

APPROVED

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BOARD REPORT

BOARD OF RECREATION
AND PARK COMMISSIONERS

NO. 17-235

DATE: November 1, 2017

C.D. _____

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: AGREEMENT WITH AMERICAN PARK NETWORK MEDIA, LLC FOR THE INSTALLATION, OPERATION, AND ONGOING SERVICE OF PUBLIC WI-FI AND OTHER COMMUNICATION SERVICE PROVIDER SERVICES AT VARIOUS PARKS; EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO ARTICLE III, SECTION 1, CLASS 3(4) OF THE CEQA GUIDELINES (INSTALLATION OF NEW EQUIPMENT INVOLVING NEGLIGIBLE OR NO EXPANSION OF USE)

AP Diaz	_____	V. Israel	_____
R. Barajas	_____	S. Pifia-Cortez	_____
H. Fujita	_____	*N. Williams	<u>NPW</u>



 General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATIONS

1. Accept a donation from American Park Network Media, LLC (APN Media), a Delaware limited liability company, consisting of the provision of Wi-Fi and other wireless communication service provider services in select, high-traffic parks, recreation areas and other sites, as more fully described in the Summary of this Report;
2. Approve a proposed agreement (Agreement) between the City of Los Angeles and APN Media, for an initial term of five (5) years with options to extend for two (2), five (5) year terms, herein included as Attachment 1, establishing the respective roles, responsibilities, and relationship with respect to furnishing, installing, maintaining, and on-going service of public Wi-Fi and other wireless communications services at various park sites;
3. Direct the Board Secretary to transmit the proposed Agreement to the Mayor and City Council for approval, subject to approval of the City Attorney as to form;
4. Authorize RAP and the City Attorney to make any necessary changes to the Agreement consistent with the terms and conditions set forth in this Report;
5. Authorize the Board President and Secretary to execute the Agreement subsequent to all necessary approvals; and,

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6. Find that the Project is exempt from provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 3(4) of the City CEQA Guidelines.

SUMMARY

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

APN Media's contribution in connection with the project is the provision, installation, operation, maintenance, and ongoing service of the computer hardware and networks required to provide the Wi-Fi services and other wireless communication services at these sites. RAP's role will be to provide input on content presented through the Wi-Fi services based on the priorities of RAP. RAP may incur telecommunication service costs to maintain internet service accounts.

On December 14, 2016, the Board of Recreation and Park Commissioners approved an agreement with APN Media, LLC (Report No. 16-258) to provide Wi-Fi and other communication service provider services in select high-traffic parks, recreation center and other sites. The initial list of sites included Echo Park Lake, Griffith Park/Observatory, Pershing Square, Venice Beach, Reseda Park, Cabrillo Beach, and The EXPO Center. APN Media's performance under this previous agreement was satisfactory and within RAP's expectations.

The proposed Agreement will continue APN Media's provision of Wi-Fi service to the same sites mentioned in Report No. 16-258 and will also now include Woodland Hills Recreation Center to the list of service sites as well as extending the term of the previous agreement. Other sites may be added at any time by mutual agreement between RAP and APN Media.

RAP staff has had, and continues to have, discussions regarding possible partnerships with other Wi-Fi service providers. However, these discussions have only produced proposals for Wi-Fi services that were limited in scope compared to those offered by APN Media. The proposed Agreement will not limit RAP's ability to continue discussions of possible partnerships with other parties to provide free Wi-Fi services at other RAP sites.

The proposed Agreement between the City and APN Media outlines each party's respective roles, responsibilities, and relationship with respect to the furnishing, installing, maintaining and on-going Wi-Fi services. The term of the proposed Agreement is for five (5) years with options to extend for two (2), five-year terms.

ENVIRONMENTAL IMPACT STATEMENT

RAP staff has determined that the project consists of installation of computer equipment and

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provision of Wi-Fi services for public use involves negligible or no expansion of facility use. Therefore, RAP staff recommends that the Board find that the project under the proposed Agreement is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 3(4) of the City CEQA Guidelines.

FISCAL IMPACT STATEMENT:

By accepting this donation, RAP will incur telecommunications service costs to maintain internet service accounts.

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

LIST OF ATTACHMENT(S)

- 1) Proposed Agreement with APN Media, LLC

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

This partnership agreement ("AGREEMENT") is entered into as of _____, 20____, ("COMMENCEMENT DATE") by and between the City of Los Angeles, a municipal corporation acting by and through its Board of Recreation and Park Commissioners ("CITY"), and APN Media, LLC ("WI-FI PROVIDER"), a Delaware limited liability corporation.

WHEREAS, CITY, through its Department of Recreation & Parks ("RAP") (collectively, the CITY, RAP and WI-FI PROVIDER are the "PARTIES" and individually, each is a "PARTY"), owns and operates park, recreation, tourism and other public venues located throughout the City of Los Angeles, CA ("ALL PARKS"); and,

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

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

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

WHEREAS, CITY has agreed to accept this offer of installation, operations and ongoing maintenance at the meeting of the Board of Recreation and Park Commissioners ("BOARD") on November 1, 2017 (Report No. _____).

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

1. Description of the SERVICES

- 1.1 WI-FI PROVIDER shall provide the SERVICES without charge to CITY.
- 1.2 SERVICES shall comply with all relevant CITY and RAP policies and regulations.

- 1.3 SERVICES shall be made available to park visitors for free, unless otherwise agreed upon by the PARTIES.
- 1.4 SERVICES shall be referred to as "Approved Wi-Fi of Los Angeles Recreation & Parks." WI-FI PROVIDER shall be referred to as an "Approved Wi-Fi Provider of Los Angeles Recreation & Parks."
- 1.5 Information content, including web links to CITY, RAP and non-profit organization sites, which are presented via the SERVICES, shall be provided and/or approved by RAP and CITY at their sole discretion ("CONTENT").
- 1.6 CITY acknowledge that the SERVICES are sponsor-supported, with any funding from sponsors, including promotional and SSID-leases ("SPONSOR"), being the sole responsibility and accruing in sole benefit to WI-FI PROVIDER unless mutually agreed upon by the PARTIES. Notwithstanding, WI-FI PROVIDER shall work with RAP to help generate sponsor support for PROGRAMS that are separate from the SERVICES.
- 1.7 The PARTIES acknowledge that the speed of SERVICES is subject to multiple factors beyond the control of WI-FI PROVIDER, including but not limited to the available speed of broadband services from third party providers and the volume of visitor usage, and, that speed can typically be increased by CITY providing multiple broadband lines and/or faster broadband connections. For the purpose of clarity, CITY acknowledges that visitor demand for higher than average data use, such as is required for streaming movies or downloading large files, is not standard in free public systems and is therefore not contemplated as part of the SERVICES. Such uses shall be mitigated by placing a speed limit/ceiling for each individual user. Further, the PARTIES acknowledge that, with sufficient speed of BROADBAND CONNECTIONS, additional wireless access points provided by WI-FI PROVIDER will allow for more concurrent users.

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

- 2.1 The following is a general description of the Wi-Fi User Experience ("UX"), which is a part of the SERVICES:
 - Upon selecting the Wi-Fi network associated with the SERVICES, WI-FI PARK visitors will be taken to a WELCOME PAGE ("WELCOME PAGE"), where they will be required to accept standard terms and conditions ("T&C").
 - The WELCOME PAGE will include, but is not limited to, the following: RAP acknowledgement, WI-FI PROVIDER acknowledgement, SPONSOR acknowledgement, a link to the T&C, a link to connect to the Internet and an indication that users must accept T&C in order to connect to the Internet.
 - While connecting to the Internet, a brief SPONSOR video will play (or another SPONSOR-related promotion will appear), after which the user will be taken to a landing page ("LANDING PAGE"). SPONSOR messaging shall be compliant with CITY/RAP regulations and family-friendly. All SPONSOR messaging shall be approved by RAP and CITY on a timely basis, which approval shall not be unreasonably withheld.
 - The LANDING PAGE will include, but is not limited to, the following: RAP acknowledgement, WI-FI PROVIDER acknowledgement, SPONSOR acknowledgement, with links to the websites of each, and a link to download the mobile app produced by WI-FI PROVIDER. It will also offer access to the T&C and privacy statement. From the Landing Page, users may browse the Internet. The Landing Page

offers a platform for RAP to provide visitor information and links to promote ALL PARKS and/or RAP and/or RAP's non-profit Partners.

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

3. Role of WI-FI PROVIDER

- 3.1 WI-FI PROVIDER shall be responsible for paying the cost of installing the networks required to provide the SERVICES. All hardware, which may include but is not limited to wireless access points (APs), small cells, DAS, LTE-U transmitters, signal beams, repeaters, routers, modems, antennas, POE adapters, satellite dishes, cables, electrical wirings, conduit, equipment cabinets and any mounting brackets or other necessary materials and equipment, along with related software as needed, are the responsibility of WI-FI PROVIDER and shall always remain the sole property of WI-FI PROVIDER. WI-FI PROVIDER shall reasonable cleanup and restore any and all RAP properties after any work performed onsite by WI-FI PROVIDER or effectuated by WI-FI PROVIDER.
- 3.2 WI-FI PROVIDER shall provide RAP with proposed site maps for each future WI-FI PARK, and for any TELECOMM ENHANCEMENTS, including equipment and equipment placement plan, for CITY'S final approval, which approval shall not be unreasonably withheld or delayed. The PARTIES have already agreed upon the site maps and equipment for WI-FI PARKS that currently have the SERVICES. In order to best enhance the visitor experience, RAP and WI-FI PROVIDER shall make best efforts to collaborate on all new site maps. Any substantive changes in site maps once approved require advanced approval of CITY by RAP, which approval shall not be unreasonably withheld or delayed.
- 3.3 WI-FI PROVIDER shall be responsible for repair or replacement cost of equipment necessary to provide the SERVICES, as long as the breakage is not a result of actions taken by the CITY or RAP, or due to vandalism that could have been reasonably protected against by CITY or RAP.
- 3.4 WI-FI PROVIDER shall arrange for internet connections within the WI-FI PARKS as needed, to be incorporated into the SERVICES, with sufficient speed to support the SERVICES in a commercially reasonable manner ("BROADBAND CONNECTIONS"). For WI-FI PARKS where it's viable to use CITY or RAP broadband connections for the SERVICES, or those of CITY or RAP Partners, WI-FI PROVIDER will coordinate with RAP to use these connections for the SERVICES. The BROADBAND CONNECTIONS shall be of the highest speed that is economically reasonable. It is acknowledged by the PARTIES as of the date of this AGREEMENT, that the minimum viable speeds for the BROADBAND CONNECTIONS are 15 Mbps download speed and 2 Mbps upload speed, and that higher speeds are always more desirable with respect to the user experience. WI-FI PROVIDER shall be granted access to the WI-FI PARKS as needed by CITY to install, or oversee the installation of, the BROADBAND CONNECTIONS, and to service, repair and/or maintain the BROADBAND CONNECTIONS as needed.

- 3.5 WI-FI PROVIDER will work collaboratively with RAP to develop sponsorship program opportunities in order to provide additional promotional benefits to CITY or RAP, serve the visitor interests or attract potential sponsors ("PROGRAMS"). PROGRAMS will be promoted in the SERVICES and implemented by WI-FI PROVIDER in the WI-FI PARKS, and may include components such as events or experiential activities, the details and locations of which shall be determined by mutual agreement. All such PROGRAMS must be compliant with all related RAP and CITY regulations. Potential Programs require the approval of RAP, which shall not be unreasonably withheld or delayed.
- 3.6 WI-FI PROVIDER shall coordinate with RAP to develop CONTENT on the LANDING PAGE that enhances the visitor experience.
- 3.7 WI-FI PROVIDER will share general user data from the SERVICES as requested by RAP ("DATA"). DATA can be helpful to understand visitor use patterns, assist in operational decision making, be useful as a forecasting tool and may also inform other means in which the SERVICES can add value to WI-FI PARK operations. WI-FI PROVIDER will adhere to industry standard practices with respect to collection of DATA. Email addresses and other user contact information, which may be requested of users of the SERVICES as part of the Wi-Fi authentication process, shall be considered part of the DATA. For clarity, all users must agree to the T&C in order to use the SERVICES and gain access to the Internet. CITY and RAP agrees that DATA shall be for internal use, such that it shall not disclose DATA to any third party. Notwithstanding, if CITY or RAP needs to disclose aggregated visitor data as a function of solicitation for services and/or grants, or for other necessary public reporting purposes, such use of said aggregated visitor traffic data is permitted.
- 3.8 WI-FI PROVIDER shall provide RAP with proposed signage for use in each future WI-FI PARK, including a sign placement plan, for CITY'S final approval, which approval shall not be unreasonably withheld or delayed. For clarity, RAP has already approved the sign design and placement for WI-FI PARKS that currently have the SERVICES.
- 3.9 WI-FI PROVIDER, at its sole expense, reserves the right to sell promotional sponsorship and/or access to the SERVICES, including but not limited to video advertisements, SSID leases and communications service provider use to enhance coverage in the WI-FI PARKS, all of which shall adhere to all applicable CITY and RAP rules and regulations. There shall be no sponsors of Wi-Fi or other connectivity services in ALL PARKS that are competitive to SPONSORS secured by WI-FI PROVIDER. For the purposes of clarity, this applies to sponsors of connectivity only, not sponsors for any other RAP programs.
- 3.10 In the event that WI-FI PROVIDER is able to secure a Wi-Fi SSID lease or a communications service provider's lease to enhance coverage by placing incremental telecommunications equipment, including small cells, in a WI-FI PARK, WI-FI PROVIDER will, upon implementation, immediately assume management and all costs and responsibilities associated with the BROADBAND CONNECTIONS at that time for said WI-FI PARK. CITY grants WI-FI PROVIDER the right to increase the speed or otherwise upgrade the BROADBAND CONNECTIONS at any time that WI-FI PROVIDER deems such an upgrade beneficial to enhance or better enable the SERVICES. This shall include the right to switch to different broadband service providers, regardless of who provided the initial BROADBAND CONNECTIONS.

- 3.11 In the event that WI-FI PROVIDER is able to secure an agreement with a communication service provider to enhance coverage by placing incremental telecommunications equipment, including small cells, in a WI-FI PARK ("TELECOMM ENHANCEMENT"), then WI-FI PROVIDER shall equally split associated revenue from communication service provider ("TELECOMM REVENUE") with CITY, but only after WI-FI PROVIDER recoups all costs associated with the TELECOMM ENHANCEMENT, excluding administrative and marketing-related costs, and once the fees associated with the BROADBAND CONNECTIONS, including BROADBAND CONNECTION fees paid by WI-FI PROVIDER that have not been previously reimbursed, and electric power are deducted from the TELECOMM REVENUE. RAP shall calculate estimated cost of electric power based on industry norms. Should WI-FI PROVIDER be successful in securing an expression of interest from a communication service provider to make a TELECOMM ENHANCEMENT in a WI-FI PARK(S) ("EXPRESSION OF INTEREST"), WI-FI PROVIDER must present proposed terms with said communication service provider to RAP for timely approval, which approval shall not be unreasonably withheld. Once WI-FI PROVIDER has submitted an EXPRESSION OF INTEREST from a given communication service provider, CITY and RAP shall not separately pursue TELECOMM ENHANCEMENTS with said communication service provider. If WI-FI PROVIDER is successful in securing a TELECOMM ENHANCEMENT in a WI-FI PARK with a communication service provider, then any additional TELECOMM ENHANCEMENTS in said WI-FI PARK from other communication service providers shall adhere to the same revenue share formula outlined herein in this Section 3.11, regardless of who secured the subsequent agreements for further TELECOMM ENHANCEMENTS. For clarity, prior to there being an EXPRESSION OF INTEREST pertaining to a specific WI-FI PARK, if CITY or RAP is able to directly secure an agreement for TELECOMM ENHANCEMENT in the same WI-FI PARK, then the revenue share described in this Section 3.11 does not apply. In this case, the CITY shall be responsible for all costs associated with the installation, maintenance, monitoring, support and management of the TELECOMM ENHANCEMENT and WI-FI PROVIDER shall have no obligations whatsoever for said TELECOMM ENHANCEMENTS, including related BROADBAND CONNECTIONS. Only CITY, RAP and WI-FI PROVIDER shall solicit TELECOMM ENHANCEMENT in the WI-FI PARKS. No agreement for TELECOMM ENHANCEMENTS or WiFi sponsorship shall have a term longer than the TERM of this agreement.
- 3.12 WI-FI PROVIDER will interact with RAP's on-site liaison, point of contact ("POC") for WI-FI PARKS where the SERVICES are provided. Said POC shall be identified by RAP, as may be needed in order to periodically test, upgrade or troubleshoot the SERVICES from time-to-time.
- 3.13 WI-FI PROVIDER shall respond to requests from CITY and RAP in a timely manner.

4. Role of RAP

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

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

- 4.3 RAP shall provide WI-FI PROVIDER with necessary access and at least one (1) POC for each WI-FI PARK in which the SERVICES are provided so that WI-FI PROVIDER can install, maintain, upgrade, service and/or repair the SERVICES and, where applicable, the BROADBAND CONNECTIONS, in the most efficient manner possible.
- 4.4 RAP will work with WI-FI PROVIDER to identify the best possible locations for the SERVICES and shall provide reasonable, economical security for any equipment required for the SERVICES.
- 4.5 RAP shall promote the SERVICES, at RAP's sole discretion, through all its relevant and available channels, which may include but shall not be limited to RAP's websites, social media, publications, tourism campaigns, media outreach, on-site collateral and other targeted channels. All promotion of the SERVICES must be compliant with RAP's policies.
- 4.6 RAP shall generate awareness of the SERVICES through on-site signage. It is acknowledged by the PARTIES that the most important means to generate ongoing awareness of the SERVICES is through on-site signage placed throughout the WI-FI PARKS, which shall well-define the area in which the SERVICES are provided in a highly visible manner. Said signage shall be designed by WI-FI PROVIDER with input from RAP in order to adhere to CITY sign regulations, including the manner in which SPONSOR recognition is incorporated. On signage at WI-FI PARKS, WI-FI PROVIDER shall provide the following credit or similar credit as approved by RAP in writing: "In collaboration with the City of Los Angeles Department of Recreation and Parks"
- 4.7 RAP shall provide constant electric power and BROADBAND CONNECTIONS for the SERVICES, except as required by Section 3.10 herein. For clarity, RAP shall assume financial and management responsibility for BROADBAND CONNECTIONS for any existing Wi-Fi PARKS except for Woodland Hills Recreation Center that WI-FI PROVIDER is currently funding and managing, whether WI-FI PROVIDER is doing so for convenience or any other reason, by December 31, 2017.
- 4.8 RAP shall respond to requests from WI-FI PROVIDER in a timely manner.

5. Intellectual Property, Feedback & Use Restrictions.

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

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

6. Copyright.

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

7. Term

- 7.1 The term of this AGREEMENT shall be for five (5) years commencing on the date the AGREEMENT is fully executed ("INITIAL TERM"), and shall automatically be extended for two (2) successive five-year renewal periods ("RENEWAL TERMS") (as used herein, the INITIAL TERM and the RENEWAL TERMS shall collectively be referred to as the "TERM"), unless one of the PARTIES terminates this AGREEMENT subject to the terms and conditions herein. Any PARTY may terminate this AGREEMENT in the event of a material breach that, upon providing written NOTICE as defined herein, is not cured in a commercially reasonable timeframe. In addition, RAP may choose not to renew should WI-FI PROVIDER fail to maintain the SERVICES at a quality level that's consistent with commercially reasonable standards and WI-FI PROVIDER may choose not to renew, or WI-FI PROVIDER may terminate at any time with at least sixty (60) days prior notice if WI-FI PROVIDER does not have any active agreements with WiFi sponsors or active agreements for TELECOMM ENHANCEMENT, based on the SERVICES no longer being commercially viable. In the event that a PARTY chooses not to renew for the reasons allowed herein, such NOTICE must be given not less than sixty (60) days prior to the expiration of the INITIAL TERM or any RENEWAL TERM.
- 7.2 **Non-Renewal Notice** If for any reason either party desires that the term of this AGREEMENT expires at the end of the INITIAL TERM or any RENEWAL TERM, such party shall provide the other party with written notice (a "**Non-Renewal Notice**"), at least sixty (60) days prior to the end of the then existing Renewal Term, of its desire that the Term expire at the end of the INITIAL TERM or any RENEWAL TERM, and shall not be subject to renewal pursuant to 7.1 of this AGREEMENT. If neither party provides the other with a timely Non-Renewal Notice, this AGREEMENT shall automatically renew in accordance with Paragraph 7.1.
- 7.3 In the event of a non-renewal or termination of this AGREEMENT as stipulated herein, WI-FI PROVIDER agrees to immediately cease all operations and other activity, remove all property and equipment for the SERVICES within one hundred eighty (180) calendar days of receiving or providing a written NOTICE of same. .Notwithstanding, RAP may notify WI-FI PROVIDER of its desire that any conduit or cabling installed by WI-FI PROVIDER be left on premises, in which case WI-FI PROVIDER shall leave such conduit or cabling in place, which shall become RAP property. In the absence of such notification, and if WI-FI PROVIDER fails to remove all its property and equipment within

one hundred eighty (180) calendar days after non-renewal or termination of this AGREEMENT, RAP, at its option, may remove such property and equipment, in which event WI-FI PROVIDER shall pay to the RAP upon demand, the reasonable cost of such removal, plus the cost of disposition thereof. Upon removal of its property, WI-FI PROVIDER agrees to leave the premises in as close to original condition as is reasonably possible, subject to normal wear and tear.

- 7.4 CITY and RAP agree that they will not endorse or contract with any other Wi-Fi or communication service provider to provide services similar to the SERVICES referenced herein at the WI-FI PARKS during the TERM of this AGREEMENT. For clarity, this applies only to the WI-FI PARKS.

8. Representations and Warranties.

- 8.1 WI-FI PROVIDER represents and warrants to CITY and RAP that it is or will be the sole owner or licensee of the copyright and all other right, title and interest in any MATERIALS provided by WI-FI PROVIDER for inclusion in the SERVICES, including but not limited to interpretive text, photographs, maps, charts, artwork and any other information, and WI-FI PROVIDER further represents and warrants that the publication of such MATERIALS as contemplated herein will not result in any copyright infringement or violation of any rights belonging to another person or entity.
- 8.2 CITY and RAP represent and warrant to WI-FI PROVIDER that CITY and RAP are or will be the sole owner or licensee of the copyright and all other right, title and interest in any MATERIALS provided for inclusion in the SERVICES, including but not limited to interpretive text, photographs, maps, charts, artwork and any other information, and CITY and RAP further represent and warrants that the publication of such Materials as contemplated herein will not result in any copyright infringement or violation of any rights belonging to another person or entity, and that all MATERIALS provided by CITY and RAP are in the "public domain" and may be used without fee.

9. Confidentiality.

- 9.1 The PARTIES agree that in order to create the relationship contemplated herein, each PARTY shall be provided with and shall otherwise have access to certain proprietary business information regarding the other PARTIES' business that is generally acknowledged to be confidential, including but not limited to sales and marketing information, web strategy and metrics, pricing policies, program performance, financial data and future plans ("CONFIDENTIAL MATERIALS"). Each PARTY agrees that it and its employees, directors and affiliates shall reasonably protect such CONFIDENTIAL MATERIALS and prevent the disclosure of such CONFIDENTIAL MATERIALS, whether directly or indirectly, to any third party in perpetuity. The PARTIES agree that upon termination of the AGREEMENT, or if it is determined by PARTIES that the AGREEMENT will not be signed, each PARTY shall promptly deliver to the other(s) all documents (whether on paper or electronic), materials, notes, samples, prototypes, premiums and any other tangible items in its possession or control that contain, relate to, or are connected in any way with CONFIDENTIAL MATERIALS, and it shall, for perpetuity, continue to treat such CONFIDENTIAL MATERIALS as confidential and proprietary to the other.

Each PARTY shall ensure that any CONFIDENTIAL MATERIALS that it receives are not disclosed to any person, firm, corporation, or other third party, except that the PARTIES

shall be under no obligation with respect to information that is, or becomes other than by their own actions, generally known or in the public domain. Notwithstanding the foregoing, each PARTY may disclose CONFIDENTIAL MATERIALS in the event that it becomes legally compelled (including interrogatories, written requests for information or documents, subpoena, civil investigative demand or similar process) to disclose such CONFIDENTIAL MATERIALS provided; however, that the legally compelled PARTY shall promptly advise the other PARTIES of such legal compulsion and, to the extent that the other PARTIES secures a legally enforceable protective order, the legally compelled PARTY shall comply with such protective order. The terms of this section shall survive the termination of this AGREEMENT in perpetuity.

WI-FI PROVIDER undertakes and agrees to defend, indemnify and hold harmless the CITY from and against all suits, claims, and causes of action brought against the CITY for the CITY's refusal to disclose WI-FI PROVIDER's CONFIDENTIAL MATERIALS to any person making a request pursuant to the State of California Public Records Act (California Government Code Section 6250 et seq.). WI-FI PROVIDER's obligations herein include, but are not limited to, all reasonable attorney's fees (both in house and outside counsel), reasonable costs of litigation incurred by the CITY or its attorneys (including all actual, costs incurred by the CITY, not merely those costs recoverable by a prevailing party, and specifically including costs of experts and consultants) as well as all damages or liability of any nature whatsoever arising out of any such suits, claims, and causes of action brought against the CITY, through and including any appellate proceedings. WI-FI PROVIDER's obligations to the CITY under this indemnification provision shall be due and payable on a monthly, on-going basis within thirty (30) days after each submission to WI-FI PROVIDER of the CITY's invoices for all fees and costs incurred by the CITY, as well as all damages or liability of any nature. WI-FI PROVIDER shall receive prompt notice from the CITY of any (1) communication to the CITY challenging the CITY's refusal to disclose WI-FI PROVIDER's CONFIDENTIAL MATERIALS, and (2) any complaint or petition to the court challenging the City's refusal to disclose WI-FI PROVIDER's CONFIDENTIAL MATERIALS. Further should WI-FI PROVIDER choose to intervene in any court action relating to the CITY's refusal to disclose WI-FI PROVIDER's CONFIDENTIAL MATERIALS, the CITY shall not oppose WI-FI PROVIDER's motion to intervene. WI-FI PROVIDER shall be discharged of its obligations to the CITY under this provision in any circumstance where WI-FI PROVIDER provides written confirmation to the CITY that 1) all of the requested records at issue are not CONFIDENTIAL MATERIALS and 2) the CITY may release said records to the requester.

10. Limitation of Liability

- 10.1 The SERVICES are provided "as is" and WI-FI PROVIDER disclaims all warranties, expressed or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, and non-infringement with respect thereto. WI-FI PROVIDER shall in no event be liable to CITY or RAP for any loss of data, loss of money, cost of cover or other special, indirect, incidental, consequential, punitive or exemplary damages of any kind or nature. CITY and RAP acknowledge and agree that WI-FI PROVIDER cannot ensure that the MATERIALS submitted by CITY and RAP will be protected from theft or misuse by third PARTIES or that users of the SERVICES and other third PARTIES will comply with any content usage rules CITY may make applicable in connection with use of the MATERIALS or the SERVICES, and to the extent not caused by WI-FI PROVIDER, WI-FI PROVIDER will have no liability arising

from a failure of any security system or procedure should any third party or SERVICES user fail to comply with said usage rules.

11. Assignment

11.1 This AGREEMENT shall inure to the benefit of, and shall be binding upon, the permitted assigns, successors in interest, personal representatives, estates, heirs, and legatees of each of the PARTIES hereto. WI-FI PROVIDER may not sell or assign all or any portion of its rights, title and interest in this AGREEMENT without the prior written consent of RAP, which consent shall not be unreasonably withheld or delayed. The assignment of this AGREEMENT to a wholly owned subsidiary or other related company, or the purchase of all or substantially all of the stock and/or assets of WI-FI PROVIDER by another entity, shall not require the prior consent of RAP. In the case of a sale or assignment, the purchaser or assignee shall undertake in writing to perform all of WI-FI PROVIDER's obligations under this AGREEMENT, and upon receipt by the RAP of such written undertaking by the purchaser or assignee, WI-FI PROVIDER shall be relieved of all further liability and obligations under this AGREEMENT.

12. Indemnification

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

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

13. Insurance

- 13.1 Before commencing work to provide the SERVICES and periodically as required during its TERM, WI-FI PROVIDER shall furnish CITY with evidence of insurance from firms reasonably acceptable to CITY and approved to do such business in the State of California, as defined in Exhibit B attached hereto. WI-FI PROVIDER or any third party providing work or services under this AGREEMENT shall name the City of Los Angeles and its boards, officers, agents, employees, assigns and successors in interest as an additional insured for all required coverages, as applicable. WI-FI PROVIDER will ensure that like insurance will be maintained by any such third party. Evidence of required coverage shall be on forms reasonably acceptable to the CITY's Risk Manager and shall include the types and minimum limits set forth in Exhibit B attached hereto and incorporated herein by reference.
- 13.2 WI-FI PROVIDER 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 WI-FI PROVIDER sixty (60) calendar days written NOTICE, provided that such amounts and/or types shall be reasonably available to WI-FI PROVIDER.
- 13.3 If any of the required insurance contains aggregate limits or applies to other operations of WI-FI PROVIDER outside of this AGREEMENT, WI-FI PROVIDER shall give CITY written NOTICE of any incident, occurrence, claim, settlement or judgment against such insurance that in WI-FI PROVIDER's best judgment may diminish the protection such insurance affords CITY within thirty (30) calendar days of the knowledge of same. WI-FI PROVIDER shall further restore such aggregate limits or shall provide other replacement insurance for such aggregate limits within sixty (60) calendar days of the knowledge of same.
- 13.4 If an insurance company elects to cancel insurance before the stated expiration date, declines to renew in the case of a continuous policy, reduces the stated limits other than by impairment of an aggregate limit or materially reduces the scope of coverage, thereby affecting CITY's interest, WI-FI PROVIDER will provide CITY at least thirty (30) calendar days (ten (10) calendar days for non-payment of premium) prior written NOTICE of such intended election. The NOTICE will be sent by receipted delivery addressed as follows: City Administrative Officer, Risk Management, 200 North Main Street, Room 1240, City Hall East, Los Angeles, California 90012, or to such address as CITY may specify by written NOTICE to WI-FI PROVIDER.
- 13.5 WI-FI PROVIDER's failure to procure and maintain the required insurance shall constitute a material breach of this AGREEMENT. At its discretion, CITY may pay to procure or renew such insurance to protect CITY's interest, in which case WI-FI PROVIDER agrees to reimburse CITY for all money so paid.
- 13.6 Self-insurance programs and self-insured retention in insurance policies are subject to separate approval by CITY upon review of evidence of WI-FI PROVIDER' financial capacity. Additionally, such programs or retention must provide CITY with an equivalent protection from liability.

14. Hazardous Substances

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

15. Publicity

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

16. Breach by WI-FI PROVIDER

- 16.1 The following occurrences constitute events of breach of this AGREEMENT: WI-FI PROVIDER materially fails in the performance of any provision or condition of this AGREEMENT, such as failure to maintain required insurance coverage, failure to comply with applicable legal requirements or failure to fulfill the obligation to maintain the SERVICES as specified herein.
- 16.2 Upon the occurrence of one or more events of breach or default by WI-FI PROVIDER, CITY may, at its election and without waiving any right to select any other remedy provided in this AGREEMENT, issue a written NOTICE of breach or default to WI-FI PROVIDER, and if WI-FI PROVIDER 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 WI-FI PROVIDER, terminate this AGREEMENT without further delay subject to the terms herein.

17. Notices

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

All NOTICES shall be addressed as follows:

If to CITY:

Information Technology Division
City of Los Angeles Department of Recreation and Parks Attention: IT Division
221 N. Figueroa Street Suite 450
Los Angeles, CA 90012
Tel.: (213) 202-3290

If to WI-FI PROVIDER:

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

18. Duly Authorized

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

19. No Joint Venture, Relationship of Parties

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

20. Ordinances and Standard Provisions

- 20.1 The "Standard Provisions for City Contracts (Rev. 10/17)" are incorporated herein by reference and attached hereto as Exhibit C. If there is any conflicting language between the "Standard Provisions for City Contracts (Rev. 10/17)" and this AGREEMENT, the language of this AGREEMENT shall prevail. WI-FI PROVIDER and CONTRACTOR have the same meaning for purposes of the "Standard Provisions for City Contracts (Rev. 10/17)." For clarity sake, notwithstanding anything herein, in the event of a termination for any reason, WI-FI PROVIDER shall retain ownership of all equipment installed to provide the SERVICE as long as it shall comply with the removal requirements as set forth herein.

21. Safety Practices

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

22. Entire Agreement

- 22.1 This AGREEMENT contains the entire understanding between the PARTIES and supersedes any prior understanding or written or oral agreements between them respecting the subject matter hereof.

[Signature Page to Follow]

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

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

By: _____ President

By: _____ Secretary

Date: _____

APN MEDIA, LLC:

By: _____

Title: _____

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

By: _____

Date: _____

EXHIBIT A
INITIAL WI-FI PARKS

The following is the list of initial WI-FI PARKS, which can be expanded at any time by mutual agreement of RAP and WI-FI PROVIDER. For clarity, it is the goal of RAP to add expansion locations whereby WI-FI PROVIDER is responsible for all incremental costs, including equipment, installation, maintenance, management and broadband connection fees. RAP will review any WI-FI PROVIDER proposal for a specific expansion location on a case-by-case basis.

- Echo Park Lake
- Griffith Park/Observatory
- Pershing Square
- Venice Beach
- Reseda Park
- Cabrillo Beach
- Expo Center
- Woodland Hills Recreation Center.

**EXHIBIT B
INSURANCE REQUIREMENTS**

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

1. **Agreement/Reference** All evidence of insurance must identify the nature of your business with the CITY. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the **types of coverage and minimum dollar amounts** specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) included in your CITY documents.
2. **When to submit** Normally, no work may begin until a CITY insurance certificate approval number ("CA number") has been obtained, so insurance documents should be submitted as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.
3. **Acceptable Evidence and Approval** Electronic submission is the preferred method of submitting your documents. **Track4LATM** is the CITY's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used primarily by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the **ACORD 25 Certificate of Liability Insurance** in electronic format – the CITY is a licensed redistributor of ACORD forms. Track4LATM advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **Track4LATM** at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on your behalf. Insurance industry certificates other than the ACORD 25 that have been approved by the State of California, may be accepted, however **submissions other than through Track4LATM will significantly delay the insurance approval process as documents will have to be manually processed.** All certificates must provide a thirty (30) days' cancellation notice provision (ten (10) days for non-payment of premium) AND an Additional Insured Endorsement naming the CITY an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured. An endorsement naming the CITY an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Completed Insurance Industry Certificates other than ACORD 25 Certificates are sent electronically to CAO.insurance.bonds@lacity.org.

Additional Insured Endorsements DO NOT apply to the following:

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

Verification of approved insurance and bonds may be obtained by checking **Track4LATM**, the CITY's online insurance compliance system, at <http://track4la.lacity.org>.

4. **Renewal** When an existing policy is renewed, have your insurance broker or agent submit a new Acord 25 Certificate or edit the existing Acord 25 Certificate through **Track4LATM** at <http://track4la.lacity.org>.
5. **General Liability** insurance covering your operations (and products, where applicable) is required whenever the CITY is at risk of third-party claims which may arise out of your work or your presence or special event on City premises. (Information on two CITY insurance programs, the SPARTA program, an optional source of low-cost insurance which meets the most minimum requirements, and the Special Events Liability Insurance Program, which provides liability coverage for short-term special events on CITY premises or streets, is available at (www.2sparta.com), or by calling (800) 420-0555.
6. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY premises; it is not required for simple commuting unless CITY is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.
7. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the State's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement (<http://cao.lacity.org/risk/InsuranceForms.htm>). **A Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.

(See attached Form 146 for insurance minimums for this AGREEMENT)

EXHIBIT C
STANDARD PROVISIONS FOR CITY CONTRACTS

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

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

PSC-2. Applicable Law, Interpretation and Enforcement

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

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

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

PSC-3. Time of Effectiveness

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

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

- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-4. Integrated Contract

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

PSC-5. Amendment

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

PSC-6. Excusable Delays

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

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

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

PSC-7. Waiver

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

PSC-8. Suspension

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

PSC-9. Termination

A. Termination for Convenience

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

B. Termination for Breach of Contract

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

coverage and Contractor's obligation to suspend performance of services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

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

abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

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

PSC-10. Independent Contractor

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

PSC-11. Contractor's Personnel

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

CONTRACTOR shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors,

CONTRACTOR shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

PSC-12. Assignment and Delegation

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

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

PSC-13. Permits

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

PSC-14. Claims for Labor and Materials

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

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

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

PSC-16. Retention of Records, Audit and Reports

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration

of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

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

PSC-17. Bonds

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

PSC-18. Indemnification

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

PSC-19. Intellectual Property Indemnification

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

this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-20. Intellectual Property Warranty

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

PSC-21. Ownership and License

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

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

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

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

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract

such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

PSC-22. Data Protection

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

PSC-23. Insurance

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

PSC-24. Best Terms

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

PSC-25. Warranty and Responsibility of Contractor

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

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

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

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

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

PSC-27. Child Support Assignment Orders

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal

employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-28. Living Wage Ordinance

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

PSC-29. Service Contractor Worker Retention Ordinance

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

PSC-30. Americans with Disabilities Act

CONTRACTOR shall comply with the Americans with Disabilities Act, 42 U.S.C. Section 12101 *et seq.*, and its implementing regulations.

PSC-31. Contractor Responsibility Ordinance

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

PSC-32. Business Inclusion Program

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

PSC-33. Slavery Disclosure Ordinance

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

PSC-34. First Source Hiring Ordinance

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

PSC-35. Local Business Preference Ordinance

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

PSC-36. Iran Contracting Act

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

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

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

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

You are a subcontractor on City of Los Angeles Contract

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

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

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

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

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

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

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

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

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

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

PSC-42. Possessory Interests Tax

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

PSC-43. Confidentiality

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

EXHIBIT 1

INSTRUCTIONS AND INFORMATION ON COMPLYING WITH CITY INSURANCE REQUIREMENTS

(Share this information with your insurance agent or broker)

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

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

Submitting your documents. **Track4LA®** is the **CITY'S** online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used by insurance brokers and agents as they submit client insurance certificates directly to the **CITY**. It uses the standard insurance industry form known as the **ACORD 25 Certificate of Liability Insurance** in electronic format. Track4LA® advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **Track4LA®** at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Insurance industry certificates other than the ACORD 25 may be accepted, however **submissions other than through Track4LA® will significantly delay the insurance approval process as documents will have to be manually processed**. **CONTRACTOR must provide CITY** a thirty day notice of cancellation (ten days for non-payment of premium) AND an Additional Insured Endorsement naming the **CITY** an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the **CITY** is an automatic or blanket additional insured. An endorsement naming the **CITY** an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Completed **Insurance Industry Certificates other than ACORD 25 Certificates** are sent electronically to CAO.insurance.bonds@lacity.org.

Additional Insured Endorsements DO NOT apply to the following:

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

Verification of approved insurance and bonds may be obtained by checking **Track4LA®**, the **CITY'S** online insurance compliance system, at <http://track4la.lacity.org>.

4. **Renewal** When an existing policy is renewed, have your insurance broker or agent submit a new Acord 25 Certificate or edit the existing Acord 25 Certificate through **Track4LA®** at <http://track4la.lacity.org>.

5. **Alternative Programs/Self-Insurance** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the **CITY** has reviewed the relevant audited financial statements. To initiate a review of your program, you should complete the Applicant's Declaration of Self Insurance form (<http://cao.lacity.org/risk/InsuranceForms.htm>) to the CAO-RM for consideration.

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

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

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

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

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

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

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

Required Insurance and Minimum Limits

Name: _____

Date: _____

Agreement/Reference: _____

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

	Limits
Workers' Compensation (WC) and Employer's Liability (EL)	WC <i>Statutory</i> EL
<input type="checkbox"/> Waiver of Subrogation in favor of City <input type="checkbox"/> Longshore & Harbor Workers <input type="checkbox"/> Jones Act	
General Liability	
<input type="checkbox"/> Products/Completed Operations <input type="checkbox"/> Sexual Misconduct <input type="checkbox"/> Fire Legal Liability <input type="checkbox"/> _____	
Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)	
Professional Liability (Errors and Omissions)	
Discovery Period _____	
Property Insurance (to cover replacement cost of building - as determined by insurance company)	
<input type="checkbox"/> All Risk Coverage <input type="checkbox"/> Boiler and Machinery <input type="checkbox"/> Flood <input type="checkbox"/> Builder's Risk <input type="checkbox"/> Earthquake <input type="checkbox"/> _____	
Pollution Liability	
<input type="checkbox"/> _____	
Surety Bonds - Performance and Payment (Labor and Materials) Bonds	
Crime Insurance	
Other: _____ _____ _____	

