

APPROVED

Oct 03 2021

BOARD REPORT

**BOARD OF RECREATION
AND PARK COMMISSIONERS**

NO. 24-211

DATE October 03, 2024

C.D. 4


BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GRIFFITH OBSERVATORY – PARTNERSHIP AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND GRIFFITH OBSERVATORY FOUNDATION FOR THE FABRICATION, INSTALLATION, AND DONATION OF THE CELESTIAL GLOBE EXHIBIT AT GRIFFITH OBSERVATORY – CATEGORICAL EXEMPTION FROM THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO ARTICLE 19, SECTION 15301 [MINOR ALTERATION OF EXISTING PUBLIC OR PRIVATE STRUCTURES, FACILITIES, MECHANICAL EQUIPMENT, OR TOPOGRAPHICAL FEATURES, INVOLVING NEGLIGIBLE OR NO EXPANSION OF EXISTING OR FORMER USE] OF THE CALIFORNIA CEQA GUIDELINES AS WELL AS TO ARTICLE III, SECTION 1, CLASS 1 OF CITY CEQA GUIDELINES

* B. Aguirre	<u>BA</u>	M. Rudnick	_____
B. Jones	_____	C. Santo Domingo	_____
C. Stoneham	_____	N. Williams	_____



General Manager

Approved X _____ Disapproved _____ Withdrawn _____
 If Approved: Board President  Board Secretary 

RECOMMENDATIONS

1. Approve a proposed partnership agreement (Agreement) between the City of Los Angeles (City) and Griffith Observatory Foundation (Foundation) for the fabrication, installation, and donation of a new Celestial Globe exhibit (Exhibit) to be installed in Griffith Observatory (Observatory), substantially in the form attached as Attachment 1 to this Report, subject to the approval of the City Council and the approval of the City Attorney as to form;
2. Authorize the Chief Accounting Employee for the Department of Recreation and Parks (RAP) to make technical corrections as necessary to implement the intent of this Report;
3. Determine that the approval of the Agreement and resulting fabrication, installation, and donation of the Exhibit (Project) is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15301 [Minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use] of

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the California CEQA Guidelines as well as to Article III, Section 1, Class 1 of City CEQA Guidelines, and direct Staff to file a Notice of Exemption (NOE) with the Los Angeles County Clerk and the California Office of Planning and Research;

4. Authorize RAP's Chief Accounting Employee to prepare a check to the Los Angeles County Clerk in the amount of \$75.00 for the purpose of filing a NOE;
5. Direct the Board of Recreation and Park Commissioners (Board) Secretary to transmit the Agreement to the City Council for approval and, concurrently, the City Attorney for review and approval as to form;
6. Authorize the Board President and Secretary to execute the Agreement upon receipt of the necessary approvals;
7. Upon completion of the installation of the Exhibit, accept the Exhibit as a donation to the City, subject to a post-installation inspection by RAP; and
8. Thank the Foundation for its generous support of the Observatory and its visitors.

BACKGROUND

Griffith Observatory is located at 2800 East Observatory Road in Griffith Park. The Observatory opened in 1935 and is an icon of Los Angeles, a national leader in public astronomy, and one of Southern California's most popular attractions. The Observatory is engaged in a formal partnership (Agreement No. 3972, the "MOU") with the non-profit Griffith Observatory Foundation which provides essential financial and organizational assistance, programming and exhibit support, advocacy, and other forms of support to enhance the Observatory for public benefit. The longstanding collaboration, since 1978, between the Observatory and the Foundation has proven very beneficial to the Observatory and City.

The Observatory annually attracts 1.6 million visitors through its doors and millions more to the Observatory's grounds and parking. The Observatory offers amazing views, live experiences in the Samuel Oschin Planetarium, free programs in the Leonard Nimoy Event Horizon, free telescope viewing each night, and free inspiring and educational exhibits. The Celestial Globe would be a significant addition to the Observatory's exhibit program.

THE CELESTIAL GLOBE EXHIBIT

The Observatory and Foundation seek to realize an exhibit element that was originally planned to be part of the comprehensive new exhibit program developed as part of the Griffith Observatory Renovation and Expansion Project (2002-2006). Unfortunately, the Celestial Globe exhibit (Exhibit) had to be deferred for cost and schedule reasons. In recent years, the Foundation agreed to resume, finance, and complete the exhibit and donate it to the City (as it developed and donated the rest of the Observatory's exhibit program). The Exhibit will enhance the Observatory visitor experience and is fully consistent with the Observatory's programmatic objectives.

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The Exhibit is an 800-pound modern interpretation of the ancient Farnese Atlas sculpture sphere that portrays 43 constellations of the night sky. The rotating globe is to be mounted on a tall post over the Observatory's Gravity's Stairway, which connects the building's historic level and new galleries added in 2006.

The Observatory and Foundation have collaborated closely on the conceptual and detailed design of the Exhibit and the Foundation has engaged contractors to document the design, to have those designs reviewed by a structural engineer, and to submit those stamped designs to the City for formal review and plan check approval (through Building and Safety).

Once that review is complete, the Foundation has engaged contractors to fabricate both the globe itself and its mounting and rotational elements and to install the Exhibit in the Observatory. The Foundation contractor will interact with RAP's onsite staff regarding detailed planning and coordination for installation of the Exhibit at the Observatory. The Foundation and installation contractor shall provide insurance in accordance with City requirements.

For its part, Observatory staff has enabled the Exhibit's development by providing historical and astronomical design input, all necessary background plans & drawings, and timely review of design, fabrication, and installation plans, drawings, and reviews. The Observatory is responsible for providing constant electrical power for the Exhibit's rotational motor. Observatory staff shall provide the Foundation installation contractor with necessary access and coordination and oversee Foundation contractors during all aspects of the installation.

Once the Exhibit is installed, tested, and demonstrated to be working, the Foundation shall formally transfer ownership of the Exhibit to the City for ongoing display. The Exhibit will become part of the Observatory's permanent exhibition program, and the Observatory staff shall be responsible for maintaining and repairing the Exhibit unless and until it is removed from public exhibition because of a serious issue or a broader change in the exhibition program. The Observatory staff shall notify the Foundation in advance regarding the reason and/or need for such removal.

The Foundation and Observatory staff shall coordinate to develop content that enhances the visitor understanding and enjoyment of the Exhibit. RAP will also consider potential signage recognizing in accordance with applicable City/RAP regulations and RAP sponsorship policies.

PROPOSED AGREEMENT

The proposed Agreement sets forth the Foundation and City's respective roles, responsibilities, and relationship with respect to the fabrication, installation, and donation of the exhibit. The Agreement provides a right of entry for the Foundation and its contractors for the installation of the exhibit. The Agreement also addresses issues of copyright, intellectual property, confidentiality, liability, indemnification, and insurance.

The term of the Agreement shall be from the date of its approval by the Board through May 31, 2025. The end of the Agreement shall not affect the ongoing maintenance and care responsibility by Observatory staff for the exhibit as described above.

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ENVIRONMENTAL IMPACT

The proposed Project consists of a minor alteration of an existing facility – the installation of a single new permanent exhibit inside the Observatory building. The supporting post of the exhibit will be mounted to the floor and attached for lateral support to a stairway. Both connections have been evaluated and stamped by a licensed structural engineer and reviewed by the Department of Building & Safety. There will be no other modification to the existing Observatory building.

According to the parcel profile report retrieved August 30, 2024, the site is located on a landslide area, but the proposed Project has been structurally assessed and designed to withstand sliding forces. The site does not reside in a liquefaction, methane or coastal zone. The site is a City of Los Angeles Historic Cultural Monument (HCM), but the proposed Project does not affect the historic nature of the Observatory. As such, there is no reasonable possibility that the proposed Project may impact an environmental resource of hazardous or critical concern or have a significant effect due to unusual circumstances. No other known projects would involve cumulatively significant impacts, and no future projects would result from the proposed Project. As of August 30, 2023, the State Department of Toxic Substances Control (DTSC) (Envirostor at www.envirostor.dtsc.ca.gov) and the State Water Resources Control Board (SWCB) (Geotracker at <https://geotracker.waterboards.ca.gov/>) have not listed the Project site or any contaminated sites near the Project area (within 1,000 feet). According to the Caltrans Scenic Highway Map there is no scenic highway located within the vicinity of the proposed Project or within its site. Furthermore, although the proposed Project is located in proximity of a known historical resource, it will not cause a substantial adverse change in its significance.

Based in this information, staff recommends that the Board determines that the proposed Project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15301 of California CEQA Guidelines and Article III, Section 1, Class 1 of City CEQA Guidelines. RAP Staff will file a Notice of Exemption with the Los Angeles County Clerk and the Office of Planning and Research upon Board's approval.

FISCAL IMPACT

There is no significant fiscal impact to the City, though there will be a significant non-monetary benefit to Observatory visitors and to the Observatory's reputation and visibility. The Foundation will invest approximately \$900,000 to design, fabricate, and install the exhibit. The Observatory expenditure will be limited to (i) the modest amount of electricity needed to power the Globe's rotation and (ii) any necessary maintenance and/or repairs to the exhibit in the future.

This Report was prepared by Mark Pine, Deputy Director, Griffith Observatory.

LIST OF ATTACHMENTS

- 1) Proposed Agreement

PARTNERSHIP AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND GRIFFITH OBSERVATORY FOUNDATION FOR THE CREATION, INSTALLATION, AND DONATION OF THE CELESTIAL GLOBE EXHIBIT AT GRIFFITH OBSERVATORY

Contract No. _____

This partnership agreement ("AGREEMENT") is entered into as of _____, ("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 Griffith Observatory Foundation ("FOUNDATION"), a California nonprofit public benefit corporation.

WHEREAS, CITY, through its Department of Recreation & Parks ("RAP") owns and operates Griffith Observatory ("OBSERVATORY"); and,

WHEREAS, collectively, the CITY and FOUNDATION are the "PARTIES" and individually, each is a "PARTY"); and,

WHEREAS, RAP provides services that enhance the visitor experience and educate the public at the OBSERVATORY; and

WHEREAS, FOUNDATION is the OBSERVATORY's exclusive nonprofit partner, providing, among other things, support and fundraising for the OBSERVATORY through Agreement 3972 known as the MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LOS ANGELES AND GRIFFITH OBSERVATORY FOUNDATION ESTABLISHING ROLES, RESPONSIBILITIES, AND THE RELATIONSHIP OF SUPPORT TO GRIFFITH OBSERVATORY, and

WHEREAS, the PARTIES wish to set forth an agreement through which FOUNDATION, with input and approval of CITY, shall fabricate, install, and donate the Celestial Globe exhibit ("EXHIBIT") to the OBSERVATORY; and

WHEREAS, CITY has agreed to accept this offer of EXHIBIT and to operate and maintain it as described in this AGREEMENT as approved at the meeting of the Board of Recreation and Park Commissioners ("BOARD") on _____ (Board Report No. XX-XXX).

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 EXHIBIT

1.1 The Celestial Globe EXHIBIT is an 800-pound modern interpretation of the ancient Farnese Atlas sculpture sphere that portrays 43 constellations of the night sky. The rotating globe is to be mounted on a tall post over the OBSERVATORY's Gravity's Stairway, which connects the building's historic level and new galleries added in 2006. The EXHIBIT was intended to be part of

the 2002-2006 Renovation and Expansion project but had to be deferred due to cost and schedule. The FOUNDATION agreed to resume and complete the EXHIBIT and to donate it to the CITY once it is installed successfully at the OBSERVATORY. The EXHIBIT is described in more detail in **EXHIBIT A**, which is attached hereto and incorporated herein by reference.

1.2 FOUNDATION shall provide EXHIBIT without charge to CITY. FOUNDATION and CITY shall collaborate using good faith business judgment on the design, fabrication, and installation of EXHIBIT. The individual contributions by FOUNDATION and CITY are described in Sections 2 and 3, respectively, of this AGREEMENT.

1.3 EXHIBIT will enhance the visitor experience at the OBSERVATORY and is consistent with OBSERVATORY programmatic objectives.

1.4 CITY acknowledges EXHIBIT is supported with funding from donors to the FOUNDATION. The solicitation and maintenance of such donor relationships is the sole responsibility of the FOUNDATION. Funding secured from donors to support the EXHIBIT has accrued solely to the FOUNDATION and solely for the benefit of the provision of the EXHIBIT; such donors may be recognized in a fashion consistent with RAP's Sponsorship Recognition Policy.

2. Role of FOUNDATION

2.1 FOUNDATION shall be responsible for engaging contractors and providing all funding for the design, fabrication, and installation of the EXHIBIT. FOUNDATION shall collaborate with CITY staff assigned to the OBSERVATORY at each stage of the design, development, and installation process. FOUNDATION shall ensure that engineered plans for the EXHIBIT are reviewed through CITY's plan check process. FOUNDATION shall reasonably clean up and restore any OBSERVATORY elements after any work performed onsite by FOUNDATION or its contractors.

2.2 FOUNDATION shall provide CITY with proposed details/specification of interior installation of EXHIBIT for CITY's final approval, which shall not be unreasonably withheld or delayed. FOUNDATION shall provide any additional documentation regarding the FOUNDATION EQUIPMENT as may be requested by CITY. Any substantive changes in installation specifications once approved require advance approval of CITY staff assigned to the OBSERVATORY, prior to installation, which approval shall not be unreasonably withheld or delayed.

2.3 FOUNDATION shall be responsible for installation of the EXHIBIT in close coordination with CITY staff assigned to the OBSERVATORY. FOUNDATION contractor(s) will interact with CITY's on-site point of contact ("POC") regarding detailed planning and coordination for EXHIBIT installation. FOUNDATION shall require installation contractor to provide insurance in accordance with CITY requirements. FOUNDATION shall be solely responsible for repair or replacement cost of equipment owned by the FOUNDATION necessary to install the EXHIBIT, as long as the breakage is not a result of actions taken by the CITY, or due to vandalism that could have been reasonably protected against by CITY.

2.4 Once EXHIBIT is installed and tested, FOUNDATION shall formally transfer ownership of EXHIBIT, within 7 business days of installation, to CITY for ongoing display at the OBSERVATORY.

2.5 FOUNDATION shall respond to questions or requests regarding the EXHIBIT from CITY in a timely manner.

3. Role of CITY

3.1 CITY staff assigned to OBSERVATORY shall enable the EXHIBIT development and installation by providing historical and astronomical design input, all necessary background plans & drawings, and timely review of design, fabrication, and installation plans and drawings. CITY staff assigned to OBSERVATORY shall assist with CITY plan check review as needed.

3.2 CITY staff assigned to OBSERVATORY shall ensure constant electric power for the EXHIBIT, subject to power disruptions or outages that are beyond CITY control.

3.3 CITY staff assigned to OBSERVATORY shall provide FOUNDATION contractor with necessary access and coordination at OBSERVATORY so FOUNDATION contractor can install EXHIBIT. CITY staff assigned to OBSERVATORY shall oversee FOUNDATION contractors during all aspects of the installation. This AGREEMENT shall serve as a formal right of entry for the FOUNDATION and its contractors to install the EXHIBIT in the OBSERVATORY.

3.4 CITY staff assigned to OBSERVATORY shall coordinate with FOUNDATION to develop content regarding EXHIBIT that enhances the visitor experience. FOUNDATION and CITY shall collaborate on the development of EXHIBIT and any signage associated with the EXHIBIT.

3.5 Once the EXHIBIT is officially installed and donated to the CITY, it will become part of the OBSERVATORY's permanent exhibition program. CITY shall be responsible for maintaining and repairing EXHIBIT unless and until EXHIBIT is removed from public exhibition because of an issue with the EXHIBIT or a broader change in the exhibition program. CITY shall notify FOUNDATION in advance regarding the reason and/or need for such removal.

4. Intellectual Property

4.1 The Parties shall share the jointly developed designs and supporting documentation. This Agreement does not grant CITY any license or rights to any other intellectual property or technology owned or operated by FOUNDATION or any of FOUNDATION's affiliates, including, without limitation, any trademarks or trade names owned by FOUNDATION or its affiliates.

5. Copyright

5.1 Notwithstanding any other provision of this AGREEMENT, the copyright and all other rights, title, and interest in the EXHIBIT shall be conveyed to CITY by FOUNDATION through the donation.

6. Term

6.1 The term of this AGREEMENT shall be from the time of its approval by the BOARD through May 31, 2025. The end of the AGREEMENT shall not affect the ongoing maintenance and care responsibility by the CITY for the EXHIBIT as outlined in Section 3.5.

6.2 The AGREEMENT shall remain in force 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 of this AGREEMENT by the other PARTY upon providing thirty (30) days written NOTICE of the breach and with such breach not being cured within thirty (30) days of such NOTICE.

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

7. Representations and Warranties

7.1 FOUNDATION represents and warrants to CITY 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 FOUNDATION for inclusion in the EXHIBIT, including but not limited to interpretive text, photographs, maps, charts, artwork and any other information, and FOUNDATION 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.

7.2 CITY represents and warrants to FOUNDATION that it is or will be the sole owner or licensee of the copyright and all other rights, titles and interests in any MATERIALS provided by CITY for inclusion in the EXHIBIT, including but not limited to interpretive text, photographs, maps, charts, artwork and any other information, and CITY 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, and that all MATERIALS provided by CITY are in the "public domain" and may be used without fee.

8. Confidentiality

8.1 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 contracting and payment information, marketing strategy and metrics, donor policies, 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. FOUNDATION 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 FOUNDATION'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.). FOUNDATION'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. FOUNDATION's obligations to the CITY under this indemnification provision shall be due and payable on a monthly, on-going basis within thirty days after each submission to FOUNDATION of the CITY's invoices for all fees and costs incurred by the CITY, as well as all damages or liability of any nature. FOUNDATION shall receive prompt notice from the CITY of any (1)

communication to the CITY challenging the CITY's refusal to disclose FOUNDATION's CONFIDENTIAL MATERIALS, and (2) any complaint or petition to the court challenging the CITY's refusal to disclose FOUNDATION's CONFIDENTIAL MATERIALS. Further should FOUNDATION choose to intervene in any court action relating to the CITY's refusal to disclose FOUNDATION's CONFIDENTIAL MATERIALS, the CITY shall not oppose FOUNDATION's motion to intervene. FOUNDATION shall be discharged of its obligations to the CITY under this provision in any circumstance where FOUNDATION provides written confirmation to the CITY that (1) all the requested records at issue are not CONFIDENTIAL MATERIALS and (2) the CITY may release said records to the requester.

9. Limitation of Liability

9.1 Donation by FOUNDATION shall include all manufacturer warranties which shall be assigned to CITY. The EXHIBIT shall be provided "as is" and FOUNDATION 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. FOUNDATION shall in no event be liable to CITY for any loss of money, cost of cover or other special, indirect, incidental, consequential, punitive, or exemplary damages of any kind or nature.

10. Assignment

10.1 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. FOUNDATION may not sell or assign all or any portion of its rights, title, and interest in this AGREEMENT without the prior written consent of CITY, which consent shall not be unreasonably withheld or delayed.

11. Indemnification

11.1 Except for the gross negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, FOUNDATION 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 FOUNDATION'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 FOUNDATION, 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.

11.2 Except for the negligence or willful misconduct of FOUNDATION, or any of its boards, officers, agents, employees, assigns and successors in interest, CITY shall defend, indemnify and hold harmless FOUNDATION 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 FOUNDATION, 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 FOUNDATION 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.

12. Insurance

12.1 Before commencing work to INSTALL the EXHIBIT and periodically as required up to the time of donation of EXHIBIT, FOUNDATION 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. FOUNDATION 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. FOUNDATION 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.

12.2 FOUNDATION shall maintain all such insurance at its sole cost and expense throughout the installation of the EXHIBIT. 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 FOUNDATION sixty (60) calendar days written NOTICE, provided that such amounts and/or types shall be reasonably available to FOUNDATION.

12.3 If any of the required insurance contains aggregate limits or applies to other operations of FOUNDATION outside of this AGREEMENT, FOUNDATION shall give CITY written NOTICE of any incident, occurrence, claim, settlement, or judgment against such insurance that in FOUNDATION's best judgment may diminish the protection such insurance affords CITY within thirty (30) calendar days of the knowledge of same. FOUNDATION 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.

12.4 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, FOUNDATION 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 FOUNDATION.

12.5 FOUNDATION'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 FOUNDATION agrees to reimburse CITY for all money so paid.

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

13. Hazardous Substances

13.1 FOUNDATION shall provide the EXHIBIT 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 CITY or FOUNDATION to any governmental agency or third party under applicable statute.

14. Publicity and Promotion

14.1 The PARTIES agree to cooperate and coordinate with respect to the nature, text, and timing of any press release or public announcement(s) concerning this EXHIBIT, 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 EXHIBIT. Further, any press release, public announcement, marketing materials or brochures prepared by any of the PARTIES, shall appropriately acknowledge the contributions of CITY and FOUNDATION. 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 CITY and FOUNDATION, including elected officials and public officials.

14.2 FOUNDATION agrees that any public release or distribution of information related to this EXHIBIT 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"

14.3 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.

15. Breach by FOUNDATION

15.1 The following occurrences constitute events of breach of this AGREEMENT: FOUNDATION 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 provide the EXHIBIT as specified herein.

15.2 Upon the occurrence of one or more events of breach or default by FOUNDATION, 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 FOUNDATION, and if FOUNDATION 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 FOUNDATION, terminate this AGREEMENT without further delay.

16. Notices

16.1 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:

Griffith Observatory
2800 East Observatory Road
Attention: Deputy Director
Los Angeles, CA 90027
Tel.: (213) 473-0824

If to FOUNDATION:

Griffith Observatory Foundation

2800 East Observatory Road
Attention: Executive Director
Los Angeles, CA 90027
Tel.: (213) 473-0879

17. Duly Authorized

17.1 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.

18. Relationship of Parties

18.1 The FOUNDATION and CITY are engaged in a joint effort to procure, install, and enable the EXHIBIT specified in this agreement, to the mutual benefit of both PARTIES and to the visitors of the OBSERVATORY. This is in the context of Agreement No. 3972 (MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LOS ANGELES AND GRIFFITH OBSERVATORY FOUNDATION ESTABLISHING ROLES, RESPONSIBILITIES, AND THE RELATIONSHIP OF SUPPORT TO GRIFFITH OBSERVATORY). Beyond the joint efforts specified in this AGREEMENT and in Agreement No. 3972 between the CITY and FOUNDATION, nothing herein shall be construed to place the PARTIES to this AGREEMENT in the relationship of any kind of business organization or agency relationship. FOUNDATION shall have no power to obligate or bind CITY in any manner whatsoever, except as it regards to the regular maintenance and repair of EXHIBIT. Further, under no circumstances will FOUNDATION represent itself to be an agent of the CITY or any of its departments. Nothing in this AGREEMENT may be construed to have authorized or vested in FOUNDATION the power to be an agent of the CITY or an actor under the color of law, be it civilly or criminally.

18.2 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 organizations, 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.

19. Ordinances and Standard Provisions

19.1 The "Standard Provisions for City Contracts (Rev. 6/24, v.1)" 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. 6/24 v.1)" and this AGREEMENT, the language of this AGREEMENT shall prevail. FOUNDATION and CONTRACTOR have the same meaning for purposes of the "Standard Provisions for City Contracts (Rev. 6/24, v.1)." For clarity's sake, notwithstanding anything herein, in the event of a termination for any reason, FOUNDATION

shall retain ownership of all FOUNDATION EQUIPMENT installed to provide the SERVICE as long as it shall comply with the removal requirements as set forth herein.

20. Safety Practices

20.1 FOUNDATION shall correct violations of safety practices immediately and shall cooperate fully with CITY in the investigation of accidents related to the installation of the EXHIBIT.

21. Entire Agreement

21.1 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 FOLLOWS]

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

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

By signing below, the signatory attests that they have no personal, financial, beneficial, or familial interest in this Agreement.

By: _____ President

By: _____ Secretary

Date: _____

GRIFFITH OBSERVATORY FOUNDATION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

HYDEE FELDSTEIN SOTO, City Attorney

By: _____
BRENDAN KEARNS, Deputy City Attorney

Date: _____

EXHIBIT A

DESCRIPTION OF CELESTIAL GLOBE EXHIBIT

Astronomy and history converge again at Griffith Observatory in a monumental Celestial Globe that depicts the familiar constellations as they appear on the sphere held aloft by the Farnese Atlas, a Roman sculpture in the Naples Archaeological Museum in Italy. Shouldering the spinning heavens, Atlas symbolizes the world axis, believed by the ancients to support and stabilize the sky.

Demonstrated antiquity, impressive resilience, and widespread recognition qualify the constellations as one of our most enduring intellectual properties. Evocatively pictorial and closely affiliated with myth, they are the point of entry to the sky for most of us. The Farnese Atlas figures are particularly important because they are the oldest known depictions of the traditional ancient Greek constellations.

Modern studies demonstrate the placement of these constellations on this celestial globe is the work of Hipparchus, the earliest astronomer on the Astronomers Monument on Griffith Observatory's front lawn.

Griffith Observatory's new version of the ancient celestial globe is populated with 43 constellation figures designed and modeled by designer Cindy Keefer. Visitors recognize constellations they know—Leo the Lion, Taurus the Bull, Orion the Hunter, Pegasus the Flying Horse, and all the rest—on the new Celestial Globe and spot others perhaps not so familiar to them. Museum Guides explain how they all are configured around the sky. The complete set induces wonder and pleasure.

Griffith Observatory suspends this system of celestial figures in Gravity's Stairway, the route that transports visitors from the Observatory's historic level, with its earth-based perspective on the sky, to the Gunther Depths of Space, which is leveraged by space age's transformation of our cosmic perspective.

On the route that carries visitors from one realm to the other, this stellar new exhibit is anchored in antiquity but bonded to our times. Along with the nearby starry skies of the Samuel Oschin Planetarium, the celestial marvels revealed by Griffith Observatory's telescopes, and the cosmological wonder of stars and galaxies in The Big Picture, the largest astronomical image in the world, the Celestial Globe reminds everyone the stars are always on the move at Griffith Observatory.

EXHIBIT B

INSURANCE REQUIREMENTS

Form Gen. 146 (Rev. 6/12v)

Required Insurance and Minimum Limits

Name: Cinnebar Date: 08/05/2024

Agreement/Reference: Installation of the Celestial Globe Exhibit at Griffith Observatory

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

		Limits
<input checked="" type="checkbox"/>	Workers' Compensation (WC) and Employer's Liability (EL)	WC <u>Statutory</u> EL <u>\$ 1,000,000</u>
<input checked="" type="checkbox"/>	Waiver of Subrogation in favor of City	
<input type="checkbox"/>	Longshore & Harbor Workers Jones Act	
<input checked="" type="checkbox"/>	General Liability <u>City of Los Angeles must be named as an additional insured party</u>	<u>\$ 1,000,000</u>
<input checked="" type="checkbox"/>	Products/Completed Operations	
<input type="checkbox"/>	Sexual Misconduct <u> </u>	
<input type="checkbox"/>	Fire Legal Liability <u> </u>	
<input checked="" type="checkbox"/>	\$5,000,000 Umbrella liability insurance	
<input checked="" type="checkbox"/>	Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)	<u>1,000,000</u>
<input type="checkbox"/>	Professional Liability (Errors and Omissions)	<u> </u>
	Discovery Period <u>12 months after completion of work or date of termination</u>	
<input type="checkbox"/>	Property Insurance (to cover replacement cost of building - as determined by insurance company)	<u> </u>
<input type="checkbox"/>	All Risk Coverage	
<input type="checkbox"/>	Flood <u> </u>	
<input type="checkbox"/>	Earthquake <u> </u>	
<input type="checkbox"/>	Boiler and Machinery	
<input type="checkbox"/>	Builder's Risk	
<input type="checkbox"/>	<u> </u>	
<input type="checkbox"/>	<u> </u>	<u> </u>
<input type="checkbox"/>	<u> </u>	<u> </u>
<input checked="" type="checkbox"/>	<u> </u>	<u> </u>
<input type="checkbox"/>	Surety Bonds - Performance and Payment (Labor and Materials) Bonds	<u> </u>
<input type="checkbox"/>	Crime Insurance	<u> </u>
Other: <u>Provided to: Mark Pine</u>		
<u>If a contractor has no employees and decides to not cover herself/himself for workers' compensation, please complete the form entitled "Request for Waiver of Workers' Compensation Insurance Requirement" located at: http://cao.lacity.org/risk/InsuranceForms.htm.</u>		
<u>In the absence of imposed auto liability requirements, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.</u>		

EXHIBIT C

STANDARD PROVISIONS FOR CITY CONTRACTS

ATTACHMENT A

Standard Provisions for City Contracts (Rev. 6/24 [v.1])

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

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

PSC-2. Applicable Law, Interpretation and Enforcement

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

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

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

PSC-3. Time of Effectiveness

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

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

PSC-4. Integrated Contract

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

PSC-5. Amendment

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

PSC-6. Excusable Delays

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

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

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

PSC-7. Waiver

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

PSC-8. Suspension

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

PSC-9. Termination

A. Termination for Convenience

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

B. Termination for Breach of Contract

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

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

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

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

PSC-10. Independent Contractor

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

PSC-11. Contractor's Personnel

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

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

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

PSC-12. Assignment and Delegation

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

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

PSC-13. Permits

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

PSC-14. Claims for Labor and Materials

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

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

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

PSC-16. Retention of Records, Audit and Reports

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

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

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

PSC-17. Bonds

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

PSC-18. Indemnification

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

PSC-19. Intellectual Property Indemnification

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

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

PSC-20. Intellectual Property Warranty

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

PSC-21. Ownership and License

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

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

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

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

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

PSC-22. Data Protection

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

PSC-23. Insurance

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

PSC-24. Best Terms

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

PSC-25. Warranty and Responsibility of Contractor

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

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

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

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

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

PSC-27. Child Support Assignment Orders

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

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

PSC-28. Living Wage Ordinance

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

PSC-29. Service Contractor Worker Retention Ordinance

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

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

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

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

PSC-31. Contractor Responsibility Ordinance

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

PSC-32. Business Inclusion Program

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

PSC-33. Slavery Disclosure Ordinance

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

PSC-34. First Source Hiring Ordinance

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

PSC-35. Local Business Preference Ordinance

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

PSC-36. Iran Contracting Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PSC-42. Possessory Interests Tax

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

PSC-43. Confidentiality

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

PSC-44. Contractor Data Reporting

If Contractor is a for-profit, privately owned business, Contractor shall, within 30 days of the effective date of the Contract and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the Contract), report the following information to City via the Regional Alliance Marketplace for Procurement (“RAMP”) or via another method specified by City: Contractor’s and any Subcontractor’s annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner (“Contractor/Subcontractor Information”). Contractor shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by City.

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

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

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

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

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

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

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

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

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

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

Required Insurance and Minimum Limits

Name: _____

Date: _____

Agreement/Reference: _____

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

Limits

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

WC Statutory

EL _____

Waiver of Subrogation in favor of City

Longshore & Harbor Workers

Jones Act

General Liability

Products/Completed Operations

Sexual Misconduct _____

Fire Legal Liability _____

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

Professional Liability (Errors and Omissions)

Discovery Period _____

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

All Risk Coverage

Boiler and Machinery

Flood _____

Builder's Risk

Earthquake _____

Pollution Liability

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

Crime Insurance

Other: _____
