

**CITY OF LOS ANGELES**  
INTER-DEPARTMENTAL CORRESPONDENCE

Date: August 9, 2010

To: The Honorable Members of the Los Angeles City Council

From: Miguel A. Santana  
City Administrative Officer

*Miguel A. Santana*

Gerry F. Miller  
Chief Legislative Analyst

*Gerry F. Miller*

Subject: **PROPOSED PUBLIC-PRIVATE PARTNERSHIP FOR PARKING ASSETS  
REQUEST FOR PROPOSAL AND DRAFT CONCESSION AGREEMENT  
(C.F. 09-0728; 09-0728-S1; 09-0600-S120)**

**SUMMARY**

In November 2008, a working group consisting of staff from the City Administrative Officer (CAO) as Chair, Mayor's Office, Chief Legislative Analyst (CLA) and City Attorney was convened upon request of the Mayor to explore opportunities for a public-private partnership (P3) with respect to the City's parking assets. Subsequently, upon the instruction of the City Council, the working group focused its efforts on developing a concession agreement for ten City-owned public parking structures, as follows:

<u>Garage</u>	<u>Location</u>	<u>CD</u>	<u>Spaces</u>
Broxton	Westwood	5	366
Cherokee	Hollywood	13	386
Cinerama Dome	Hollywood	13	1,717
Dickens	Sherman Oaks	5	198
Friar St	Van Nuys	6	237
Hollywood & Highland	Hollywood	13	3,006
Larchmont	Hancock Park	4	167
Pershing Square	Downtown	9	1,590
Robertson	West LA	5	334
Ventura Blvd	Studio City	2	397
	<b>TOTAL SPACES:</b>		<b>8,398</b>

In July, the Controller's Office joined as an ex officio member following a discussion in Council (C.F. 09-0728-S2). In September 2009, the working group was instructed by the Mayor and Council to provide the final parking study, an analysis of the results and a discussion of options for consideration (C.F. 09-0600-S120). In February 2010, the working group concluded the assessment phase of this project and presented findings and recommendations for further action in support of a P3 concession and lease for the identified parking structures.

On June 15, 2010, the working group presented to the City Council in Closed Session ten key issues affecting the price and terms of payment for this Concession Agreement. Councilmembers expressed concerns regarding certain conditions proposed in the draft agreement intended to maximize the value of the transaction, but could impact business and/or residents in the vicinity. Based on the instructions from the Council, the working group made the following changes to the Request for Proposal (RFP) and draft Concession Agreement (CA).

- Removes the Larchmont Parking Garage from the proposed P3 transaction.
- Includes language to require any future vendor to accommodate 1,200 vehicles during the evening hours to support the Broadway Theatre district.
- Phases out the current parking validation program at the Broxton Garage over three years.

In addition, Schedule 6 in the attached draft CA establishes maximum rates to be allowed at each of the City-owned parking structures. These rates were determined based on an occupancy and market study conducted by the City's parking consultant, Desman Associates, and have been incorporated as a requirement of the draft CA.

## **REQUEST FOR PROPOSALS**

The P3 working group, in close consultation with the City's independent advisors and sell-side advisors, developed the attached RFP to solicit responses from the list of pre-qualified bidders identified in the recent Request for Qualifications. The RFP contains the following key elements:

### RFP Evaluation Process

Responses to the RFP will be judged on a pass/fail basis relative to the respondents' operational experience running similar parking assets in areas comparable to Los Angeles. The Operational criteria detailed in the RFP was developed in consultation with the City's parking experts in the Department of Transportation and the General Services Department (GSD)

Responses will also be judged on a pass/fail basis relative to the Financial Plan presented in their submittal. A qualified financial proposal is required to "contain a fully committed Financing Plan without any contingencies and demonstrating enough capital to fund the upfront rent payment."

Proposers must submit verifiable evidence of compliance with both the Financial and Operational criteria.

In addition, all proposers must fully comply with the City's Administrative requirements, by fulfilling the standard requirements for City contracts including, but not limited to, Non-Discrimination/Equal Employment Practices/Affirmative Action policies, MBE/WBE/OBE

requirements, the Equal Benefits Ordinance, Contractor Responsibility requirements, and the City's Living Wage and Service Contract Worker Retention Ordinances.

### Proposed Selection Process

The working group recommends an RFP selection process intended to measure the value of the Pershing Square and Broxton provisions, noted above, by requiring each respondent to the RFP to submit four distinct bids:

- Base Response that includes both the Pershing Square and Broxton requirements;
- A first alternative values the removal of the Pershing Square Garage provision;
- A second alternative values the removal of the Broxton validation phase-out; and
- A third alternative values the removal of both provisions.

The selection panel, comprised of representatives of the CAO, CLA, and the Mayor's Office, will evaluate each proposal based on the detailed criteria in the RFP. For those respondents that 'pass' the City's Operational, Financial, and Administrative criteria, the respondents Base Response and three alternatives would be reviewed. In each of the four categories, any respondents whose proposal is within 10% of the top submittal will be asked to submit a Best and Final Offer (BAFO) in that category, thereby providing respondents with one more opportunities to fully value the concession agreement.

All RFP submittals, including any BAFO submittals, will be forwarded to the City Council for consideration and award.

### Related Issues:

**Pershing Square Garage:** The Pershing Square Garage is under the control of the Department of Recreation and Parks. According to the City Attorney, inclusion of this facility in this transaction requires the approval of the Board of Recreation and Parks Commissioners. Parking revenues from this facility totaled \$3.7 million in 2008-2009, of which \$1.4 million was paid to GSD for operational, maintenance, capital improvements and security expenses, and the remaining \$2.3 million covered Pershing Square Park administration, security, maintenance, capital improvements, recreational, special event programming and mobile youth programming.

On August 2, 2010, the Board approved the inclusion of the Pershing Square Garage in the RFP and draft CA, with the understanding that the concessionaire will be required to make a "reasonable good faith effort" to accommodate the Department's parking needs relative to park improvements from time to time for the continued effective use of the park. Board approval will also be required upon final award of this CA, to allow the Board to determine if they would prefer a lump sum or annual payment from the proceeds of this transaction. In addition, should the terms of the CA relating to the Pershing Square Garage change substantially prior to award, Board approval would be required.

**Cinerama Dome:** The Cinerama Dome garage is currently owned and managed by the Community Redevelopment Agency (CRA). To include this facility in this transaction, the City will purchase the garage from the CRA for \$44.75 million. This amount will be sufficient to retire the outstanding bonds of \$38.15 million and an outstanding debt to the developer, Dome Entertainment Center, Inc, of \$6.6 million. A purchase and sale agreement is being drafted for presentation to the CRA Board for final approval. The sale will only be consummated if the City enters into a Concession Agreement for the Parking System.

The garage is being sold to the City in an "As Is" condition and subject to all existing license and parking covenant agreements. The existing Reciprocal Easement Agreement (REA) between the developer and the CRA will remain in place including the rate setting mechanism set forth in the REA, which requires public hearings before there is any change to the range of rates that can be charged for parking. Any changes to the REA will be subject to the terms and conditions of the purchase and sale agreement between the City and the CRA.

The CRA is also currently contracting to replace the revenue collection equipment at a cost of over \$700,000. They anticipate that this conversion of equipment to be completed by December 2010 and prior to execution of the Concession Agreement.

## **NEXT STEPS**

Should the City Council approve the release of the attached RFP and draft CA, the following is the anticipated timeline and process for returning to the Council with recommendations:

Step	Dates	Action
1	8/11/2010	City Council meets to consider the draft Concession Agreement (CA) and Maintenance and Operating Standards (M&O Standards) and Request for Proposals (RFP).
2	8/11/2010	Upon approval of the City Council, release the RFP and the CA and M&O Standards to pre-qualified parties.
3	9/13/2010	Commence due diligence sessions with pre-qualified parties.
4	10/5/2010	Complete due diligence sessions.
5	10/8/2010	Respondents' post-due-diligence legal and business issues due.
6	10/22/2010	Drafting/strategy session to review and, where appropriate, revise the draft CA and M&O Standards based on respondents' feedback.
7	11/12/2010	Final comments due from potential respondents.
8	12/8/2010	Final CA and M&O Standards completed by City working group. Report to Council with recommended revisions, if any.
9	12/13/2010	City Council meets to review and approve final CA and M&O Standards (possible Closed Session).

10	12/14/2010	Release final CA and M&O Standards to proposers.
11	1/31/2011	Proposals Due.
12	2/3/2011	City Panel (CAO, CLA, Mayor) review proposals for pass/fail criteria and to determine if Best and Final Offers (BAFOs) are needed.
13	2/10/2011	BAFOs due.
14	2/11/2011	Report to Council with all submittals.
15	2/16/2011	Council meets to review all submittals, deliberate, and make final award or reject all proposals.

## **FUNDING**

Adoption of the recommendations in this report is consistent with the City's Financial Policies in that funding in the amount of \$3 million was included in the Unappropriated Balance of the 2009-10 Adopted Budget to evaluate and implement a potential public-private partnership with respect to the City's parking assets.

To date, there have been appropriations totaling \$1.32 million and expenditures totaling \$784,000. No further appropriations are needed at this time, however we will continue to report on expenditures in the future and submit a request for additional appropriations, if necessary.

## **RECOMMENDATIONS**

1. AUTHORIZE the City Administrative Officer to issue a Request for Proposals and Draft Concession Agreement to qualified bidders for a proposed public-private partnership with respect to the City's parking structures;
2. FIND that pursuant to Charter section 371(e)(10) the use of competitive bidding to enter into a long-term concession and lease agreement would be undesirable and impractical due to market practices, and that it would be in the best financial interest of the City to utilize a Request for Proposals process to engage in negotiations with proposers to achieve a concession and lease agreement that satisfies the goals and interests of the City and select a concessionaire;
3. DETERMINE this action, as a continuing administrative activity authorizing the release of an RFP for the lease of existing City facilities, is exempt from the California Environmental Quality Act (CEQA) pursuant to Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.
4. AUTHORIZE the City Administrative Officer to make technical adjustments as necessary to implement the intent of the Mayor and Council actions.

### **FISCAL IMPACT STATEMENT**

The City Administrative Officer will report back with the results of the public-private partnership solicitation and include a fiscal impact statement based on any proposals resulting from this solicitation.

### **DEBT IMPACT STATEMENT**

The City Administrative Officer will report back with the results of the public-private partnership solicitation and include a debt impact statement based on any proposals resulting from this solicitation.

#### **Attachments:**

1. Request for Proposals
2. Draft Concession Agreement
3. Operational Manual

# CITY OF LOS ANGELES



## REQUEST FOR PROPOSALS

*for*

LONG-TERM CONCESSION  
AND LEASE AGREEMENT

*for*

LOS ANGELES PUBLIC  
PARKING GARAGE SYSTEM

August 11, 2010

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## **1.0 PURPOSE OF REQUEST FOR PROPOSAL AND PROCESS LETTER FOR CONCESSION AND LEASE AGREEMENT**

The City of Los Angeles (the “City”) seeks to enter into a long-term Concession and Lease Agreement (the “**Concession Agreement**”) for a group of parking garages (collectively, the “**Parking Garage System**”). The City is releasing this Request for Proposals and Process Letter (the “**RFP**”) and draft Concession Agreement to provide all previously qualified parties the opportunity to submit proposals for the Concession Agreement.

The following parking garages are included in this RFP: Hollywood & Highland Garage (6801 Hollywood Boulevard, Hollywood), the Studio City Garage (12225 Ventura Boulevard, Studio City), the Cherokee Avenue Garage (1710 Cherokee Avenue, Hollywood), the Broxton Avenue Garage (1036 Broxton Avenue, Westwood), the Robertson Boulevard Garage (123 S. Robertson Boulevard, Los Angeles), the Friar Street Garage (14401 Friar Street, Van Nuys), the Dickens Street Garage (14591 Dickens Street, Sherman Oaks), the Pershing Square Garage (441 West Sixth Street, Los Angeles) and the Cinerama Dome Garage (6389 DeLongpre Avenue, Hollywood).

In addition, Concessionaire will have the option to negotiate for inclusion of the following garages currently under construction or shortly to commence construction: the Aiso Street Garage (1001 N. Judge John Aiso Street, Los Angeles), the Vine Street Garage (1633 N. Vine Street, Hollywood) and the Pico/Robertson Garage (8866 Pico Boulevard, Los Angeles), as more fully described in the draft Concession Agreement attached hereto.

The City’s goal in the Concession Agreement is to maximize the value of the Parking Garage System to the citizens of Los Angeles while maintaining high levels of customer service, safety and security. The City also seeks appropriate control and oversight of the parking facilities necessary to protect the public interest and the value of the Parking Garage System upon the reversion of the assets to the City. To assist in this process, the City has retained J.P. Morgan and Loop Capital Markets as its sell side advisors (the “**Sell Side Advisors**”) and Scott Balice Strategies, LLC as its financial advisor (the “**Financial Advisor**”) (collectively, the “**Transaction Advisors**”).

Proposals will only be considered from those entities which submitted a response to the City’s Request for Qualifications dated February 4, 2010 (the “**RFQ**”), and that have signed Confidentiality Agreements with the City covering this transaction (“**Proposers**”). Any conflicts between (i) the final draft Concession Agreement, (ii) this RFP and addenda to the RFP, or (iii) the RFQ, shall be resolved in the order listed in this sentence. **As outlined in the following section, the RFP process is intended to produce final versions of the Concession Agreement documents and culminate in RFP responses that include fully financed and binding proposals.**

## **2.0 REQUEST FOR PROPOSAL PROCESS**

The City anticipates the following tentative schedule of events as key elements of this process. The City reserves the right to amend this schedule, terminate this process or make any other adjustments that it deems to be appropriate and in the best interests of the City and its taxpayers.

August 11	<p><b>RELEASE OF CONCESSION AGREEMENT DOCUMENTS AND VIRTUAL DATA ROOM</b></p> <p>RFP, Draft Concession Agreement with exhibits (including draft Operations and Maintenance Manual) are released to the Proposers and access to virtual data room is provided.</p>
September 13 – October 8	<p><b>DUE DILIGENCE MEETINGS</b></p> <p>The Proposers will be invited to conduct a more detailed investigation of the Parking Garage System through the following process:</p> <ol style="list-style-type: none"> <li>1. Information about the Parking Garage System and the proposal process will be presented to each Proposer during an individual meeting by the City and the Transaction Advisors.</li> <li>2. Proposers will be provided with the opportunity to tour the parking garages.</li> <li>3. City’s feasibility/operations team will meet individually with each Proposer to discuss issues related to the parking structures, operations, and revenue projections. Three (3) business days prior to the meeting, the Proposer shall provide to the City its markup of the Operations and Maintenance Manual and a <b>prioritized</b> list of questions. The purpose of the meeting will be to facilitate the Proposer’s understanding of the operations and condition of the Parking Garage System and ensure that the City understands the nature of the Proposer’s concerns with respect to the Draft Operations and Maintenance Manual.</li> <li>4. Representatives of the City’s legal team and Transaction Advisors will meet individually with each Proposer to discuss any issues that the Proposer may have with the draft Concession Agreement. Three (3) business days prior to the meeting, the Proposer shall provide a <b>prioritized</b> list of legal and business concerns. The purpose of the meeting is to ensure that the City’s team understands the nature of the Proposer’s concerns.</li> <li>5. Within three (3) business days after the meeting described in paragraph 4, above, to discuss proposer’s issues, the Proposer shall submit to the City proposed markups of the draft Concession Agreement.</li> <li>6. To ensure a fair and equitable process, answers to questions raised by a Proposer prior to the Proposal Deadline date may be posted in the virtual data room without reference to who asked the questions, providing all Proposers access to relevant information. Proposers should not disclose any confidential information to the City during the due diligence process unless essential to the process, in which case the Proposer must comply with all of the requirements of Section 7.0 as to the confidential information.</li> </ol>

October 22	<p><b>REVISED DRAFTS OF CONCESSION AGREEMENT DOCUMENTS</b></p> <p>If appropriate, in the sole discretion of the City, a revised draft of the Concession Agreement and Maintenance and Operating Manual may be circulated to the Proposers in response to the comments.</p>
November 5	<p><b>CLARIFICATIONS ON REVISED DRAFTS OF CONCESSION AGREEMENT DOCUMENTS</b></p> <p>Proposers have the opportunity to seek clarifications on the revised version of Draft Concession Agreement and Maintenance and Operating Manual from the City through individualized structured conference calls. The purpose of the calls will be to facilitate understanding of provisions and standards in the latest draft of documents. Questions and answers will be posted in the Data Room.</p>
November 12	<p><b>FINAL COMMENTS ON DRAFT CONCESSION AGREEMENT DOCUMENTS</b></p> <p>Final comments on Draft Concession Agreement and Maintenance and Operating Manual due from the Proposers. In the sole discretion of City, a revised draft of the Concession Agreement and Maintenance and Operating Manual may be circulated to the Proposers in response to the comments.</p>
December 14	<p><b>RELEASE OF FINAL CONCESSION AGREEMENT DOCUMENTS</b></p> <p>Release of final Concession Agreement and Maintenance and Operating Manual distributed to the Proposers.</p>
January 31, 3:00 PM Los Angeles Time	<p><b>RFP RESPONSES DUE (“Proposal Deadline Dates”)</b></p> <p>All RFP proposals will be due on the dates set in Section 6.3, below (“<b>Proposal Deadline Dates</b>”), and include fully financed bids based on the final Concession Agreement documents that emerge from the previous steps. The proposals will first be evaluated based on operational, financial, and administrative pass/fail criteria. Those proposals deemed passed will then be evaluated solely on the basis of the monetary payments (Base Rent, Section 3.1 of the Concession Agreement).</p>
February 3	<p><b>PREFERRED PROPOSER ANNOUNCED OR BAFO ROUND REQUESTED</b></p> <p>The Panel announces its recommendation for award, rejection of all proposals, or requests Best and Final Offers (“<b>BAFO</b>”) if, for each category of proposal, one or more of the Proposers are deemed by the City (at its sole discretion) to be within 10% of the highest Proposer for that category. If the Panel announces its recommendation for award or rejection of all proposals, approximately five days later, the City’s Board of Recreation and Parks Commissioners and Council will hold</p>

	hearings to decide whether to award the Concession Agreement or reject all proposals based upon the Base Rent, with or without the Pershing Square Garage and/or the Broxton Garage operating requirements as determined by the City Council and Board at their sole discretion.
February 10	<b>BAFOs DUE (if needed)</b>  BAFOs due from selected proposers.
February 11	Panel's recommendation for award made public as to each category.
February 16-17	Council and Board of Recreation and Parks Commissioners award the Concession Agreement or reject all proposals.

### 3.0 PROCESS INTEGRITY AND COMMUNICATIONS PROTOCOL

Throughout the course of the City's process to award the Concession Agreement, the following communications protocol shall apply.

1. Each Proposer shall provide the name of one person (the **"Key Contact"**) to serve as its point of contact regarding this opportunity and one back-up contact. All information will be directed to the Key Contact, or the backup contact, and no other person from the Proposer will be provided information by the City or its advisors, other than through the Due Diligence Meetings and conference call described in Section 2.0, above.
2. The individual at the City tasked with assuring that all Proposers are treated consistent with this protocol and to whom all communications should be directed (the **"Response Coordinator"**), is  
  
Ms. Natalie R. Brill  
Office of the City Administrative Officer  
City of Los Angeles  
200 N. Main Street, 15<sup>th</sup> Floor  
Los Angeles, CA 90012  
Telephone: (213) 473-7526  
Email: cao.debt@lacity.org.
3. City personnel will not engage in direct communications with Proposers except as part of structured informational sessions, as described above.
4. Each Proposer shall receive the same information in the same method at substantially the same time as all other Proposers. No confidential information about the City, the Parking Garage System or the Concession Agreement will be shared with one Proposer unless it is shared with all Proposers.
5. Information provided by any Proposer regarding its business plan, process concerns, methods for enhancing value or other information unique to that Proposer which is marked as confidential must comply with all of the provisions of Section 7.0, below.

6. Each Proposer must report any meetings or calls with City officials, City Staff, members of the Transaction Advisors, or legal team (other than the Response Coordinator) to the Response Coordinator within 48 hours of such contact. Failure to promptly report such contact may be grounds for disqualification of the Proposer from further consideration for the Concession Agreement, in the City's sole discretion.
7. Each Proposer must immediately disclose to the Response Coordinator the name of any lobbyist or advisor paid to assist in securing this Concession Agreement.
8. Data Room.
  - 8.1. Proposers seeking access to an online repository of information related to the City, Parking Garage System, the Concession Agreements and process (the "Data Room") will need to obtain a Gmail account prior to requesting access.
  - 8.2. The team name, individual name and Gmail account information for each individual requesting access to the Data Room shall be submitted to the Response Coordinator.
  - 8.3. Each Proposer is limited to a maximum of five individuals who shall be granted access to the Data Room.
  - 8.4. Proposers are responsible for reviewing information provided by the City in the Data Room. The City and its Transaction Advisors intend to periodically update information in the Data Room to provide all Proposers access to the same information at all times. The City may also monitor use of the Data Room from time to time.

#### **4.0 BASIS OF EVALUATION**

##### **4.1 Steps in the evaluation process**

###### **4.1.1 Step 1**

All proposals will be reviewed on a pass/fail basis on (i) operational criteria; (ii) financial criteria, and (iii) administrative criteria (compliance with the other requirements of this RFP, including submission of other information, documents, and properly completed forms).

###### **4.1.2 Step 2**

Those responses unanimously deemed passed on operational, financial and administrative criteria will then be evaluated solely on the basis of the amounts offered for the Base Rent, Section 3.1 of the Concession Agreement with or without the Pershing Square Garage and Broxton Garage requirements, as described identified in Appendix I hereto, the "Form of Proposal Letter." Depending upon

the amounts offered for the removal of those two components, the final Concession Agreement may or may not contain, in the City's sole judgment, the Pershing Square Garage and/or the Broxton Garage operating requirements.

#### **4.2 Operational Criteria**

To ensure that the Concessionaire has the requisite experience and knowledge for running the Los Angeles Public Parking Garage System, the Proposer must provide verifiable evidence and documents to satisfy the following operational criteria for evaluation of the Proposer's team:

- The Proposer or associated parking operator must have been in business operating paid parking garages or lots for the past ten (10) years which are open to the public.
- The Proposer or associated parking operator must currently have staff and experience operating at least twenty (20) off-street paid parking garages or lots in one of the 366 Metropolitan Statistical Areas (MSA)<sup>1</sup>, as defined by the United States Office of Management and Budget, with a total 2009 population of over 1 million people. If the Proposer or parking operator is not currently operating in the United States, it must have experience and staff operating at least twenty (20) off-street paid parking garages or lots in a metropolitan area with a total population of over 1 million people.
- The Proposer or associated parking operator must currently be operating a minimum total of 15,000 off-street paid parking spaces.
- Each proposal should identify comparable parking operations and specify how these operations relate to the proposed Concession Agreement.
- The Proposer or associated parking operator must have at least three (3) years of experience within the past five (5) years with parking associated with one or more of the following: retail stores, entertainment or sports venues, special events, office buildings, or similar uses.

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<sup>1</sup> The United States Office of Management and Budget (OMB) defines a Metropolitan Statistical Area (MSA) as a Core Based Statistical Area having at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties. The OMB has defined 366 MSAs for the United States as of March 29, 2010.

### **4.3 Financial Criteria**

While the amount of the Base Rent offered is a key criterion for the award of the Concession Agreement, the proposal will also be evaluated for soundness of the financing plan. The City will apply the following criteria:

- The proposal must contain a fully committed Financing Plan without any contingencies and demonstrating enough capital to fund the upfront rent payment.
- The financing plan must be supported by verifiable evidence and documents including summaries of debt and equity commitments, debt and equity terms, rating agency discussions (if any), diligence completed and hedging strategy (if applicable). In addition the financing plan must provide sufficient evidence to demonstrate that the financing plan is committed, the financing plan is consistent with market practice, and that financial close can be achieved within ninety (90) days.
- The proposal must provide Proposal Security in compliance with the requirements of Section 6.10, below.

The City, through its advisors, may approach the sources of equity and debt capital to obtain clarifications about commitments underlying the financial plan.

### **4.4 Administrative Criteria**

The administrative pass/fail requirements are as follows:

#### **4.4.1 City Contract Ordinances**

The proposal must include the properly completed and signed forms and documents needed to satisfy the following City contract requirements: Affidavit of Non-Collusion; MBE/WBE/OBE; Non-Discrimination, Equal Employment Practices, and Affirmative Action policies; Equal Benefits Ordinance; Child Support Assignment Orders; Contractor Responsibility Ordinance; and (if not submitted with the response to the RFQ) the Los Angeles Municipal Lobbying Ordinance. If the Responsibility Questionnaire for Service Contracts required by the Contractor Responsibility Ordinance had been previously submitted to City, then the information must be updated as of the date of the Proposal Letter. General information on these requirements is outlined under Section 11.0 below. Detailed information with the appropriate forms concerning these provisions are attached to this RFP as Appendix III.

#### **4.4.2 Proposal Letter**

The proposal must include the Proposal Letter as required by Section 6.2, below.



**4.4.3 Organizational Documents**

The proposal must include the organizational documents as required by section 6.5, below.

**4.4.4 Special Purpose Entity**

The proposal must include the special purpose entity documents required by Section 6.6, below.

**4.4.5 Consortium, Partnership, Joint Venture, or Association**

The proposal must contain the documents and information required by section 6.7, below.

**4.4.6 Team Information**

The proposal must include the team information as required by Section 6.8, below.

**4.4.7 Team Agreements**

The proposal must include the team agreements as required by Section 6.9, below.

**4.4.8 Approvals**

The proposal must include the information required by Section 6.10, below.

**4.4.9 Other Forms and Documents**

The proposal must include all other specified forms and documents, properly completed and signed (if required) and such forms and documents do not identify any material adverse information.

**4.5 Disqualification For Default In City Contracts Or Payments**

The City reserves the right to disqualify a Proposer if any of the following scenarios have occurred within the last 10 years:

- The Proposer or any of its related entities was in default of the terms and conditions of a contract with the City (including its Department of Airports, Department of Water and Power and Harbor Department) or with the CRALA.
- The City (including its Department of Airports, Department of Water and Power and Harbor Department) or CRALA has terminated a contract with the Proposer or any of its related entities due to performance related issues.
- The Proposer, or any of its related entities, has been delinquent on timely remittance of tax payments owed to the City (including its Department of Airports, Department of Water and Power and Harbor Department) or CRALA, which delinquency has not been resolved to the satisfaction of the City or CRALA, as appropriate.
- The City reserves the right to determine, in its sole discretion, whether an entity is a “related entity” under this Section 4.5.

## **5.0 DETAILS ON SUBMISSION OF PROPOSAL**

### **5.1 Acceptance of Terms and Conditions**

Submitting a proposal constitutes acknowledgment and acceptance of all terms and conditions in this RFP.

### **5.2 Format**

All RFP submissions should follow the format outlined below. Portions of this format may be substantially similar to the RFQ response. Proposers may copy and include in their proposals any or all pertinent information or documents in the same format as they may have used in responding to the RFQ; provided, however, that information or documents provided under the RFQ which do not meet the requirements of this RFP will not be considered adequate and may result, in the City's sole discretion, in disqualification of the Proposer.

### **5.3 Submission of Proposals**

**The original signed proposal and two (2) hard copies must be delivered to the addresses shown below prior to the times indicated:**

**Original and two hard copies:**

January 31, 2011, no later than 3:00 p.m., Los Angeles Time to:

Ms. Natalie Brill  
Office of the City Administrative Officer  
City of Los Angeles  
200 N. Main Street, 15<sup>th</sup> Floor  
Los Angeles, CA 90012

### **5.4 Submission Title Cover**

The original and hard copies of the signed proposal must be enclosed in a sealed package plainly marked with the following:

PROPOSAL FROM: (Name Of Proposer)

PROPOSAL FOR LONG-TERM CONCESSION AND LEASE AGREEMENT FOR  
LOS ANGELES PUBLIC PARKING GARAGE SYSTEM

### **5.5 Responsibility For Timely Submittal Of Proposal**

The hard copies of all proposals submitted will be stamped with the time and date received. Timely submission of proposals is the sole responsibility of the Proposers. No

fax proposals will be accepted. City reserves the right to reject any proposal that is received in part or in whole after the Proposal Deadline Date, and any such proposal will be returned to the Proposer.

#### **5.6 Withdrawal by Proposer**

A Proposer may withdraw its proposal provided that the request is in writing, signed by an authorized representative, and is received by the Response Coordinator prior to the Proposal Deadline Date. After proposals have been opened the same shall be subject to acceptance by the City for a period of ninety (90) days. Except as previously stated, no Proposer may withdraw its proposal, except with the written consent of the City, at the City's sole discretion. A Proposer will not be released on account of errors in its proposal.

#### **5.7 The City's Rights Of Rejection and Withdrawal of RFP**

The City reserves the right to at any time reject any and all proposals, to withdraw this RFP. The City also reserves the right to waive any informality in a proposal when to do so would be to the advantage of the City and its taxpayers.

#### **5.8 Requirements for Submitting Proposal**

**5.8.1** Documents submitted in response to this RFP shall be submitted by hard copy on paper with a minimum of 30 percent post-consumer recycled content either hand delivered or by overnight mail at the address provided herein. Proposer's existing letterhead or stationery that accompanies these documents is exempt from this requirement. Pages should be double sided. Neon or fluorescent paper shall not be used in any written documents submitted.

**5.8.2** Proposals should be typed and stapled - not bound - without three-ring, spiral, or plastic binders, without card stock or colored paper, and include one (1) original and (2) copies. Submitted materials will not be returned to the sender after the proposals have been opened.

#### **5.9 Cost of RFP**

The Proposer understands and agrees that the City is not responsible for any costs incurred by the Proposer in responding to this RFP. A Proposer who responds to this RFP does so at its own expense, including attendance at any pre or post submission meetings or interviews. Provided, however, that the winning Proposer who enters into a Concession Agreement executed by the Proposer and the City after approval in accordance with the City's required procedures will be entitled to reimbursement of certain costs

incurred after execution under the circumstances specified in the executed Concession Agreement.

## **6.0 CONTENTS OF PROPOSAL**

Proposals must consist of the sections identified in this Section 6.0 of the RFP in the same order presented below. All proposals must be typed and in English. Handwritten proposals will be rejected.

### **6.1 Cover Page**

Each proposal must include the names and contact information of the Proposer and all team members.

### **6.2 Proposal Letter**

Each proposal must be accompanied by a cover letter in the “Form of Proposal Letter” set out in Appendix I. It must be signed by a representative of the Proposer who has authority to bind the Proposer to all provisions of this RFP, any addenda to it, and to any final Concession Agreement. Documents establishing the representative’s authority must be provided. The representative may, but need not be, the “Key Contact” required under Section 3, subdivision 1, above.

### **6.3 Table of Contents**

### **6.4 Executive Summary**

### **6.5 Organizational Documents**

The proposal must include the organizational documents demonstrating that the Proposer has or, in the case of a special purpose entity to be formally established upon the Notice of Intent to Award, will have, legal capacity to undertake obligations of the Concession Agreement, including appropriate provisions for management and decision making within the organization as well as for continuation of the Proposer in the event of bankruptcy or withdrawal of any of its members, and are otherwise consistent with requirements of this RFP and the Concession Agreement .

### **6.6 Special Purpose Entity**

If the Proposer anticipates execution of the Concession Agreement by a special purpose entity, the proposal must include the pro formas of the special purpose entity corporate formation documents that will be used to establish the entity should the City award the Concession Agreement to the Proposer.

#### **6.7 Consortium, Partnership, Joint Venture, or Association**

If the Proposer is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal must include a letter signed by each Equity Member and any other member who will make up the Proposer indicating they accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed as the entity which will execute the Concession Agreement.

#### **6.8 Team information**

Each proposal must provide an update and clarification of all team members, including background information on Operator, Equity Investors and Controlling Interest, Financial and Legal Advisors (including any changes approved by the City from the RFQ proposal), and name and legal form of entity which will execute the Concession Agreement, names and titles of individuals authorize to execute the Concession Agreement, and the ownership of that entity.

#### **6.9 Team Agreements**

The proposal must include the teaming/consortium agreements between the Proposer team members, including the Equity Member, Parking Operator and other subcontractors.

#### **6.10 Operational Criteria**

Each proposal must provide documents and information adequate to meet the Operational Criteria described in Section 4.2, above.

#### **6.11 Financial Criteria**

Each proposal must provide documents and information adequate to meet the Financial Criteria described in Section 4.3, above.

#### **6.12 Administrative Criteria**

Each proposal must provide documents adequate to meet the Administrative Criteria described in Section 4.4.1, above.

#### **6.13 Approvals**

Each proposal must provide a description of the level of review that the final Concession Agreement has received by the participants on the Proposer's team, including any deliberations made by investment committees, boards, and other decision-making bodies

associated with the proposal. Please provide evidence and explain what (if any) further review will be necessary to bring this to successful conclusion by the Proposer.

## **6.14 Proposal Security**

### **6.14.1 \$20 Million**

Every proposal must be accompanied by security in the amount of twenty million dollars (\$20 million) ("Proposal Security") consisting of either (1) wired federal funds to an account specified by the City, or (2) a Letter of Credit in the form of Appendix II, as a guarantee that the Proposer will enter into the proposed contract if the same be awarded to it. The Proposal Security will be returned promptly to the unsuccessful Proposers after the earlier of: i) the successful Proposer has executed the Concession Agreement or ii) ninety (90) days after the date of opening the final Proposals. If the successful Proposer fails or refused to execute the Concession Agreement as required by this RFP, the Proposal Security shall be subject to forfeiture for non-performance. Each non-selected Proposer may be selected for award until a Proposer complies or until all proposals are rejected. Should the successful Proposer fail or refuse to execute the Concession Agreement after award to such proposer, the entire sum of the Proposal Security shall become the property of the City, not as penalty, but as liquidated damages. Such payment shall not preclude recovery by the City of any amount over and above said sum to which City sustains damage by reason of such failure or refusal.

### **6.14.2 Letter of Credit**

"Letter of Credit" means an irrevocable, unconditional, commercial letter of credit, in favor of the City, in form and content reasonably acceptable to the City, payable in U.S. dollars upon presentation of a sight draft and a certificate confirming that the City has the right to draw under such letter of credit in the amount of such sight draft, without presentation of any other Document, which letter of credit (i) is issued by a commercial bank or trust company that is a member of the New York Clearing House Association and that has a current credit rating of A+ or better by Standard & Poor's Ratings Services and an equivalent credit rating by another Rating Agency (or an equivalent credit rating from at least two nationally recognized rating agencies if the named rating agency ceases to publish ratings) (or such other commercial bank or trust company reasonably acceptable to the City and approved by the City prior to the submission of the letter of credit), and (ii) provides for the continuance of such letter of credit for a period of at least one year or as otherwise provided in this Agreement. The office for presentment of sight drafts specified in the Letter of Credit shall be located at a specified street address within the City of Los Angeles. For the avoidance of doubt, the obligations of the account party during the Term to

reimburse the issuer for draws under the Letter of Credit may be secured by a Leasehold Mortgage.

#### **6.15 Evaluation Factors**

The RFP responses will be evaluated based on the requirements of this RFP and the amount offered for the Base Rent. Proposers bear the responsibility to ensure that the RFP responses provide adequate and appropriate information and documentation for the City and its advisors to evaluate the response against the criteria set forth for evaluation. Lack of adequate information and documentation may result in the Proposal being deemed having failed the evaluation criteria and disqualified.

#### **6.16 Additional Considerations, Information and Documents Proposers Wish To Present**

Each proposal may include additional relevant considerations, information and documents that the Proposer wishes the City to consider in its evaluation of the proposal (including material qualifications to the proposal). This material should be clearly labeled as "Additional Considerations, Information, and Documents."

#### **6.17 Signed Proposals**

All proposals must be signed by authorized individuals, accompanied by documents showing that they are authorized to execute the proposal on behalf of the Proposer. If the proposer is a partnership, a general partner must sign the proposal in the name of the partnership. If the proposer is a corporation, the proposal must be signed on behalf of the corporation by two officers authorized by the Board of Directors to execute such documents (e.g., a Chairman of the Board, President or Vice-President and a Secretary, Treasurer or City Financial Officer). If the Proposer is a limited liability company, either the authorized manager or member, as applicable, of the company, must sign the proposal. If the proposer is a joint venture, each member of the joint venture must sign the proposal.

#### **6.18 Best and Final Offer**

By submitting a proposal in response to this RFP, each proposer understands and agrees that should the City Council determine, in its sole discretion, to release a revised Concession Agreement with or without the Pershing Square Garage and Broxton Garage operating requirements to some or all of the Proposers for a best and final offer, that the proposer agrees that its best and final offer on the revised Concession Agreement will be no less than its original proposal offer conforming to the revised Concession Agreement and that if the proposer fails to submit a best and final offer, the City may, at its sole option, elect to accept the proposer's original offer conforming to the revised Concession Agreement.

## **7.0 PROPOSALS BECOME THE PROPERTY OF THE CITY**

All proposals submitted in response to this RFP will become the property of the City and subject to disclosure as a public record upon the recommendation by the Panel for award of the Concession Agreement. The Proposer must identify, in writing, all copyrighted materials, trade secrets or other proprietary information that it claims are exempt from disclosure under the Public Records Act (California Government Code Section 6250 *et seq.*) or other applicable provision of law.

A Proposer claiming such an exemption must identify the specific provision of the Public Records Act or provision of law that provides an exemption from disclosure for each item that the Proposer claims is not subject to disclosure. A Proposer claiming such an exemption must also state in its proposal that the Proposer agrees to defend, indemnify and hold harmless the City and its officers and employees, from any action brought against the City for its refusal to disclose such materials, trade secrets and other proprietary information to any party making a request therefore.

A Proposer who fails to include the above statements shall be deemed to have waived any right to an exemption from disclosure as provided by the California Public Records Act or other provision of law.

## **8.0 EVALUATION OF PROPOSALS, AWARD AND EXECUTION OF CONCESSION AGREEMENT**

### **8.1 Evaluation Of Proposals**

A panel consisting of members of the CITY staff composed of representatives from the Mayor, the CAO and the CLA (**Panel**), with the assistance of the Transaction Advisors will evaluate the proposals as described in this RFP. Proposals deemed non-responsive will be disqualified and not evaluated. The Panel may request additional information to clarify a submitted proposal. At its sole discretion, the Panel may waive any informality in a proposal when to do so would be to the advantage of the City and its taxpayers. In its discretion, the Panel may recommend approval and award of the Concession Agreement for the proposal determined to be in the best interests of the City or it may recommend that no award be made. All decisions and recommendations made by the Panel must be based on a unanimous vote.

### **8.2 Award and Execution of Concession Agreement**

If the Panel recommends award of the Concession Agreement, the selected Proposer must execute the Concession Agreement within five (5) business days following the announcement of the recommendation. After the Los Angeles City Department of Recreation and Parks Board and the Los Angeles City Council make the award and adopt the necessary ordinance and the Mayor approves the award and ordinance, the City will promptly execute the Concession Agreement. This RFP or any part thereof, and/or any



portion of the Proposal submitted by the successful Proposer may be incorporated into and made a part of the Concession Agreement. However, the City reserves the right to further negotiate and modify the terms and conditions of the Concession Agreement with the selected proposer if deemed appropriate.

## **9.0 INTERPRETATIONS AND ADDENDA**

Changes to the RFP and Instructions to Proposers, if any, will be made only by written addenda (“**Addenda**”), which will be posted in the Data Room. Full consideration should be given to all Addenda in the preparation of proposals, as Addenda will be considered a part of the RFP and proposal.

A Proposer that finds ambiguities, conflicts, discrepancies in or omissions from this RFP or Addenda, or if a Proposer should be in doubt as to the true meaning of any part thereof, the Proposer must submit a written request via e-mail to the Response Coordinator for corrections, clarification or interpretation.

**If the City determines that the RFP requires changes, correction, clarification, or interpretation prior to the receipt of proposals, an appropriate Addendum will be posted in the Data Room.**

**The City of Los Angeles, Los Angeles City Council, its officers and employees, and the Transaction Advisors will not be responsible for any changes, corrections, clarifications, interpretations, or other information pertaining to the RFP given to proposers during the proposal period in any manner other than by written Addenda posted in the Data Room.**

The Proposer in its Proposal Letter (see Appendix I) must acknowledge that it is aware of all Addenda and documents posted in the Data Room as of the date of its Proposal Letter.

## **10.0 PROHIBITION OF COMMUNICATION DURING RFP EVALUATION PERIOD**

After submitting proposals and continuing until a Concession Agreement has been awarded, all City personnel involved in the project will be specifically directed against holding any meetings, conferences or technical discussions with any proposer except as provided in this RFP. Proposers must not initiate communication with City personnel regarding this RFP or the proposals during this time, unless authorized in advance by the Panel. Failure to comply with this requirement may result, in City’s sole discretion, in disqualification of the Proposer.

## **11.0 GENERAL CITY PROVISIONS**

Each proposer must comply with and provide information or documents relating to the applicable provisions discussed below, unless the proposer had previously submitted the information or documents to the City as part of the RFQ process. The provisions which must be complied with by the time of submittal of the proposal are listed in Section 4.5; the remainder must be complied with by the winning pro-

poser by the time of execution of the Concession Agreement. More detailed information and the appropriate forms concerning these provisions are attached to this RFP as Appendix III.

#### **11.1 Affidavit Of Non-Collusion**

**THE PROPOSAL MUST INCLUDE** an “**AFFIDAVIT OF NON-COLLUSION**” executed and submitted by the Proposer in accordance with City’s Administrative Code, Section 10.15(d).

#### **11.2 Minority, Women, and Other Business Enterprise Outreach Program**

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

#### **11.3 Nondiscrimination, Equal Employment Practices and Affirmative Action Policies**

The successful Proposer awarded the Concession Agreement contract pursuant to this Request for Proposal must comply with the Nondiscrimination Policy, Equal Employment Practices and Affirmative Action Program set forth in the Los Angeles Administrative Code Section 10.8, et seq. The Proposer must sign and submit with its proposal a Nondiscrimination, Equal Employment Practices and Affirmative Action Certification Declaration, Composition of Total Workforce Report, and a signed version of one of the following affirmative action plans: a) a trade association affirmative action plan; b) the Proposer’s own affirmative action plan which meets all the requirements of the City’s Affirmative Action Program; or c) an executed copy of the Los Angeles City Affirmative Action Plan.

#### **11.4 Service Contractor Worker Retention and Living Wage Ordinances**

The Service Contractor Worker Retention Ordinance (Los Angeles Administrative Code, Section 10.36 et seq.) and the Living Wage Ordinance (Los Angeles Administrative Code, Section 10.37 et seq.) provide that all employers (except those specifically exempted) under contracts primarily for the furnishing of services to or for the City and that involve an expenditure or receipt in excess of \$25,000 and a contract term of at least three (3) months, or certain recipients of City financial assistance, shall comply with provisions of said Ordinances.

Those City employees who are performing those activities covered under this proposal at the time of implementation shall be offered first right of refusal for employment under the terms and conditions established by the successor contractor (or subcontractor) or as required by law.

#### **11.5 Equal Benefits Ordinance**

**THE PROPOSAL MUST INCLUDE**, unless otherwise exempt, a **“CERTIFICATION OF COMPLIANCE FORM”** and, if appropriate, the **“REASONABLE MEASURES CERTIFICATION”** or the **“SUBSTANTIAL COMPLIANCE CERTIFICATION”** under the Equal Benefits Ordinance, Los Angeles Administrative Code Section 10.89.2.1 et seq., which requires that Proposers provide the same benefits to domestic partners of employees that are provided to spouses of employees.

#### **11.6 Insurance**

The successful Proposer awarded the Concession Agreement must furnish the City evidence of insurance coverage, as specified in the Concession Agreement. Insurance forms which must be completed and approved by the City Administrative Officer (CAO) Risk Management will be posted in the Data Room. These forms are for information only and do not need to be returned with the proposal however, **IF YOU ARE THE SUCCESSFUL PROPOSER, PROOF OF INSURANCE MUST BE SUPPLIED BEFORE THE EXECUTION OF THE CONCESSION AGREEMENT.**

#### **11.7 Child Support Assignment Orders**

**THE PROPOSAL MUST INCLUDE**, a completed and signed **“CERTIFICATION OF COMPLIANCE”** with Child Support Obligations required by the Los Angeles Administrative Code Section 10.10, Child Support Assignment Orders.

#### **11.8 Contractor Responsibility Ordinance**

**THE PROPOSAL MUST INCLUDE** the **“RESPONSIBILITY QUESTIONNAIRE FOR SERVICE CONTRACTS”** and any other documents required in compliance with the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq., of Article 14, Chapter 1 of Division 10 of the Los Angeles Administrative Code, unless exempt pursuant to the provisions of the Ordinance. If the Proposer has previously submitted to the City the completed Responsibility Questionnaire For Service Contracts, the Proposer must submit the required documents to update the Questionnaire as of the date of submittal of the proposal.

This questionnaire and additional information about the Ordinance will be posted in the Data Room. Failure to return the completed questionnaire or update, as appropriate, may result in the Proposer being deemed non-responsive.

**The Ordinance also requires that during the term of the Concession agreement, the Concessionaire must update responses to the questionnaire, within thirty calendar days, after any changes to the responses previously provided if such change would affect the Concessionaire's fitness and ability to continue performing the Concession Agreement.**

Pursuant to the Ordinance, by executing the Concession Agreement with the City, the Concessionaire pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in performance of the Concession Agreement, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees. Further, the Ordinance requires the Concessionaire to: (1) notify the awarding authority within thirty calendar days after receiving notification that any governmental agency has initiated an investigation which may result in a finding that the Concessionaire is not in compliance with Section 10.40.3 (a) of the Ordinance; and (2) notify the awarding authority within thirty calendar days of all findings by a government agency or court of competent jurisdiction that the Concessionaire has violated Section 10.40.3 (a) of the Ordinance.

#### **11.9 Americans with Disabilities Act**

The Proposer awarded the Concession Agreement must comply with the Americans with Disabilities Act and execute a certification regarding compliance with the Americans with Disabilities Act prior to the execution of a contract.

#### **11.10 Slavery Disclosure Act**

The Proposer awarded the Concession Agreement must complete and submit to the City the Affidavit Disclosing Slavery Era Participation, Investments or Profits.

#### **11.11 Business Tax Registration Certificate**

The Proposer awarded the Concession Agreement will be required to demonstrate compliance with the City's business tax laws by acquiring/maintaining one of the following: Business Tax Registration Certificate; Vendor Registration Number; or Certificate of Exemption. The Certificate or Registration Number must remain in force during the entire period of the contract and proof of license will be required at time of winning proposer's signatory execution.

### **11.12 Los Angeles Municipal Lobbying Ordinance**

**THE PROPOSAL MUST INCLUDE** the completed **Certification CEC Form 50** unless previously submitted with the RFQ. The Proposer agrees to comply with the Los Angeles Municipal Lobbying Ordinance if it qualifies as a lobbying entity under Los Angeles Municipal Code Section 48.02. A copy of the Municipal Lobbying Ordinance and CEC Form 50 is attached to the RFQ and may also be found at <http://ethics.lacity.org/forms.cfm>.

## **12.0 PROTEST PROCEDURES**

- 12.1** The purpose of these protest procedures is to provide a method for resolving protests regarding the award of the Concession Agreement before the City awards a Concession Agreement. Proposers will have an opportunity to protest the recommendation of award of the Concession Agreement under this RFP. These procedures will enable the City Administrative Officer to ascertain the facts necessary to make an informed recommendation regarding the award of the Concession Agreement.
- 12.2** Any protest as to the RFQ and/or RFP documents or matters or procedures referred to therein must be submitted in detail and in writing to the Response Coordinator and postmarked within fourteen (14) days after issuance of this RFP to the proposers. Any protest as to any other matter must be submitted in detail and in writing and submitted to and received by the City by 12:00 p.m., Los Angeles time, on the fifth (5) business day after the City's evaluation panel (Panel) notifies the proposer by e-mail of its recommendation to the award the Concession Agreement. The protest shall contain a full and complete statement specifying in detail the grounds of the protest and the facts in support thereof.
- 12.3** All protests must include the following information:
  - 12.3.1** The name, address and telephone number of the person representing the protesting party;
  - 12.3.2** Name of this RFP;
  - 12.3.3** The initial protest document must contain a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
  - 12.3.4** Statement as to the form of relief requested; and
- 12.4** The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documents to all other Proposers who have submitted a proposal and who have a reasonable prospect of receiving an award depending upon the outcome of the protest.
- 12.5** The procedure and time limits set forth in this Section are mandatory and are the sole and exclusive remedy in the event of protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

- 12.6** The City will only consider protests by or against any Proposer(s) who appears to have a substantial and reasonable prospect of receiving an award if the protest is denied or sustained, as applicable.
- 12.7** Protests meeting the above criteria will be reviewed and will be submitted to the City. Protesting parties will be notified of the time and date that the protest will be discussed in a public session of an appropriate panel or body. Protesting parties will be given the opportunity to present their arguments at a public session. The panel or body will issue a recommendation to the Los Angeles City Council regarding the protest.

## Appendix I: Form of Proposal Letter

Date: [], 2010

Ms. Natalie R. Brill  
Office of the City Administrative Officer  
City of Los Angeles  
200 N. Main Street, 15<sup>th</sup> Floor  
Los Angeles, CA 90012

The undersigned (we or the Proposer) submit this proposal (this Final Proposal) in response to Request for Proposals (the RFP) issued by the City of Los Angeles. Capitalized terms not otherwise defined herein shall have the meanings set forth the final Concession Agreement issued by the City prior to the date of this Proposal Letter.

The Proposer's representatives for the RFP and subsequent Concession Agreement award is [name, title, address and telephone number]. He/She has [no] [specify if any] limitations of authority in regard to the RFP and subsequent Concession Agreement Award and has authority to bind the Proposer to all provisions of the RFP, and any subsequent Concession Agreement or changes to it. [The representative for the Proposer must sign the Proposal Letter]

Proposer's team members are as follow: \_\_\_\_\_

### PROPOSALS:

1) The amount of Base Rent that the Proposer as Concessionaire will pay pursuant to Section 3. 1 of the Concession Agreement in its current form will be US\$[in numbers], [in words].

2) The amount of Base Rent that the Proposer as Concessionaire will pay pursuant to Section 3. 1 of the Concession Agreement will increase by US\$ [in numbers], [in words] if the following operating requirement for the Pershing Square Garage (Schedule 14, paragraph 4H, of the Concession Agreement) is deleted from the Concession Agreement:

"Notwithstanding the general transient space requirement, the Concessionaire shall accommodate up to Twelve Hundred (1200) vehicles for transient parking at Pershing Square Garage between the hours of 5 PM and 2:30 AM Monday through Sunday. The rate for parking during these hours shall not exceed the flat rate set forth in the rate schedule subject to adjustment as permitted by the rate schedule set forth in Schedule 6 of the Concession Agreement."

3) The amount of Base Rent that the Proposer as Concessionaire will pay pursuant to Section 3. 1 of the Concession Agreement will increase by US\$ [in numbers], [in words] if the following operating require-

ment for the Broxton Avenue Garage (Schedule 14, paragraph 3, of the Concession Agreement) is deleted from the Concession Agreement:

“The Concessionaire shall continue the free validation system at the Broxton Avenue Garage for a period of two years following the Closing Date.”

4) The amount of Base Rent that the Proposer as Concessionaire will pay pursuant to Section 3. 1 of the Concession Agreement will increase by US\$ [in numbers], [in words] if the above operating requirements for the Pershing Square Garage and the Broxton Garage [Schedule 14, paragraphs 3 and 4H] are deleted from the Concession Agreement.

### **Undertakings**

In consideration for City supplying us, at our request, with the RFP and any related materials and agreeing to examine and consider this Final Proposal, we undertake, jointly and severally, to keep this Final Proposal open for acceptance for ninety (90) days after the opening of the proposals, or for such longer period as is mutually agreed in writing between City and the Proposer, without unilaterally varying or amending its terms and without any member or partner withdrawing from, and without any other change being made to the composition of, our Proposer Team, without first obtaining the prior written consent of City (such consent to be at City's sole discretion).

Furthermore, we undertake, jointly and severally, that, if selected by City as the Successful Proposer:

- (a) we shall satisfy all other conditions to the award of the Concession Agreement as set forth in this RFP and the final concession agreement; and
- (b) we shall cause the Concessionaire to perform the obligations set forth in the RFP and the Concession Agreement, including compliance with all commitments contained in this Final Proposal.

### **Certifications**

Proposer certifies the following: (a) the Proposal is submitted without reservation, qualification, assumptions or conditions; (b) Proposer has carefully examined and is fully familiar with all of the RFP documents and is satisfied that the RFP documents provide sufficient detail regarding the Concessionaire's obligations and do not contain internal inconsistencies; (c) Proposer has carefully checked all the words, figures and statements in this Proposal; (d) Proposer has conducted such other field investigations and additional diligence as is prudent and reasonable in preparing this Proposal; (e) that Proposer has notified the City of any deficiencies in or omissions from any RFP documents or other documents provided by the City.

Proposer represents that all statements made in its response to the RFQ previously delivered to the City are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal. Proposer agrees that such response to the RFQ, except as modified by the enclosed Proposal, is incorporated as if fully set forth herein.

Proposer understands that the City is not bound to award the Concession Agreement to the Highest Base Rent Proposal or any other Proposal that the City may receive.



Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer.

Proposer agrees that the City will not be responsible for any errors, omissions, inaccuracies or incomplete statements in this Proposal. Proposer certifies that it is aware of all Addenda and documents posted in the Data Room as of the date of this Proposal Letter.

This Final Proposal shall be governed by and construed in all respects according to the laws of the State of California.

[insert appropriate signature *blocks from following page*]

### Sample Signature Blocks

1. Sample signature block for corporation or limited company:

*[Proposer's name]*

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

Print Name: \_\_\_\_\_

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

2. Sample signature block for partnership or joint venture:

*[Proposer's name]*

By: *[Insert general partner's or member's name]*

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

Print Name: \_\_\_\_\_

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

*[Add signatures of additional general partners or members as appropriate]*

3. Sample signature block for attorney in fact:

*[Proposer's name]*

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

Print Name: \_\_\_\_\_

Attorney in Fact

## Appendix II: Form of Letter of Credit<sup>2</sup>

[●], 2010

City of Los Angeles  
C/O City Administrative Officer  
200 N. Main Street, 15<sup>th</sup> Floor  
Los Angeles, CA 90012

Ladies and Gentlemen:

We hereby issue this Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor for the account of *[Name of Applicant]* in the amount of US \$20,000,000<sup>2</sup> *as the Stated Amount*.

Funds under this Standby Letter of Credit are available to you upon your presentation to us of one or more sight drafts drawn on us for a sum or sums in an aggregate amount not exceeding the Stated Amount, specifically referencing this *[Name of Bank]* Irrevocable Standby Letter of Credit No. \_\_\_\_\_, signed by the City Administrative Officer of the City of Los Angeles (the "City") (whether acting or actual) or his designee, which sight draft shall contain a statement that the City is entitled to make such draw or be accompanied by a signed statement of the City to the same effect.

Our obligations hereunder are primary obligations to the City and shall not be affected by the performance or non-performance by *[Name of Applicant]* under any agreement with the City or by any bankruptcy, insolvency or other similar proceeding initiated by or against *[Name of Applicant]*. *[Name of Applicant]* is not the beneficiary under this Standby Letter of Credit and possesses no interest whatsoever in proceeds of any draw hereon. We agree with you that any draws under this Standby Letter of Credit shall be duly honored on sight if presented to us on or before *[insert date, to be no earlier than ninety (90) days after the date of opening the Final Proposals]* (the Expiry Date). This Standby Letter of Credit shall terminate on the earlier of (i) the close of business on the Expiry Date or (ii) the date that we have honored one or more draws in the full amount of this Standby Letter of Credit. This Standby Letter of Credit may not be transferred by the City to any other person.

To the extent not inconsistent with the express provisions hereof, this Standby Letter of Credit shall be governed by and construed in accordance with the International Standby Practices 1998, International Chamber of Commerce, Publication No. 590 (*ISP98*) as interpreted under the laws of the State of California and shall, as to matters not governed by *ISP98*, be governed and construed in accordance with the laws of the State of California, without regard to principles of conflicts of law.

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\* NOTE TO PROPOSERS: Proposers must insert information where prompted.

<sup>2</sup> Proposers may provide multiple letters of credit such that, in the aggregate (and together with any cash deposit or other approved form of security) the total Proposal Security or Proposer's Security is U.S. \$20,000,000. If providing multiple letters of credit as the Proposal Security or Proposer's Security and/or any cash deposit, modify the Stated Amount to reflect the relevant stated amount of each letter of credit. The form shall otherwise be submitted unmodified.

With respect to any suit, action or proceedings relating to this Standby Letter of Credit (*Proceedings*), we irrevocably: (i) submit to the exclusive jurisdiction of the Superior Court of the State of California, County of Los Angeles; and (ii) waive any objection which we may have at any time to the laying of venue of any Proceedings brought in any such court, waive any claim that such Proceedings have been brought in an inconvenient forum and further waive the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over us.

[*Name*      *and*      *Address*      *of*      *Bank*]

[*Authorized Signature*]

## **Appendix III: City Contract Ordinance Requirements**

DATE \_\_\_\_\_

Contractor \_\_\_\_\_ Project Title \_\_\_\_\_ Length of Contract \_\_\_\_\_  
 Contractor Address \_\_\_\_\_ Work Force as of (Date) \_\_\_\_\_ (If you have no employees, write "no employee at this time.")

(Note: J - Journeyman, A - Apprentice, T - Trainee, F - Female, M - Male)																							
FOR CONSTRUCTION PROJECTS (L.A. County Only)																							
	AFRICAN AMERICAN (BLACK)			HISPANIC			ASIAN / PACIFIC ISLANDER			AMERICAN INDIAN/ ALASKAN NATIVE			CAUCASIAN (NON-HISPANIC)			TOTAL EMPLOYEES			% MINORITY			GENDER	
CRAFT	J	A	T	J	A	T	J	A	T	J	A	T	J	A	T	J	A	T	J	A	T	M	F
Brick Layers																							
Carpenters																							
Electricians																							
Gunit Workers																							
Iron Worker																							
Laborers																							
Operator Engineers																							
Painters																							
Pipe Trades																							
Plasters / Cement Masons																							
Sheet Metal Workers																							
Teamsters																							
Clerical																							
Supervisory																							
TOTAL																							

<b>FOR NON-CONSTRUCTION PROJECTS</b>																
	AFRICAN AMERICAN (BLACK)		HISPANIC		ASIAN OR PACIFIC ISLANDER		AMERICAN INDIAN / ALASKAN NATIVE		CAUCASIAN (NON-HISPANIC)		TOTAL EMPLOYEES		% MINORITY		GENDER	
OCCUPATION	Regular	Trainee	Regular	Trainee	Regular	Trainee	Regular	Trainee	Regular	Trainee	R	T	R	T	M	F
Official & Managers																
Professionals																
Technicians																
Sales Workers																
Office / Clerical																
Semi-Skilled																
Laborers (Unskilled)																
Service Workers																
TOTAL																

Employment statistics were obtained from:  
 Available Records    Visual Check    Other (Specify) \_\_\_\_\_

**EQUAL EMPLOYMENT PRACTICES PROVISIONS**  
**Construction Contracts in excess of \$1,000 or more but less than \$5,000 and**  
**Nonconstruction Contracts of \$1,000 or more but less than \$100,000**

**Sec. 10.8.3. Equal Employment Practices Provisions.**

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$1,000 or more, and every construction contract for which the consideration is \$1,000 or more, shall contain the following provisions, which shall be designated as the EQUAL EMPLOYMENT PRACTICES provision of such contract:

- A. During the performance of this contract, the contractor agrees and represents that it will provide equal employment practices and the contractor and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
  2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  3. The contractor agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, the contractor shall certify in the specified format that he or she has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of City contracts. On their or either of their request the contractor shall provide evidence that he or she has or will comply therewith.
- E. The failure of any contractor to comply with the Equal Employment Practices provisions of this contract may be deemed to be a material breach of City contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.
- F. Upon a finding duly made that the contractor has failed to comply with the Equal Employment Practices provisions of a City contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, such contractor shall be disqualified from being awarded a contract with City of Los Angeles for a period of two years, or until the contractor shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- H. The Board of Public Works shall promulgate rules and regulations through the Office of Contract Compliance, and provide necessary forms and required language to the awarding authorities to be included in City Request for Bids or Request for Proposal packages or in supplier registration requirements for the implementation of the Equal Employment Practices provisions of this contract, and such rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish the contract Compliance program.
- I. Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the City, or when an individual bid or proposal is submitted, the contractor shall agree to adhere to the Equal Employment Practices specified herein during the performance or conducted of City Contracts.
- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Hiring practices;
  2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
  3. Training and promotional opportunities; and
  4. Reasonable accommodations for persons with disabilities.
- L. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.



**AFFIRMATIVE ACTION PROGRAM PROVISIONS**  
**Construction Contracts of \$5,000 or More and**  
**Nonconstruction Contracts of \$100,000 or More**

**Sec. 10.8.4. Affirmative Action Program Provisions.**

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of a City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
  - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
  - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  - 3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any contractor to comply with the Affirmative Action program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The public Works board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

- K. The contractor shall submit an Affirmative Action Plan which shall meet the requirements of this Chapter at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
- (1) Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
  - (2) A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
  2. Classroom preparation for the job when not apprenticeable;
  3. Pre-apprenticeship education and preparation.
  4. Upgrading training and opportunities;
  5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
  6. The entry of qualified women, minority and all other journeymen into the industry; and
  7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's work force to achieve the requirements of the city's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

**LOS ANGELES CITY AFFIRMATIVE ACTION PLAN****LOS ANGELES CITY AFFIRMATIVE ACTION MANDATORY PROVISIONS**

Notwithstanding any other provision of this Division to the contrary, every construction contract involving an expenditure of \$5,000 or more of City funds, except in cases of urgent necessity, as provided in Section 371 of the Charter of the city of Los Angeles and except as provided in Section 10.9 of this Code, shall contain as part of the contract an Affirmative Action Plan substantially as set forth in this section and which by the contractor's signature affixed thereto, shall constitute and be established as the contractor's Affirmative Action Plan. The Plan, which may be a plan proposed by the contractor or the City's proposed Plan prepared by the Office of Contract Compliance, shall be subject to the approval of the Office of Contract Compliance prior to award of the contract. The Plan may consist of a Plan approved by the Office of Contract Compliance within the previous twelve months. If the previously approved Plan is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance which shall be subject to approval before the contract may be awarded.

**Sec. 10.13. Mandatory Provisions Pertaining to Nondiscrimination in Employment and Affirmative Action in Hiring Employees in the Performance of Work on Certain City Construction Contracts.**

**1. Construction Contracts Included.**

The contractor shall not be eligible for an award of a City Construction Contract in excess of \$5,000, unless the contractor has submitted as part of the bid a written Affirmative Action Plan embodying both (1) anticipated levels of minority\*, women and all other staffing utilization, and (2) specific affirmative action steps directed at applying good faith efforts in a nondiscriminatory manner to recruit and employ minority, women and all other potential staff or is deemed to have submitted such a program pursuant to Subsection 3 of this section. Both the anticipated levels and the affirmative action steps must be taken and applied in good faith and in a nondiscriminatory manner to attempt to meet the requirements of this section for all trades which are to be utilized on the project, whether subcontracted or not.

\*"Minority" is defined as the term "minority person" is defined in subsection (f) of section 2000 of the California Public Contract Code.

**2. Anticipated Utilization.**

The plan must set forth anticipated minority, women, and all other staffing utilization by the contractor and all subcontractors on each project constructed by the City using those trades within the area of jurisdiction of the Los Angeles Building and Construction Trades Council within the City of Los Angeles in each work class and at all levels in terms of staff hours. The anticipated levels of minority, women and other staffing utilization shall be the levels at which each of those groups are represented in the relevant workforce in the Greater Los Angeles Area as determined by the U. S. Bureau of the Census and made available by the Office of Contract Compliance. Attainment of the anticipated levels of utilization may only be used as an indicia of whether the contractor has complied with the requirements of this section and has applied its Affirmative Action Plan in good faith and in a nondiscriminatory manner. Failure to attain the anticipated levels of utilization shall not, by itself, disqualify the contractor for award of a contract or subject the contractor to any sanctions or penalties.

In no event may a contractor utilize the requirements of this section in such a manner as to cause or result in discrimination against any person on account of race, color, religion, ancestry, age, disability, medical condition, marital status, domestic partner status, sex, sexual orientation, or national origin.

**3. An Affirmative Action Plan.**

The contractor certifies and agrees to immediately implement good faith efforts measures to recruit and employ minority, women, and other potential staff in a nondiscriminatory manner including, but not limited to, the following actions. The contractor shall:

**a. Recruit and make efforts to obtain such employees through:**

- (1) Advertising employment opportunities in minority and other community news media. Notifying minority, women and other community organizations of employment opportunities.
- (2) Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.
- (3) Encouraging present minority, women and other employees to refer their friends and relatives.
- (4) Promoting after school and vacation employment opportunities for minority, women and other youth.
- (5) Validating all job specifications, selection requirements, tests, etc.
- (6) Maintaining a file of names and addresses of each worker referred to the contractor and what action was taken concerning such worker.
- (7) Notifying the appropriate awarding authority of the City and the Office of Contract Compliance in writing when a union with whom the contractor has a collective bargaining agreement has failed to refer a minority, woman or other worker.

**b. Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in nondiscriminatory manner so as to achieve and maintain a diverse work force.**

**c. Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in such training programs to enhance their skills and advancement.**

**d. Secure cooperation or compliance from the labor referral agency to the contractor's contractual affirmative action obligations.**

**e. Establish a person at the management level of the contracting entity to be the Equal Employment Opportunity Office; such individual to have the authority to disseminate and enforce the company's Equal Employment and Affirmative Action Policies.**

- f. Maintain such records as are necessary to determine compliance with equal employment and affirmative action obligations, and making such records available to City, State and Federal authorities upon request.
4. The contractor shall make a good faith effort with respect to apprenticeship and training program to:
  - a. Recruit and refer minority, women and other employees to such programs;
  - b. Establish training programs within the company and/or its association that will prepare minority, women and other employees for advancement opportunities.
  - c. Abide by the requirements of the Labor Code of the State of California with respect to the provision of apprenticeship job opportunities.
5. The contractor shall establish written company policies, rules, and procedures which shall be encompassed in a company-wide Affirmative Action Plan for all its operations and contracts. Said policies shall be provided to all employees, subcontractors, vendors, unions and all others with whom the contractor may become involved in fulfilling any of its contracts. The company's Affirmative Action Plan shall encompass the requirements contained herein as a minimum and shall be submitted with its bid to the appropriate awarding authority of the City and to the Office of Contract Compliance of the City.
6. Where problems are experienced by the contractor in complying with its obligations pursuant to this section, the contractor shall document its good faith effort to comply with the requirements by the following procedure. The contractor shall state:
  - a. What steps were taken, how and on what date.
  - b. To whom those efforts were directed.
  - c. The responses received, from whom and when.
  - d. What other steps were taken or will be taken to comply and when.
  - e. Why the contractor has been or will be unable to comply.
7. The contractor shall complete and file, and require each of its known subcontractors to complete and file with the contractor's bid for the subject project an acceptable Affirmative Action Plan.
8. The contractor shall submit and require each of its subcontractors to submit an Ethnic Composition of the Company's Total Work Force (by employees) prior to the date of award of the contract.
9. No contract shall be executed until the appropriate awarding authority of the City of Los Angeles, and the Federal funding agency (if Federal funds are involved), has determined in writing that such contractor has executed and filed with the awarding authority and the City Office of Contract Compliance the required Affirmative Action Plan.
10. It shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for referral, exclusive or otherwise, failed to refer minority, women or other employees.
11. Subject to this subsection the contractor shall execute such further forms and documentation at such times and as may be required by the appropriate awarding authority of the City of Los Angeles.
12. Where the contractor has failed to comply with the requirements contained in this section, any and all sanctions allowed by law may be imposed upon the contractor.
13. The Office of Contract Compliance within the Department of Public Works shall be responsible for administering the City's Contract Compliance Program in the manner described in Sections 22.359 through 22.359.5 of this Code.
14. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

By its execution hereof, the contractor accepts and submits the foregoing as its Affirmative Action Plan.

DATE

OFFICER'S SIGNATURES

FIRM NAME

A-7

OFFICER'S NAME AND TITLE (TYPE OR PRINT)

CERTIFICATION REGARDING COMPLIANCE WITH THE  
AMERICANS WITH DISABILITIES ACT

The undersigned certifies, that to the best of his/her knowledge and belief, that:

1. The Contractor/Borrower/Agency (hereafter Contractor) is in compliance with and will continue to comply with the Americans with Disabilities Act 42 U.S.C. 12101 et seq. and its implementing regulations.
2. The Contractor will provide for reasonable accommodations to allow qualified individuals with disabilities to have access to and participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act.
3. The Contractor will not discriminate against persons with disabilities nor against persons due to their relationship or association with a person with a disability.
4. The Contractor will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative Contracts) and that all subrecipients shall certify and disclose accordingly.
5. This certification is a material representation of fact upon which reliance was placed when the parties entered into this transaction.

Contract Number \_\_\_\_\_

CONTRACTOR/BORROWER/AGENCY

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

## CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT OBLIGATIONS

This document must be returned with the Proposal/Bid Response

The undersigned hereby agrees that \_\_\_\_\_ will:

Name of Business/Borrower

1. Fully comply with all applicable State and Federal employment reporting requirements for its employees.
2. Fully comply with and implement all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment.
3. Certify that the principal owner(s) of the business/the Borrower are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally.
4. Certify that the business/Borrower will maintain such compliance throughout the term of the contract.
5. This certification is a material representation of fact upon which reliance was placed when the parties entered into this transaction.
6. The undersigned shall require that the language of this Certification be included in all subcontracts and that all subcontractors shall certify and disclose accordingly.

To the best of my knowledge, I declare under penalty of perjury that the foregoing is true and was executed at :

\_\_\_\_\_  
City/County/State

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Business

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature of Authorized Officer or Representative

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone Number

**CITY OF LOS ANGELES  
RESPONSIBILITY QUESTIONNAIRE**

**RESPONSES TO THE QUESTIONS CONTAINED IN THIS QUESTIONNAIRE MUST BE SUBMITTED ON THIS FORM.** In responding to the Questionnaire, neither the City form, nor any of the questions contained therein, may be retyped, recreated, modified, altered, or changed in any way, in whole or in part. Bidders or Proposers that submit responses on a form that has been retyped, recreated, modified, altered, or changed in any way shall be deemed non-responsive.

The signatory of this Questionnaire guarantees the truth and accuracy of all statements and answers to the questions herein. Failure to complete and return this questionnaire, any false statements, or failure to answer (a) question(s) when required, may render the bid/proposal non-responsive. All responses must be typewritten or printed in ink. Where an explanation is required or where additional space is needed to explain an answer, use the Responsibility Questionnaire Attachments. Submit the completed form and all attachments to the awarding authority. Retain a copy of this completed form for future reference. Contractors must submit updated information to the awarding authority if changes have occurred that would render any of the responses inaccurate in any way. Updates must be submitted to the awarding authority within 30 days of the change(s).

**A. CONTACT INFORMATION****CITY DEPARTMENT INFORMATION**

City Department/Division Awarding Contract

City Contact Person

Phone

City Bid or Contract Number (if applicable) and Project Title

**BIDDER/CONTRACTOR INFORMATION**

Bidder/Proposer Business Name

Street Address

City

State

Zip

Contact Person, Title

Phone

Fax

**TYPE OF SUBMISSION:**

The Questionnaire being submitted is:

- ☐ An initial submission of a completed Questionnaire.
- ☐ An update of a prior Questionnaire dated \_\_\_\_/\_\_\_\_/\_\_\_\_.
- ☐ No change. I certify under penalty of perjury under the laws of the State of California that there has been no change to any of the responses since the last Responsibility Questionnaire dated \_\_\_\_/\_\_\_\_/\_\_\_\_ was submitted by the firm. Attach a copy of that Questionnaire and sign below.

Print Name, Title

Signature

Date

**TOTAL NUMBER OF PAGES SUBMITTED, INCLUDING ALL ATTACHMENTS:** \_\_\_\_\_

**B. BUSINESS ORGANIZATION/STRUCTURE**

Indicate the organizational structure of your firm. "Firm" includes a sole proprietorship, corporation, joint venture, consortium, association, or any combination thereof.

☐ **Corporation:** Date incorporated: \_\_\_\_/\_\_\_\_/\_\_\_\_ State of incorporation: \_\_\_\_\_

List the corporation's current officers.

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

Vice President: \_\_\_\_\_

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

Treasurer: \_\_\_\_\_

☐ Check the box only if your firm is a publicly traded corporation.

List those who own 5% or more of the corporation's stocks. Use Attachment A if more space is needed. Publicly traded corporations need not list the owners of 5% or more of the corporation's stocks.

\_\_\_\_\_  
\_\_\_\_\_

☐ **Limited Liability Company:** Date of formation: \_\_\_\_/\_\_\_\_/\_\_\_\_ State of formation: \_\_\_\_\_

List members who own 5% or more of the company. Use Attachment A if more space is needed.

\_\_\_\_\_  
\_\_\_\_\_

☐ **Partnership:** Date formed: \_\_\_\_/\_\_\_\_/\_\_\_\_ State of formation: \_\_\_\_\_

List all partners in your firm. Use Attachment A if more space is needed.

\_\_\_\_\_  
\_\_\_\_\_

☐ **Sole Proprietorship:** Date started: \_\_\_\_/\_\_\_\_/\_\_\_\_

List any firm(s) that you have been associated with as an owner, partner, or officer for the last five years. Use Attachment A if more space is needed. Do not include ownership of stock in a publicly traded company in your response to this question.

\_\_\_\_\_  
\_\_\_\_\_

☐ **Joint Venture:** Date formed: \_\_\_\_/\_\_\_\_/\_\_\_\_

List: (1) each firm that is a member of the joint venture and (2) the percentage of ownership the firm will have in the joint venture. Use Attachment A if more space is needed. **Each member of the Joint Venture must complete a separate Questionnaire for the Joint Venture's submission to be considered as responsive to the invitation.**

\_\_\_\_\_  
\_\_\_\_\_



**C. OWNERSHIP AND NAME CHANGES**

1. Is your firm a subsidiary, parent, holding company, or affiliate of another firm?

☐ Yes    ☐ No

If Yes, explain on Attachment A the relationship between your firm and the associated firms. Include information about an affiliated firm only if one firm owns 50% or more of another firm, or if an owner, partner or officer of your firm holds a similar position in another firm.

2. Has any of the firm's owners, partners, or officers operated a similar business in the past five years?

☐ Yes    ☐ No

If Yes, list on Attachment A the names and addresses of all such businesses, and the person who operated the business. Include information about a similar business only if an owner, partner or officer of your firm holds a similar position in another firm.

3. Has the firm changed names in the past five years?

☐ Yes    ☐ No

If Yes, list on Attachment A all prior names, addresses, and the dates they were used. Explain the reason for each name change in the last five years.

4. Are any of your firm's licenses held in the name of a corporation or partnership?

☐ Yes    ☐ No

If Yes, list on Attachment A the name of the corporation or partnership that actually holds the license.

**Bidders/Contractors must continue on to Section D and answer all remaining questions contained in this Questionnaire.**

**The responses to the remaining questions in this Questionnaire will not be posted on the internet but will be made available to the public for review upon request. Contact the appropriate Designated Administrative Agency.**

**D. FINANCIAL RESOURCES AND RESPONSIBILITY**

5. Is your firm now, or has it ever been at any time in the last five years, the debtor in a bankruptcy case?

☐ Yes    ☐ No

If Yes, explain on Attachment B the circumstances surrounding each instance.

6. Is your company in the process of, or in negotiations toward, being sold?

☐ Yes    ☐ No

If Yes, explain the circumstances on Attachment B.

**E. PERFORMANCE HISTORY**

7. How many years has your firm been in business? \_\_\_\_\_ Years.

8. Has your firm ever held any contracts with the City of Los Angeles or any of its departments?

☐ Yes    ☐ No

If Yes, list on an Attachment B all contracts your firm has had with the City of Los Angeles for the last 10 years. For each contract listed in response to this question, include: (a) entity name; (b) purpose of contract; (c) total cost; (d) starting date; and (e) ending date.

9. List on Attachment B all contracts your firm has had with any private or governmental entity (other than the City of Los Angeles) over the last five years that are similar to the work to be performed on the contract for which you are bidding or proposing. For each contract listed in response to this question, include: (a) entity name; (b) purpose of contract; (c) total cost; (d) starting date; and (e) ending date.

☐ Check the box if you have not had any similar contracts in the last five years

10. In the past five years, has a governmental or private entity or individual terminated your firm's contract prior to completion of the contract?

☐ Yes    ☐ No

If Yes, explain on Attachment B the circumstances surrounding each instance.

11. In the past five years, has your firm used any subcontractor to perform work on a government contract when you knew that the subcontractor had been debarred by a governmental entity?

☐ Yes    ☐ No

If Yes, explain on Attachment B the circumstances surrounding each instance.

12. In the past five years, has your firm been debarred or determined to be a non-responsible bidder or contractor?

☐ Yes    ☐ No

If Yes, explain on Attachment B the circumstances surrounding each instance.

**F. DISPUTES**

13. In the past five years, has your firm been the defendant in court on a matter related to any of the following issues? For parts (a) and (b) below, check **Yes** even if the matter proceeded to arbitration without court litigation. For part (c), check **Yes** only if the matter proceeded to court litigation. If you answer **Yes** to any of the questions below, explain the circumstances surrounding each instance on Attachment B. You must include the following in your response: the name of the plaintiffs in each court case, the specific causes of action in each case, the date each case was filed, and the disposition/current status of each case.

(a) Payment to subcontractors?

☐ Yes    ☐ No

(b) Work performance on a contract?

☐ Yes    ☐ No

(c) Employment-related litigation brought by an employee?

☐ Yes    ☐ No

14. Does your firm have any outstanding judgements pending against it?

☐ Yes    ☐ No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

15. In the past five years, has your firm been assessed liquidated damages on a contract?

☐ Yes    ☐ No

If **Yes**, explain on Attachment B the circumstances surrounding each instance and identify all such projects, the amount assessed and paid, and the name and address of the project owner.

**G. COMPLIANCE**

16. In the past five years, has your firm or any of its owners, partners or officers, ever been investigated, cited, assessed any penalties, or been found to have violated any laws, rules, or regulations enforced or administered, by any of the governmental entities listed on Attachment C (Page 9)? For this question, the term "owner" does not include owners of stock in your firm if your firm is a publicly traded corporation.

☐ Yes    ☐ No

If **Yes**, explain on Attachment B the circumstances surrounding each instance, including the entity that was involved, the dates of such instances, and the outcome.

17. If a license is required to perform any services provided by your firm, in the past five years, has your firm, or any person employed by your firm, been investigated, cited, assessed any penalties, subject to any disciplinary action by a licensing agency, or found to have violated any licensing laws?

☐ Yes    ☐ No

If **Yes**, explain on Attachment B the circumstances surrounding each instance in the last five years.

**SERVICE**

18. In the past five years, has your firm, any of its owners, partners, or officers, ever been penalized or given a letter of warning by the City of Los Angeles for failing to obtain authorization from the City for the substitution of a Minority-owned (MBE), Women-owned (WBE), or Other (OBE) business enterprise?

☐ Yes ☐ No

If Yes, explain on Attachment B the circumstances surrounding each instance in the last five years.

**H. BUSINESS INTEGRITY**

19. For questions (a), (b), and (c) below, check Yes if the situation applies to your firm. For these questions, the term "firm" includes any owners, partners, or officers in the firm. The term "owner" does not include owners of stock in your firm if the firm is a publicly traded corporation. If you check Yes to any of the questions below, explain on Attachment B the circumstances surrounding each instance.

- (a) Is a governmental entity or public utility currently investigating your firm for making (a) false claim(s) or material misrepresentation(s)?

☐ Yes ☐ No

- (b) In the past five years, has a governmental entity or public utility alleged or determined that your firm made (a) false claim(s) or material misrepresentation(s)?

☐ Yes ☐ No

- (c) In the past five years, has your firm been convicted or found liable in a civil suit for, making (a) false claim(s) or material misrepresentation(s) to any governmental entity or public utility?

☐ Yes ☐ No

20. In the past five years, has your firm or any of its owners or officers been convicted of a crime involving the bidding of a government contract, the awarding of a government contract, the performance of a government contract, or the crime of fraud, theft, embezzlement, perjury, bribery? For this question, the term "owner" does not include those who own stock in a publicly traded corporation.

☐ Yes ☐ No

If Yes, explain on Attachment B the circumstances surrounding each instance.

**CERTIFICATION UNDER PENALTY OF PERJURY**

I certify under penalty of perjury under the laws of the State of California that I have read and understand the questions contained in this questionnaire and the responses contained on all Attachments. I further certify that I have provided full and complete answers to each question, and that all information provided in response to this Questionnaire is true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
Print Name, Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT A FOR SECTIONS A THROUGH C**

Where additional information or an explanation is required, use the space below to provide the information or explanation. Information submitted on this sheet must be typewritten or printed in ink. Include the number of the question for which you are submitting additional information. Information submitted on this Attachment in response to Questions in Sections A through C will be posted on the Internet for public review. Make copies of this Attachment if additional pages are needed.

Page \_\_\_\_\_

**ATTACHMENT B FOR SECTIONS D THROUGH H**

Where additional information or an explanation is required, use the space below to provide the information or explanation. Information submitted on this sheet must be typewritten or printed in ink. Include the number of the question for which you are submitting additional information. Information submitted on this Attachment in response to Questions in Sections D through H will not be posted on the Internet but will be made available to the public for review upon request. Make copies of this Attachment if additional pages are needed.

Page \_\_\_\_\_

**ATTACHMENT C: GOVERNMENTAL ENTITIES FOR QUESTION NO. 16**

Check **Yes** in response to Question No. 16 if your firm or any of its owners, partners or officers, have ever been investigated, cited, assessed any penalties, or found to have violated any laws, rules, or regulations enforced or administered, by any of the governmental entities listed below (or any of its subdivisions), including but not limited to those examples specified below. The term "owner" does not include owners of stock in your firm if your firm is a publicly traded corporation. If you answered **Yes**, provide an explanation on Attachment B of the circumstances surrounding each instance, including the entity involved, the dates of such instances, and the outcome.

**FEDERAL ENTITIES****Federal Department of Labor**

- American with Disabilities Act
- Immigration Reform and Control Act
- Family Medical Leave Act
- Fair Labor Standards Act
- Davis-Bacon and laws covering wage requirements for federal government contract workers
- Migrant and Seasonal Agricultural Workers Protection Act
- Immigration and Naturalization Act
- Occupational Safety and Health Act
- anti-discrimination provisions applicable to government contractors and subcontractors
- whistleblower protection laws

**Federal Department of Justice**

- Civil Rights Act
- American with Disabilities Act
- Immigration Reform and Control Act of 1986
- bankruptcy fraud and abuse

**Federal Department of Housing and Urban Development (HUD)**

- anti-discrimination provisions in federally subsidized/assisted/sponsored housing programs
- prevailing wage requirements applicable to HUD related programs

**Federal Environmental Protection Agency**

- Environmental Protection Act

**National Labor Relations Board**

- National Labor Relations Act

**Federal Equal Employment Opportunity Commission**

- Civil Rights Act
- Equal Pay Act
- Age Discrimination in Employment Act
- Rehabilitation Act
- Americans with Disabilities Act

**STATE ENTITIES****California's Department of Industrial Relations**

- wage and labor standards, and licensing and registration
- occupational safety and health standards
- workers' compensation self insurance plans
- Workers' Compensation Act
- wage, hour, and working standards for apprentices
- any provision of the California Labor Code

**California's Department of Fair Employment and Housing**

- California Fair Employment and Housing Act
- Unruh Civil Rights Act
- Ralph Civil Rights Act

**California Department of Consumer Affairs**

- licensing, registration, and certification requirements
- occupational licensing requirements administered and/or enforced by any of the Department's boards, including the Contractors' State Licensing Board

**California's Department of Justice****LOCAL ENTITIES**

**City of Los Angeles** or any of its subdivisions for violations of any law, ordinance, code, rule, or regulation administered and/or enforced by the City, including any letters of warning or sanctions issued by the City of Los Angeles for an unauthorized substitution of subcontractors, or unauthorized reductions in dollar amounts subcontracted.

**OTHERS**

**Any other federal, state, local governmental entity** for violation of any other federal, state, or local law or regulation relating to wages, labor, or other terms and conditions of employment.

**CITY OF LOS ANGELES  
EQUAL BENEFITS ORDINANCE  
(Los Angeles Administrative Code Section 10.8.2.1)**

**1. What is the Equal Benefits Ordinance?**

The Equal Benefits Ordinance (EBO) requires that City contractors who provide benefits to employees with spouses must provide the same benefits to employees with domestic partners.

**2. What types of agreements are covered by the Ordinance?**

The Ordinance covers any City agreement over \$5,000. This includes agreements for grants, services, the purchase of goods, construction, and leases.

**3. When does the Ordinance become applicable?**

The original Ordinance became effective on January 1, 2000. The original Ordinance was applicable mostly to service contracts and leases of City property. However, in February 2003, the Ordinance was amended to also cover competitively bid contracts such as construction and procurement contracts. Because of the amendment, the Ordinance applies to competitively bid contracts amended after April 1, 2003 and competitive bids released after May 1, 2003.

**4. Are agreements entered into before the effective date of the Ordinance affected?**

In general, agreements executed prior to January 1, 2000 become subject to the Ordinance if they are amended, modified, or renewed after January 1, 2000. For competitively bid agreements, the Ordinance becomes applicable if they are amended, modified, or renewed after April 1, 2003. At the time of amendment, modification, or renewal, the awarding authority must incorporate the requirements of the Ordinance into the agreement.

**5. Who is covered by the Ordinance?**

The Ordinance applies to the following:

- Any contractor that has an agreement with the City.
- All of the City contractor's other operations located within the City limits, even if those operations are not involved in the City agreement.
- Any of the contractor's operations if it is on property owned by the City, or on property that the City has a right to occupy.
- The contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the subject City agreement.



## **6. What is a covered contractor required to do under the Ordinance?**

The Ordinance requires the contractor to:

- Certify that equal benefits will be provided to employees with spouses and to employees with domestic partners.
- Post a copy of the following statement in an area frequented by employees: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners."
- Allow the City access to records so that the City can verify compliance with the Ordinance.

## **7. Are subcontractors also covered?**

This depends on when the prime contractor's agreement with the City became subject to the Ordinance. If the prime contractor's agreement with the City became subject to the EBO between January 1, 2000 and March 31, 2003, subcontractors working on the agreement are subject to the requirements of the EBO. If the prime contractor's agreement with the City became subject to the EBO after April 1, 2003, subcontractors working on the agreement are not subject to the EBO.

## **8. What benefits are included?**

The Ordinance applies to all benefits offered by an employer. This includes, for example, bereavement leave, family medical leave, medical, dental, and vision benefits, membership or membership discounts, moving expenses, travel and relocation benefits, and retirement plans.

## **9. How does the Ordinance define a "domestic partner"?**

"Domestic partner" means any two adults, of the same or different sex, who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing this registration, or with an internal registry maintained by the employer of at least one of the Domestic Partners.

## **10. What if the actual cost to a contractor of providing a benefit to an employee's domestic partner is more than the cost of providing the benefit to an employee's spouse?**

In that case, the contractor may require that the benefit will be provided to the employee's domestic partner only if the employee agrees to pay for the extra cost of the benefit. The contractor may do the same if the actual cost to the employer of providing a benefit to an employee's spouse is more than the cost of providing the benefit to an employee's domestic partner.

**11. What happens if a contractor is found to be in violation of the Ordinance?**

The City may take the following steps:

- The contractor may be deemed to be in material breach of the City agreement.
- The agreement may be canceled, terminated, or suspended, in whole or in part.
- The City may also retain money due to the contractor
- The contractor may be deemed a non-responsible bidder and disqualified from contracting with the City under the Contractor Responsibility Ordinance.
- The City may pursue other legal remedies.

**12. What happens if a subcontractor is found to be in violation of the Ordinance?**

Because the contractor is responsible for making sure that all its subject subcontractors comply with the Ordinance, the enforcement actions listed in the previous answer may be applied to the contractor if the subcontractor is found to be in violation. See the response to question number seven regarding which subcontractors are subject to the EBO.

**13. Are there any exceptions or waivers to the Ordinance?**

An awarding authority may apply to the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance (OCC) for a waiver in the following situations:

- The contractor is the only provider of a needed good or service.
- The contractor is the only bidder or contractor willing to enter into an agreement with the City for use of City property.
- The agreement is necessary to respond to an emergency situation that endangers the public health or safety, and no contractor that complies with the law is immediately available.
- The agreement involves specialized litigation as certified by the City Attorney's Office.
- The contractor is a public entity providing a good, service, or access to real property that is not available from any other source.
- The contractor is a public entity and the good or service is necessary to serve a substantial public interest
- The application of the Ordinance would conflict with the terms or conditions of a grant agreement with a public agency.
- The agreement is essential to the City or the City's residents and no other contractor that complies with the Ordinance is available.
- The agreement is for a bulk purchasing agreement through City, federal, state, or regional entities that reduce the City's purchasing cost.
- The agreement involves the investment of certain types of monies, or instances in which the City will incur a financial loss that would violate the Treasurer's or City Administrative Officer's fiduciary duties.

**14. What if a contractor is subject to a collective bargaining agreement?**

The Ordinance does not apply to a collective bargaining agreement (CBA) that was in effect prior to the Ordinance becoming applicable to the Contractor. However, in order to contract with the City, the contractor must agree that if the CBA is subsequently amended, extended, or otherwise modified, the contractor will propose to the union that the requirements of the Ordinance be incorporated into the CBA. If the contractor agrees to do so, the contractor may be granted Provisional Compliance status allowing the contractor to begin working on the City agreement. When the Provisional Compliance status expires, the contractor must verify for the City the steps taken to come into compliance with the EBO.

**15. Who is responsible for administering and enforcing the requirements of the Ordinance?**

The Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance, located at 1149 S. Broadway Street, 3<sup>rd</sup> Floor, Los Angeles, CA 90015. For additional information, please call (213) 847-1922, or go to the OCC website at [www.lacity.org/bca](http://www.lacity.org/bca).

**16. Where can a domestic partnership be registered?**

Many governmental agencies offer domestic partnership registries. Two local governmental entities that offer such registries include the County of Los Angeles and the City of West Hollywood.

**Los Angeles County**

Couples may file a Statement of Domestic Partnership with the Los Angeles County Department of Registrar-Recorder/County Clerk. The County registry is available to same sex and different sex couples. Couples must both be 18 years of age or older and at least one partner must reside or work within Los Angeles County.

For additional information, contact the Registrar-Recorder/County Clerk at (562) 462-2060. The Los Angeles County Department of Registrar-Recorder/County Clerk webpage at <http://regrec.co.la.ca.us/scripts/partnership.htm> contains information on where to file a Statement of Domestic Partnership and forms that can be downloaded.

**City of West Hollywood**

Couples may apply for Domestic Partnership registration with City of West Hollywood's Office of the City Clerk. The City of West Hollywood registry is available to couples of the same and different sex. The couple need not work in nor reside in West Hollywood to register.

For additional information, couples may contact the City of West Hollywood's Office of the City Clerk at (323) 848-6332. The City of West Hollywood's website at [www.weho.org](http://www.weho.org) contains information on Domestic Partnership status and forms that can be downloaded.

**CITY OF LOS ANGELES**  
Department of Public Works  
Bureau of Contract Administration  
Office of Contract Compliance  
1149 S. Broadway Street, 3<sup>rd</sup> Floor, Los Angeles, CA 90015  
Phone: (213) 847-1922 - Fax: (213) 847-2777

**INSTRUCTIONS FOR COMPLETING EQUAL BENEFITS ORDINANCE FORMS**

- 1. Start with the Equal Benefits Ordinance (EBO) Compliance Form (Form OCC/EBO-1).** Your company must be determined to be in compliance with the EBO before a contract with the City may be executed. In Section 2 of the form, indicate what benefits your company currently offers its employees. If a benefit is not offered, indicate the benefit is not offered.

If your company currently does not offer equal benefits to employees with spouses and employees with same or different sex domestic partners, you may, on page two of the EBO Compliance Form, request one of the following by checking the appropriate box on the form:

- a. **Request additional time to come into compliance with the EBO.** This is available to contractors who agree to fully comply with the EBO but need additional time to add domestic partner coverage, to change company policies, or to negotiate the addition of domestic partner coverage to a collective bargaining agreement. Complete the Application for Provisional Compliance (Form OCC/EBO-3) and return it with the EBO Compliance Form (Form OCC/EBO-1). You must submit supporting documentation to verify why additional time is needed.
  - b. **Request to be allowed to comply with the EBO by providing employees the cash equivalent.** This is available to contractors who meet both of the following: (1) agree to provide employees with domestic partners the cash equivalent of the benefits offered to employees with spouses; and (2) have demonstrated that they have taken reasonable yet unsuccessful efforts to comply, or that it would be unreasonable under the circumstances to require the contractor to provide equal benefits rather than pay the cash equivalent to employees. Complete the Application for Reasonable Measures Determination (Form OCC/EBO-2) and return it with the EBO Compliance Form (Form OCC/EBO-1). You must submit the supporting documentation requested in the Reasonable Measures Form.
  - c. **Request to be allowed to comply with the EBO on a contract-by-contract basis.** If your company can only comply with the EBO for those locations or employees covered by the EBO, you may apply for compliance on a contract-by-contract basis. Contact the Department of Public Works, Office of Contract Compliance for additional information. Check the appropriate box on the EBO Compliance Form (Form OCC/EBO-1) and submit supporting documentation regarding the locations and employees affected by the EBO.
- 2. Obtain supporting documentation.** The City must verify that each benefit offered by your company is offered equally. Refer to the EBO supporting documentation information sheet for the type of documentation that will be required. You must submit supporting documentation for each benefit checked in Question 2 of the EBO Compliance Form (Form OCC/EBO-1).

**Unless otherwise specified in the RFB/RFP/RFQ,** you do not need to submit supporting documentation with the bid or proposal. However, because supporting documentation will be required if you are selected for award of a contract, you must have the supporting documentation readily available for submission. A delay in the submission of documentation will result in a delay in the execution of your contract. **If you have already been notified that you have been selected for the award of a contract, supporting documentation must be submitted immediately to avoid delays.**

- 3. Submit the EBO Compliance Form (Form OCC/EBO-1) to the awarding department.** If you are requesting additional time to comply or to be allowed to pay employees the cash equivalent, you must also submit the appropriate forms (see #1 above) and supporting documentation with the EBO Compliance Form.
- 4. The forms and documentation will be forwarded to the Office of Contract Compliance for review.** If additional information or supporting documentation is needed, the Contractor Enforcement Section will contact you to obtain the information. **Because your contract cannot be executed until you have been determined to be in compliance with the EBO, you must respond promptly to any request for additional information.**

# COMPLIANCE

**CITY OF LOS ANGELES**  
 Department of Public Works  
 Bureau of Contract Administration  
 Office of Contract Compliance  
 1149 S. Broadway, 3<sup>rd</sup> Floor, Los Angeles, CA 90015  
 Phone: (213) 847-1922 - Fax: (213) 847-2777

## **EQUAL BENEFITS ORDINANCE COMPLIANCE FORM**

Your company must be certified as complying with Los Angeles Administrative Code Section 10.8.2.1, Equal Benefits Ordinance, prior to the execution of a City agreement. This form must be returned to the City department awarding the agreement. If responding to a request for bid/proposal, submit this form with the bid/proposal.

City Dept. Awarding Contract: \_\_\_\_\_ Contact/Phone: \_\_\_\_\_

### **SECTION 1. CONTACT INFORMATION**

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

I am a one-person contractor, and I have no employees. ☐ Yes ☐ No (if you answered "Yes," go to Section 3)

Approximate Number of Employees in the United States: \_\_\_\_\_

Are any of your employees covered by a collective bargaining agreement or union trust fund? ☐ Yes ☐ No

### **SECTION 2. COMPLIANCE QUESTIONS**

Has your company previously submitted a Compliance Form and all supporting documentation? ☐ Yes ☐ No  
 If Yes, AND the benefits provided to your employees have not changed since that time, continue onto Section 3. If No, OR if the benefits provided to your employees have changed since that time, complete the rest of this form.

In the table below, check all benefits that your company currently provides to employees or to which your employees have access. Provide information for each benefits carrier if your employees have access to more than one carrier. Note: some benefits are available or apply to employees because they have a spouse or domestic partner to whom the benefit applies, such as bereavement leave that allows an employee time off because of the death of a spouse or domestic partner; other benefits are provided directly to the spouse or domestic partner, such as medical insurance that covers the spouse or domestic partner as a dependent.

	BENEFIT(S) YOUR COMPANY CURRENTLY OFFERS	This Benefit Is Not Offered to Employees	This Benefit Is Available to Employees	Available/Applies to Spouses of Employees	Available/Applies to Domestic Partners of Employees
1	<b>Health Insurance (List Name of Carrier(s))</b>				
	Health Carrier 1:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Health Carrier 2:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/> additional carriers on attachment.				
2	<b>Dental Insurance (List Name of Carrier(s))</b>				
	Dental Carrier 1:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Dental Carrier 2:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/> additional carriers on attachment.				
3	<b>Vision Plan (List Name of Carrier(s))</b>				
	Vision Carrier 1:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Vision Carrier 2:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	Pension/401(k) Plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Bereavement Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	Family Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	Parental Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	Employee Assistance Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	Relocation & Travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	Company Discount, Facilities & Events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	Credit Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12	Child Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14	Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## COMPLIANCE

**YOU MUST SUBMIT SUPPORTING DOCUMENTATION TO VERIFY EACH BENEFIT MARKED.** Without proper documentation for each carrier and each benefit marked, your company cannot be certified as complying with the EBO. If documentation for a particular benefit does not exist, attach an explanation. Refer to the "Documentation to Verify Compliance with the Equal Benefits Ordinance" fact sheet for more information on the type of documentation that must be submitted to verify compliance with the EBO.

If in the Table in Section 2 you indicated that your company does not provide all benefits equally throughout its entire operations to all your employees with spouses and employees with domestic partners of the same and different sex, you may:

- ☐ **a. Request additional time to comply with the EBO.** Provisional Compliance may be granted to Contractors who agree to fully comply with the EBO but need more time to incorporate the requirements of the EBO into their operations. Submit the Application for Provisional Compliance (OCC/EBO-3) and supporting documentation with this Compliance Form.
- ☐ **b. Request to be allowed to comply with the EBO by providing affected employees with the cash equivalent.** Your company must agree to provide employees with a cash equivalent. In most cases, the cash equivalent is the amount of money equivalent to what your company pays for spousal benefits that are unavailable for domestic partners, or vice versa. Submit a completed Application for Reasonable Measures Determination (OCC/EBO-2) and supporting documentation with this Compliance Form.
- ☐ **c. Comply on a Contract-by-Contract Basis.** Compliance may be granted on a contract-by-contract basis for those Contractors who have multiple locations in the U.S. but cannot comply with the EBO throughout the Contractor's operations. Indicate below the compliance category you are requesting:
  - ☐ Contractor has multiple operations located both within and outside City limits. Contractor will comply with the EBO only for the operation(s) located within City limits and for employee(s) located elsewhere in the United States who perform work relating to the City agreement. Supporting documentation for the affected operation(s)/employees must be submitted.
  - ☐ Contractor has no offices within City limits but does have (an) employee(s) working on the City agreement located elsewhere in the United States. Contractor will comply with the EBO only for employee(s) located elsewhere in the United States who perform work relating to the City agreement. Supporting documentation for the affected employee(s) must be submitted.

### SECTION 3. EXECUTE THE DECLARATION AND SUBMIT THE FORM TO THE AWARDING DEPARTMENT

This form must be returned to the City department awarding the agreement. If responding to a request for bid/proposal, submit this form with the bid/proposal to the awarding department. The awarding department will forward the form to the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance for review.

#### DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(City) (State)

Signature \_\_\_\_\_

Mailing Address \_\_\_\_\_

Name of Signatory (please print) \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Title \_\_\_\_\_

Federal ID Number \_\_\_\_\_

## COMPLIANCE

### CITY OF LOS ANGELES

Department of Public Works  
Bureau of Contract Administration  
Office of Contract Compliance

1149 S. Broadway Street, 3<sup>rd</sup> Floor, Los Angeles, CA 90015

Phone: (213) 847-1922 - Fax: (213) 847-2777

#### DOCUMENTATION TO VERIFY COMPLIANCE WITH THE EQUAL BENEFITS ORDINANCE

Section 2 of the Equal Benefits Ordinance Compliance Form (Form OCC/EBO-1) requires that you submit supporting documentation to the Office of Contract Compliance to verify that all benefits marked in your response(s) are offered in a nondiscriminatory manner. This list is intended to be used only as a guide for the type of documentation needed.

**Health, Dental, Vision Insurance:** A statement from your insurance provider that spouses and domestic partners receive equal coverage in your medical plan. This may be in a letter from your insurance provider or reflected in the eligibility section of your official insurance plan document. Note that "domestic partner" includes same-sex as well as different-sex partners so that the definition of "domestic partner" contained in the plan document must include different-sex partners.

**Pension/401(k) Plans:** Documentation should indicate that participating employees may designate a beneficiary to receive the amount payable upon the death of the employee. Submit a blank beneficiary designation form.

**Bereavement Leave:** Your bereavement leave or funeral leave policy indicating the benefit is offered equally. If your policy allows employees time off from work because of the death of a spouse, it should also allow for time off because of the death of a domestic partner. If the policy allows time off for the death of a parent in-law or other relative of a spouse, it must include time off for the death of a domestic partner's equivalent relative.

**Family Leave:** Your company's Family and Medical Leave Act policy. All companies with 50 or more employees must offer this benefit. Your policy should indicate that employees may take leave because of the serious medical condition of their spouse or domestic partner.

**Parental Leave:** Your company's policy indicating that employees may take leave for the birth or adoption of a child. If leave is available for step-children (the spouse's child) then leave should also be made available for the child of a domestic partner.

**Employee Assistance Program (EAP):** The benefit typically refers to programs that allow employees and their family members access to counselors who provide short-term counseling and referrals to assist in dealing with issues such as family problems, addiction, and financial and legal difficulties. Your company's EAP policy must confirm that spouses, domestic partners and their parents and children are equally eligible (or ineligible) for such benefits. If provided through a third party, a statement from the third party provider regarding eligibility is required.

**Relocation & Travel:** Your company's policy confirming that expenses for travel or relocation will be paid on the same basis for spouses and domestic partners of employees.

**Company Discounts, Facilities & Events:** Your company's policy confirming that to the extent discounts, facilities (such as a gym) and events (such as a company holiday party) are equally available to spouses and domestic partners of employees.

**Credit Union:** Documentation from the credit union indicating that spouses and domestic partners have equal access to credit union services.

**Child Care:** Documentation that the children of spouses (step-children) and children of domestic partners have equal access to child care services.

**Other Benefits:** Documentation of any other benefits listed to indicate that they are offered equally.

## REASONABLE MEASURES

### CITY OF LOS ANGELES

Department of Public Works  
Bureau of Contract Administration  
Office of Contract Compliance

1149 S. Broadway Street, 3<sup>rd</sup> Floor, Los Angeles, CA 90015  
Phone: (213) 847-1922 - Fax: (213) 847-2777

#### APPLICATION FOR REASONABLE MEASURES DETERMINATION - CASH EQUIVALENT COMPLIANCE

Name of Company		Federal ID Number	
Street Address	City,	State	Zip
Contact Person/Title	Telephone Number	Fax Number	

Before the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance (OCC) will approve a contractor's application to comply with the Equal Benefits Ordinance (EBO) by paying a cash equivalent, the OCC must determine that: (a) the contractor has made a reasonable yet unsuccessful effort to provide equal benefits; or (b) under the circumstances, it would be unreasonable to require the contractor to provide benefits to domestic partners (or spouses if applicable). **To apply, contractors must submit:**

1. An explanation and documentation that demonstrates: (a) the Contractor has made a reasonable, yet unsuccessful, effort to provide equal benefits; or (b) under the circumstances, it would be unreasonable to require the contractor to provide equal benefits rather than paying the cash equivalent. See EBO Regulation #2B(1)(a) and #2B(1)(b).
2. This completed application. Fill in the company's information, then read and sign the acknowledgement below.
3. A completed Equal Benefits Ordinance Compliance Form (Form OCC/EBO-1). Be certain that box "b" on page two of the form is checked.
4. A draft of the memorandum that will be distributed to affected employees informing them of the cash equivalent option.
5. Copies of the revised policies, such as bereavement, for which the cash equivalent is not applicable.

If approved by the OCC, a contractor will be allowed to comply with the EBO by paying its employees with domestic partners the cash equivalent of benefits made available to the spouses of its employees. The cash equivalent is the difference between the amount an employer pays to provide an employee with spousal or family coverage and the amount that an employer pays to provide an employee with employee-only coverage. For example, an employer pays \$200 per month to provide benefits for an employee and his/her spouse, and \$150 per month to provide benefits for an employee with employee-only coverage. The cash equivalent that must be paid to the employee with a domestic partner is \$50 per month.

For benefits for which a cash equivalent is not applicable, such as bereavement leave, the employer must amend its policies so that domestic partners are treated in the same manner as spouses. For example, if the policy allows an employee three days off in the event of the death of a spouse or the spouse's parents, the policy must be amended to allow an employee three days off in the event of the death of a domestic partner or the domestic partner's parents.

#### ACKNOWLEDGEMENT REGARDING APPLICATION

I declare under penalty of perjury under the laws of the State of California that I am authorized to bind the company/entity listed above. I understand that this Application must be approved by the OCC before compliance by paying the cash equivalent will be allowed. By signing below, I agree on behalf of the company that if this Application is approved by the OCC, the company will comply with the EBO by providing employees with domestic partners the cash equivalent of the benefits that are made available to employees with spouses. For those benefits to which the cash equivalent is not applicable, such as for bereavement leave or family leave, the company agrees to amend its policies so that the domestic partners of employees will be treated in the same manner as the spouse of an employee. The relatives of domestic partners will be treated in the same manner as relatives of spouses. The company further agrees to provide a memorandum notifying our affected employees of the availability of the cash equivalent option if they have domestic partners for whom equal benefits cannot be provided.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, at \_\_\_\_\_ (City) \_\_\_\_\_ (State)

Name of Signatory (Print)	Signature	Title	Date
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## PROVISIONAL COMPLIANCE

### CITY OF LOS ANGELES

Department of Public Works  
Bureau of Contract Administration  
Office of Contract Compliance

1149 S. Broadway Street, 3<sup>rd</sup> Floor, Los Angeles, CA 90015

Phone: (213) 847-1922 - Fax: (213) 847-2777

### APPLICATION FOR PROVISIONAL COMPLIANCE WITH EQUAL BENEFITS ORDINANCE

**COMPLETE AND SUBMIT THIS FORM ONLY IF APPLICABLE.** Contractors entering into, amending, or bidding on a City contract who agree to comply with the Equal Benefits Ordinance ("EBO") but need more time to incorporate the requirements of the EBO into their operations must submit this form, and supporting documentation, to the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance ("OCC"). (This form must be submitted with the EBO Compliance Form OCC/EBO-1.) The Contractor may be granted additional time to incorporate the requirements of the EBO only in the circumstances indicated below. Fill out all sections that apply. Attach additional sheets if necessary.

#### **A. OPEN ENROLLMENT FOR HEALTH, DENTAL AND/OR VISION INSURANCE PLANS**

The Contractor may be granted additional time to implement the requirements of the EBO if equal benefits cannot be provided until after the first open enrollment process following the date the contract with the City is executed. To qualify, the Contractor must submit evidence that reasonable efforts are being undertaken to implement the requirements of the EBO. Additional time granted may not exceed two years from the date the contract with the City is executed, and applies only to benefits for which an open enrollment period is applicable.

                     - Date domestic partner (same and different sex) coverage will become effective.

**You must submit copies of correspondence between your company and your insurance provider(s) documenting your effort to obtain domestic partner coverage for same- and different-sex couples. You should also submit verification of the next open enrollment date or the date the benefits become available.**

#### **B. ADMINISTRATIVE ACTIONS AND REQUESTS FOR EXTENSION**

The Contractor may be granted additional time to implement the requirements of the EBO if the administrative actions necessary to incorporate the EBO cannot be completed prior to the date that the contract with the City is executed. Additional time granted for the completion of the administrative action shall apply only to those benefits that require administrative actions and may not exceed three months. Upon written request by the Contractor and at the discretion of the OCC, the Contractor may be granted additional time to complete the administrative actions. Administrative actions may include personnel policy revisions and the development and distribution of employee communications.

**Describe below or on an attachment the administrative actions needed and the anticipated completion dates. Attach supporting documentation such as the relevant portions of your current policy and the changes you plan to make.**

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**If you are requesting an extension beyond three months, explain why more than three months is needed and attach any supporting documentation that may be relevant.**

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## PROVISIONAL COMPLIANCE

### C. COLLECTIVE BARGAINING AGREEMENTS

Compliance with the EBO may be delayed until the expiration of a Contractor's current collective bargaining agreement(s) (CBA). When the CBA is renegotiated, the Contractor must propose to the union for incorporation into the CBA the EBO requirements so that all benefits provided to employees with spouses are also extended to employees with domestic partners. Provisional compliance status may be granted if all of the following conditions are met.

1. The provision of some or all of the benefits offered to the Contractor's employees are governed by one or more CBA(s) but domestic partner coverage for same- and different-sex couples is not offered under the CBA(s).

**Required Information:** Indicate below the name of each CBA for which Provisional Compliance is being requested and the time period the CBA covers.

Name of Bargaining Unit: _____	Start date: _____	End date: _____
Name of Bargaining Unit: _____	Start date: _____	End date: _____
Name of Bargaining Unit: _____	Start date: _____	End date: _____

2. The Contractor agrees to propose to the union that the EBO requirements be incorporated into each of the CBA(s) by signing the statement below.

When the CBA is renegotiated, we will propose to the union that the EBO requirements be incorporated into the CBA so that all benefits provided to employees with spouses will be extended to employees with same or different sex domestic partners. After the CBA expires, we will provide, upon request by the City, reports on the status of the efforts to incorporate the EBO requirements into the CBA.

By the end of negotiations, we agree to notify the OCC of the result by submitting a statement which will indicate: (1) when the issue of same and different sex domestic partners was raised during negotiations; and (2) whether or not the EBO requirements was incorporated into the CBA. We understand that a separate statement must be submitted for each CBA for which Provisional Compliance was requested.

Name of Signatory (Print)	Signature	Title	Date
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3. For benefits not strictly governed by a CBA, the Contractor must establish policies so that those benefits are provided in accordance with the requirements of the EBO. For example, the Contractor may be required to expand the existing bereavement leave policy to allow an employee with a domestic partner time off in event of the domestic partner's death even if the CBA does not require the employer to do so.

**Required documentation:** A listing of benefits not strictly governed by the CBA along with the Contractor's policies as they relate to those benefits.

**EXECUTE THE DECLARATION AND SUBMIT THE FORM TO THE AWARDING DEPARTMENT:** This form, and the Equal Benefits Ordinance Compliance Form (Form OCC/EBO-1) must be returned to the City department awarding the agreement. If responding to a request for bid/proposal, submit this form with the bid/proposal to the awarding department. The awarding department will forward the form to the OCC for review.

### DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(City) (State)

Name of Company	Name of Signatory (Print)	Signature	Title
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## LWO EXEMPTION APPLICATION

**CITY OF LOS ANGELES**  
Department of Public Works  
Bureau of Contract Administration  
Office of Contract Compliance  
1149 S. Broadway Street, 3<sup>rd</sup> Floor  
Los Angeles, CA 90015  
Phone: (213) 847-1922 -- Fax: (213) 847-2777

### LIVING WAGE ORDINANCE APPLICATION FOR NON-COVERAGE OR EXEMPTION

Los Angeles Administrative Code 10.37, the Living Wage Ordinance (LWO), presumes all City contractors (including service contractors, subcontractors, financial assistance recipients, lessees, licensees, sublessees and sublicensees) are subject to the LWO unless an exemption applies. Contractors may submit this form with their bid or proposal to apply for exemption. City departments may also use this form. Exemptions based on the categories listed below must be approved by the Office of Contract Compliance (OCC) to be valid.

#### SECTION 1: CONTRACTOR INFORMATION

Company Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_  
Company Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

#### SECTION 2: DEPARTMENT AND CONTRACT INFORMATION

Department Awarding Contract: \_\_\_\_\_ Contract # (if any): \_\_\_\_\_  
Name of Department Contact: \_\_\_\_\_ Department Phone: \_\_\_\_\_  
Contract Amount: \$ \_\_\_\_\_ Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_  
Purpose/ Service Provided: \_\_\_\_\_

#### SECTION 3: EXEMPTION BASIS (Check one of the options below and submit supporting documentation as requested.)

- ☐ **Collective Bargaining Agreements (LAAC 10.37.12):** Contractors who are party to a collective bargaining agreement (CBA) which contains specific language indicating that the CBA will supersede the LWO may receive an exemption as to the employees covered under the CBA.

Required documentation: A copy of the CBA with the superseding language clearly marked, or a letter from the union stating that the union has agreed to allow the CBA to supersede the LWO must be submitted with this application.

- ☐ **Occupational License (LAAC 10.37.1(f)):** Only the individual employees who are required to possess an occupational license to provide services to or for the City are exempt.

Required documentation: A listing of the employees required to possess occupational licenses to perform services to or for the City and copies of their occupational licenses must be submitted with this application.

- ☐ **Other - Cite the LWO code section:** \_\_\_\_\_

Required documentation: Submit a memorandum explaining the basis for the request for application for exemption.

#### SECTION 4: CONTRACTOR CERTIFICATION UNDER PENALTY OF PERJURY

By signing, the contractor certifies under penalty of perjury under the laws of the State of California that the information submitted in support of this application is true and correct to the best of the contractor's knowledge.

Name of Signatory	Signature	Title	Date
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Any approval of this application exempts only the listed contractor from the LWO during the performance of this contract. A subcontractor performing work on this contract is not exempt unless the Office of Contract Compliance has approved a separate exemption for the individual subcontractor.

#### FOR OCC USE ONLY

Approved / Not Approved – Reason: _____	By OCC Analyst: _____	Date: _____
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**CITY OF LOS ANGELES**

Department of Public Works, Bureau of Contract Administration  
 Office of Contract Compliance  
 1149 S. Broadway Street, 3<sup>rd</sup> Floor, Los Angeles, CA 90015  
 Phone: (213) 847-1922 – Fax: (213) 847-2777

**SERVICE CONTRACTOR WORKER RETENTION ORDINANCE (SCWRO)**  
**CITY FINANCIAL ASSISTANCE RECIPIENT ("CFAR")**  
**APPLICATION FOR NON-COVERAGE OR EXEMPTION**

A City financial assistance recipient (CFAR), as defined in Los Angeles Administrative Code Section 10.36.1(c), may apply for non-coverage or exemption if they meet the criteria described below. Under LAAC 10.36.1(c), a CFAR means any person that receives from the City in any one year discrete financial assistance for economic development or job growth totaling at least \$100,000. Service contracts for economic development or job growth are also deemed to be financial assistance once the \$100,000 threshold is reached.

Company Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_  
 Company Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Department Awarding Financial Assistance: \_\_\_\_\_  
 Number of Contracts with the City of Los Angeles: \_\_\_\_\_

(Attach a list identifying the awarding department, contract amount, contract term, and contract purpose.)

**Please check the box indicating the exemption for which you are applying and follow the instructions.**

☐ **Exemption 1:** A corporation organized under Section 501(c)(3) of the United States Internal Revenue Service Code, that regularly employs homeless persons, persons who are chronically unemployed, or persons receiving public assistance may apply for this exemption.

**To qualify:** Read and sign the statement that follows. Submit this form and a copy of your IRS 501(c)(3) letter to the awarding department, who will then review it and submit it to the Bureau of Contract Administration, Office of Contract Compliance for final approval.

***I certify under penalty of perjury that this corporation regularly employs homeless persons, persons who are chronically unemployed, or persons receiving public assistance.***

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

☐ **Exemption 2:** A corporation organized under Section 501(c)(3) of the United States Internal Revenue Service Code, with an annual operating budget of less than five million dollars (\$5,000,000) may apply for this exemption.

**To qualify:** Submit this form, a copy of your IRS 501(c)(3) letter and a copy of your operating budget for the current fiscal year to the awarding department, who will then review it and submit it to the Bureau of Contract Administration for final approval.

**AWARDING DEPARTMENT'S RECOMMENDATION:**

Approved: \_\_\_\_\_ Not Approved: \_\_\_\_\_ Date: \_\_\_\_\_

Department Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

**FOR BCA USE ONLY**

Approved: \_\_\_\_\_ Not Approved (See Attached): \_\_\_\_\_

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

**NON-COLLUSION AFFIDAVIT**

The appropriate, authorized operator's designate must sign and affix the corporate seal (see space below).

I, \_\_\_\_\_, depose and say that I am

\_\_\_\_\_ of \_\_\_\_\_  
("President," "Vice-President," etc.) (Insert Name and Address of Organization)

who submits this proposal to the City of Los Angeles, City Attorney's Office, and hereby declare that this proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named and the proposer had not directly induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from submitting a proposal, and that the proposer has not in any manner sought by collusion to secure for him/herself an advantage over any other proposer.

Date: \_\_\_\_\_ at \_\_\_\_\_  
(Month, Day, Year) (City, State)

(Corporate Seal)

I certify under penalty of perjury that the foregoing is correct.

\_\_\_\_\_  
(Signature)

## CITY OF LOS ANGELES - SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt from the Slavery Disclosure Ordinance (SDO), a Company entering into a Contract with the City must complete an Affidavit disclosing any and all records of Participation or Investment in, or Profits derived from Slavery, including Slaveholder Insurance Policies, during the Slavery Era. The Company must complete and submit the Affidavit and any attachments to the Awarding Authority. This is required only of the Company actually selected for award of a Contract. It must be done before the Contract or Contract amendment can be executed. Questions regarding the Affidavit may be directed to the Department of Public Works, Office of Contract Compliance located at 1149 S. Broadway Street, 3<sup>rd</sup> Floor, Los Angeles, California 90015. Phone: (213) 847-1922; Fax: (213) 847-2777.

City Department Awarding Agreement \_\_\_\_\_ Department Contact Person \_\_\_\_\_

### AFFIDAVIT DISCLOSING SLAVERY ERA PARTICIPATION, INVESTMENTS, OR PROFITS

1. I, \_\_\_\_\_, am authorized to bind contractually the Company identified below.

2. Information about the Company entering into a Contract with the City is as follows:

Company Name	Phone	Federal ID #
Street Address	City	State
		Zip

3. Has the Company submitted the SDO Affidavit previously? ☐ NO ☐ YES Date of prior submission: \_\_\_\_\_  
If "NO," complete Section 4, 5, and 6. If "YES," list the date of prior submission and skip to Section 6 and execute the form.

4. The Company came into existence in \_\_\_\_\_ (year).

5. The Company has searched its records and those of any Predecessor Companies for information relating to Participation or Investments in, or Profits derived from Slavery or Slaveholder Insurance Policies. Based on that research, the Company represents that:

\_\_\_\_\_ The Company found no records that the Company or any of its Predecessor Companies had any Participation or Investments in, or derived Profits from, Slavery or Slaveholder Insurance Policies during the Slavery Era.

\_\_\_\_\_ The Company found records that the Company or its Predecessor Companies Participated or Invested in, or derived Profits from Slavery during the Slavery Era. The nature of that Participation, Investment, or Profit is described on the attachment to this Affidavit and incorporated herein.

\_\_\_\_\_ The Company found records that the Company or its Predecessor Companies bought, sold, or derived Profits from Slaveholder Insurance Policies during the Slavery Era. The names of any Enslaved Persons or Slaveholders under the Policies are listed on the attachment to this Affidavit and incorporated herein.

6. I declare under penalty of perjury under the laws of the State of California that the representations made herein are true and correct to the best of my knowledge.

Executed on \_\_\_\_\_ at \_\_\_\_\_, \_\_\_\_\_  
(Date) (City) (State)

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

### DEFINITIONS

**Awarding Authority** means a subordinate or component entity or person of the City, such as a City Department or Board of Commissioners, that has the authority to enter into a Contract or agreement for the provision of goods or services on behalf of the City of Los Angeles.

**Company** means any person, firm, corporation, partnership or combination of these.

**Contract** means any agreement, franchise, lease or concession including an agreement for any occasional professional or technical personal services, the performance of any work or service, the provision of any materials or supplies or rendering of any service to the City of Los Angeles or the public, which is let, awarded or entered into with or on behalf of the City of Los Angeles or any Awarding Authority of the City.

**Designated Administrative Agency (DAA)** means the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance.

**Enslaved Person** means any person who was wholly subject to the will of another and whose person and services were wholly under the control of another and who was in a state of enforced compulsory service to another during the Slavery Era.

**Investment** means to make use of an Enslaved Person for future benefits or advantages.

**Participation** means having been a Slaveholder during the Slavery Era.

**Predecessor Company** means an entity whose ownership, title and interest, including all rights, benefits, duties and liabilities were acquired in an uninterrupted chain of succession by the Company.

**Profits** means any economic advantage or financial benefit derived from the use of Enslaved Persons.

**Slavery** means the practice of owning Enslaved Persons.

**Slavery Era** means that period of time in the United States of America prior to 1865.

**Slaveholder** means holders of Enslaved Persons, owners of business enterprises using Enslaved Persons, owners of vessels carrying Enslaved Persons or other means of transporting Enslaved Persons, merchants or financiers dealing in the purchase, sale or financing of the business of Enslaved Persons.

**Slaveholder Insurance Policies** means policies issued to or for the benefit of Slaveholders to insure them against the death of, or injury to, Enslaved Persons.

**Affidavit** means the form developed by the DAA and may be updated from time to time. The Affidavit need not be notarized but must be signed under penalty of perjury.

## SDO EXEMPTION

### CITY OF LOS ANGELES

Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance  
1149 S. Broadway Street, 3<sup>rd</sup> Floor, Los Angeles, CA 90015  
Phone: (213) 847-1922 Fax: (213) 847-2777

#### **SLAVERY DISCLOSURE ORDINANCE (SDO) REQUEST FOR EXEMPTION**

All agreements are subject to the SDO unless otherwise exempted. If the Awarding Authority believes that a contract should be exempted because of exigent circumstances or because the contract involves proprietary goods/services that are available only from a single source, an exemption application must be submitted. **The exemption MUST be approved by the Office of Contract Compliance, Equal Employment Opportunities Enforcement Section prior to contract execution, and Awarding Authorities MUST submit a memorandum explaining why the exemption is justified.**

#### **Section 1: Awarding Department**

Name of contact person:	Title:
Department:	Phone:
Signature:	Date:

#### **Section 2: Contractor and Contract Information**

Company Name:	Federal ID #:	
Company Address:		
City:	State:	Zip:
Purpose	Contract # (if any)	
Start Date:	End Date:	Amount:

#### **Section 3: Basis for Exemption – Check one. A memorandum must be attached explaining why exemption is justified.**

☐ The contract is for the furnishing of articles covered by letters patent granted by the government of the United States or the goods or services are proprietary or only available from a single source.

☐ The City would suffer a financial loss or that City operations would be adversely impacted unless exempted.

#### **OCC USE ONLY**

Approved: _____	Not Approved. (See attached memorandum.) _____
OCC Analyst: _____	Date: _____

#### **THE FOLLOWING ARE STATUTORILY EXEMPT AND DO NOT REQUIRE OCC APPROVAL**

\_\_\_\_ Contracts relating to: (a) the investment of City trust moneys or bond proceeds; (b) Pension funds; (c) Indentures, security enhancement agreements for City tax-exempt and taxable financings; (d) Deposits of City surplus funds in financial institutions; (e) The investment of City moneys in securities permitted under the California State Government Code and/or the City's investment policy; (f) Investment agreements, whether competitively bid or not; (g) Repurchase agreements; and (h) City moneys invested in United States government securities.

\_\_\_\_ Contracts involving City moneys in which the Treasurer or the City Administrative Officer finds that the City will incur a financial loss or forego a financial benefit, and which in the opinion of the Treasurer or the City Administrative Officer would violate his or her fiduciary duties.

\_\_\_\_ Grant funded Contracts if the application of this article would violate or be inconsistent with the terms or conditions of a grant or Contract with an agency of the United States, the State of California or the instruction of an authorized representative of any of those agencies with respect to any grant or Contract.

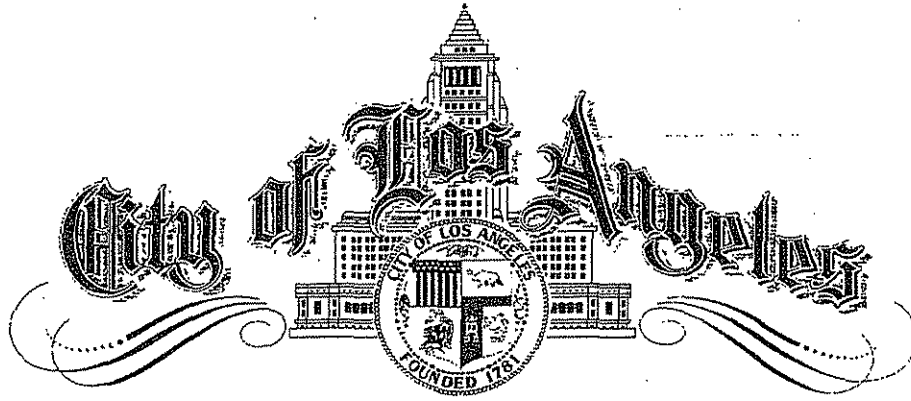
\_\_\_\_ Contracts with a governmental entity such as the United States of America, the State of California, a county, city or public agency of one of these entities, or a public or quasi-public corporation located in the United States and declared by law to have a public status.

\_\_\_\_ Contracts with any Company that has been designated as a non-profit organization pursuant to the United States Internal Revenue Code Section 501(c)(3).

\_\_\_\_ Contracts entered into pursuant to Charter Section 371(e)(5) as approved by Council.

\_\_\_\_ Contracts entered into pursuant to Charter Section 371(e)(6) as approved by Council.

\_\_\_\_ Contracts entered into pursuant to Charter Section 371(e)(7).



CITY HALL  
LOS ANGELES, CALIFORNIA 90012  
(213) 847-2489

OFFICE OF THE MAYOR

RICHARD J. RIORDAN  
MAYOR

### EXECUTIVE DIRECTIVE NO. 2001-26

February 8, 2001

**TO: THE HEADS OF ALL DEPARTMENTS, OFFICES  
AND COMMISSIONS OF CITY GOVERNMENT**

**SUBJECT: CITY OF LOS ANGELES MINORITY, WOMEN  
AND OTHER BUSINESS ENTERPRISE PROGRAM**

Effective immediately, each department (Awarding Authority) which issues invitations for bids or requests for proposals (RFPs) for work to be performed under contracts awarded by the City of Los Angeles shall implement this directive by utilizing the outreach program set forth herein.

It is the policy of the City of Los Angeles to provide Minority Business Enterprises (MBEs)<sup>1</sup>, Women Business Enterprises (WBEs) and all Other Business Enterprises (OBEs) an equal opportunity to participate in the performance of all city contracts. This policy applies to all City Departments, Proprietary Departments, and Boards and Commissions, which may, by their authority, award construction, procurement, and personal service contracts.

The Mayor's Office of Economic Development (MOED) shall have the primary responsibility for coordinating and managing city business development and outreach efforts designed to enhance business opportunities for minority, women, and other business enterprises, including small local businesses.

In coordination with the Mayor's Office of Economic Development, the heads of all departments of city government shall be responsible for developing, managing, and implementing the MBE, WBE, and OBE policy and program. Departments are required

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<sup>1</sup> For the purposes of this Executive Directive, "minority group member" shall be synonymous with "minority person" as defined in the code of Federal Regulations, 49CFR, Part 26.



to submit a quarterly report covering the activities and their outcomes relating to the efforts undertaken by the respective Departments to implement the minority, women, and other business enterprise program outlined in this Directive.

All Awarding Authorities which issue invitations for bids or RFPs for work to be performed under contracts valued at \$100,000 or more shall require bidders or proposers to conduct the City's "Good Faith Effort," unless otherwise determined by MOED. The aforementioned policy shall be implemented as outlined in the City of Los Angeles Minority, Women and Other Business Enterprise Program.

**CITY OF LOS ANGELES MINORITY, WOMEN AND  
OTHER BUSINESS ENTERPRISE PROGRAM**

**Departmental Responsibilities**

The department heads will assign to the Purchasing Agent, Contract Administrators, Contract Compliance Officers and/or Affirmative Action Officers the responsibility for developing, managing, and implementing the MBE, WBE and OBE policy and program on a day-to-day basis. In order to implement effectively this policy the following program areas will be incorporated within the body of each individual departmental plan:

1. Development of information and communication outreach programs on contracting and bidding procedures, along with the timely dissemination of contract and bid information to both public and private business assistance centers, Chambers of Commerce, Minority and Women Business and Trade Associations.
2. Development of effective vendor databases and directories, which will include but not be limited to, qualified minority, women-owned, and other businesses, business assistance agencies, capital providers, bonding and insurance providers, and certification providers, which will be made available to all buyers, storekeepers with purchasing authority, and all other departmental personnel with authority to solicit bids and enter into negotiated personal service contracts.
3. Development and maintenance of listings of MBEs, WBEs, and OBEs to be made available to all prime contractors, vendors, and suppliers who seek to comply with contract requirements and/or subcontracts and joint venture opportunities. The listing shall include, but not limited to: the name, address, telephone number, ethnicity and gender of owner, and the service, commodity or goods provided, sold or manufactured.
4. Participation in minority trade fairs and other outside activities related to the development of minority, women and other vendors.

5. Provide information to MBE, WBEs and OBEs on projected department contractual needs, conduct pre-bid and post conferences, permit MBEs, WBEs, and OBEs to review and evaluate successful bid documents of similar contracting or procurement opportunities.
6. Evaluate and verify, as necessary, the eligibility of all firms and joint ventures who claim to be minority or women-owned in coordination with the City of Los Angeles' certification entity and/or any other certification entity that has a reciprocal certification agreement with the City of Los Angeles.
7. Develop and implement workshops for buyers, storekeepers, and any departmental personnel with authority to negotiate construction, procurement, and personal service contracts, on how to do business with minority, women-owned and other business enterprises.
8. All bids, RFPs, and construction notices, whenever possible, be published in widely circulated newspapers, trade associations and business publications, including those which focus on minority and women business communities, and through the utilization of radio and any other electronic media.
9. The Small, Local Business Program (10% Preference) shall be utilized to further encourage and strengthen the bidding opportunities for small local businesses.
10. All purchasing authorities and/or department designees, with the authority to negotiate contracts, shall maintain such records, and provide such reports as are necessary to ensure full compliance with this policy.
11. All bids and RFPs will give notice that the City requires a good faith outreach effort by contractors, suppliers, and vendors to subcontract with minority, women and other contractors, suppliers, and vendors in their performance of City contracts.
12. The "Good Faith Effort" requirement shall be applied in all city procurement, personal services and construction contracts valued in excess of \$100,000, unless otherwise determined by MOED. All Awarding Authorities shall notify MOED of the anticipated levels of MBE and WBE participation for each contract.
13. Other government entities may not have Good Faith Effort programs that meet the city's standards for business development or outreach. In the event that the city participates ("piggybacks") onto an existing contract of another government entity or association of government entities, the city shall first evaluate the host contract to determine the extent and effect of

the other entity's outreach and business development requirements. The results of the required evaluation shall be communicated to the Mayor's Office of Economic Development as part of the request for approval of any resulting contract by the Mayor's Office.

#### **Mayor's Office of Economic Development Responsibilities**

Departments shall seek assistance from the Mayor's Office of Economic Development to implement the previously stated departmental responsibilities. MOED has the responsibility of providing the respective Departments, covered by this directive, with the following services, including but not limited to:

1. Strategic implementation of City MBE, WBE, OBE and small local business outreach and business development efforts.
2. Technical expertise in the areas of MBE, WBE and OBE outreach program design, development and implementation.
3. Information relating to compliance with Federal and State business outreach regulations.
4. Technical expertise in coordinating outreach efforts with minority, women, and other professional associations, trade groups, business assistance centers and related organizations.
5. Technical expertise in the development of the necessary databases, directories, and reports relating to MBE, WBE and OBE program compliance.
6. The Good Faith Effort requirement does not apply to contracts valued at \$100,000 or less, but that fact shall not prevent MOED from providing to departments, at its discretion, outreach and other services authorized under this directive, with respect to such contracts.
7. Such other assistance as may be necessary in connection with the implementation of this directive by the Departments.

#### **Quarterly Reports**

Departments shall submit a Quarterly Report to MOED covering the activities relating to the efforts undertaken by the Departments to implement the MBE, WBE and OBE outreach program. The Report shall include data on construction, procurement and personal services contracts and be due 15 calendar days after the close of each calendar quarter, commencing with the quarter ending March 31, 2001. The Report shall include, but not be limited to:

1. A summary of all contract dollars and number of contracts awarded during the quarter to prime contractors and subcontractors, with a breakdown of awards to MBE, WBE and OBE firms. The data shall be further summarized by ethnic categories as determined by MOED.
2. A list of all contracts awarded or contract amendments awarded during the quarter. Each contract shall list the name of the prime contractor and each subcontractor on the project and include award date, contract term, contract type, award amount, contact person, ethnicity, gender, city, state, zip, telephone and fax number.
3. The number of business and contracting opportunity seminars, conferences, and other related events participated in by the Department.
4. All significant efforts undertaken to implement the various elements of the MBE, WBE and OBE Program outlined in this Directive.
5. Any and all other data or Departmental information relating to business development or business outreach as may be requested by MOED to further program development.

#### **Good Faith Effort Policy and Documentation**

Bidders and proposers shall assist the city in implementing this policy by taking all reasonable steps to ensure that all available business enterprises, including MBEs, WBEs, and OBEs have an equal opportunity to compete for and participate in city contracts. As outlined below, the following indicators and point scale will be used to determine the bidder's and proposer's compliance with the Good Faith Effort requirements:

- (1) The bidder's or proposer's efforts to obtain participation by MBEs, WBEs, and OBEs can reasonably be expected by the Awarding Authority to produce a level of participation by interested subcontractors, including \_\_\_\_\_ percent MBE and \_\_\_\_\_ percent WBE as established by the Awarding Authority.

**0 Points**

- (2) The bidder or proposer attended pre-solicitation or pre-bid meetings, if any, scheduled by the Awarding Authority to inform all bidders or proposers of the requirements for the project for which the contract will be awarded. The Awarding Authority may waive this requirement if the bidder or proposer certifies it is informed as to those project requirements.

**10 Points**

- (3) The bidder or proposer identified and selected specific items of the project for which the contract will be awarded to be performed by subcontractors

to provide an opportunity for participation by MBEs, WBEs, and OBEs. The bidder or proposer shall, when economically feasible, divide total contract requirements into small portions or quantities to permit maximum participation of MBEs, WBEs, and OBEs.

**10 Points**

- (4) The bidder or proposer advertised for bids or proposals from interested business enterprises no less than 10 calendar days prior to the submission of bids or proposals, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media specified by the Awarding Authority.

**9 Points**

- (5) The bidder or proposer provided written notice of its interest in bidding on the contract to those business enterprises, including MBEs and WBEs, having an interest in participating in such contracts. All notices of interest shall be provided not less than 10 calendar days prior to the date the bids or proposals were required to be submitted. In all instances, the bidder or proposer must document that invitations for subcontracting bids were sent to available MBEs, WBEs, and OBEs for each item of work to be performed. The Mayor's Office of Economic Development shall be available to help identify interested MBEs, WBEs, and OBEs.

**15 Points**

- (6) The bidder or proposer documented efforts to follow-up initial solicitations of interest by contacting business enterprises to determine with certainty whether the enterprises were interested in performing specific portions of the project not less than three calendar days prior to the date the bids or proposals were required to be submitted.

**10 Points**

- (7) The bidder or proposer provided interested business enterprises with information about the plans, specifications and requirements for the selected subcontracting work.

**5 Points**

- (8) The bidder or proposer requested assistance from organizations that provide assistance in the recruitment and placement of MBEs, WBEs, and OBEs not less than 15 calendar days prior to the submission of bids or proposals.

**10 Points**

- (9) The bidder or proposer negotiated in good faith with interested MBEs, WBEs, and OBEs and did not unjustifiably reject as unsatisfactory bids or proposals prepared by a business enterprise, as determined by the Awarding Authority. As documentation the bidder or proposer must submit a list of all sub-bidders for each item of work solicited, including dollar amounts of potential work for MBEs, WBEs and OBEs.

**26 Points**

- (10) The bidder or proposer documented efforts to advise and assist interested MBEs, WBEs, and OBEs in obtaining bonds, lines of credit, or insurance required by the Awarding Authority or contractor.

**5 Points**


An Awarding Authority's determination of the adequacy of a bidder's or proposer's Good Faith Effort must be based on due consideration of all indicators of good faith as set forth above. Achievement of anticipated levels of participation in indicator (1), above, may only be used as one of the ten indicia of whether a bidder or proposer has met the Good Faith Effort to recruit MBEs, WBEs, and OBEs. If the Awarding Authority has established anticipated levels of participation for MBE and WBE subcontractors, failure to meet those levels shall not by itself be the basis for disqualification of the bidder or proposer.

Each indicator is to be graded on a Pass/Fail basis. Either full credit or no credit will be awarded. No partial credit is to be given. A minimum of 75 of 100 evaluation points are required to establish compliance with the Good Faith Effort requirements. The Good Faith Effort is required even if the bidder has achieved the anticipated MBE and WBE participation levels. The Good Faith Effort also is required even if the bidder is a certified Minority or Woman Business Enterprise.

In the event that an Awarding Authority is considering awarding to other than the lowest bidder, or not awarding a contract to a proposer, because the bidder or proposer is determined to be non-responsive for failure to comply with the Good Faith Effort requirements set forth above, the Awarding Authority shall, if requested, and prior to the award of the contract, afford the bidder or proposer the opportunity to present evidence to the Awarding Authority in a public hearing of the bidder's or proposer's compliance with the Good Faith Efforts in making its outreach. In no case shall an Awarding Authority deny award of a contract to a bidder or proposer pursuant to this program, if the bidder or proposer complies with the Good Faith Effort but fails to meet the anticipated levels of participation.

Nothing herein restricts the discretion of the Awarding Authority to reject all bids or proposals in accordance with provisions of the City Charter or Administrative Code.

The directions set forth herein shall take effect immediately, and all Awarding Authorities, including the city's proprietary departments, shall modify their implementation programs to the extent such programs are inconsistent with this Executive Directive.



Richard J. Riordan  
Mayor

Supersedes Executive Directive 1-B (Bradley Series), dated March 29, 1983, and 1-C (Bradley Series), dated March 6, 1989.

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**LOS ANGELES PARKING GARAGE SYSTEM  
CONCESSION AND LEASE AGREEMENT**

dated as of

\_\_\_\_\_, 2010

by and between

**CITY OF LOS ANGELES**

and

\_\_\_\_\_

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Schedule 9	Form of Legal Opinion of the City Attorney	
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## **LOS ANGELES PARKING GARAGE SYSTEM CONCESSION AND LEASE AGREEMENT**

**THIS LOS ANGELES PARKING GARAGE SYSTEM CONCESSION AND LEASE AGREEMENT** (this “Agreement,” “Lease” or “Concession”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by and between the City of Los Angeles, a municipal corporation and a charter city under the laws of the State of California (the “City”), and \_\_\_\_\_ (the “Concessionaire”).

### **R E C I T A L S**

**WHEREAS**, the City and the Community Redevelopment Agency of the City of Los Angeles (the “CRLA”) own the Parking Garage System (as defined herein); and

**WHEREAS**, the CRLA has agreed to transfer all of its interest in the Cinerama Dome Garage (subject to the provisions of the documents that effectuate such transfer) to the City on or prior to the Closing (as defined herein) so that City shall own all of the Parking Garage System from and after the Closing; and

**WHEREAS**, the Board of Recreation and Parks Commissioners has approved the inclusion of the Pershing Square Garage into the Parking Garage System; and

**WHEREAS**, pursuant to, and under the terms and conditions contained in, that certain motion adopted by the City Council of the City (the “Parking Garage System Council Action”), the City is authorized to enter into the Transaction (as defined herein); and

**WHEREAS**, the Concessionaire desires to lease the Parking Garage System from the City to provide Parking Garage Services (as defined herein) in connection therewith, all as hereinafter provided;

**WHEREAS**, the City desires to lease the Parking Garage System to the Concessionaire and grant the Concessionaire the right to provide Parking Garage Services to the public in connection therewith, all as hereinafter provided; and

**WHEREAS**, the City has determined that the terms and provisions of this Agreement will ensure that the Parking Garage System will be operated, and the Parking Garage Services will be provided in a manner that benefits the public and fulfills the public purposes of the Parking Garage System, including the free circulation of traffic in the City, and that such public benefits and public purposes will be preserved by, among others, (i) the requirements that the Parking Garage System be maintained, and the Parking Garage Services be performed, in accordance with the Operating Standards; (ii) requirements for preservation of parking spaces for transient parking; (iii) limitations on parking rates; and (v) the reservation by the City of its police and regulatory powers with respect to the Parking Garage System, and the regulation of traffic, traffic control and the use of the public way.

**NOW THEREFORE**, for and in consideration of the premises, the mutual covenants, representations, warranties and agreements contained herein and other valuable consideration,

the receipt and sufficiency of which are hereby acknowledged, the Parties (as defined herein) covenant and agree as follows:

## **ARTICLE 1 BASIC PROVISIONS**

**Section 1.1. Date and Parties.** This Agreement is dated, for reference purposes only, \_\_\_\_\_, 2010, and is between City, as landlord, and the Concessionaire, as tenant, upon the provisions and conditions contained in this Agreement. The City is a municipal corporation and a charter city, organized under the laws of the State of California. The Concessionaire is a \_\_\_\_\_, with principal offices at \_\_\_\_\_.

**Section 1.2. Reserved Powers.** The Reserved Powers (as herein defined) of the City are expressly reserved to the City for the Term of this Agreement. Any obligations or restrictions imposed by this Agreement on the City shall not relate to or otherwise affect any activity of the City in its governmental capacity, including, but not limited to, enacting laws, inspecting structures, reviewing and issuing permits, and all other legislative, administrative, or enforcement functions of the City pursuant to federal, state, or local law.

**Section 1.3. Execution Date and Lease Date.** The phrase “Execution Date” shall mean the date the Office of the City Clerk of Los Angeles attests this Agreement on page \_\_, except in the event that Concessionaire executes this Agreement after such attestation, in which case the date of such execution by Concessionaire shall be the Execution Date. The date of this Agreement shall also be the Execution Date.

**Section 1.4. References.** All references to the “City” in this Agreement shall include the City’s various departments and subdivisions, including the Department of Recreation and Parks and the Department of Transportation. The CRALA is a separate legal entity.

## **ARTICLE 2 DEFINITIONS AND INTERPRETATION**

**Section 2.1. Definitions.** Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

“AA-Compensation” has the meaning ascribed thereto in Section 14.1(b).

“AA-Dispute Notice” has the meaning ascribed thereto in Section 14.1(e).

“AA-Notice” has the meaning ascribed thereto in Section 14.1(d).

“AA-Preliminary Notice” has the meaning ascribed thereto in Section 14.1(c).

“Additional Rent” has the meaning ascribed thereto in Section 3.2.

“Adjusted Base Amount” has the meaning ascribed thereto in Section 7.7.

“Adjusted for Inflation” means adjusted by the percentage increase or decrease, if any, in the Index during the applicable adjustment period.

“Adjustment Date” has the meaning ascribed thereto in Section 7.2.

“Adverse Action” has the meaning ascribed thereto in Section 14.1.

“Affected Property” means any public or private property, including a park, highway, street, road, roadway, railroad, rail or other transit way, mechanical room, tunnel, storage room or elevator and any ancillary facilities related to any of the foregoing, under the jurisdiction and control of the City any other Governmental Authority or any other Person (including any private road) that is located above, within the boundaries of, intersects with, crosses over or under or is adjacent to the Parking Garage System or any part thereof.

“Affiliate”, when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with such specified Person, and a Person shall be deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise (it being understood and agreed that for the purposes of this definition, a managed fund or trust shall be deemed to be an Affiliate of the Person managing such fund or trust).

“Administrative Code” means the Administrative Code of the City of Los Angeles, as amended.

“Agreement” has the meaning ascribed thereto in the preamble to this Agreement (including all schedules referred to herein), as amended from time to time in accordance with the terms hereof.

“Annual Revenue Payment” has the meaning ascribed thereto in Section 7.7.

“Annual Revenues” means, with respect to any Lease Year, all gross Parking Fee Revenues and all gross Other Concessionaire Revenues.

“Approval”, “Approved”, “Approves”, “Approved by the City” and similar expressions mean approved or consented to by the City in accordance with the provisions of Section 2.14.

“Assumed Liabilities” has the meaning ascribed thereto in Section 4.2(c).

“Audit” and similar expressions mean, with respect to any matter or thing relating to the Parking Garage System, the Parking Garage System Operations or this Agreement, the performance by or on behalf of the City of such reviews, investigations, inspections and audits relating to such matter or thing as the City may reasonably determine to be necessary in the



circumstances, conducted in each case in accordance with applicable United States industry accepted practices, if any, or as required by Law.

“Authorization” means any approval, certificate of approval, authorization, consent, waiver, variance, exemption, declaratory order, exception, license, filing, registration, permit, notarization or other requirement of any Person that is reasonably required from time to time for the Parking Garage System Operations.

“Bank Rate” means the 3-Month London Interbank Offered Rate (LIBOR) as reported in *The Wall Street Journal* (or its successors).

“Base Amount” means, for each Lease Year, the amount set forth in Schedule 12 for such Lease Year.

“Base Rent” has the meaning ascribed thereto in Section 3.1.

“Beginning Index” has the meaning ascribed thereto in Section 7.2.

“Bid Date” means \_\_\_\_\_.

“Bid Deposit” means the deposit made by Concessionaire as described in Section 3.10(a).

“Board” means the Board of Recreation and Parks Commissioners of the City.

“Business Day” means any day that is neither a Saturday, a Sunday nor a day observed as a holiday by State of California, the City of Los Angeles, or the United States government. Whenever under the terms of this Agreement the time for performance of a covenant or condition falls on a Saturday, Sunday, or Federal, California State, or City of Los Angeles holiday, such time for performance shall be extended to the next business day.

“CAO” means the City Administrative Officer of the City or the City Administrative Officer’s designee.

“Cash Deposit” means any portion of the Bid Deposit paid in cash pursuant to Section 3.10(a).

“Casualty Cost” has the meaning ascribed thereto in Section 13.19(a).

“Change in Control” means, with respect to any Person, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, either (i) a change in ownership so that 50% or more of the direct or indirect voting or economic interests in such Person is transferred to a Person or group of Persons acting in concert, (ii) the power directly or indirectly to direct or cause the direction of management and policy of such Person, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred to a Person or group of Persons acting in concert or (iii) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person; *provided, however*, that notwithstanding anything to the contrary set forth in this definition,

(A) clauses (i) and (ii) above shall apply to transactions in shares of a publicly traded company or other transactions involving a publicly traded company only if they cause such company to no longer be a publicly traded company, (B) Transfers of direct or indirect ownership interests in the Concessionaire or the Operator (as applicable) between or among Persons that are Affiliates shall not constitute a “Change in Control” for the purposes of this Agreement, (C) Transfers of shares of the Concessionaire or its direct or indirect parent pursuant to an initial public offering on the New York Stock Exchange, NASDAQ, London Stock Exchange or comparable securities exchange shall not constitute a “Change in Control” for purposes of this Agreement, (D) Transfers of direct or indirect ownership interest in the Concessionaire by any Equity Participant or its beneficial owner(s) to any Person shall not constitute a “Change in Control” so long as the Equity Participants or their beneficial owner(s) having, in the aggregate, more than 50% direct or indirect ownership interest in the Concessionaire as of the date of this Agreement retain, in the aggregate, more than 50% of the rights to elect directors, officers and managers of the Concessionaire, (E) any change of ownership that is attributable to a lease, sublease, concession, management agreement, operating agreement or other similar arrangement that is subject and subordinate in all respects to the rights of the City under this Agreement shall not constitute a “Change in Control” so long as (1) no “Change in Control” occurs with respect to the Concessionaire, (2) the Concessionaire remains obligated under this Agreement and (3) such lease, sublease, concession, management agreement, operating agreement or other similar arrangement does not result in a “Change in Control” of the Operator and (F) the creation of a trust or any other transaction or arrangement that is solely a transfer of all or part of the Concessionaire’s economic interest under this Agreement to another entity shall not constitute a “Change in Control” so long as (1) no “Change in Control” occurs with respect to the Concessionaire, (2) the Concessionaire remains obligated under this Agreement and (3) such transaction does not result in a “Change in Control” of the Operator. It is understood and agreed that the existence of a contractual relationship or management agreement between the Operator and a party to a lease or other arrangement referred to in clauses (E) or (F) of the preceding sentence shall not constitute a “Change of Control” of the Operator.

“Cinerama Dome Agreement” means the Reciprocal Easement Agreement by and between Dome Entertainment Center Inc., a California corporation and The Community Redevelopment Agency of the City of Los Angeles, California, a public body, corporate and politic, recorded as Document No. 00-1231259 with the Los Angeles County Recorder.

“City” has the meaning ascribed thereto in the preamble to this Agreement.

“City Directive” means a written order or directive prepared by or on behalf of the City directing the Concessionaire, to the extent permitted hereby, to (i) add or perform work in respect of the Parking Garage System in addition to that provided for in this Agreement, or (ii) change the dimensions, character, quantity, quality, description, location or position of any part of the Parking Garage System or the Parking Garage System Operations or make any other changes to the Parking Garage System or the Parking Garage System Operations; *provided, however,* that no such order or directive may in any event order or direct the Concessionaire to do any act that could reasonably be expected to violate any applicable Law or cause the Concessionaire to fail to be in compliance with this Agreement.

“City Default” has the meaning ascribed thereto in Section 16.2(a).

“City’s Option” has the meaning ascribed thereto in Section 18.8(a).

“Claim” means any demand, action, cause of action, suit, proceeding, arbitration, claim, judgment or settlement or compromise relating thereto which may give rise to a right to indemnification under Section 12.1 or 12.2.

“Closing” has the meaning ascribed thereto in Section 3.2(a).

“Closing Date” has the meaning ascribed thereto in Section 3.2(a).

“Closing LOC” has the meaning ascribed thereto in Section 3.10.

“Comparable Facilities” means a parking garage (whether publicly or privately owned) open to the general public and used primarily for general public parking that is reasonably comparable to the particular Structure concerned in terms of its operation and in a reasonable comparable area in terms of parking rates within the City of Los Angeles.

“Compensation Event” means any Competing Parking Action, the Concessionaire’s compliance with or the implementation of any City Directive or any modified or changed Operating Standard subject to Section 4.23, the events described in Section 4.26(f), the occurrence of an Adverse Action or the occurrence of any other event that under the terms of this Agreement requires the payment of Concession Compensation.

“Competing Parking Action” means the construction, acquisition and/or operation of a Public Parking Garage by or on behalf of the City or the CRALA within a Competing Parking Area. Notwithstanding the foregoing, it does not include any of the following: (i) the ownership and/or operation of any garage owned and/or operated by the City or the CRALA as of the execution date of this Agreement, including any garage under construction, (ii) the construction, ownership and/or operation of garages, parking facilities, or granting of parking spaces, permits or passes for the use of City employees and visitors to City offices and properties, (iii) the construction, ownership and/or operation of non-public garages or parking facilities, (iv) any acts (other than actual acquisition or operation of a garage) relating to a garage by the City or CRALA, (v) the permitting or approval by the City or CRALA of a garage, (vi) the funding by the City or CRALA of a garage to be owned and operated by parties other than the City or CRALA that does not provide public parking spaces in excess of the number of such spaces required by the Municipal Code, (vii) disposition and development agreements, (viii) development agreements under Government Code § 65864, *et seq.*, (ix) zoning activities, including conditional use permits and variances, (x) the exercise of the City’s Reserved Powers; or (xi) the construction, acquisition, ownership, operation and/or sale of parking structures at or about the following addresses: 1001 N. Judge John Aiso Street, Los Angeles, 1633 N. Vine Street, Hollywood, and Public Parking Lot No. 689 located at 8866 Pico Boulevard, Los Angeles, and Public Parking Lot No. 742 located at 1633 North Wilcox, Hollywood; proposed garages located at or adjacent to 621, 629, and 635 South Broadway, 628 - 630 South Hill Street, Los Angeles, 100 S. Grand Avenue, Los Angeles, 440 W. First Street, Los Angeles, 220 S. Hope Street, Los Angeles, or 236 S. Hope Street, Los Angeles, or associated with the Broad Museum on Grand Avenue, Los Angeles (tentatively located at 221 N. Grand Avenue, Los Angeles).

“Competing Parking Area” means that portion of the City of Los Angeles within one-eighth of a mile of the perimeter of any Structure.

“Concession Compensation” means compensation payable by the City to the Concessionaire in order to restore the Concessionaire to the same economic position the Concessionaire would have enjoyed if the applicable Compensation Event had not occurred, which compensation shall be equal to the sum of (i) all Losses (including increased operating, capital and maintenance costs but excluding any costs and expenses that the Concessionaire would otherwise expend or incur in order to comply with this Agreement or in the ordinary course of the performance of the Parking Garage System Operations or the carrying on of business in the ordinary course) that are reasonably attributable to such Compensation Event plus or minus (ii) the actual and reasonably estimated net losses or gains, as the case may be and without duplication of the costs and expenses, of the Concessionaire’s present and future Parking Fee Revenues and Other Concessionaire Revenues that are reasonably attributable to such Compensation Event (but excluding any losses attributable to parking provided or sold to City or CRALA employees or invitees, and excluding all losses attributable to non-public parking activities by Persons other than the City or CRALA); *provided, however*, that, unless otherwise specified in this Agreement, any claim for Concession Compensation shall be served in writing upon City within 60 Days following the earliest time that the Concessionaire became aware that the City either (i) intended to consider approving, authorizing, or undertaking such Compensation Event or (ii) that a Compensation Event had occurred, approved, or been authorized. For purposes of this provision, in the case of a potential Adverse Action, the City may, at its discretion, give Concessionaire written notice that it was considering authorizing, approving or performing an action potentially constituting a Compensation Event, in which case the time within which to serve an AA-Preliminary Notice for such action shall commence upon service of the first of such written notice. Any Concession Compensation payable with respect to Losses or lost Parking Fee Revenues or Other Concessionaire Revenues that will occur in the future shall be payable at the time such Compensation Event occurs based on a reasonable determination of the net present value of the impact of such Compensation Event over the remainder of the Term, or the duration of the Compensation Event, whichever is shorter. If the Concessionaire is required to provide its own capital with respect to compliance with or implementation of a City Directive or a modified or changed Operating Standard, then the Concession Compensation, shall, in addition to the components described above, take into account the actual cost to the Concessionaire of such capital and include a then applicable market-based rate of return thereon

“Concessionaire” has the meaning ascribed thereto in the preamble to this Agreement.

“Concessionaire Default” has the meaning ascribed thereto in Section 16.1(a).

“Concessionaire Interest” means the interest of the Concessionaire in the Parking Garage System created by this Agreement and the rights and obligations of the Concessionaire under this Agreement (including the interest described in Section 3.1(b)(ii)).

“Concessionaire Request” means a written request in respect of the Parking Garage System prepared by or on behalf of the Concessionaire and addressed to the City seeking to make a fundamental change in the dimensions, character, quality or location of any part of the

Parking Garage System; *provided, however*, that a Concessionaire Request need not be submitted in connection with operations, maintenance, repair or overhaul of the Parking Garage System in the ordinary course or any other aspects of Parking Garage System Operations permitted or reserved to the Concessionaire under this Agreement, including any modification or change to the Operating Standards pursuant to Section 5.2.

“Consent” means any approval, consent, ratification, waiver, exemption, license, permit, novation, certificate of occupancy or other authorization, of any Person, including any Consent issued, granted, given, or otherwise made available by or under the authority of any Governmental Authority or pursuant to any applicable Law.

“Consideration” has the meaning ascribed thereto in Section 3.3.

“Construction Contract” means any construction contract entered into by the Concessionaire related to the Parking Garage System (or subcontracts thereunder).

“Contractor” means, with respect to a Person, any contractor with whom such Person contracts to perform work or supply materials or labor in relation to the Parking Garage System, including any subcontractor of any tier, supplier or materialman directly or indirectly employed pursuant to a subcontract with a Contractor. For the avoidance of doubt, the Operator shall be a Contractor of the Concessionaire.

“CRALA” means The Community Redevelopment Agency of Los Angeles.

“Days” or “days” as applied in this Agreement to a period of less than ten (10) days shall mean Business Days; otherwise, “days” shall mean calendar days unless specifically modified herein to be “business” or “working” days. All references, if any, to “month” or “months” shall be deemed to include the actual number of days in such actual month or months.

“Defending Party” has the meaning ascribed thereto in Section 12.4(c).

“Delay Event” means (i) an event of Force Majeure, (ii) a failure to obtain, or delay in obtaining, any Authorization from a Governmental Authority (*provided* that such failure or delay could not have been reasonably prevented by technical and scheduling or other reasonable measures of the Concessionaire), (iii) the enactment of a new Law or the modification, amendment or change in enforcement or interpretation of a Law (including a change in the application thereof by any Governmental Authority) arising after the date of this Agreement, (iv) a delay caused by the performance of works (including the activities authorized by Section 4.7) carried out by a Governmental Authority or any utility or railway operator or Person not acting under the authority or direction of, or pursuant to a contract, sublease or any other agreement or arrangement with the Concessionaire or the Operator, (v) a failure by the City to perform or observe any of its covenants or obligations under this Agreement or (vi) a delay caused by the presence in, on, under or around the Parking Garage System of Hazardous Substances, which in each case results in or would result in a delay or interruption in the performance by the Concessionaire of any obligation under this Agreement; except to the extent that the consequences of such delay or the cause thereof is specifically dealt with in this Agreement or arises by reason of (A) the negligence or intentional misconduct of the Concessionaire or its Representatives, (B) any act or omission by the Concessionaire or its

Representatives in breach of the provisions of this Agreement or (C) except as contemplated by Section 6.1, lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire. For the avoidance of doubt, a Delay Event shall not include any of the exceptions listed in clauses (i) through (iv) of the definition of Force Majeure.

“Delay Event Dispute Notice” has the meaning ascribed thereto in Section 15.1(e).

“Delay Event Notice” has the meaning ascribed thereto in Section 15.1(e).

“Delay Event Remedy” has the meaning ascribed thereto in Section 15.1(d).

“Department of Recreation and Parks” means the City’s Department of Recreation and Parks.

“Department of Transportation” means the City’s Department of Transportation.

“Depository” means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by the Concessionaire, that enters into an agreement with the Concessionaire to serve as depository pursuant to this Agreement, *provided* that such Depository shall have an office, branch, agency or representative located in the City of Los Angeles; *provided, however*, that so long as a Leasehold Mortgage is in effect, the Depository under Section 13.19 shall be the institution acting as the collateral agent or depository under the financing secured by such Leasehold Mortgage.

“Designated Senior Person” means such individual who is designated as such from time to time by each Party for the purposes of Article 19.

“Direct Claim” means any Claim by an Indemnified Party against an Indemnifier that does not result from a Third Party Claim.

“Document” has the meaning ascribed thereto in Section 2.14(c).

“DOT Garages” means the Hollywood Boulevard Garage, the Studio City Garage, the Cherokee Avenue Garage, the Broxton Avenue Garage, the Robertson Boulevard Garage, the Friar Street Garage and the Dickens Street Garage.

“Eligible Investments” means any one or more of the following obligations or securities: (i) direct obligations of, and obligations fully guaranteed by, the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America; (ii) demand or time deposits, federal funds or bankers’ acceptances issued by any Institutional Lender (*provided* that the commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such Institutional Lender at the time of such investment or contractual commitment providing for such investment have been rated “A” or higher by a Rating Agency or any other demand or time deposit or certificate of deposit fully insured by the Federal Deposit Insurance Corporation); (iii) commercial paper (including both non-interest-bearing discount obligations and interest-

bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) which has been rated “A” or higher by a Rating Agency at the time of such investment; (iv) any money market funds, the investments of which consist of cash and obligations fully guaranteed by the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America and which have been rated “A” or higher by a Rating Agency; and (v) other investments then customarily accepted by the City in similar circumstances; *provided, however*, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

“Encumbrance” means any mortgage, lien, judgment, execution, pledge, charge, security interest, restriction, easement, servitude, option, reservation, lease, UCC filing, claim, trust, deemed trust or encumbrance of any nature whatsoever, whether arising by operation of Law, judicial process, contract, agreement or otherwise created.

“End Date” means the date on which this Agreement expires or is terminated.

“Environment” means soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air.

“Environmental Laws” means any Laws applicable to the Parking Garage System regulating or imposing liability or standards of conduct concerning or relating to (i) the regulation, use or protection of human health and the Environment or (ii) the regulation, use or exposure to Hazardous Substances.

“Equity Participant” means any Person who holds any shares of capital stock, units, partnership or membership interests, other equity interests or equity securities of the Concessionaire.

“Escrow Agent” means the Chicago Title Company, which is also the “Title Company.”

“Excess Revenue Amount” has the meaning ascribed thereto in Section 7.7.

“Excluded Liabilities” has the meaning ascribed thereto in Section 4.2(c).

“Execution Date” has the meaning ascribed thereto in Section 1.3.

“Express Park” means the part of the City’s Congestion Reduction Demonstration Program, or any similar program initiated by the City to count the available spaces within City owned parking garages (including one or more of the Structures) and to advise motorists of the available parking spaces in those garages and may include a real-time parking guidance system to provide real-time information including the location, pricing and policies available for on- and off-street parking through the use of an internet website, web-enabled mobile devices and on-street dynamic message signs placed at key decision points in selected areas.

“Extension Index” has the meaning ascribed thereto in Section 7.2.

“Fiscal Year” means the annual period commencing on July 1 of a calendar year and ending on June 30 of the next calendar year.

“Force Majeure” means any event beyond the reasonable control of the Concessionaire that delays, interrupts or limits the performance of the Concessionaire’s obligations hereunder or the Concessionaire’s use and occupancy of the Parking Garage System, including an intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, sabotage, civil commotions, interference by civil or military authorities, condemnation or confiscation of property or equipment by any Governmental Authority, nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, tornado, flooding, earthquake or other natural disaster, riot or other public disorder, epidemic, quarantine restriction, strike, labor dispute or other labor protest, stop-work order or injunction issued by a Governmental Authority, governmental embargo, except to the extent that the consequence of such event is otherwise specifically dealt with in this Agreement or arises by reason of (i) the negligence or intentional misconduct of the Concessionaire or its Representatives, (ii) any act or omission by the Concessionaire or its Representatives in breach of the provisions of this Agreement, (iii) except as contemplated by Section 6.1, lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire or (iv) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Concessionaire or its Representatives to supply materials or services for or in connection with the Parking Garage System Operations or any strike, labor dispute or labor protest pertaining to the Concessionaire that is not of general application that is caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the Concessionaire or its Representatives. Neither Party shall be liable for, and in particular Concessionaire shall not be entitled to any abatement, reduction of rent, damages, or right to terminate by reason of, any such delays or failures or other inability to provide services or access under this Agreement due to Force Majeure.

“Government Agreement” has the meaning ascribed thereto in Section 4.14.

“Governmental Authority” means any court, federal, state, local or foreign government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority.

“Hazardous Substance” means any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, subject waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation).

“Hollywood and Highland Agreement” means collectively the following agreements: (i) the Hollywood and Highland Reciprocal Easement and Operating Agreement, recorded as Document No. 99-0837738 with the Los Angeles County Recorder, as amended by the First Amendment to the Hollywood and Highland Reciprocal Easement and Operating Agreement, recorded as Document No. 01-629275 with the Los Angeles County Recorder, and (ii) the



Parking and Easement Agreement, entered into on September 28, 1998, recorded as Document No. 98-1830629 with the Los Angeles County Recorder, as amended by the First Amendment to the Parking and Easement Agreement, entered in on February 24, 2004, recorded as Document No. 04-0472610 with the Los Angeles County Recorder.

“Indemnified Party” means any Person entitled to indemnification under this Agreement.

“Indemnifier” means any Party obligated to provide indemnification under this Agreement.

“Indemnity Payment” has the meaning ascribed thereto in Section 12.7.

“Index” means the Consumer Price Index for All Items, All Urban Consumers for the Los Angeles-Riverside-Orange County, California Area (1982-84=100), published by the United States Department of Labor, Bureau of Labor Statistics and, if discontinued, the substitute index selected pursuant to Section 7.3.

“Information” means any and all information relating to the Parking Garage System Operations, including (i) income statements, balance sheets, statements of cash flow and changes in financial position, details regarding Parking Fee Revenues and Other Concessionaire Revenues, operating income, expenses, capital expenditures and budgeted operating results relating to the Parking Garage System Operations, (ii) all certificates, correspondence, data (including test data), documents, facts, files, information, investigations, materials, notices, plans, projections, records, reports, requests, samples, schedules, statements, studies, surveys, tests, test results, parking information (including volume counts, classification counts, and vehicle jurisdiction data) analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by the Parking Garage System, the Concessionaire or any of its Representatives in connection with the Parking Garage System or the Parking Garage System Operations and (iii) proper, complete and accurate books, records, accounts and documents of the Concessionaire relating to the Parking Garage System Operations, including any Information that is stored electronically or on computer-related media; *provided, however*, that nothing in this Agreement shall require the disclosure by any Party of Information that is protected by attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to the other Party or acquired by a Party subject to a confidentiality agreement.

“Institutional Lender” means (a) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects, (b) any (i) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States (if such qualification is necessary in connection with the acquisition of Leasehold Mortgage Debt), (iii) pension fund, foundation or university or college or other endowment fund, (iv) real estate investment trust, investment bank, pension advisory firm,

mutual fund, investment company or money management firm, (v) entity which is formed for the purpose of originating and causing the securitizing of mortgages, which securities are backed by such mortgages and are sold by public offering or to qualified investors under the Securities Act or (vi) Person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the Securities Act within two years of its making, (c) any “qualified institutional buyer” under Rule 144(A) under the Securities Act or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms or (d) any other financial institution or entity designated by the Concessionaire and Approved by the City (*provided* that such institution or entity, in its activity under this Agreement, shall be acceptable under then current guidelines and practices of the City); *provided, however*, that each such entity (other than entities described in clause (b)(v), clause(b)(vi) and clause (c) of this definition) or combination of such entities if the Institutional Lender shall be a combination of such entities shall have individual or combined assets, as the case may be, of not less than \$100 million, which shall include, in the case of an investment or advisory firm, assets controlled by or under management.

“Law” or “Laws” includes all federal, state, county, city, or government agency laws, statutes, ordinances, standards, rules, requirements, writs, injunctions, decrees, judgments, or orders now in force or hereafter enacted, promulgated, or issued, including, without limitation, government measures regulating or enforcing public access, occupational, health, or safety standards, hazardous materials, or for parking, garages, employers, employees, landlords, tenants, or concessionaires.

“Lease Date” has the meaning ascribed in Section 1.3.

“Lease Year” means (i) if the Closing Date occurs on the first day of a calendar month, the 12-month period beginning on the Closing Date or (ii) if the Closing Date does not occur on the first day of a calendar month, the period from the Closing Date through the end of the calendar month in which the Closing Date occurred and the next succeeding 12-month period and, in either case of clause (i) or (ii), each succeeding 12-month period and in any case ending on the End Date.

“Leasehold Mortgage” means any lease, indenture, mortgage, deed of trust, pledge or other security agreement or arrangement, including a securitization transaction with respect to Parking Fee Revenues and Other Concessionaire Revenues, encumbering any or all of the Concessionaire Interest or the shares or equity interests in the capital of the Concessionaire and any cash reserves or deposits held in the name of the Concessionaire, in each case that satisfies all of the conditions in Section 18.1.

“Leasehold Mortgage Debt” means any bona fide debt (including principal, accrued interest and customary lender or financial insurer, agent and trustee fees, costs, premiums, expenses and reimbursement obligations with respect thereto, and including all payment obligations under interest rate hedging agreements with respect thereto and reimbursement obligations with respect thereto to any financial insurer) or an assignment in connection with a securitization transaction secured by a Leasehold Mortgage relating to the Parking Garage System and granted to a Person pursuant to an agreement entered into prior to the occurrence of

any Adverse Action or City Default giving rise to the payment of amounts for or in respect of termination under this Agreement. For the purposes of determining Parking Garage System Concession Value, Leasehold Mortgage Debt shall not include (i) debt from an Affiliate of the Concessionaire or the Operator, unless such debt is on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith; (ii) any increase in debt to the extent such increase is the result of an agreement or other arrangement entered into after the Concessionaire was aware (or should have been aware, using reasonable due diligence) of the prospective occurrence of an event giving rise to the payment of the Parking Garage System Concession Value; or (iii) any debt with respect to which the Leasehold Mortgagee did not provide the City with notice of its Leasehold Mortgage in accordance in all material respects with the Leasehold Mortgagee Notice Requirements. Notwithstanding anything to the contrary set forth in this definition, except with respect to debt incurred or committed on or prior to the Closing Date, all of which incurred or committed debt shall be deemed to be Leasehold Mortgage Debt, Leasehold Mortgage Debt shall not include any new debt incurred or committed following the Closing Date (it being understood and agreed by the Parties that any capitalization of interest or accretion of principal or other committed increases on any debt incurred or committed on or prior to the Closing Date shall not constitute new debt) unless (A) the Concessionaire has provided the City with a written appraisal (at the Concessionaire's expense and by an independent third party appraiser described under "Parking Garage System Concession Value") of the fair market value of the Concessionaire Interest at the time of the incurrence or commitment of such new debt, and (B) such appraisal confirms the aggregate amount of Leasehold Mortgage Debt after giving effect to the incurrence or commitment of any such new debt is not in excess of eighty percent (80%) of the fair market value of the Concessionaire Interest set forth in such appraisal at the time of incurrence or commitment of such new debt *provided* that any capitalization of interest or accretion of principal or other committed increases on any debt set forth in such appraisal shall constitute Leasehold Mortgage Debt to the extent such debt constitutes Leasehold Mortgage Debt on the date such appraisal is given; and *provided further* that the Parties agree that notwithstanding the requirements of the foregoing sub-clauses (A) and (B), the amount of Consideration paid at Closing shall be deemed to constitute the fair market value of the Concessionaire Interest for a period of six months after the Closing Date and, as such, no appraisal shall be required within such six-month period. The appraisal requirement in the preceding sentence shall not apply to any protective advances made by any Leasehold Mortgagee or advances made by any Leasehold Mortgagee to cure Concessionaire defaults under the Leasehold Mortgage (regardless of whether entered into on or after the Closing Date) or other financing documents of such Leasehold Mortgagee.

"Leasehold Mortgagee" means the holder or beneficiary of a Leasehold Mortgage, including the Lessor in a lease or Leveraged Lease.

"Leasehold Mortgagee Notice Requirements" means the delivery by a holder or beneficiary of a Leasehold Mortgage to the City, not later than 10 Business Days after the execution and delivery of such Leasehold Mortgage by the Concessionaire, of a true and complete copy of the executed original of such Leasehold Mortgage, together with a notice containing the name and post office address of the holder of such Leasehold Mortgage.

"Leasehold Mortgagee's Notice" has the meaning ascribed thereto in Section 18.8(a).

“Lessor Lender” means a Leasehold Mortgagee that has purchased all or a portion of the Concessionaire Interest and leased that interest in the Concessionaire Interest to the Concessionaire.

“Letter of Credit” means an irrevocable, unconditional, commercial letter of credit, in favor of the City, in form and content reasonably acceptable to the City, payable in U.S. dollars upon presentation of a sight draft and a certificate confirming that the City has the right to draw under such letter of credit in the amount of such sight draft, without presentation of any other Document, which letter of credit (i) is issued by a commercial bank or trust company that is a member of the New York Clearing House Association and that has a current credit rating of A+ or better by Standard & Poor’s Ratings Services and an equivalent credit rating by another Rating Agency (or an equivalent credit rating from at least two nationally recognized rating agencies if the named rating agency ceases to publish ratings) (or such other commercial bank or trust company reasonably acceptable to the City and approved by the City prior to the submission of the letter of credit), and (ii) provides for the continuance of such letter of credit for a period of at least one year or as otherwise provided in this Agreement. The office for presentment of sight drafts specified in the Letter of Credit shall be located at a specified street address within the City of Los Angeles. For the avoidance of doubt, the obligations of the account party during the Term to reimburse the issuer for draws under the Letter of Credit may be secured by a Leasehold Mortgage.

“Leveraged Lease” means a lease, sublease, concession, management agreement, operating agreement or other similar arrangement in which the Lessor Lender has borrowed a portion of the purchase price of the interest in the Concessionaire Interest acquired by the Lessor Lender and granted to the lenders of those funds a security interest in that interest.

“Loss” means, with respect to any Person, any loss, liability, damage, penalty, charge or out-of-pocket and documented cost or expense actually suffered or incurred by such Person, but excluding any punitive, special, indirect and consequential damages and any contingent liability until such liability becomes actual.

“Material Adverse Effect” means a material adverse effect on the business, financial condition or results of operations of the Parking Garage System taken as a whole; *provided, however*, that no effect arising out of or in connection with or resulting from any of the following shall be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein; (ii) financial, banking, currency or capital markets fluctuations or conditions (either in the United States or any international market and including changes in interest rates); (iii) lack of use or profitability of the Parking Garage System or any part thereof; (iv) conditions affecting the real estate, financial services, construction or parking garage industries generally; (v) any existing event or occurrence of which the Concessionaire has actual knowledge as of the date of this Agreement; (vi) any action, omission, change, effect, circumstance or condition contemplated by this Agreement or attributable to the execution, performance or announcement of this Agreement or the transactions contemplated hereby; and (vii) negligence, intentional misconduct or bad faith of the Concessionaire or its Representatives.

“Memorandum of Lease” has the meaning ascribed in Section 3.13 and shall be in the form of the attached Schedule 5.

“Month” or “Months” shall be deemed to include the actual number of days in such actual month or months.

“Municipal Code” means the Municipal Code of the City of Los Angeles, as amended.

“New Agreement” has the meaning ascribed thereto in Section 18.5(a).

“New Parking Garage” has the meaning ascribed thereto in Section 20.1.

“Notice” means the notice given in compliance with Sections 21.1 and 21.2.

“Offsets” has the meaning ascribed thereto in Section 11.11(a).

“Operating Agreement” means any material agreement, contract or commitment to which the Concessionaire is a party or otherwise relating to the Parking Garage System Operations as in force from time to time (including any warranties or guaranties), but excluding any Leasehold Mortgage and financing documents related thereto.

“Operating Agreements and Plans” has the meaning ascribed thereto in Section 4.16.

“Operating Standards” means (i) the standards, specifications, policies, procedures and processes that apply to the operation, maintenance, rehabilitation and capital improvements to, the Parking Garage System set forth on Schedule 3, including any plans submitted by the Concessionaire to the City as required therein and (ii) the requirements of the Cinerama Dome Agreement and the Hollywood and Highland Agreement. To the extent that any term or provision set forth in Schedule 3 or incorporated by reference in Schedule 3 conflicts with any term or provision specified in this Agreement, then such term or provision of this Agreement shall govern and shall supersede any such conflicting term or provision.

“Operator” has the meaning ascribed thereto in Section 4.3(a).

“Other Concessionaire Revenues” means the revenues (other than Parking Fee Revenues) derived from the Parking Garage System Operations including all commercial activity such as advertising, rental of commercial space and other commercial activities.

“Parking Fee Revenues” has the meaning ascribed thereto in Section 7.1.

“Parking Garage Purposes” means the use of the Parking Garage System to provide Parking Garage Services to members of the general public and for other purposes then in general use with respect to Comparable Public Parking Garages; *provided* that notwithstanding the foregoing, Concessionaire shall at all times comply with the public purpose requirements of Section 4.24 and the requirements of the Operating Standards.

“Parking Garage Services” means the services to be provided by the Concessionaire as grantee of the concession under this Agreement.

“Parking Garage System” or “Los Angeles Parking Garage System” or “Premises” mean the nine (9) parking garage structures (the “Structures”) as described or depicted on Schedule 1, and any Constructed Parking Garage from and after the date that it is added to the Parking Garage System pursuant to Article 20, all improvements (including paving), improvements, signage (including all parking garage entry and exit signage), and fixtures of any and every kind whatsoever forming a part of and used in connection with such Structures from time to time, but excluding (i) all oil, gas and mineral rights, air rights and development rights and (ii) all improvements, structures, signage and fixtures related to any area within the boundaries of the Parking Garage System that is not included in the Parking Garage System, as the Parking Garage System is described or depicted on Schedule 5 hereto, which areas shall not be conveyed to the Concessionaire pursuant to this Agreement.

“Parking Garage System Assets” means the personal property of the City used in connection with operations at the Parking Garage System set forth on Schedule 4.

“Parking Garage System Bonds” means the \$38,250,000 aggregate outstanding principal amount of Parking System Revenue Bonds (Cinerama Dome Public Parking Project) Series 2000A, of the CRALA and the \$65,230,000 aggregate outstanding principal amount of Parking System Revenue Bonds, Series 1999-A, of the City.

“Parking Garage System Concession Value” means, at any given date, the fair market value of the Concessionaire Interest at the time of the occurrence of the relevant Adverse Action or City Default (but excluding the effect of such Adverse Action or City Default), as determined pursuant to a written appraisal prepared in conformity with the Uniform Standards of Professional Appraisal Practice as set forth by the Appraisal Standards Board by an independent third party appraiser that is nationally recognized in appraising similar assets and that is acceptable to the City and the Concessionaire. If the Parties fail to agree upon such a single appraiser within 30 days after a Party requests the appointment thereof, then the City and the Concessionaire shall each appoint an independent third party appraiser and both such appraisers shall be instructed jointly to select a third independent third party appraiser to make the appraisal referred to above. The City shall pay the reasonable costs and expenses of any appraisal.

“Parking Garage System Contracts” means the agreements to which the City is a party relating to the operations of the Parking Garage System that are set forth on Schedule 2.

“Parking Garage System Operations” means (i) the operation, management, maintenance and repair of the Parking Garage System and (ii) all other actions relating to the Parking Garage System that are performed by or on behalf of the Concessionaire pursuant to this Agreement.

“Parking Garage System Council Action” has the meaning ascribed thereto in the recitals to this Agreement.

“Party” means a party to this Agreement and “Parties” means all of them.

“Permitted City Encumbrance” means, with respect to the Parking Garage System, the encumbrances described in the Preliminary Reports and the following encumbrances incurred after Closing: (i) the Concessionaire Interest; (ii) any Encumbrance that is being contested, or being caused to be contested, by the City in accordance with Section 4.5(b) (but only for so long

as such contestation effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's or other like Encumbrances arising in the ordinary course of business of the Parking Garage System or the City's performance of any of its rights or obligations hereunder, and either (A) not delinquent or (B) which are being contested, or are being caused to be contested, by the City in accordance with Section 4.5(b) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iv) any easement, covenant, condition, right-of-way, servitude, or any zoning, building, environmental, health or safety Law relating to the development, use or operation of the Parking Garage System (or other similar reservation, right and restriction) or other defects and irregularities in the title to the Parking Garage System that do not materially interfere with the Parking Garage System Operations or the rights and benefits of the Concessionaire under this Agreement or materially impair the value of the Concessionaire Interest; (v) any right reserved to or vested in any Governmental Authority (other than the City) by any statutory provision or under common law (it being understood and agreed that nothing in this clause (v) shall limit or otherwise affect the City's obligations or the Concessionaire's rights hereunder); (vi) any other Encumbrance permitted hereunder; (vii) any Encumbrances created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it; (viii) any rights reserved to or vested in the City by any statutory provision (it being understood and agreed that nothing in this definition shall limit or otherwise affect the City's obligations or the Concessionaire's rights hereunder); (ix) any retail, office or commercial leases and operating agreements existing on the date of this Agreement; and (x) any amendment, extension, renewal or replacement of any of the foregoing.

"Permitted Concessionaire Encumbrance" means, with respect to the Concessionaire Interest: (i) any Encumbrance that is being contested in accordance with Section 4.5(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (ii) any (A) lien or security interest for obligations not yet due and payable to a Contractor or other Person, (B) any statutory lien, deposit or other non-service lien or (C) lien, deposit or pledge to secure mandatory statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature, any of which are incurred in the ordinary course of business of the Parking Garage System Operations and either (A) not delinquent or (B) which are being contested by the Concessionaire in accordance with Section 4.5(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's, or other like Encumbrances arising in the ordinary course of business of the Parking Garage System or the Concessionaire's performance of any of its rights or obligations hereunder, and either (A) not delinquent or (B) which are being contested by the Concessionaire in accordance with Section 4.5(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iv) any right reserved to or vested in any Governmental Authority by any statutory provision or under common law; (v) any other Encumbrance permitted hereunder (including any Leasehold Mortgage (and financing statements relating thereto); (vi) liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance, social security and other governmental rules and that do not in the aggregate materially impair the use, value or operation of the Parking Garage System; (vii) any Encumbrances created, incurred, assumed or suffered to exist by the City, or any Person claiming through the City; and (viii) any amendment, extension, renewal or replacement of any of the foregoing. Notwithstanding anything to the

contrary contained herein, no Permitted Concessionaire Encumbrance shall be permitted to attach to the fee simple interest in the Parking Garage System.

“Pershing Square Annual Appropriation” means, with respect to each Fiscal Year, the amount determined pursuant to Section 4.26 to be appropriated from the General Fund of the City to the Recreation and Parks Fund constituting replacement revenues in consideration for the inclusion of the Pershing Square Garage in the Parking Garage System.

“Pershing Square Appropriation Failure” shall have the meaning ascribed thereto in Section 4.26(c).

“Person” means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

“Preliminary Reports” means the preliminary title reports with respect to the Structures.

“Public Parking Garage” means a building or structure (but not a parking lot) located in the City and used by the general public and devoted primarily to the purpose of providing off street spaces for parking motor vehicles.

“Rating Agency” means any of Standard & Poor’s Corporation, Moody’s Investors Service, Inc. or Fitch Ratings, Inc. or any similar entity or any of their respective successors.

“Remaining Amortized Rent” means an amount of money equal to the total value as of the Reversion Date as shown in Schedule 13.

“Replacement Letter of Credit” has the meaning ascribed thereto in Section 16.3(c).

“Representative” means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, Contractor, other Person for whom such Person is at law responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

“Required Coverages” has the meaning ascribed thereto in Section 13.1.

“Reserved Powers” means the exercise by the City of police and regulatory powers with respect to the Parking Garage System, and the regulation of traffic, traffic control and the use of the public way.

“Restoration” has the meaning ascribed thereto in Section 13.19(a).

“Restoration Funds” has the meaning ascribed thereto in Section 13.19(a).

“Reversion Date” means the day immediately following the End Date.



“Securities Act” means the U.S. Securities Act of 1933, as amended.

“Special Provisions” means the terms, provisions and conditions applicable to particular structures as set forth in Schedule 14.

“Structures” means the parking garage structures owned by the City or CRALA and listed in the attached Schedule 1 and any Constructed Parking Garage from and after the date it is added to the Parking Garage System pursuant to Article 20.

“Tax” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, permit fees, capital stock, profits, withholding, social security, unemployment, disability, real property, possessory interest, personal property, parking, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not.

“Term” means the term of the lease and concession referred to in Section 3.1.

“Termination Compensation” has the meaning ascribed thereto in Section 4.1(b).

“Termination Damages” has the meaning ascribed thereto in Section 14.2(a).

“Third Party Claim” means any Claim asserted against an Indemnified Party by any Person who is not a Party or an Affiliate of such a Party.

“Title Commitment” has the meaning ascribed thereto in Section 3.11(a)(iv).

“Title Company” means the Chicago Title Company, which is also the Escrow Company.

“Title Policy” has the meaning ascribed thereto in Section 3.11(a)(iv).

“Transaction” has the meaning ascribed thereto in Section 3.1.

“Transfer” means to sell, convey, assign, lease, sublease, mortgage, encumber, transfer or otherwise dispose of.

“Transferee” has the meaning ascribed thereto in Section 17.1(a).

**Section 2.2. Number and Gender.** In this Agreement words in the singular include the plural and vice versa and words in one gender include all genders.

**Section 2.3. Headings.** The division of this Agreement into articles, sections and other subdivisions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

**Section 2.4. References to this Agreement.** The words “herein,” “hereby,” “hereof,” “hereto” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular portion of it. The words “Article,” “Section,” “paragraph,” “sentence,” “clause” and “Schedule” mean and refer to the specified article, section, paragraph, sentence, clause or schedule of or to this Agreement.

**Section 2.5. References to Any Person.** A reference in this Agreement to any Person at any time refers to such Person’s permitted successors and assignees.

**Section 2.6. Meaning of Including.** In this Agreement, the words “include,” “includes” or “including” mean “include without limitation,” “includes without limitation” and “including without limitation,” respectively, and the words following “include,” “includes” or “including” shall not be considered to set forth an exhaustive list.

**Section 2.7. Meaning of Discretion.** In this Agreement, the word “discretion” or words of like import, City and Concessionaire expressly agree that such Party has the sole and absolute unfettered ability to exercise such discretion, including, without limitation, to grant or withhold approval, either arbitrarily or otherwise, and with or without reason, and neither the opposite Party nor any other Person, entity, or tribunal shall have any right or power to inquire into or review the exercise of such discretion, including, without limitation, the granting or withholding of approval, or the reasons or lack of reasons therefor.

**Section 2.8. Consents and Approvals.** Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an approval or consent by either Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

**Section 2.9. Trade Meanings.** Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

**Section 2.10. Laws.** Unless specified otherwise, references to a Law are considered to be a reference to (i) such Law as it may be amended from time to time, (ii) all regulations and rules pertaining to or promulgated pursuant to such Law, (iii) the successor to the Law resulting from recodification or similar reorganizing of Laws and (iv) all future Laws pertaining to the same or similar subject matter. Nothing in this Agreement shall fetter or otherwise interfere with the right and authority of the City to enact, administer, apply and enforce any Law in its capacity as a governmental agency. Except for Adverse Actions or if compensation or other relief is otherwise available pursuant to applicable Law, the Concessionaire shall not be entitled to claim or receive any compensation or other relief whatsoever as a result of the enactment, administration, application or enforcement of any Law by the City.

**Section 2.11. Currency.** Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

**Section 2.12. Generally Accepted Accounting Principles.** All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and

applied in accordance with generally accepted accounting principles in the United States of America, consistently applied.

**Section 2.13. Calculation of Time.** For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event that began the period and to end at 5:00 p.m. (Los Angeles time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Los Angeles time) on the next Business Day.

**Section 2.14. Approvals, Consents and Performance by the City.**

(a) *Procedures.* Wherever the provisions of this Agreement require or provide for or permit an approval or consent by the City of or to any action, Person, Document, or other matter contemplated by this Agreement, the following provisions shall apply: (i) such request for approval or consent must (1) contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, as reasonably determined by the City, (2) clearly set forth the matter in respect of which such approval or consent is being sought, (3) form the sole subject matter of the correspondence containing such request for approval or consent, and (4) state clearly that such approval or consent is being sought; (ii) such approval or consent shall not be unreasonably or arbitrarily withheld, conditioned or delayed (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or is subject to the discretion of the City); (iii) the City shall, within such time period set forth herein (or if no time period is provided, within 45 days, subject to the City's right to extend such period for an additional 15 days) after the giving of a notice by the Concessionaire requesting an approval or consent, advise the Concessionaire by notice either that it consents or approves or that it withholds its consent or approval, in which latter case it shall (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or is subject to the discretion of the City) set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by the City acting reasonably, of the information or documentation provided; (iv) if the responding notice mentioned in clause (iii) of this Section 2.14(a) indicates that the City does not approve or consent, the Concessionaire may take whatever steps may be necessary to satisfy the objections of the City set out in the responding notice and, thereupon, may resubmit such request for approval or consent from time to time and the provisions of this Section 2.14 shall again apply until such time as the approval or consent of the City is finally obtained; (v) if the disapproval or withholding of consent mentioned in clause (iv) of this Section 2.14(a) is subsequently determined pursuant to Article 19 to have been improperly withheld or conditioned by the City, such approval or consent shall be deemed to have been given on the date of such final determination; and (vi) for the avoidance of doubt, any dispute as to whether or not a consent or approval has been unreasonably withheld, conditioned or delayed shall be resolved in accordance with the provisions of Article 19.

(b) *Authority of the City.* Wherever this Agreement provides that an act is to be taken or performed or approval or consent is to be given by the City, unless specified otherwise in this Agreement or otherwise expressly required by Law, the City Charter, the Municipal Code or the Administrative Code, such act may be taken or performed or approval or

consent may be given by the CAO, without further action by the City Council of the City and the Concessionaire may rely thereon in all respects.

(c) *Approved Documents.* Subject to the other provisions hereof, wherever in this Agreement an approval or consent is required with respect to any document, proposal, certificate, plan, drawing, specification, contract, agreement, budget, schedule, report or other written instrument whatsoever (a “Document”), following such Approval such Document shall not be amended, supplemented, replaced, revised, modified, altered or changed in any manner whatsoever without obtaining a further Approval in accordance with the provisions of this Section 2.14.

(d) *Special Approvals and Consents.* In addition to the approval or consent of the City pursuant to Section 2.14(b), (i) the approval or consent of the Board shall be required with respect to certain matters relating to the Pershing Square Garage and (ii) the approval or consent of the CRALA may be required with respect to certain matters relating to the Cinerama Dome Garage.

**Section 2.15. Schedules and Exhibits.** In the event of any conflict between the terms of this Agreement and the terms of the Schedules and Exhibits attached to this Agreement, the terms of this Agreement shall control.

### ARTICLE 3

#### THE TRANSACTION; CLOSING; CONDITIONS PRECEDENT; COVENANTS

**Section 3.1. Grant of Lease and Concession; Rent; and Term.** Upon the terms and subject to the conditions of this Agreement, effective at the Time of Closing, (a) the Concessionaire shall deliver to be delivered to City through the Escrow Agent the exact amount of \_\_\_\_\_ (\$\_\_\_\_\_) (“Base Rent”) in federal funds; and (b) the City shall (i) demise and lease the Parking Garage System to the Concessionaire free and clear of Encumbrances other than Permitted City Encumbrances, for and during the term (the “Term”) commencing on the Closing Date and expiring on the fiftieth (50<sup>th</sup>) anniversary of the Closing Date (or such later date as required pursuant to the terms of this Agreement to effect a Delay Event Remedy), unless terminated earlier in accordance with the terms of this Agreement, (ii) grant the Concessionaire an exclusive right for and during the Term to provide Parking Garage Services, and in connection therewith to use, possess, operate, manage, maintain and rehabilitate the Parking Garage System and charge and collect Parking Fee Revenues and Other Concessionaire Revenues in connection with the Parking Garage System for Parking Garage Purposes and otherwise in accordance with and pursuant to this Agreement and (iii) and the Concessionaire shall accept each such demise and lease (collectively, the “Transaction”). The rights granted to the Concessionaire to use, possess, operate, manage, maintain and rehabilitate the Parking Garage System and to charge and collect Parking Fee Revenues and other Concession Revenues is subject to (i) the Reserved Powers of the City, (ii) the Cinerama Dome Agreement, (iii) the Hollywood and Highland Agreement and (iv) the terms and provisions of this Agreement. Prior to or at the Closing, the City shall cause the CRALA to execute and deliver to City fee title to the Cinerama Dome Garage.

**Section 3.2. Additional Rent.** All charges other than Base Rent to be paid by the Concessionaire hereunder shall be considered additional rent (“Additional Rent”) for the purposes of this Agreement.

**Section 3.3. Consideration.** The consideration for this Agreement consists of the Base Rent and any Additional Rent, together with the Concessionaire’s compliance with all of the terms and obligations of this Agreement.

**Section 3.4. Closing Deliveries.** At the Time of Closing, each Party shall execute and deliver all assets, agreements, bills of sale, assignments, endorsements, instruments and documents as are reasonably necessary in the opinion of the other Party to effect the Transaction (and in form and substance that are reasonably satisfactory to such other Party).

**Section 3.5. Holdover.** If Concessionaire remains in possession of all or any part of the Parking Garage System after the End Date, with or without the express or implied consent of City, such tenancy shall be from month to month only, and not a renewal hereof or an extension for any further term, and such month to month tenancy shall be subject to every other provision, covenant and agreement contained herein except for Additional Rent. The Additional Rent due with respect to the holdover period shall be 150% of the gross revenues derived from the operation of the Parking Garage System during the same period in the prior year. Acceptance by City of rent after such expiration or earlier termination shall not constitute a consent to holdover hereunder or result in a renewal. The foregoing provisions of this Section 3.5 are in addition to and do not affect right of re-entry or any rights of City hereunder or as otherwise provided by law, and in no way shall affect any right which City may otherwise have to recover damages from Concessionaire for loss or liability incurred by City resulting from such failure by Concessionaire to surrender the Parking Garage System. Nothing contained in this Section 3.5 shall be construed as consent by City to any holding over by Concessionaire, and City expressly reserves the right to require Concessionaire to surrender possession of the Parking Garage System to City as provided in this Agreement upon the expiration or other termination of this Agreement.

**Section 3.6. Surrender of Premises.** Upon the End Date, or earlier termination of this Agreement, the provisions of Section 16.4 shall apply.

**Section 3.7. No Merger; Assignment of Contracts and Leases; Delivery of Keys not a Surrender.** Termination or other surrender of this Agreement by Concessionaire, or a mutual cancellation thereof, shall not work as a merger, and shall, at the option of City, operate as an assignment to it of any or all contracts, licenses, subleases or subtenancies. No act or thing done by City or any agent or employee of City during the Term shall be deemed to constitute an acceptance by City of a surrender of the Public Garage System unless such intent is specifically acknowledged in a writing signed by City. The delivery of keys to the Parking Garage System, or any part thereof, to City or any agent or employee of City shall not constitute a surrender of the Parking Garage System or effect a termination of this Agreement, whether or not the keys are thereafter retained by City, and notwithstanding such delivery, Concessionaire shall be entitled to the return of such keys at any reasonable time upon request until this Agreement shall have been properly terminated.

**Section 3.8. No Relocation Assistance.** Concessionaire acknowledges that it is not entitled to relocation assistance or any other benefits under the California Relocation Assistance Act (Government Code Section 7260, *et seq.*), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C.A. § 4601, *et seq.*), or any other provisions of law upon termination of this Agreement. Concessionaire therefore waives any claim to such assistance or benefits.

**Section 3.9. Closing.**

(a) The closing of the Transaction (the “Closing”) shall take place on the first Business Day immediately after the 60-day period following the date hereof or such other date agreed to in writing by the City and the Concessionaire (the “Closing Date”). The Closing shall be held at the offices of Katten Muchin Rosenman LLP, in the City of Los Angeles, California or such other place agreed to in writing by the City and the Concessionaire. At the Time of Closing, the Concessionaire shall deliver or cause to be delivered to or upon the order of the City same-day funds by wire transfer in the amount of the Base Rent (as adjusted pursuant to Section 3.9(b)) in full payment of the Transaction, and upon receipt of such payment the Transaction shall be effective. Upon receipt of the funds described in the preceding sentence, the City shall immediately cancel and return the Closing LOC, if any, in accordance with the Concessionaire’s instructions.

(b) All revenues, charges, costs and expenses with respect to the Parking Garage System shall be prorated between the City and the Concessionaire as of 11:59 p.m. on the day immediately preceding the Closing Date based upon the actual number of days in the month and a 365-day year and the required payment resulting from such proration shall be added to or subtracted from the Consideration accordingly. If final prorations cannot be made at the Closing for any item being prorated under this Section 3.9(b), then the City and the Concessionaire shall allocate such items on a fair and equitable basis as soon as revenue statements, invoices or bills are available, with final adjustment to be made as soon as reasonably possible after the Closing Date. The City and the Concessionaire shall have reasonable access to, and the right to inspect and audit, the other’s books to confirm the final prorations to the extent permitted by Law.

(c) The Parties may also establish an escrow account with the Escrow Agent to administer any Bid Deposit and to facilitate the transfer contemplated to take place at the Time of Closing.

**Section 3.10. Bid Deposit.**

(a) The City acknowledges receipt from the Concessionaire of a deposit (“Bid Deposit”) pursuant to the Request for Proposals dated \_\_\_\_\_ of either (i) a cash deposit (in the form of either wired same day funds or cashier’s check) (the “Cash Deposit”), or (ii) one or more a Letters of Credit with term of at least 180 days from the Bid Date (the “Closing LOC”) in an aggregate amount equal to \$20,000,000. The Bid Deposit is to be held by the City for the purpose described in Section 3.10(b), and, if the Bid Deposit was in cash and the Transaction closes, to be applied as a credit to the Base Rent described in Section 3.1.

(b) If the City terminates this Agreement pursuant to Section 3.11(d)(iv), then the City shall be entitled to, as applicable (i) retain the Cash Deposit and all interest accrued thereon or, (ii) without notice to the Concessionaire, immediately draw the full amount of the Closing LOC upon presentation of a sight draft and a certificate confirming that the City has the right to draw under the Closing LOC in the amount of such sight draft, and the City shall be entitled to retain all of the proceeds of the Closing LOC, in each case as the sole remedy or right of the City against the Concessionaire hereunder (*provided* that this limitation shall not apply in the event of fraud); *provided, however*, that if this Agreement is terminated for any other reason, the City shall return any Cash Deposit and the interest earned thereon in accordance with the Concessionaire's reasonable instructions, or deliver, in accordance with the Concessionaire's reasonable instructions, the Closing LOC and agree to cancel the Closing LOC, in each case, immediately following any such termination (*provided* that this limitation shall not apply in the event of fraud). Except in cases involving fraud by the Concessionaire, the right of the City to retain the Cash Deposit or to draw the Closing LOC is intended to be, and shall constitute, liquidated damages, and any payment thereof to the City shall terminate the City's rights and remedies in all respects.

(c) At Closing, upon the satisfaction of the conditions set forth in Sections 3.11(a), 3.11(b) and 3.11(c), the Concessionaire shall be entitled to apply the Cash Deposit (including any accrued interest) as a credit against the Base Rent.

### **Section 3.11. Conditions Precedent to Closing; Termination.**

(a) *Conditions for the Benefit of the Concessionaire.* The Concessionaire shall be obliged to complete the Closing only if each of the following conditions has been satisfied in full at or before the Closing, unless waived by the Concessionaire: (i) the representations and warranties of the City set forth in Section 9.1 shall be true and correct on and as of the date hereof and at and as of the Closing with the same force and effect as if made at and as of such time and date except (1) that representations and warranties that by their terms speak only as of the date of this Agreement or some other date need be true and correct only as of such date and (2) for failures of representations and warranties to be true or correct that, individually or in the aggregate, have not had and are not reasonably likely to have a Material Adverse Effect (*provided* that the foregoing Material Adverse Effect qualifier shall not apply to any representations or warranties which themselves, pursuant to this Agreement, are already qualified by a standard of a Material Adverse Effect or a material adverse effect); (ii) the City shall not be in material breach of any material covenant on its part contained in this Agreement which is to be performed or complied with by the City at or prior to the Time of Closing; (iii) the City shall have arranged for the deposit of funds sufficient to provide for the payment of all obligations payable from and secured by the Parking Fee Revenues or the Parking Garage System and outstanding at the Closing (including all outstanding Parking Garage System Bonds) in such a manner that such obligations shall be legally defeased on the Closing Date and no longer treated as outstanding under the documents under which such obligations were issued and are secured and the City shall have provided the Concessionaire evidence reasonably satisfactory to it that any and all security interests and collateral securing any such obligations will be released in full as of the Closing (it being understood that the receipt or acceptance by the Concessionaire of any such evidence shall in no way constitute a waiver of the obligation of the City to indemnify the Concessionaire if any such obligations would finally become payable);

(iv) Title Company shall be irrevocably committed to issue to deliver to the Concessionaire effective at the Closing, at the expense of the Concessionaire, a commitment (the “Title Commitment”) for an ALTA (1992) Owner’s policy, insuring the leasehold interest of the Concessionaire (the “Title Policy”); (v) the City shall have delivered to the Concessionaire the legal opinions of the City Attorney and counsel to the City, in substantially the forms attached hereto as Schedule 9 and Schedule 10, respectively; and (vi) the City shall have executed and delivered the estoppel certificate contemplated by Section 10.2.

(b) *Conditions for the Benefit of the City.* The City shall be obliged to complete the Closing only if each of the following conditions precedent has been satisfied in full at or before the Closing, unless waived by the City: (i) all representations and warranties of the Concessionaire in Section 9.2 shall be true and correct on and as of the date hereof at and as of Closing with the same force and effect as if made at and as of such time and date except (1) that representations and warranties that by their terms speak only as of the date of this Agreement or some other date need be true and correct only as of such date and (2) for failures of representations and warranties to be true or correct that, individually or in the aggregate, have not had and are not reasonably likely to have a material adverse effect on the ability of the Concessionaire to consummate the transactions contemplated hereby or perform its obligations hereunder; (ii) the Concessionaire shall not be in material breach of any material covenant on its part contained in this Agreement which is to be performed or complied with by the Concessionaire at or prior to the Closing; (iii) the Concessionaire shall have delivered to the City a legal opinion of counsel to the Concessionaire, in substantially the form attached hereto as Schedule 11, (iv) the City or the Escrow Agent on behalf of the City has received the Base Rent described in Section 3.1 and the Concessionaire shall have executed and delivered the estoppel certificate contemplated by Section 10.3.

(c) *Mutual Conditions.* The City and the Concessionaire shall be obliged to complete the Closing only if each of the following conditions precedent has been satisfied in full at or before the Closing, unless waived by both the City and the Concessionaire: (i) there shall be no preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority of competent jurisdiction or other legal restraint or prohibition enjoining or preventing the consummation of the Transaction; and (ii) there shall be no action taken, or any Law enacted, entered, enforced or deemed applicable to the Transaction by any Governmental Authority of competent jurisdiction that makes the consummation of the Transaction illegal.

(d) *Termination.* This Agreement may be terminated at any time prior to the Closing:

(i) by mutual consent of the City and the Concessionaire in a written instrument;

(ii) by either the City or the Concessionaire, upon notice to the other Party, if any Governmental Authority other than the City of competent jurisdiction shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the Transaction, and such order, decree, ruling or other action has become final and nonappealable; *provided, however*, that the right to terminate this Agreement under this



Section 3.11(d)(ii) shall not be available to any Party whose failure to comply with any provision of this Agreement has been the cause of, or resulted in, such action;

(iii) by the Concessionaire, upon notice to the City, if any condition set forth in Section 3.11(a) is not satisfied at the Closing; *provided, however*, that the Concessionaire shall not have the right to terminate this Agreement under this Section 3.11(d)(iii) if the Concessionaire's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied; or

(iv) by the City, upon notice to the Concessionaire, if any condition set forth in Section 3.11(b) is not satisfied at the Closing; *provided, however*, that the City shall not have the right to terminate this Agreement under this Section 3.11(d)(iv) if the City's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied.

(e) *Effect of Termination.* In the event of termination of this Agreement prior to Closing by either the City or the Concessionaire as provided in Section 3.11(d), this Agreement shall forthwith become void and there shall be no liability or obligation on the part of the City or the Concessionaire or their respective Representatives, except as set forth in Section 3.10(b), this Section 3.11(e), Article 12, Article 19 and Article 21. In the event that the Concessionaire terminates this Agreement pursuant to Section 3.11(d)(iii) (except for termination resulting from a breach of the representations or warranties contained in the first sentence of Section 9.1(g)(iv) or in Section 9.1(k)), the City will compensate the Concessionaire for up to \$2,000,000 of documented and reasonable out-of-pocket costs incurred by the Concessionaire from and after the date of this Agreement in connection with the transaction contemplated by this Agreement, including the costs associated with the unwinding of any hedging instruments entered into in connection with the prospective financing of the Base Rent. In the event of termination pursuant to Section 3.11(d)(i), (ii) or (iii) or Section 3.12(j), the Bid Deposit and all investment earnings accrued thereon shall be paid to the Concessionaire or the Closing LOC shall be returned undrawn to the Concessionaire marked canceled, as applicable.

### **Section 3.12. Covenants.**

(a) *Cooperation.* From the date hereof up to the Closing, the Parties shall cooperate with each other in order to permit the Closing to be consummated on the Closing Date. Without limiting the generality of the foregoing, the City shall cooperate with Concessionaire in connection with any efforts by the Concessionaire to obtain, at the expense of the Concessionaire, any endorsements or additional coverages with respect to the Title Policy.

(b) *Best Efforts.* From the date hereof up to the Closing, each Party shall use its best efforts (i) to take, or cause to be taken, all actions necessary to comply promptly with all requirements under this Agreement and all legal requirements which may be imposed on such Party to consummate the Transaction as promptly as practicable, and (ii) to obtain (and to cooperate with the other Party to obtain) any Consent of any Governmental Authority or any other public or private third party which is required to be obtained or made by such Party in connection with the consummation of the Transaction. Each Party shall promptly cooperate with

and promptly furnish information to the other in connection with any such efforts by, or requirement imposed upon, any of them in connection with the foregoing.

(c) *Injunctions.* If any Governmental Authority of competent jurisdiction issues a preliminary or permanent injunction or temporary restraining order or other order before the Time of Closing which would prohibit or materially restrict or hinder the Closing, each Party shall use all reasonable efforts to have such injunction, decree or order dissolved or otherwise eliminated or to eliminate the condition that formed the basis for such injunction or order, in each case as promptly as possible and, in any event, prior to the Time of Closing.

(d) *Operation of the Parking Garage System.* From the date hereof up to the Closing, the City shall cause the Parking Garage System to be operated by the City or CRALA, as applicable, in the ordinary course in a manner consistent with past practice, which shall include using all reasonable efforts to preserve the goodwill of the Parking Garage System and to maintain good business relationships with customers, suppliers and others having business dealings with the Parking Garage System, to maintain the Parking Garage System Assets in normal operating condition and repair in accordance with past practice (ordinary wear and tear excepted), to perform (or cause to be performed) in all material respects all of the City's or CRALA's obligations under the Parking Garage System Contracts and to cause the Parking Garage System to be operated in all material respects in accordance with all applicable Laws (except to the extent any non-compliance is being contested in good faith by appropriate proceedings, all to the end that the Parking Garage System as a going concern shall be unimpaired and transferred to the Concessionaire at Closing in a condition not materially worse than the condition as of the date hereof. It is understood and agreed that the City or CRALA, as applicable, shall, up to and including the Closing, be entitled to all of the cash or cash equivalents in or generated by the Parking Garage System (subject to the terms of Section 3.9(b) in the case of any cash or cash equivalents that are paid prior to the Closing but are allocable to periods after the Time of Closing). Without limiting the foregoing, the City shall not, and shall cause the CRALA to not, terminate, amend, modify or agree to a waiver of the terms of any Authorization related to the Parking Garage System after the date of this Agreement and before the Time of Closing without the Concessionaire's consent, which shall not be unreasonably withheld, conditioned or delayed.

(e) *Policies of Insurance.* City is generally self insured but to the extent any insurance policies are in force and applicable to the Parking Garage System, from the date hereof up to the Closing, the City shall continue in force such policies. At the Closing, any such policies of insurance shall terminate and the Concessionaire shall be responsible for obtaining insurance for the Parking Garage System in accordance with the terms hereof.

(f) *Disclosure of Changes.*

(i) From the date hereof up to the Closing, each Party shall immediately disclose in writing to the other Party any matter which becomes known to it which is inconsistent in any material respect with any of the representations or warranties contained in Article 9. No such disclosure, however, shall cure any misrepresentation or breach of warranty for the purposes of Section 3.11 or Article 12; and

(ii) From the date hereof up to the Closing, the City may supplement or amend the Schedules hereto, including one or more supplements or amendments to correct any matter which would constitute a breach of any representation, warranty, covenant or obligation contained herein, including any amendment or supplement to Schedule 1 to make any necessary changes in relation to, pursuant to or in accordance with the delivery of the Title Commitment by the City to the Concessionaire pursuant to Section 3.11(a)(iv)). No such supplement or amendment shall be deemed to cure any breach for purposes of Section 3.11(a) or, subject to the following sentence, for any other purpose. Notwithstanding the previous sentence, if the Closing occurs, then, subsequent to the Closing, any such supplement or amendment with respect to any representation or warranty contained in Sections 19.1(d), 9.1(g)(ii), 9.1(i), 9.1(j) or 9.1(k) relating to a matter arising after the date hereof will be effective to cure and correct for all purposes any inaccuracy in, or breach of, any such representation or warranty which would exist if the City had not made such supplement or amendment, and all references to any Schedule hereto which is supplemented or amended as provided in this Section 3.12(f)(ii) shall (subject to the foregoing limitation) for all purposes after the Closing be deemed to be a reference to such Schedule as so supplemented or amended.

(g) *Access to Information.* From the date hereof up to the Closing, but subject to confidentiality obligations binding on the City with respect to any Person (*provided* that the City has disclosed to the Concessionaire the existence of the applicable agreement or other document that is subject to such confidentiality limitation in order to enable the Concessionaire to evaluate the materiality and significance of the lack of disclosure based on such limitations) the City shall (i) give, the Concessionaire and its Representatives reasonable access during normal business hours and on reasonable notice to the Parking Garage System, subject to the City's policies and regulations regarding safety and security and any other reasonable conditions imposed by the City, (ii) permit the Concessionaire and its Representatives to make such inspections as they may reasonably request (including any environmental assessments of the Parking Garage System and any plats of survey thereof) and (iii) to furnish the Concessionaire and its Representatives with such financial and operating data and other information that is available with respect to the Parking Garage System as they may from time to time reasonably request. The Concessionaire shall hold and will cause its Representatives to hold in strict confidence all documents and information concerning the Parking Garage System to the extent and in accordance with the terms and conditions of the confidentiality agreement among the City and \_\_\_\_\_, dated as of \_\_\_\_\_.

(h) *Transition.* From the date hereof up to the Closing, the Parties shall cooperate with each other to ensure the orderly transition of control, custody, operation, management, maintenance and rehabilitation of, and the collection Parking Fee Revenues and Other Concessionaire Revenues in connection with, the Parking Garage System at the Closing. Not less than 60 Days prior to the Closing Date the Concessionaire shall submit to the City, for the Approval of the City, a transition plan for each of the Structures.

(i) *City Employees.* Concessionaire shall comply with Section 11.2(p) of this Agreement (Service Contract Worker Retention Ordinance) as to the employees under contracts for the management of the Structures. Concessionaire shall also comply with Section 11.2(p) as to all City employees assigned to work and working at the Parking Garage System at any time during the thirty (30) day period prior to the Closing. Prior to the Time of Closing, the

Concessionaire shall offer (or shall cause the Operator to offer) employment to all City employees engaged in the provision of Parking Garage Services who are in a bargaining unit recognized in a collective bargaining agreement with the City. The Concessionaire accepts (and shall cause the Operator to accept) all of the provisions of each such collective bargaining agreement and agrees (and shall cause the Operator to agree) to be bound by such provisions for the remaining Term of each such collective bargaining agreement.

(j) *Casualty Loss Prior to Closing.* If prior to the Time of Closing, a material casualty loss, destruction or damage to any part of the Parking Garage System has occurred and this Agreement has not been terminated under Section 3.11(d), then the City at its option shall (i) promptly and diligently repair and rebuild the affected parts of the Parking Garage System to restore them to at least the same condition in which they were before the occurrence of such casualty loss, destruction or damage, *provided* that if the affected parts of the Parking Garage System cannot prior to the Closing Date be repaired or rebuilt to restore them to at least the same condition in which they were before the occurrence of such casualty loss, destruction or damage, the City shall make such repairs or restoration as can reasonably be completed prior to the Closing Date and prior to the Closing Date shall provide to the Concessionaire a plan for the completion of such repairs or restoration following the Time of Closing at the City's expense subject to the Concessionaire's reasonable approval and shall then complete such repairs or restoration in accordance with such plan, or (ii) authorize the Concessionaire to repair and rebuild the affected parts of the Parking Garage System, in which event the City shall assign to the Concessionaire all insurance and other proceeds payable by third-party insurers or other third parties to the City in respect of such casualty loss, destruction or damage and enforce (with the cooperation of the Concessionaire) all of its rights, remedies and privileges under any applicable insurance policies with third-party insurers, *provided* that to the extent that such proceeds are not sufficient to repair and rebuild the affected parts of the Parking Garage System and restore such affected parts to at least the same condition in which they were before the occurrence of the casualty loss, destruction or damage then (A) either the City or the Concessionaire may terminate this Agreement prior to the Closing Date or (B) in the event neither Party terminates this Agreement pursuant to clause (A), the City shall reimburse the Concessionaire for the difference upon such terms as are agreed to by the City and the Concessionaire. The City shall pay the Concessionaire all Concession Compensation with respect to any repair or restoration required by this Section 3.12(j).

(k) *Parking Garage System Contracts.* The Parking Garage System Contracts are listed on Schedule 2. At least 40 days prior to the Closing Date, the Concessionaire shall designate any such Parking Garage System Contracts as Parking Garage System Contracts to be assigned to the Concessionaire on the Closing Date. Following the Concessionaire's designation, the City shall designate any remaining Parking Garage System Contracts that are not to be assigned to the Concessionaire as Parking Garage System Contracts to be retained by the City or CRALA following the Closing Date (so long as such retained Parking Garage System Contracts do not interfere with the operation of the Parking Garage System). All other Parking Garage System Contracts shall be terminated by the City or CRALA, as applicable, effective at the Time of Closing. Any liability under or related to any Parking Garage System Contracts retained by the City or CRALA following the Closing Date or terminated by the City or CRALA on the Closing Date (including any liability resulting from the termination thereof), and any liability under or related to any Parking Garage System Contracts that is assigned to the

Concessionaire on the Closing Date attributable to periods prior to the effectiveness of the assignment thereof to the Concessionaire, shall be solely for the account of the City or CRALA.

**Section 3.13. Memorandum of Lease.** At the Time of Closing, the Parties shall execute and deliver a Memorandum of Lease (the “Memorandum of Lease”) in the form attached hereto as Schedule 5, which shall be recorded with the Los Angeles County Recorder’s Office. To the extent this Agreement is amended with respect to the Term, leased property or other material matters set forth in the recorded Memorandum of Lease, the Parties shall execute, deliver and record an amendment to the recorded Memorandum of Lease reflecting such changes. Concessionaire understands that this Agreement will be a public document.

**Section 3.14. Intended Treatment for Federal and State Income Tax Purposes.** This Agreement is intended for United States federal and state income Tax purposes only to be a sale of the Parking Garage System and the Parking Garage System Assets to the Concessionaire and the grant to the Concessionaire of a right within the meaning of sections 197(d)(1)(D) and (F) of the Internal Revenue Code of 1986, as amended, and sections 1.197-2(b)(8) and (10) of the Income Tax Regulations thereunder, for and during the Term to provide Parking Garage Services. The City and the Concessionaire agree that the Consideration will be allocated among the assets that the Concessionaire is obtaining the use of pursuant to this Agreement using the residual allocation provisions of Section 1060 of the Internal Revenue Code of 1986 as provided therein.

## **ARTICLE 4 TERMS OF THE LEASE AND CONCESSION**

### **Section 4.1. Quiet Enjoyment; Present Condition.**

(a) *Quiet Enjoyment.* The City agrees that, the Concessionaire shall, at all times during the Term, be entitled to and shall have the quiet possession and enjoyment of the Parking Garage System and the rights and privileges granted to the Concessionaire hereunder, subject to (i) the Reserved Powers, (ii) the City’s remedies upon a Concessionaire Default, (iii) the Cinerama Dome Agreement, (iv) the Hollywood and Highland Agreement, and (v) the provisions contained in this Agreement. The City and the Concessionaire acknowledge that the Concessionaire’s rights to use the Parking Garage System as public parking garages and charge parking fees are subject to the right of the City, in accordance with the terms of this Agreement, to monitor compliance with this Agreement to ensure that the Parking Garage System is used and operated as required by this Agreement. Unless expressly so stated in writing by the City, any entry by the City, or any of its Representatives onto the Parking Garage System required or permitted under this Agreement shall not constitute a reentry, trespass or a breach of the covenant for quiet enjoyment contained in this Agreement. The City shall, at all times during the Term, defend its title to the Parking Garage System, the Concessionaire’s leasehold interest in and to the Parking Garage System and the rights granted to the Concessionaire hereunder, or any portion thereof, against any Person claiming any interest adverse to the City or the Concessionaire in the Parking Garage System, or any portion thereof, except where such adverse interest arises as a result of the act, omission, negligence, misconduct or violation of Law of the Concessionaire, its Affiliates or their respective Representatives.

(b) *Present Condition.* Subject to Section 3.12(j) and except as specifically set forth herein, the Concessionaire understands, agrees and acknowledges that the Concessionaire (i) by the execution of this Agreement, agrees to accept the Parking Garage System “AS IS” at the Time of Closing and (ii) has inspected the Parking Garage System and is aware of its condition and acknowledges that the City neither has made nor is making any representation or warranty, express or implied, regarding the condition of the Parking Garage System (or any part thereof) or its suitability for the Concessionaire’s proposed use.

#### **Section 4.2. Parking Garage System Operations.**

(a) *Use.* Except as otherwise specifically provided herein, including without limitations the public purpose requirements of Section 4.24, the Concessionaire shall, at all times during the Term, (i) be responsible for all aspects of the Parking Garage System Operations; (ii) cause the Parking Garage System Operations to be performed in accordance with the provisions of this Agreement and applicable Law (*provided, however*, that the Concessionaire or the Operator may contest the application of any Law by appropriate proceedings) and (iii) be responsible for the management and control and the continuous rental of any non-parking retail, commercial or rental units that are part of the street facade of any Structure. The Concessionaire shall, at all times during the Term, cause the Parking Garage System to be open and operational in accordance with the Operating Standards, for use by the public for Parking Garage Purposes, except as required by applicable Law, as necessary to comply with any other requirement of this Agreement (including closures related to the performance of maintenance or repair activities as required by the Operating Standards) or as necessary for temporary closures required to address emergencies, public safety or temporary events.

(b) *Costs and Expenses.* Except as otherwise specifically provided herein, the Concessionaire shall, at all times during the Term, pay or cause to be paid all costs, expenses, and taxes relating to the Parking Garage System Operations as and when the same are due and payable.

(c) *Assumed Liabilities.* The Concessionaire agrees to assume and discharge or perform when due, all debts, liabilities and obligations whatsoever relating to the Parking Garage System or the Parking Garage System Operations that occur, arise out of or relate to, or are based on facts or actions occurring, during the Term, but only to the extent such debts, liabilities or obligations do not arise from or relate to any breach by the City of any covenant, representation or warranty set forth in this Agreement (collectively, the “Assumed Liabilities”); *provided, however*, that the Assumed Liabilities shall not include, and the City shall perform or cause to be performed and discharge or cause to be discharged as and when due, any debts, liabilities and obligations (i) with respect to the City’s obligations under this Agreement, (ii) arising out of Parking Garage System Operations (including with respect to any Parking Garage System Contracts) prior to Closing, (iii) relating to any Parking Garage System Bonds or any other debt or obligations related to the Parking Garage System and incurred by the City or the defeasance thereof and (iv) under any Environmental Law arising out of or relating to the ownership, operation or condition of the Parking Garage System at any time prior to the Closing or any Hazardous Substance or other contaminant that was present or released on or migrated or escaped or was released from the Parking Garage System or otherwise existed at any time prior to the Closing and including (A) the abatement or removal of any asbestos present at the Closing

from the Parking Garage System as required by any Environmental Law in connection with the repair, maintenance or construction activities permitted or required to be performed under this Agreement and (B) any known or unknown environmental conditions and any pre-existing conditions prior to the Closing the manifestation of which occurs following the Closing (collectively, the “Excluded Liabilities”).

#### **Section 4.3. Operator.**

(a) *Engagement.* The Parking Garage System Operations shall, at all times during the Term, be under the direction and supervision of an active operator with the expertise, qualifications, experience, competence, skills and know-how to perform the Parking Garage System Operations in accordance with this Agreement (an “Operator”) who may be the Concessionaire itself or its Affiliate. Except as provided in Section 3.12(h), the Operator on the first day of the Term shall be the Concessionaire unless the Concessionaire has designated another Person to be the Operator in the response to the request for Parking Garage System concessionaire qualifications delivered by or on behalf of the Concessionaire to the City in connection with the execution of this Agreement. The Concessionaire shall not engage or appoint a replacement Operator unless the City has Approved such Operator (based upon a determination in accordance with Section 4.3(b)) or such Operator and replacement Operator are Affiliates of the Concessionaire in which case no such Approval shall be required; *provided, however*, that a Change in Control of an Operator shall be deemed to be the appointment of a replacement Operator subject to the City’s Approval. The Operator shall at all times be subject to the direction, supervision and control (by ownership, contract or otherwise) of the Concessionaire, and any delegation to an Operator shall not relieve the Concessionaire of any obligations, duties or liability hereunder. The Concessionaire shall immediately notify the City upon the termination or resignation of an Operator. Any agreement between the Concessionaire and any Operator shall by its terms terminate without penalty at the election of the City or the Operator upon three Business Days’ notice to such Operator or the City, as applicable, upon the termination of this Agreement. The Operator shall have no interest in or rights under this Agreement or the Parking Garage System unless the Operator is the Concessionaire itself.

(b) *Approval.* The Approval of a proposed replacement Operator may be withheld if the City reasonably determines that the engagement of such proposed Operator is prohibited by applicable Law or such proposed Operator is not capable of performing the Parking Garage System Operations in accordance with this Agreement, which determination shall be based upon and take into account the following factors: (i) the financial strength and integrity of the proposed Operator, its direct or indirect beneficial owners and each of their respective Affiliates; (ii) the experience of the proposed Operator in operating parking garages and performing other projects; (iii) the background and reputation of the proposed Operator, its direct or indirect beneficial owners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person’s past or present performance on other projects); (iv) the ability of the Operator to meet the requirements then generally applied by the City to applicants for a license to operate a public garage; and (v) the Operator’s history with the City, CRALA, and their affiliates in paying taxes and other obligations to, and complying with any contracts with, the City, CRALA and their affiliates. Any disputes between the City and the Concessionaire with respect to the appointment or

replacement of the Operator shall be settled in accordance with the provisions of Article 19. Notwithstanding the foregoing, in the event that, upon termination or resignation of the Operator, a replacement Operator acceptable to the City has not been appointed, the Concessionaire shall have the right to appoint, for a period not to exceed six months, an interim Operator to operate the Parking Garage System until a replacement Operator can be selected pursuant to this Agreement. This interim Operator may be selected without Approval by the City so long as the Concessionaire reasonably determines that the interim Operator meets the following criteria: (A) the interim Operator has experience in operating public parking facilities substantially similar to the Parking Garage System and (B) the interim Operator (or any guarantor of its obligations) has a tangible net worth reasonably sufficient to carry out its obligations and responsibilities as Operator. The Concessionaire shall not extend the term of any interim Operator beyond six consecutive months or appoint a successor interim Operator after such six-month period.

(c) *Removal.* If the Operator (i) is delinquent in the payment of any tax, fee or other monetary obligation due and payable to the City or its agencies or departments or (ii) fails to operate the Parking Garage System in compliance with the Operating Standards and Section 4.24, and after ten days written notice from the City to the Operator and Concessionaire, fails to cure such delinquency or correct in a timely manner any deficiencies in such operation of the Parking Garage System, the City may direct that the Concessionaire remove the Operator pursuant to a motion adopted by the City Council. The City shall provide the Concessionaire and the Operator with no less than 20 days prior written notice of the time, date, place and subject matter of the meeting of the City Council at which the removal motion will be considered and both the Concessionaire and the Operator shall be afforded a reasonable opportunity to present testimony and evidence at such meeting and to present to the City written objections to any proposed removal determination. Any motion adopted by the City Council shall contain written determinations as to the reasons for removal of the Operator. This Section 4.3(c) is not a limitation on other remedies granted to the City under this Agreement.

(d) *Police Permit.* The Operator and any replacement Operator shall, on the Closing date and at all times during the term of this Agreement, be in compliance with Municipal Code Section 103.202, which requires a Police Permit for each Structure and the posting of a bond.

(e) *Tax or Payment Delinquency.* Notwithstanding the approval standard in Section 4.3(b), the City reserves the right in its sole discretion to disapprove any Operator or proposed replacement Operator that is then, or at any time in the ten years immediately prior to the date such approval is requested was, delinquent in the payment of any tax, fee or other monetary obligation due and payable to the City or its agencies or departments.

#### **Section 4.4. Authorizations; Qualifications.**

(a) *Compliance.* The Concessionaire shall obtain, comply with, promptly renew and maintain in good standing all Authorizations; *provided, however*, that if the Concessionaire is, at any time during the Term, required to obtain any Authorization from a Governmental Authority that the City was not required to obtain in connection with its operation of the Parking Garage System prior to the Time of Closing, the City shall use its reasonable



efforts to assist the Concessionaire in obtaining such Authorization. Nothing in this Agreement, including Section 3.1, shall be deemed to waive or modify any Authorization required to be obtained by the Concessionaire or any other Person in connection with the Parking Garage System, the Parking Garage System Operations or any activities generating Parking Fee Revenues or Other Concessionaire Revenues.

(b) *Qualifications.* The Concessionaire shall, at all times during the Term, maintain in full force and effect its existence and all qualifications necessary to carry on its business pertaining to the Parking Garage System Operations, including all rights, licenses, privileges and qualifications required in connection with the Parking Garage System Operations. Nothing contained in the foregoing shall be deemed to prohibit or limit the Concessionaire from changing its organizational form or status (including a change from a limited liability company to a corporation or a limited partnership), subject to the terms of Section 17.1.

#### **Section 4.5. No Encumbrances.**

(a) *By the Concessionaire.* The Concessionaire shall not do any act or thing that will create any Encumbrance (other than a Permitted Concessionaire Encumbrance) against the Parking Garage System and shall promptly remove any Encumbrance (other than a Permitted Concessionaire Encumbrance) against the Parking Garage System, unless the Encumbrance came into existence as a result of an act of or omission by the City or a Person claiming through it which in turn was not caused by an act or omission of the Concessionaire. The Concessionaire shall not be deemed to be in default hereunder if the Concessionaire continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance, *provided* that the Concessionaire has given (i) advance notification to the City that it is the intent of the Concessionaire to contest the validity or collection thereof or cause such contest and (ii) unless a bond or other security is provided in connection with such proceedings, a satisfactory indemnity to the City or deposit with the City a Letter of Credit, title insurance endorsement (or similar instrument), indemnity bond, surety bond, cash or Eligible Investment reasonably satisfactory to the City in an amount equal to the amount of the claim or Encumbrance, plus such interest and penalties, court costs, or other charges as the City may reasonably estimate to be payable by the Concessionaire at the conclusion of such contest or as is required to provide insurance over any potential Encumbrance; *provided, however*, that in the event such Letter of Credit, cash or Eligible Investment shall be so deposited, the same shall be held until such claim or other imposition shall have been released and discharged and shall thereupon be returned to the Concessionaire, less any amounts reasonably expended by the City to procure such release or discharge, or any loss, cost, damage, reasonable attorneys' fees or expense incurred by the City by virtue of the contest of such Encumbrance.

(b) *By the City.* The City shall not do any act or thing that will create any Encumbrance (other than a Permitted City Encumbrance) against the Parking Garage System and shall promptly remove any Encumbrance (other than a Permitted City Encumbrance) against the Parking Garage System that came into existence as a result of an act of or omission by the City or a Person claiming through the City. The City shall not be deemed to be in default hereunder if the City continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to

prevent the foreclosure of any such Encumbrance, *provided* that the City has given advance notification to the Concessionaire that it is the intent of the City to contest the validity or collection thereof or cause such contest.

(c) *Removal.* Each Party, if requested by the other Party and at such other Party's costs and expense, shall use its reasonable efforts to assist such other Party in attempting to remove any Encumbrance that has come into existence as a result of an act of or omission by such other Party; *provided* that nothing herein shall obligate the City to waive, modify or otherwise limit or affect the enforcement by the City of any applicable Law with respect to the Parking Garage System or any activities generating Parking Fee Revenues or Other Concessionaire Revenues.

**Section 4.6. Single Purpose Covenants.** The Concessionaire shall, at all times during the Term, (i) be formed and organized solely for the purpose of owning the Concessionaire Interest and using, possessing, leasing, operating, collecting Parking Fee Revenues and Other Concessionaire Revenues with respect to and otherwise dealing with the Parking Garage System (and carrying out other activities permitted pursuant to this Agreement (and any activities reasonably incidental thereto)), (ii) not engage in any business unrelated to clause (i) above, (iii) not have any assets other than those related to its activities in accordance with clauses (i) and (ii) above, (iv) except as appropriate for Tax reporting purposes, maintain its own separate books and records and its own accounts, (v) observe all corporate, limited partnership or limited liability company, as applicable, formalities and do all things necessary to preserve its existence, (vi) not guarantee or otherwise obligate itself with respect to the debts of any other Person, (vii) except as expressly permitted hereby or by any Leasehold Mortgage or in connection in the ordinary course of business of the Parking Garage System, not pledge its assets for the benefit of any other Person and (viii) maintain adequate capital in light of its contemplated business operations.

**Section 4.7. Rights of the City to Access and Perform Work on the Parking Garage System.**

(a) *Reservation of Rights.* The City reserves (for itself and any of its Representatives) and shall, at all times during the Term, have the right to enter the Parking Garage System and each and every part thereof at all reasonable times and upon reasonable prior notice to perform each of the following at the City's own cost and expense (other than if pursuant to clause (ii) or (iii)):

(i) to inspect the Parking Garage System or determine whether or not the Concessionaire is in compliance with its obligations under this Agreement or applicable Law pursuant to Section 8.3;

(ii) if a Concessionaire Default then exists, to make any necessary repairs to the Parking Garage System and perform any work therein pursuant to Section 16.1(b)(iii);

(iii) in the event of an emergency or danger that threatens to cause injury to individuals (or damage to property) or to impair the continuous operation of the Parking

Garage System as public parking garages and if the Concessionaire is not then taking all necessary steps to rectify or deal with said emergency or danger, to take actions as may be reasonably necessary to rectify such emergency or danger (in which case, no notice shall be necessary);

(iv) as may be necessary to design, construct, operate, service, manage, maintain, repair, rehabilitate or replace any Affected Property owned or controlled by the City that is located within or adjacent to the Structures, including, without limitation, congestion, management equipment and signage, utilities and storage and maintenance facilities located within portions of the Affected Property that are located within the Structures;

(v) to design, construct, operate, service, manage, maintain, repair, rehabilitate or replace any Affected Property, other than as provided in clause (v);

(vi) to (A) install, design, manage, maintain, repair and rehabilitate any existing or future utilities or similar services (whether provided by the City or third parties at the City's instruction) in, on, under, across, over or through the Parking Garage System (including water and sewer lines, power transmission lines, fiber optic cable, other communications and other equipment), (B) grant easements and rights on, over, under or within the Parking Garage System for the benefit of suppliers or owners of any such utilities or services and (C) use the Parking Garage System in connection with any such installation, design, management, maintenance, repair or rehabilitation (*provided* that notwithstanding the foregoing clauses (A), (B) and (C), the Concessionaire shall have the right, at all times during the Term, to install, design, manage, maintain, repair and rehabilitate utilities or other services for its own account (and not for lease, resale or service to third parties) to the extent that the said utilities or services are necessary for the Parking Garage System Operations); and

(vii) to, solely in accordance with the terms hereof, do any other act or thing that the City may be obligated to do or have a right to do under this Agreement.; *provided, however*, that the City shall not be obligated to make any payments to the Concessionaire for such access and the City shall use reasonable efforts to minimize interference with the Parking Garage System Operations in connection with any entry on the Parking Garage System pursuant to this Section 4.7(a). The City shall pay to the Concessionaire the Concession Compensation, after demand by the Concessionaire, resulting from any damage resulting from entry to or action on the Parking Garage System pursuant to clauses (iv), (v), (vi), and (vii).

(b) *Access Rights.* The City and any of their Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the City, during the progress of any work referred to in this Section 4.7 shall, subject to the Concessionaire's right to demand payment of the Concession Compensation referred to in Section 4.7(a), have all necessary easement and access rights and may keep and store at the Parking Garage System all necessary materials, tools, supplies, equipment and vehicles, in a reasonably neat and orderly fashion in compliance with all Laws and so as to not unreasonably interfere with the Concessionaire's conduct of business at the Parking Garage System. To the extent that the City undertakes work or repairs in the Parking Garage System under this Section 4.7 or any other provision of this Agreement, such work or repairs shall be commenced and diligently completed in a good and workmanlike manner, in accordance with any applicable Operating Standards and

in such a manner as not to unreasonably interfere with the conduct of business in or use of such space.

(c) *Effect of Reservation.* Any reservation of a right by the City and any of their Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the City to enter the Parking Garage System and to make or perform any repairs, alterations, Restoration or other work in, to, above, or about the Parking Garage System which is the Concessionaire's obligation pursuant to this Agreement, shall not be deemed to (i) impose any obligation on the City to do so, (ii) render the City liable to the Concessionaire or any other Person for the failure to do so or (iii) relieve the Concessionaire from any obligation to indemnify the City as otherwise provided in this Agreement. Nothing in this Agreement shall impose any duty upon the part of the City to do any work required to be performed by the Concessionaire hereunder and performance of any such work by the City and any of their Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the City shall not constitute a waiver of the Concessionaire's default in failing to perform the same.

#### **Section 4.8. Coordination.**

(a) *Utility Coordination.* The Concessionaire shall be responsible for coordinating or ensuring the coordination of all Parking Garage System Operations with utilities and Persons having service lines, pipelines, transmission lines and other equipment, cables, systems and other apparatus in, on, under, over or adjacent to the Parking Garage System. The Concessionaire shall cause provision to be made for the removal or temporary or permanent relocation and restoration of utilities and other services and any lines, equipment, cables, systems and other apparatus that intersect, interfere with, interface with or otherwise affect the Parking Garage System Operations and shall arrange for temporary rights of entry and access to utilities and other services to be made available that are necessary in connection with the Parking Garage System Operations or as may exist under this Agreement or applicable Law; *provided* that the City shall cooperate with the Concessionaire with respect to its obligations under this Section 4.8(a).

(b) *Affected Property Coordination.* The Concessionaire shall be responsible for coordinating or ensuring the coordination of all Parking Garage System Operations with Affected Property. The Concessionaire shall arrange for temporary right-of-entry and access to the property of all relevant Governmental Authorities or other Persons as may be necessary in connection with the Parking Garage System Operations or as may exist under this Agreement or applicable Law. Neither the City nor the Concessionaire shall block or otherwise obstruct access to ventilation or air circulation systems of any Affected Property or the Parking Garage System, as the case may be, or interfere with any such access to ventilation or air circulation systems during the Term, other than on an emergency or temporary basis in connection with the activities contemplated by this Agreement. The City shall cooperate with the Concessionaire with respect to its obligations under this Section 4.8(b).

(c) *No Interference.* The Parties understand and agree that nothing in the foregoing clauses (a) and (b) is in any way intended to interfere with the normal operations of the Parking Garage System by the Concessionaire, and the City shall cooperate with the

Concessionaire in minimizing any effect that the obligations of the Concessionaire under such clauses (a) and (b) may have on the Parking Garage System Operations and the Other Concessionaire Revenues and Parking Fee Revenues.

**Section 4.9. No Entry on City Property.** Except (a) in the case of an emergency (and then only to the extent necessary to avoid injury or death to individuals or damage to property), (b) as may be reasonably necessary to operate the Parking Garage System pursuant to the Operating Standards and otherwise as contemplated by this Agreement and (c) for limited access necessary for the Concessionaire's performance of its obligations hereunder or its compliance with applicable Laws that does not interfere with the City's use or operation of such other properties in any material respect, the Concessionaire shall not enter upon any property of the City adjacent to, above, under or within the boundaries of the Parking Garage System, in connection with the Parking Garage System Operations without the prior Approval of the City. For the avoidance of doubt, the Parties acknowledge and agree that nothing contained in this Section 4.9 shall be deemed to prevent or limit the Concessionaire from entering property of the City that is open to the public (including City streets).

**Section 4.10. Payment of Taxes.** Except as otherwise provided in this Section 4.10, the Concessionaire shall pay when due all Taxes payable during the Term in respect of the operations at, occupancy of, or conduct of business in or from the Parking Garage System, including any parking Taxes imposed on customers of the Parking Garage System pursuant to (i) Sections 21.15.1 through 21.15.14 of the Municipal Code, which requires the Concessionaire to collect a parking tax from customers of the Parking Garage System and remit the tax to the City, (ii) as required by the applicable Law. The Concessionaire shall have the right to contest in good faith the validity or amount of any Taxes which it is responsible to pay under this Section 4.10, *provided* that (i) the Concessionaire has given prior notice to the City of each such contest, (ii) no contest by the Concessionaire may involve a reasonable possibility of forfeiture or sale of the Parking Garage System, and (iii) upon the final determination of any contest by the Concessionaire, if the Concessionaire has not already done so, the Concessionaire shall pay any amount found to be due, together with any costs, penalties and interest.

**Section 4.11. Possessory Interest Tax.** By executing this and accepting the benefits thereof, a property interest may be created known as "possessory interest" and such property interest will be subject to property taxation. Concessionaire, as the party in whom the possessory interest is vested, may be subject to the payment of the property taxes levied upon such interest. Concessionaire acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

**Section 4.12. Los Angeles City Business Tax.** Concessionaire represents that it will obtain and will hold from the time of Closing through the End Date, the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the Term of this Agreement, Concessionaire shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

**Section 4.13. Utilities.** The Concessionaire shall pay when due all charges (including all applicable Taxes and fees) for gas, electricity, light, heat, power, telephone, water and other

utilities and services used in the Parking Garage System Operations or supplied to the Parking Garage System during the Term. Upon request of the City, the Concessionaire shall forward to the City, within 15 days following the respective due dates, official receipts, photocopies thereof, or other evidence satisfactory to the City, acting reasonably, of the payment required to be made by the Concessionaire in accordance with this Section 4.13. The City shall offer to furnish to the Concessionaire for purposes of the Parking Garage System Operations any utilities that the City is voluntarily and directly furnishing to other commercial users in the immediate vicinity of the Parking Garage System at such time, on rates and other terms as are applicable to other similarly situated commercial users of such utilities, as may be amended from time to time; *provided, however*, that the City shall have no obligation or responsibility to furnish the Concessionaire with any other utilities and makes no representations or warranties as to the availability of any utilities. The City does not warrant that any utility services will be free from interruptions caused by war, insurrection, civil commotion, riots, acts of God, government action, terrorism, repairs, renewals, improvements, alterations, strikes, lockouts, picketing, whether legal or illegal, accidents, inability to obtain fuel or supplies or any other causes, and any such interruption of utility services in and of itself shall never be deemed an Adverse Action or an eviction or disturbance of the Concessionaire's use and possession of the Parking Garage System or any part thereof, or render the City liable to the Concessionaire for damages or, unless the same constitutes a Delay Event, relieve the Concessionaire from performance of the Concessionaire's obligations under this Agreement.

**Section 4.14. Negotiations with Governmental Authorities.** Prior to entering into any agreement with any Governmental Authority in connection with the Parking Garage System Operations (a "Government Agreement") that extends or could extend beyond the Term (unless such extension is subject to a right by the City to terminate such agreement within three Business Days' notice or less) or pursuant to which the City may incur any liability whatsoever thereunder, the Concessionaire shall submit such Government Agreement for Approval by the City (which Approval may be withheld, delayed or otherwise conditioned in the discretion of the City) prior to the execution and delivery thereof (except with respect to Government Agreements the absence of which may cause the Concessionaire or Parking Garage System Operations to fail to be in compliance with applicable Law or this Agreement, in which case the Concessionaire may enter into such Government Agreement upon notice to the City *provided* that the Concessionaire indemnifies the City as the case may be, for any Losses relating thereto). If the Concessionaire wishes the City to be a party to a Government Agreement, in the place and stead of, or in addition to, the Concessionaire, the Concessionaire must provide notice of the proposed terms of such Government Agreement to the City for Approval and all costs and expenses incurred by the City as the case may be, in connection with or related to such Government Agreement shall be borne by the Concessionaire.

**Section 4.15. Notices of Defaults and Claims.**

(a) *Notice by the Concessionaire.* The Concessionaire shall promptly give notice to the City (i) if the Concessionaire becomes aware that a Concessionaire Default has occurred under this Agreement (*provided, however*, that the failure to give such notice shall not constitute an independent Concessionaire Default) and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation in respect of the Concessionaire pertaining to the Parking Garage System or the City or the Parking Garage System Operations (whether or not

such claim, proceeding or litigation is covered by insurance) of which the Concessionaire is aware (other than as a result of a notice to the Concessionaire from the City). The Concessionaire shall provide the City with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

(b) *Notice by the City.* The City shall promptly give notice to the Concessionaire (i) if the City becomes aware that a City Default has occurred under this Agreement (*provided, however*, that the failure to give such notice shall not constitute an independent City Default) and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation in respect of the City pertaining to the Parking Garage System or the Concessionaire or the Parking Garage System Operations (whether or not such claim, proceeding or litigation is covered by insurance) of which the City is aware (other than as a result of a notice to the City from the Concessionaire). The City shall provide the Concessionaire with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

**Section 4.16. Assignment of Operating Agreements and Plans.** At the request of the City, the Concessionaire shall collaterally assign, to the extent reasonably practicable, to the City, in form and substance satisfactory to the City, acting reasonably, all of the right, title and interest of the Concessionaire in, to and under all or any of the Operating Agreements and all present and future specifications, plans, drawings, information and documentation in relation to the Parking Garage System Operations except to the extent any of the foregoing involve proprietary information (collectively, the “Operating Agreements and Plans”) as collateral security to the City for the observance and performance by the Concessionaire of its covenants and obligations under this Agreement. The Concessionaire covenants that it shall use all reasonable efforts to cause all of the right, title and interest of the Concessionaire in, to and under all Operating Agreements and Plans entered into or created after the Time of Closing to be collaterally assignable to the City for the purposes of this Section 4.16. The City acknowledges that the Operating Agreements and Plans may also be assigned as security to a Leasehold Mortgagee and that each of the City and such Leasehold Mortgagee shall be entitled to use the Operating Agreements and Plans in enforcing their respective security as hereinafter provided. Without limiting the generality of the foregoing, but subject to the City’s assumption of liabilities under the Operating Agreements and Plans and to Article 18, the City shall be entitled to use the Operating Agreements and Plans in each of the following events: (i) if the City terminates this Agreement without a concession agreement being granted to a Leasehold Mortgagee or nominee thereof pursuant to the provisions of Article 18; and (ii) if the City elects to use the Operating Agreements and Plans to remedy a Concessionaire Default under this Agreement. Notwithstanding the foregoing, in the event that any such Leasehold Mortgagee has entered into possession or is diligently enforcing and continues to diligently enforce its security, whether by way of appointment of a receiver or receiver and manager, foreclosure or power of sale in accordance with Article 18, or otherwise, and is using the Operating Agreements and Plans in respect of the Parking Garage System Operations, the City shall not be entitled to use the Operating Agreements and Plans in enforcing its security, it being acknowledged that any assignment of the Operating Agreements and Plans to a Leasehold Mortgagee shall have priority at all times over any assignment of the Operating Agreements and Plans to the City. The Concessionaire shall promptly deliver to the City, at the sole cost and expense of the

Concessionaire, forthwith after completion or execution and delivery, a copy of each item of the Operating Agreements and Plans.

#### **Section 4.17. Name and Advertisements.**

(a) *Names.* Each Structure included in the Parking Garage System in this Agreement is composed of the parking structures listed in Schedule 1. The names of said Structures listed in Schedule 1 may be changed by the Concessionaire only with the prior Approval of the City, which shall be at the sole discretion of the City Council. The Concessionaire shall not have the right to sell, lease, or license any naming rights for the Parking Garage System or any Structure to any third party without the Approval of City Council, which shall be at its sole discretion. All gross proceeds from any sale of said rights shall be split equally between City and Concessionaire, unless the City Council, in its sole discretion directs a different division. The City grants, to the extent it has the power to grant, to the Concessionaire a non-exclusive, non-transferable, royalty-free license during the Term to use the names of the Structures together with all existing and future developed logos and marks (not including the City seal) used in connection with the Parking Garage System Operations, solely in connection with the performance of the Concessionaire's rights and obligations under this Agreement. The Concessionaire may sub-grant the same right to the Operator and vendors with operations within the boundaries of the Parking Garage System. City reserves the right at its sole discretion to change the names, logos, or marks of any of the parking structures and Concessionaire shall have the right to use, and shall use, such names, logos, or marks for the Parking Garage System or Structures, without charge under this provision.

(b) *Advertisements.* The Concessionaire shall have the right to provide advertising space in and about the Structures *provided* that all advertisements shall comply with (i) the advertising policy of the Concessionaire which shall be subject to the Approval of the City and (ii) the advertising policy of the City.

**Section 4.18. Police, Fire, Emergency and Public Safety Access Rights.** At all times during the Term and without notice or compensation to the Concessionaire (i) any police, fire and emergency services and any other security or emergency personnel retained by or on behalf of the City shall have access, as required by such services or personnel, to the Parking Garage System; (ii) the City shall have access, as required by the City, to the Parking Garage System as necessary for the protection of public safety; *provided, however*, that inspections by the City for purposes of determining whether or not the Concessionaire is in compliance with its obligations under this Agreement or applicable Law shall be undertaken pursuant to Section 4.7(a)(i); and (iii) any Governmental Authority with jurisdiction over the Parking Garage System shall have access to the Parking Garage System as necessary for emergency management and homeland security purposes, including the prevention of or response to a public safety emergency.

**Section 4.19. Payments by the City.** The Concessionaire acknowledges and agrees that if the City is required under applicable Law of general application to withhold a portion of any payment that the City is obligated to make to the Concessionaire under this Agreement, the City will be deemed to have satisfied such payment obligation to the Concessionaire to the extent of such withholding by the City.



**Section 4.20. Signage.** Other than as required by the Operating Standards, the Concessionaire shall have the right, but not the obligation, at its own cost and expense, to redesign, install, manage, maintain, repair and rehabilitate existing or future signage relating to the Parking Garage System, *provided* that no such signage shall be located on park land (except for existing signs, which may be redesigned, repaired, rehabilitated or replaced subject to this Section 4.20), the installation of all such signage shall be in compliance with applicable Law and subject to all generally applicable Authorizations with respect each particular type of signage installed. With respect to the Pershing Square Garage, the Concessionaire shall not be entitled to change any of the congestion management signage without the prior written approval of the Department of Transportation.

**Section 4.21. Traffic Management.** Concessionaire shall fully comply with all present and future programs intended to manage parking, transportation, or traffic in and around the Structures, and in connection therewith, Concessionaire shall take responsible action for the transportation planning and management of all employees located at the Structures by working directly with City, any governmental transportation management organization, or any other transportation-related committees or entities. Without limiting the extent of the foregoing, the Concessionaire expressly agrees to permit the City to install congestion management technologies including, but not limited to vehicle sensors and signage in conjunction with the ExpressPass program or any similar future congestion management program.

**Section 4.22. Operating Standards – Concessionaire Changes.** If the Concessionaire, at its cost and expense, wishes to implement and use operating standards other than the Operating Standards, the Concessionaire must provide notice of such proposed operating standards to the City for Approval. The Concessionaire's proposed operating standards must be accompanied by an explanation of the Concessionaire's rationale for making its proposal and all relevant supporting information, certificates, reports, studies, investigations and other materials as are necessary to demonstrate that the Concessionaire's proposed operating standards are reasonably designed to achieve the objectives of the applicable Operating Standards. The City may request any additional supporting information, certificates, reports, studies, investigations and other materials as are reasonably required by the City to determine if the Concessionaire's proposed operating standards are reasonably designed to achieve the objectives of the applicable Operating Standards. Approval of the Concessionaire's proposed operating standards may be withheld, delayed or conditioned only if the City reasonably determines that the Concessionaire's proposed operating standards are not reasonably designed to achieve the objectives of the applicable Operating Standards. Until the City provides its Approval for the implementation of the Concessionaire's proposed operating standards, the Concessionaire shall not implement the proposed operating standards and shall implement and comply with the Operating Standards. The Concessionaire's proposed operating standards shall be deemed incorporated into the Operating Standards upon Approval by the City in accordance with the terms hereof. If the City refuses to Approve any proposed operating standards and the Concessionaire disagrees with such refusal, the Concessionaire may submit the matter to arbitration under the provisions of Article 19.

#### **Section 4.23. Operating Standards – City Changes.**

(a) The City shall have the right, at any time during the Term, to modify or change the Operating Standards upon notice to the Concessionaire to (i) comply with any new Law applicable to the Parking Garage System Operations or (ii) conform the Operating Standards to standards or practices generally adopted with respect to Comparable Public Parking Garages. In the event the City modifies the Operating Standards in accordance with the immediately preceding sentence, the Concessionaire, at its cost and expense, shall perform all work required to implement and shall comply with all such modifications and changes and in no event shall the Concessionaire be excused from compliance with any such modification or change. For the avoidance of doubt, the Concessionaire will have the right to challenge any modified Operating Standard pursuant to Article 19 on the basis that it does not meet either of the requirements set forth above.

(b) If during the Term the City is of the opinion that a modification or change to the Operating Standards is necessary or desirable but such modification or change is not subject to Section 4.23(a), the City may upon reasonable notice to the Concessionaire modify or change the Operating Standards; *provided, however*, that the City shall pay to the Concessionaire the Concession Compensation with respect thereto at the time such modification or change is implemented. At the City's request, the Concessionaire shall perform all work required to implement and shall comply with all such modifications and changes, and in no event shall the Concessionaire be excused from compliance with any such modification or change. The City shall have the right to undertake the work necessary to ensure implementation of and compliance with any such modification or change to the Operating Standards if the Concessionaire fails to do so within a reasonable period of time; *provided, however*, that to the extent that such work is undertaken by the City, the Concessionaire shall pay to the City within 10 Business Days following demand therefor, or the City may offset from amounts owing to the Concessionaire in connection with such modification or change, the costs of the portion of the work performed in order to comply with the Operating Standards existing immediately prior to such modification or change, and the City shall be responsible only for the incremental costs of the additional work required in order to implement such proposed modification or change to the Operating Standards and, without duplication with the foregoing, the Concession Compensation with respect to such modification or change.

#### **Section 4.24. Public Purpose Requirements.**

(a) The Parties agree that during the Term of this Agreement the City retains its Reserved Powers to enforce this Agreement and the Operating Standards to ensure that the Parking Garage System will be dedicated and used at all times for public benefit purposes intended to promote the public safety, convenience and welfare, to enhance the free circulation of traffic through the streets of the City and to alleviate traffic congestion that interferes with the primary use of such streets for the movement of vehicles, including the rapid and effective disposition of firefighters, police forces and public safety responders.

(b) In order to assure that the Parking Garage System continues to operate in a manner that benefits the public and fulfills the public purposes set forth in Section 4.24(a), the Parking Garage System shall be operated consistent with the requirement that the number of

parking spaces in each Structure that is available for use by members of the general public for transient parking and not allocated to specific Persons (such as through arrangements for monthly or annual parking) shall be no less than 40% of the parking spaces in such Structure and the aggregate number of such parking spaces in the Parking Garage System (taken as a whole) that is available for use by members of the public for transient parking shall be not less than 50% of the parking spaces in the Parking Garage System. The Concessionaire may request the City to approve an adjustment of the percentage for a particular Structure. In considering any such request, the City shall consider (A) the pattern of historical use of the affected Structure, and whether historical use indicates underutilization of the Structure; (B) the impact of any change upon traffic control and availability of adequate off-street parking in the area served by the Structure; and (C) impact of any change upon the ability of the Parking Garage System as a whole to continue to serve its essential public benefit purposes.

**Section 4.25. Leases, Covenants and Easements.** Concessionaire must comply with the provisions of all leases, covenants and easements on the Structures and in case of any conflict between the provisions of this Agreement and the leases, covenants and easements on any of the Structures, the provisions of the leases, covenants and easements will control.

**Section 4.26. Pershing Square Garage.**

(a) *Board Consideration.* In consideration for the inclusion of the Pershing Square Garage in the Parking Garage System, the City shall appropriate in each Fiscal Year the Pershing Square Annual Appropriation for that Fiscal Year determined pursuant to Section 4.26(b).

(b) *Pershing Square Annual Appropriation.* The first Pershing Square Annual Appropriation shall be for the Fiscal Year ending June 30, 2012, and shall be in the amount of \$2,269,000. The Pershing Square Annual Appropriation for each subsequent Fiscal Year shall be in an amount equal to \$2,269,000, Adjusted for Inflation by the percentage change in the Index from the Index for the month of February 2011 to the Index for the month of February immediately prior to the first day of such Fiscal Year.

(c) *Pershing Square Appropriation Failure.* If with respect to any Fiscal Year, the City fails to make the Pershing Square Annual Appropriation by the first day of the Fiscal Year, such failure shall constitute a “Pershing Square Appropriation Failure” but shall not constitute an “Adverse Action” or “City Default.” The City shall give to the Concessionaire prompt written notice of each Pershing Square Appropriation Failure.

(d) *Concessionaire Payment Option.* If a Pershing Square Appropriation Failure shall have occurred and shall not have been remedied, then, no later than the 60<sup>th</sup> day of the Fiscal Year, the Concessionaire, at its election, may pay to the Department of Recreation and Parks an amount of money equal to the portion of the Pershing Square Annual Appropriation not appropriated by the City.

(e) *Termination by Board.* If as of the first Business Day of the fifth month of such Fiscal Year, (i) the Concessionaire has not paid to the Board an amount of money equal to the portion of the Pershing Square Annual Appropriation not appropriated by the City and (ii) the

amount of Pershing Square Annual Appropriation (after taking into account any payment from the Concessionaire pursuant to Section 4.26(d)) has not otherwise been fully provided for, then the Board, at its election to be made no earlier than the tenth Business Day of the fifth month of such Fiscal Year and no later than the first day of the tenth month of such Fiscal Year, may terminate the lease of the Pershing Square Garage by giving the City and the Concessionaire written notice of its election to terminate the lease of the Pershing Square Garage, which notice shall set forth the reversion date for the Pershing Square Garage which reversion date shall be a Business Day no earlier than the 60<sup>th</sup> day, and no later than the 90<sup>th</sup> day, following the date such written notice of termination was given to the Concessionaire.

(f) *Compensation Events.* The payment by the Concessionaire of any amount pursuant to in Section 4.26(d)(i) and the termination of the lease of the Pershing Square Garage by the Board pursuant to Section 4.26(e) shall each constitute a Compensation Event for which the Concessionaire shall be entitled to Concession Compensation from the City without recourse by the Concessionaire or the City to the Recreation and Parks Fund.

**Section 4.27. Express Park.** If the City determines to include one or more of the Structures in the Express Park program, the Concessionaire shall permit access to the City and its Representatives for the installation and maintenance of equipment to monitor and measure the utilization of the Structure and for signage to inform the general public regarding the number of available spaces in the Structure and to otherwise provide information to motorists. The installation and maintenance of such equipment shall be at the sole cost and expense of the City.

**Section 4.28. Special Conditions and Provisions.** In addition to the special conditions or provisions of this Agreement regarding the operations of one or more of the Structures, the Operating Standards, the Hollywood and Highland Agreement and the Cinerama Dome Agreement, the Concessionaire acknowledges that it and the Operator are obligated to operate and maintain particular Structures in accordance with the Special Provisions set forth in Schedule 14.

## **ARTICLE 5 MODIFICATIONS**

**Section 5.1. City Directives.** The City may, at any time during the Term, issue a City Directive to the Concessionaire. The enforcement of Laws by the City is not a City Directive. Subject to the City making available to the Concessionaire sufficient funds to perform the work required to implement such City Directive at or before the time payment for such work is required to be made, and the Concessionaire having obtained (with the cooperation of the City) all relevant Authorizations from all relevant Governmental Entities required for the relevant work, the Concessionaire shall perform the work required to implement such City Directive, and the City shall pay to the Concessionaire the Concession Compensation with respect thereto.

**Section 5.2. Concessionaire Requests.** If the Concessionaire wishes at any time during the Term to make a fundamental change in the dimensions, character, quality or location of any part of the Parking Garage System, then the Concessionaire may submit to the City, for Approval, a Concessionaire Request with respect to such change and shall submit to the City for

its Approval specific plans with respect to any such work; *provided, however*, that the Concessionaire shall not be required to submit a Concessionaire Request in order to convert into parking spaces any portions of the Parking Garage System not used as parking spaces as of the Closing Date except for spaces that, as of the date of this Agreement, are built out as retail, commercial or office spaces. Changes that are non-structural in nature shall not be considered “fundamental changes.” The Concessionaire shall be responsible for all amounts required to implement an Approved Concessionaire Request (and any Losses incurred in connection therewith). No Concessionaire Request shall be implemented unless and until such Concessionaire Request has been Approved by the City.

**Section 5.3. Performance of Modifications.** Subject to the other provisions of this Article 5, the Concessionaire shall ensure that City Directives and Approved Concessionaire Requests are performed in a good and workmanlike manner and diligently complied with and implemented in such manner that the costs (in the case of City Directives only) and delays relating thereto are minimized.

## **ARTICLE 6 ALTERATIONS AND IMPROVEMENTS**

### **Section 6.1. Alterations and Improvements.**

(a) *City Approval.* With the prior written approval of City, Concessionaire may make alterations and improvements to the Structures (“Alterations”) which do not affect the (i) exterior appearance of the Structures, or (ii) structural aspects of the Structures, as long as Concessionaire pays for the entire cost of such Alterations, and as long as Concessionaire agrees to remove said Alterations upon the expiration or termination of the Agreement, if requested by the City. Any time Concessionaire proposes to make such Alterations, Concessionaire shall provide City with prior written notice of the proposed Alterations, together with the plans and specifications. Notwithstanding anything to the contrary set forth above, Concessionaire may make, without City’s prior written consent but after thirty (30) days’ notice to City, Alterations which (i) do not require any structural or any substantial modification to the Structures, (ii) do not affect the Structure Systems, (iii) do not affect the exterior appearance of the Structure, and (iv) do not cost in excess of Fifty Thousand Dollars (\$50,000), Adjusted for Inflation from the Closing Date.

(b) *“Structure Systems” - Defined.* As used in this Article 6, the phrase “Structure Systems” shall mean any machinery, transformers, duct work, conduit, pipe, bus duct, cable, wires, and other equipment, facilities, and systems, to the extent within the Structure, designed to supply heat, ventilation, air conditioning and humidity or any other services or utilities, or comprising or serving as any component or portion of the electrical, gas, steam, plumbing, sprinkler, communications, alarm, security, or fire/life safety systems or equipment, or any other mechanical, electrical, electronic, computer, or other systems or equipment which service the Structure in whole or in part; *provided, however*, that such equipment, facilities, and systems which serve solely the Structure or Concessionaire with respect to communications, alarm, security, and computer systems shall not be considered part of the Structure Systems to

the extent that such equipment, facilities, and systems may be accessed and altered without interference with any Structure Systems.

(c) *Manner of Construction.* City may impose reasonable requirements as a condition of its consent to all Alterations or repairs of the Structures or about the Structures, including, but not limited to, the requirement that upon City's request, Concessionaire shall, at Concessionaire's expense, remove such Alterations upon the expiration or any early termination of the Term, and/or the requirement, with respect to work on the Structure Systems, that Concessionaire utilize for such purposes only contractors, materials, mechanics, and material providers approved by City. City may require Concessionaire to provide City, at Concessionaire's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure City against any liability for claims or purported mechanic's and materialmen's liens and to insure completion of the work. Concessionaire shall construct such Alterations and perform such repairs in conformance with any and all applicable rules and regulations of any federal, state, county or municipal code or ordinance and pursuant to a valid building permit, issued by the City, in conformance with City's reasonable construction rules and regulations. All work with respect to any Alterations must be done in a good and professional manner and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of work. In performing the work of any such Alterations, Concessionaire shall have the work performed in such manner as not to obstruct access to the Structures. Upon completion of any Alterations, Concessionaire agrees at the request of City to cause a Notice of Completion to be recorded in the office of the Recorder of the County of Los Angeles in accordance with Section 3093 of the California Civil Code or any successor statute, and Concessionaire shall deliver to City a reproducible copy of the "as-built" drawings, if any, of the Alterations.

(d) *Construction Insurance.* In the event Concessionaire makes any Alterations, Concessionaire agrees to carry "Builder's All Risk" insurance in an amount equal to the value of construction and materials on hand.

(e) *Payment For Alterations.* Where the work under this Article 6 is performed by City and/or City's contractor, the charges for such work shall be deemed Additional Rent under this Agreement, payable within sixty (60) days of the receipt by Concessionaire of a sufficiently itemized invoice and billing therefor upon the substantial completion of such work. Where the work under this Article 6 is performed by Concessionaire or Concessionaire's contractor, upon completion of such work, Concessionaire shall deliver to City, where applicable, evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services, and materials.

(f) *Ownership of Alterations.* All Alterations, fixtures, and equipment which may be installed or placed in or about the Structures, from time to time, shall be at the sole cost of Concessionaire, and any Alterations, fixtures, and equipment remaining at the Structures after the vacation of the Premises by Concessionaire shall be and become the property of City. *Provided, however,* if City, as a condition to City's consent to any Alteration, requires that Concessionaire remove any Alteration upon the expiration or early termination of the Term, then unless City agrees in writing otherwise, Concessionaire must remove at Concessionaire's expense such Alterations and to repair any damage to the Structures caused by such removal. If

Concessionaire fails to complete such removal or to repair any damage caused by the removal of any Alterations, City may do so and may charge the cost thereof to Concessionaire.

(g) *Mechanics' Liens.* Concessionaire shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Concessionaire at or for use in the Structures, which claims made against City and/or purport to be secured by any mechanic's or materialmen's lien against the Structures, or any interest therein. If Concessionaire fails to pay such claims or demands or if Concessionaire shall, in good faith, contest the validity of any such lien, claim or demand, then Concessionaire shall, at its sole expense, defend itself and City against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the City or the Structures, upon the condition that if City shall require, Concessionaire shall furnish to City a surety bond satisfactory to City in an amount equal to such contested lien, claim or demand indemnifying City against liability for the same and holding the Parking Garage System property free from the effect of such lien or claim. In addition, City may require Concessionaire to pay City's reasonable attorneys' fees and costs in participating in such action if City shall decide it is to City's best interest so to do.

(h) *Nonresponsibility and Work Commencement Notices.* City shall have the right at all times to post and keep posted on the Structures any notices permitted or required by law, or which City shall deem proper for the protection of City and the Structures, and any other party having an interest therein, from liens, and Concessionaire shall give to City at least ten (10) business days prior written notice of the expected date of commencement of and work relating to Alterations or additions to the Structures.

(i) *Failure to Comply with Conditions.* Should Concessionaire make any Alterations without the prior approval of City, or, where required, use a contractor not expressly approved by City, or otherwise fail to comply with the conditions of this Article 6, City may, at any time during the Term, require that Concessionaire remove any part or all of the same.

## **ARTICLE 7**

### **PARKING FEES; REVENUES**

**Section 7.1. Parking Fee Revenues.** The Concessionaire shall, at all times during the Term, (i) have the right to establish, collect and enforce payment of fees (Parking Fees) with respect to the parking of any vehicle in the Parking Garage System in accordance with the provisions of this Article 7 of this Agreement and (ii) have the right, title, entitlement and interest in all Parking Fees charged by or on behalf of the Concessionaire in respect of vehicles using the Parking Garage System during the Term ("Parking Fee Revenues"). Other than as set forth in this Article 7 and Schedule 6, the City shall not limit, through this Agreement or by any other action, the Parking Rates that the Concessionaire may charge in respect of vehicles using the Parking Garage System during the Term.

**Section 7.2. Maximum Parking Rate Increases.** For the first five (5) Lease Years of this Agreement the Parking Rates for each Structure shall not exceed the parking rates set forth in Schedule 6 (Maximum Parking Rates) for the particular Structure. Commencing with the

sixth (6<sup>th</sup>) Lease Year and continuing on the commencement of each Lease Year thereafter, the Maximum Parking Rates shall be automatically adjusted, effective on the commencement of each Lease Year (the "Adjustment Date"), proportionately by the change, if any, in the Index which is for the month which is sixteen (16) months prior to the Adjustment Date ("Beginning Index"). The Index for the month which is four (4) months prior to each Adjustment Date ("Extension Index") is to be used in determining the amount of the adjustment. In other words, if the Extension Index has increased over the Beginning Index, the Maximum Parking Rates for the following Lease Year shall be set by multiplying the Maximum Parking Rates (Schedule 6) for the particular Structure by a fraction, the numerator of which is the Extension Index and denominator of which is the Beginning Index. In no event, however, shall the Maximum Parking Rates for a particular Structure for a Lease Year ever be less than the Maximum Parking Rates for that Structure in effect immediately preceding such Lease Year. Notwithstanding anything in this Section 7.2 to the contrary, as to the Cinerama Dome Garage and the Hollywood and Highland Garage, the Concessionaire must comply with the provisions relating to parking rates contained in the Cinerama Dome Agreement and the Hollywood and Highland Agreement.

**Section 7.3. Changes in the Index.** If the Index changes so that the base year of the Index differs from that used as of the Beginning Index, the Index shall be converted in accordance with the conversion factors published by the United States Department of Labor, Bureau of Labor Statistics. Should said Index be discontinued, or be published with such infrequency as to render the formulae in this Article 7 to be unworkable, or be altered in some other manner, then City and Concessionaire shall mutually adopt a substitute index or substitute procedure which reasonably reflects and monitors consumer prices. The substitute index must obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

**Section 7.4. Requests to Increase Parking Rates Above Maximum Parking Rates as Adjusted by the Index.** Concessionaire may at any time more than four months prior to the end of the Lease Year request the City to approve Parking Rates for one or more Structures for the next Lease Year and one or more additional successive Lease Years in excess of the rates permitted by Section 7.2 and Section 7.3 (Maximum Parking Rates adjusted by the Index) by submitting a current market survey of Comparable Facilities conducted by an independent, locally recognized parking consultant. The City Council, in its sole discretion, may approve or disapprove the request for the next Lease Year and one or more of the successive Lease Years. Following the expiration of the Lease Years for which excessive Parking Rates have been approved, Parking Rates shall thereafter be limited by the Rates as determined in Section 7.2 and Section 7.3 and Schedule 6.

**Section 7.5. Parking Fee Rate Notices.** The Concessionaire shall provide to the City, no later than the end of each calendar quarter, notice of the rates and rate types charged by the Concessionaire for the parking of any vehicle in the Parking Garage System. Such notice shall include the rates and rate types charged during the prior calendar quarter and expected to be charged during the next calendar quarter. Such notice shall be provided by the Concessionaire to the City solely for informational purposes and, consistent with and to the extent permitted by this Article 7 and Schedule 6, such rates may be changed at any time and from time to time by the Concessionaire without notice to the City. Consistent with and to the extent permitted by this Article 7 and Schedule 6, Concessionaire may charge any types of rates as it determines are



appropriate in its discretion, including variable rates, time-of-day rates, monthly rates, weekday, weekend and special event rates and discounts to be determined by the Concessionaire.

#### **Section 7.6. Other Concessionaire Revenues.**

(a) *Commercial Use.* The Concessionaire and the City shall cooperate in the development of plans and programs to enhance Other Concessionaire Revenues. The amount of space in any Structure devoted to advertising and commercial activities (and not available for parking motor vehicles) shall not exceed twenty five percent (25%) of the gross square footage of the Structure. All activities generating Other Concessionaire Revenues shall be undertaken in compliance with all applicable Laws and shall be subject to all Authorizations, fees (including license fees) and Taxes generally imposed by the City and other Governmental Authorities with respect to such activities and the revenues generated by such activities and *provided, however*, that no gasoline or oil may be stored, sold, or used in the Parking Garage System and all licenses, permits, contracts, and subleases for the advertising, concessions, and other services described in this Section 7.6 shall be subject to the Approval of the City, in its sole discretion and further *provided, however*, that the City reserves to itself the right to utilize a reasonable amount of space to erect and maintain advertising within the Structures to notify the public of public services or public events. In addition, the Concessionaire shall comply with all leases, covenants and easements on the Structures (including but not limited to Cinerama Dome Agreement and the Hollywood and Highland Agreement) and in case of any conflict between the provisions of this Agreement and the recorded covenants and easements on any of the Structures, the provisions of the recorded covenants and easements will control.

(b) *Existing Commercial Space.* All space in a Structure that on the Bid Date was used for commercial purposes may continue to be used for such commercial purposes without any required additional Approval of the City. All Other Concessionaire Revenues derived from such commercial activities including subsequent commercial tenants for the same retail space shall be revenue of the Concessionaire.

(c) *New Commercial Space or Use.* Subject to the 25% space limitation set forth in Section 7.6(a) the Concessionaire may utilize space in any Structure for additional advertising and commercial activities including electric charging stations and other new uses; *provided, however*, that each such additional use shall be subject to the Approval of the City which shall be at the sole discretion of the City. The Parties intend that the Other Concessionaire Revenues derived from additional advertising and commercial activities shall be shared by the Parties. The City may withhold its Approval of any additional commercial activity if it is not satisfied with its share of the expected additional Other Concessionaire Revenues.

**Section 7.7. Revenue Payment to the City.** With respect to each Lease Year, if the Annual Revenues of the Parking Garage System is greater than the Base Amount for such Lease Year as shown in Schedule 12, as Adjusted for Inflation (the “Adjusted Base Amount”) then the Concessionaire shall pay to the City as Additional Rent an Annual Revenue Payment for such Lease Year equal to fifty percent (50%) of the Excess Revenue Amount for such Lease Year. As used in this Section 7.7, for any particular Lease Year, “Excess Revenue Amount” means the amount of Annual Revenues for such Lease Year in excess of the Adjusted Base Amount for such Lease Year. In the first Lease Year, the Adjusted Base Amount shall be the Adjusted Base

Amount multiplied by a fraction the numerator of which is the actual number of days elapsed in such Lease Year from and including the Closing Date to and including the last day of the Lease Year and the denominator of which is 365 days. In the final Lease Year, the Adjusted Base Amount shall be the Adjusted Base Amount multiplied by a fraction the numerator of which is the actual number of days elapsed in such Lease Year from and including first day of the Lease Year to and including the End Date and the denominator of which is 365 (or 366 if a February 29<sup>th</sup> was included in the numerator).

The information necessary to determine the Annual Revenue Payment for each applicable Lease Year shall be included in the annual financial reports required to be delivered to the City pursuant to clause (ii) of Section 8.1(c) and shall also be certified by the independent certified accountants of the Concessionaire. The Annual Revenue Payment for each Lease Year shall be paid within 90 days after the end of the Lease Year, except that the Annual Revenue Payment of the last Lease Year shall be paid on the End Date as a good faith estimated amount subject to adjustment by the Parties within 90 days after the End Date.

**Section 7.8. Cinerama Dome Garage Litigation Settlement.** The Concessionaire acknowledges receipt of the Settlement Agreement and Release dated March 30, 2010 in connection with the class action litigation before the United States District Court for the Central District of California (Case No. SACV09-422 DMG (ANx) and styled: Razmig Tchoboian v. Parking Concepts, Inc.; The Community Redevelopment Agency of the City of Los Angeles, California and Does 1 through 10, inclusive. The Concessionaire, covenants and agrees that it will, and it will cause the Operator to, operate the Cinerama Dome Garage in accordance with the terms and provisions of said Settlement Agreement and Release including, but that limited to, the provision of Section 20(a) thereof regarding the provision of free parking spaces for use by the general public on 14 specific dates as required by said Section 20(a).

## **ARTICLE 8 REPORTING; AUDITS; INSPECTIONS**

### **Section 8.1. Reports.**

(a) *Incident Management and Notifications.* The Concessionaire shall provide notice to the City within 24 hours of all emergencies, and promptly provide notice to the City of all accidents and incidents occurring on or at the Parking Garage System, and of all claims in excess of \$50,000 made by or against the Concessionaire, or potential claims in excess of \$50,000 that the Concessionaire reasonably expects to make against, or to be made against it by, third parties.

(b) *Environmental Incident Management and Notifications.* The Concessionaire shall provide notice to the City within 24 hours following the Concessionaire's becoming aware of the discharge, dumping, spilling (accidental or otherwise) of any reportable quantity, as defined under applicable Environmental Law, of Hazardous Substances occurring on or at the Parking Garage System and the location at which the incident has occurred, the time, the agencies involved, the damage that has occurred and the remedial action taken.

(c) *Financial Reports.* Until the End Date, the Concessionaire shall deliver to the City (i) within 30 days of the end of each calendar quarter of the Lease Year, quarterly statements of gross and net income, changes in equity, and cash flows, and (ii) within sixty (60) days after the end of each Lease Year a copy of the audited balance sheets of the Concessionaire for the Lease Year, and the related audited statements of gross and net income, changes in equity and cash flows for the Lease Year, including in each case the notes thereto, together with the report thereon of the independent certified public accountants of the Concessionaire, in each case in a manner and containing information consistent with the Concessionaire's current practices and certified by the Concessionaire's chief financial officer that such financial statements fairly present the financial condition and the results of operations, changes in equity and cash flows of the Concessionaire as at the respective dates of and for the periods referred to in such financial statements, all in accordance with generally accepted accounting principles in the United States consistently applied. Such financial statements shall reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. Such annual audited financial statement shall include the information required to make the determinations contemplated by Section 7.7.

## **Section 8.2. Information.**

(a) *Furnish Information.* At the request of the City, the Concessionaire shall, at the Concessionaire's cost and expense and at any and all reasonable times during the Term: (i) make available or cause to be made available (and, if requested by the City, furnish or cause to be furnished) to the City all Information relating to the Parking Garage System Operations, this Agreement or the Parking Garage System as may be specified in such request and as shall be in the possession or control of the Concessionaire or its Representatives, and (ii) permit the City, after giving 10 Business Days' prior notice to the Concessionaire (which notice shall identify the persons the City requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview), to discuss the obligations of the Concessionaire under this Agreement with any of the directors, officers, employees or managers of the Concessionaire, the Operator or their respective Representatives (it being agreed that the Concessionaire shall have the right to be present during any such discussions with the Operator or Representatives of the Concessionaire or the Operator), for the purpose of enabling the City to determine whether the Concessionaire is in compliance with this Agreement, *provided* that, in the case of investigations of possible criminal conduct or City ordinance violations, no prior notice shall be required to the Concessionaire and the Concessionaire shall not have the right to be present during any discussions with the Operator or Representatives of the Concessionaire or the Operator. For the avoidance of doubt, this Section 8.2(a) does not impose a requirement to retain Information not otherwise retained in the normal course of business or required to be retained by applicable Law.

(b) *Confidentiality.* Unless disclosure is required by applicable Law, the City shall keep confidential any Information obtained from the Concessionaire or its Representatives that (i) pursuant to the California Public Records Act, California Government Code, constitutes trade secrets or commercial or financial information (A) where the trade secrets or commercial or financial information are proprietary, privileged or confidential, or (B) where disclosure of the trade secrets or commercial or financial information may cause competitive harm and (ii) is designated as such by the Concessionaire in writing to the City; *provided, however*, that the City

shall have the right to determine, in its reasonable discretion, whether the California Public Records Act applies to any such Information; *provided further* that in the event the City determines that the California Public Records Act does not apply to any such Information, the City shall provide reasonable notice to, and shall consult with, the Concessionaire prior to disclosure of such Information. In the event that the Concessionaire requests the City to defend an action seeking the disclosure of Information that the City determines to be confidential pursuant to this Section 9(b) the Concessionaire shall reimburse the City for the reasonable costs and expenses (including attorneys' fees of the prevailing party) incurred by the City in defending any such action. Notwithstanding anything to the contrary herein, the City and the Concessionaire may disclose the United States federal tax treatment and tax structure of the Transaction.

### **Section 8.3. Inspection, Audit and Review Rights of the City.**

(a) *Audit Right.* In addition to the rights set out in Section 8.2, the City may, at all reasonable times, upon 10 Business Days' prior notice, except in the case of investigations of possible criminal conduct or City ordinance violations, in which case no prior notice shall be required, cause a Representative designated by it to, carry out an Audit of the Information required to be maintained or delivered by the Concessionaire under this Agreement in connection with the performance of the Parking Garage System Operations for the purpose of verifying the information contained therein and shall be entitled to make copies thereof and to take extracts therefrom, at the City's expense, but, in any event, subject to Section 8.2(b). The Concessionaire, at the cost and expense of the Concessionaire, shall, at reasonable times, make available or cause to be made available to the City or its designated Representative such information and material as may reasonably be required by the City or its designated Representative for its purposes and otherwise provide such cooperation as may be reasonably required by the City in connection with the same.

(b) *Inspection Right.* The City and its Representatives shall, at all reasonable times and upon reasonable prior notice, have access to the Parking Garage System and every part thereof and the Concessionaire, at the reasonable cost and expense of the Concessionaire, shall and shall cause its Representatives to, furnish the City with every reasonable assistance for inspecting the Parking Garage System and the Parking Garage System Operations (including providing free parking in the Structure for the inspectors) for the purpose of Auditing the Information or ascertaining compliance with this Agreement and applicable Law.

(c) *Tests.* The City and its Representatives shall, with the prior consent of the Concessionaire (which shall not be unreasonably withheld, conditioned or delayed), except in the case of investigations of possible criminal conduct or City ordinance violations, in which case no consent shall be required, be entitled, at the sole cost and expense of the City, and at any time and from time to time, to perform or cause to be performed any test, study or investigation in connection with the Parking Garage System or the Parking Garage System Operations as the City may reasonably determine to be necessary in the circumstances and the Concessionaire, at the cost and expense of the Concessionaire, shall, and shall cause its Representatives to, furnish the City or its Representatives with reasonable assistance in connection with the carrying out of such tests, procedures, studies and investigations.

(d) *No Waiver.* Failure by the City or its Representatives to inspect, review, test or Audit the Concessionaire's responsibilities under this Agreement or any part thereof or the Information, shall not constitute a waiver of any of the rights of the City hereunder or any of the obligations or liabilities of the Concessionaire hereunder. Inspection, review, testing or Audit not followed by a notice of Concessionaire Default shall not constitute a waiver of any Concessionaire Default or constitute an acknowledgement that there has been or will be compliance with this Agreement and applicable Law.

(e) *No Undue Interference.* In the course of performing its inspections, reviews, tests and Audits hereunder, the City shall minimize the effect and duration of any disruption to or impairment of the Parking Garage System Operations or the Concessionaire's rights or responsibilities under this Agreement, having regard to the nature of the inspections, reviews, tests and Audits being performed, except as necessary in the case of investigations of possible criminal conduct or City ordinance violations.

**Section 8.4. Audits, Assistance, Inspections and Approvals.** Wherever in this Agreement reference is made to the City or its Representatives providing assistance, services, Approvals or consents to or on behalf of the Concessionaire or its Representatives or to the City or its Representatives performing an Audit or inspecting, testing, reviewing or examining the Parking Garage System, the Parking Garage System Operations or any part thereof or the books, records, documents, budgets, proposals, requests, procedures, certificates, plans, drawings, specifications, contracts, agreements, schedules, reports, lists or other instruments of the Concessionaire or its Representatives, such undertaking by the City or its Representatives shall not relieve or exempt the Concessionaire from, or represent a waiver of, any requirement, liability, Concessionaire Default, covenant, agreement or obligation under this Agreement or at law or in equity and shall not create or impose any requirement, liability, covenant, agreement or obligation (including an obligation to provide other assistance, services or Approvals) on the City or its Representatives not otherwise created or imposed pursuant to the express provisions of this Agreement.

## **ARTICLE 9 REPRESENTATIONS AND WARRANTIES**

**Section 9.1. Representations and Warranties of the City.** The City makes the following representations and warranties to the Concessionaire and acknowledges that the Concessionaire and its Representatives are relying upon such representations and warranties in entering into this Agreement:

(a) *Organization.* The City is a municipal corporation and charter city, duly organized and existing under the Constitution and laws of the State of California.

(b) *Power and Authority.* City Council and Mayor of the City have (i) duly approved this Agreement, which remains in full force and effect, and (ii) duly authorized and approved the performance by the City of its obligations contained in this Agreement. The City has the power and authority to approve this Agreement, to enter into this Agreement, and to do

all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.

(c) *Enforceability.* This Agreement has been duly authorized, executed and delivered by the City and constitutes a valid and legally binding obligation of the City, enforceable against the City in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) *Title.* At the Time of Closing, the City will have good and sufficient title to the Parking Garage System necessary for the Parking Garage System Operations pursuant to this Agreement, subject only to this Agreement, Permitted City Encumbrances and Encumbrances caused or permitted by Concessionaire. Subject to this Agreement and any and all Permitted City Encumbrances and encumbrances caused or permitted by Concessionaire existing at the Time of Closing, there is no recorded or unrecorded agreement, contract, option, commitment, right, privilege or other right of another binding upon, or which at any time in the future may become binding upon, the City to sell, transfer, convey, subject to lien, charge, grant a security interest in, or in any other way dispose of or materially encumber the Parking Garage System. The recorded or unrecorded restrictions, exceptions, easements, rights of way, reservations, limitations, interests and other matters that affect title to the Parking Garage System (or any portion thereof) do not materially adversely affect the Concessionaire's ability to operate the Parking Garage System in accordance with the terms hereof. Following defeasance of the outstanding Parking Garage System Bonds pursuant to Section 3.11(a), no indebtedness for borrowed money of the City will be secured by any interest in the Parking Garage System and no Person will have any claim or right to, or interest in, any income, profits, rents, or revenue derived from or generated with respect to the Parking Garage System (other than the Concessionaire under this Agreement and any claims, rights or interests granted by or otherwise relating to the Concessionaire).

(e) *No Conflicts.* The approval, execution and delivery of this Agreement by the City, the consummation of the transactions contemplated hereby (including the operation of the Parking Garage System in accordance with the terms of this Agreement) and the performance by the City of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the City under (i) any applicable Law or (ii) any agreement, instrument or document to which the City is a party or by which it is bound which will materially adversely affect Concessionaire's rights under this Agreement..

(f) *Consents.* No Consent is required to be obtained by the City from, and no notice or filing is required to be given by the City to or made by the City with, any Person (including any Governmental Authority) in connection with the execution, delivery and performance by the City of this Agreement or the consummation of the transactions contemplated hereby.

(g) *Compliance with Law; Litigation; Environmental Matters.*

(i) To the actual knowledge without any duty of inquiry of the CAO, the City's Department of Transportation has operated and is operating the DOT Garages in compliance, in all material respects, with all applicable Laws and the City not is in breach of any applicable Law that would have a material adverse effect on the operations of the Parking Garage System or on the Concessionaire Interest.

(ii) To the actual knowledge without any duty of inquiry of the CAO, the Department of Recreation and Parks has operated and is operating the Pershing Square Garage in compliance, in all material respects, with all applicable Laws and the City not is in breach of any applicable Law that would have a material adverse effect on the operations of the Parking Garage System or on the Concessionaire Interest.

(iii) To the actual knowledge without any duty of inquiry of the CAO, the CRALA has operated and is operating the Cinerama Dome Garage in compliance, in all material respects, with all applicable Laws and the CRALA is no in breach of any applicable Law that would have a material adverse effect on the operations of the Parking Garage System or on the Concessionaire Interest.

(iv) All Authorizations from any Governmental Authority necessary for the operation of the Parking Garage System as currently being operated have been obtained.

(v) Except as noted in Section 9.1(g)(vi) or otherwise disclosed in writing to the Concessionaire prior to the Bid Date, there is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the City's knowledge, threatened against the City prior to or at the Time of Closing, which will have a material adverse effect on the operations of the Parking Garage System. As of the date of this Agreement, there is no action, suit or proceeding, at Law or in equity, or before or by any Governmental Authority, pending nor, to the best of the City's knowledge, threatened against the City which could materially affect the validity or enforceability of this Agreement.

(vi) [Litigation.]

(h) *Parking Garage System Contracts.* Each Parking Garage System Contract is in full force and effect, has been made available for review by the Concessionaire but [will] [may] be terminated at or before the Closing in accordance with Section 3.12(k) with the exception of the Parking Garage System Contract for the Cinerama Dome Garage which expires on October 1, 2011. The City is not in material breach of its obligations under any Parking Garage System Contract, and no act or event has occurred which, with notice or lapse of time, or both, would constitute a material breach thereof, and to the knowledge of the City no other party to any Parking Garage System Contract is in material breach of its obligations under any Parking Garage System Contract, and no act or event has occurred with respect to any such party, which with notice or lapse of time, or both, would or is reasonably be expected to constitute a material breach thereof. The Parking Garage System Contracts are all of the material contracts and agreements (i) to which the City is a party that relate to the Parking Garage System Operations or (ii) that bind the Parking Garage System in any material respect.

(i) *Accuracy of Information.* To the knowledge of the City, the factual and past historical information regarding the Parking Garage System that the City provided to the Concessionaire in the virtual data room at <https://sites.google.com/a/lageecs.lacity.org/la-parking/> was reasonably accurate at the time such information was provided with the exception that the information relating to the maintenance, repairs, operating expenses, and revenue collected is the best information obtainable after reasonable efforts and is not completely reliable. Concessionaire understands that the information was collected by the City departments and for their own internal purposes and not with the intention of others relying upon it, has not been audited, and is may not be completely reliable in all respects.

(j) *Absence of Changes.* Since the execution date of this Agreement, there has not been any transaction or occurrence that has resulted or is reasonably likely to result in a Material Adverse Effect.

(k) *Brokers.* Except for Scott Balice Strategies, Loop Capital Markets and J.P. Morgan Securities Inc., whose fees will be paid by the City, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the City who might be entitled to any fee or commission from the City in connection with the transactions contemplated by this Agreement.

**Section 9.2. Representations and Warranties of the Concessionaire.** The Concessionaire makes the following representations and warranties to the City (and acknowledges that the City is relying upon such representations and warranties in entering into this Agreement):

(a) *Organization.* The Concessionaire is duly organized, validly existing and in good standing under the laws of the state of its organization. The capital stock, units, partnership or membership interests and other equity interests or securities of the Concessionaire (including options, warrants and other rights to acquire any such equity interests) are owned by the Persons set forth in the written certification that the Concessionaire delivered to the City prior to the date hereof.

(b) *Power and Authority.* The Concessionaire has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.

(c) *Enforceability.* This Agreement has been duly authorized, executed and delivered by the Concessionaire and constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) *No Conflicts.* The execution and delivery of this Agreement by the Concessionaire, the consummation of the transactions contemplated hereby and the performance by the Concessionaire of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a material breach of (with or without the giving of notice or



lapse of time, or both) or acceleration of any material obligations of the Concessionaire under (i) any applicable Law, (ii) any material agreement, instrument or document to which the Concessionaire is a party or by which it is bound or (iii) the articles, bylaws or governing documents of the Concessionaire.

(e) *Consents.* No Consent is required to be obtained by the Concessionaire from, and no notice or filing is required to be given by the Concessionaire to or made by the Concessionaire with, any Person (including any Governmental Authority) in connection with the execution and delivery by the Concessionaire of this Agreement or the consummation of the transactions contemplated hereby, except for such consents which have been obtained and notices which have been given as of the date hereof.

(f) *Compliance with Law; Litigation.* The Concessionaire is not in breach of any applicable Law that could have a material adverse effect on the operations of the Parking Garage System. Neither the Concessionaire nor any Affiliate of the Concessionaire is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of Persons with which the City may not do business under applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the Concessionaire's knowledge, threatened against the Concessionaire prior to or at the Time of Closing, which will have a material adverse effect on (i) the transactions contemplated by this Agreement or (ii) the validity or enforceability of this Agreement.

(g) *Request For Proposals.* All of the information in the financial disclosure statements and the response to the request for Parking Garage System concessionaire qualifications delivered by or on behalf of the Concessionaire to the City in connection with the Request for Proposals and the process leading up to the execution of this Agreement is true, accurate and correct in all material respects.

(h) *Brokers.* Except for any broker or advisor whose fees will be paid by the Concessionaire or its Affiliates, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Concessionaire or any of its Affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

(i) *No Tax or Payment Delinquency.* None of the Concessionaire, the Operator, any Affiliate of the Concessionaire, any Affiliate of the Operator or any Equity Participant is delinquent in the payment of any tax, fee or other monetary obligation due and payable to the City or its agencies or departments.

**Section 9.3. Non-Waiver.** No investigations made by or on behalf of any Party at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the other Party in this Agreement or pursuant to this Agreement. No waiver by a Party of any condition, in whole or in part, shall operate as a waiver of any other condition.

#### **Section 9.4. Survival.**

(a) *City's Representations and Warranties.* The representations and warranties of the City contained in Section 9.1 shall survive and continue in full force and effect for the benefit of the Concessionaire as follows: (i) as to the representations and warranties contained in Sections 9.1(a) through 9.1(i), inclusive, without time limit; and (ii) as to all other matters, for a period of 24 months following the Closing Date unless a bona fide notice of a Claim shall have been given, in writing in accordance with Section 21.1, prior to the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.

(b) *Concessionaire's Representations and Warranties.* The representations and warranties of the Concessionaire contained in Section 9.2 shall survive and continue in full force and effect for the benefit of the City as follows: (i) as to the representations and warranties contained in Sections 9.2(a) through 9.2(g), inclusive and Section 9.2(i), without time limit; and (ii) as to all other matters, for a period of 24 months following the Closing Date unless a bona fide notice of a Claim shall have been given, in writing in accordance with Section 21.1, before the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.

### **ARTICLE 10 FINANCE OBLIGATIONS**

**Section 10.1. Concessionaire's Obligations.** Except with respect to the City's funding of costs and expenses related to City Directives as contemplated by Section 5.1, the Concessionaire shall be responsible for obtaining any financing for the performance of its obligations under this Agreement, which financing shall comply with all requirements of this Agreement.

**Section 10.2. City's Obligations.** The City shall, to the extent consistent with applicable Law and at the sole cost and expense of the Concessionaire, cooperate with the Concessionaire with respect to documentation reasonably necessary to obtain, maintain and replace financing for the performance of the obligations of the Concessionaire hereunder. The City's cooperation may include reviewing, approving and executing documents which substantiate the terms of this Agreement (including any consents and agreements necessary to confirm that the debt evidenced by the relevant financing constitutes Leasehold Mortgage Debt) and making information and material available to the Concessionaire's lenders to facilitate financing to the extent permitted by applicable Law and contractual obligations with third parties and to the extent reasonable in the circumstances. In addition, the City shall, promptly upon the request of the Concessionaire or any Leasehold Mortgagee, execute, acknowledge and deliver to the Concessionaire, or any of the parties specified by the Concessionaire, estoppel certificates with respect to this Agreement in the form of the attached Schedule 7, which may be qualified to

the best of the knowledge and belief of a designated representative of the City. Nothing herein shall require the City to incur any additional obligations or liabilities (unless the City shall have received indemnification, as determined in the City's discretion, with respect thereto) or to take any action, give any consent or enter into any document inconsistent with the provisions of this Agreement.

**Section 10.3. Concessionaire's Obligation for Estoppel Certificates.** The Concessionaire shall, promptly upon the request of the City, execute and deliver to the City, or any of the parties specified by the City, estoppel certificates in the form attached hereto as Schedule 8, with respect to this Agreement which may be qualified to the best of the knowledge and belief of a designated representative of the Concessionaire. Nothing herein shall require the Concessionaire to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with the provisions of this Agreement or applicable Law.

**Section 10.4. Prohibited Tax Shelter Transactions.** The Concessionaire covenants and agrees that it shall not enter into any lease, sublease, concession, management agreement, operating agreement or other similar arrangement or other transaction that would cause the City to become a party to a "prohibited tax shelter transaction" within the meaning of section 4965 of the Internal Revenue Code of 1986 (it being agreed that, for purposes of this Section 10.4, the City shall not be treated as having become a party to such transaction solely by virtue of the execution of this Agreement). A violation of this Section 10.4 by the Concessionaire shall entitle the City to (a) recover from the Concessionaire, to the extent permitted by applicable Law, the amount of any Tax liability to which the City or any City official is subject and (b) require the Concessionaire, at the Concessionaire's expense, to prepare timely all statements and returns, and to maintain all lists and similar information that the City becomes obligated to disclose, file or maintain with any taxing authority or participant or otherwise as a result of such transaction.

## **ARTICLE 11 COMPLIANCE WITH LAWS**

**Section 11.1. Compliance with Laws.** The Concessionaire must at all times at its own cost and expense observe and comply, in all material respects, and cause the Parking Garage System Operations to observe and comply, in all material respects, with all applicable Laws now existing or later in effect that are applicable to it or such Parking Garage System Operations, including those Laws expressly enumerated in this Article 11. The Concessionaire must notify the City within seven days after receiving notice from a Governmental Authority that the Concessionaire may have violated any Laws as described above.

### **Section 11.2. Non-Discrimination.**

(a) *Non-Discrimination In Use Of Premises.* There shall be no discrimination against or segregation of any person, or group of persons, on account of race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition in the lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Parking Garage System or any part of the Parking Garage System or any operations or

activities conducted on the Parking Garage System or any part of the Structures, nor shall Concessionaire or any person claiming under or through Concessionaire establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of Concessionaire, subconcessionaires, subtenants, or vendees of the Structures. Any sublease or assignment which may be permitted under this Agreement shall also be subject to the non-discrimination clauses contained in this Section 25.4.

(b) *Non-Discrimination In Employment.* Concessionaire agrees and obligates itself in the performance of this Agreement not to discriminate against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition.

(c) *Equal Employment Practices.* This Agreement is a contract with or on behalf of the City of Los Angeles for which the consideration is \$1,000 or more. Accordingly, during the performance of this Agreement, Concessionaire further agrees to comply with Section 10.8.3 of the Administrative Code ("Equal Employment Practices"). By way of specification but not limitation, pursuant to Sections 10.8.3.E and 10.8.3.F of the Los Angeles Administrative Code, the failure of Concessionaire to comply with the Equal Employment Practices provisions of this Agreement may be deemed to be a material breach of this Agreement. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Concessionaire. Upon a finding duly made that Concessionaire has failed to comply with the equal employment practices provisions of this Agreement, this Agreement may be forthwith terminated.

(d) *Affirmative Action Program.* This Agreement is a non-construction contract with or on behalf of the City for which the consideration is \$100,000 or more. Accordingly, during the performance of this Agreement, Concessionaire further agrees to comply with Section 10.8.4 of the Administrative Code ("Affirmative Action Program"). By way of specification but not limitation, pursuant to Sections 10.8.4.E and 10.8.4.F of the Los Angeles Administrative Code, the failure of Concessionaire to comply with the Affirmative Action Program provisions of this Agreement may be deemed to be a material breach of this Agreement. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Concessionaire. Upon a finding duly made that Concessionaire has breached the Affirmative Action Program provisions of this Agreement, this Agreement may be forthwith terminated.

(e) *Equal Benefits Provisions.* This Agreement is subject to Section 10.8.2.1, Article 1, Chapter 1, Division 10 of the Administrative Code ("Equal Benefits Provisions") related to equal benefits to employees. Concessionaire agrees to comply with the provisions of Section 10.8.2.1. By way of specification but not limitation, pursuant to Section 10.8.2.1.c of the Administrative Code, the failure of Concessionaire to comply with the Equal Employment Practices provisions of this Agreement may be deemed to be a material breach of this Agreement. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Concessionaire. Upon a finding duly made that Concessionaire has failed to comply with the Equal Employment Practices provisions of this Agreement, this Agreement may be forthwith terminated.

(f) *Service Contract Worker Retention Ordinance.* This Agreement is subject to the Service Contract Worker Retention Ordinance (“SCWRO”) (Section 10.36, *et seq.* of the Administrative Code. The SCWRO requires that, unless specific exemptions apply, all employers (as defined) under contracts that are primarily for the furnishing of services to or for the City and that involve an expenditure or receipt in excess of \$25,000 and a contract term of at least three (3) months shall provide retention by a successor contractor for a ninety-day (90-day) transition period of the employees who have been employed for the preceding twelve (12) months or more by the terminated contractor or subcontractor, if any, as provided for in the SCWRO. Under the provisions of Section 10.36.3(c) of the Administrative Code, City has the authority, under appropriate circumstances, to terminate this Agreement and otherwise pursue legal remedies that may be available if City determines that the subject contractor violated the provisions of the SCWRO.

(g) *Child Support Assignment Orders.* This Agreement is subject to Section 10.10, Article 1, Chapter 1, Division 10 of the Administrative Code related to Child Support Assignment Orders. Pursuant to this Section, Concessionaire (and any subcontractor of Concessionaire providing services to City under this Agreement shall (i) fully comply with all State and Federal employment reporting requirements for Concessionaire’s or Concessionaire’s subcontractor’s employees applicable to Child Support Assignment Orders; (ii) certify that the principal owner(s) of Concessionaire and applicable subcontractors are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (iii) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code section 5230, *et seq.*; and (iv) maintain such compliance throughout the Term of this Agreement. Pursuant to Section 10.10.b of the Administrative Code, failure of Concessionaire or an applicable subcontractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of Concessionaire or applicable subcontractors to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default of this Agreement subjecting this Agreement to termination where such failure shall continue for more than ninety (90) days after notice of such failure to Concessionaire by City (in lieu of any time for cure provided in Section 16.1).

(h) *General Provisions: Living Wage Policy.* This Agreement is subject to the Living Wage Ordinance (“LWO”) (Section 10.37, *et seq.* of the Administrative Code. The LWO requires that, unless specific exemptions apply, any employees of Concessionaires or licensees of City property who render services on the leased or licensed premises are covered by the LWO if any of the following applies: (1) the services are rendered on premises at least of portion of which are visited by substantial numbers of the public on a frequent basis, (2) any of the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources, or (3) the designated administrative agency of the City has determined in writing that coverage would further the proprietary interests of the City. Employees covered by the LWO are required to be paid not less than a minimum initial wage rate, as adjusted each year (July 1, 2009, levels: \$10.30 per hour with health benefits of at least \$1.25 per hour or otherwise \$11.55 per hour). The LWO also requires that employees be provided with at least twelve (12) compensated days off per year for sick leave, vacation, or personal necessity at the employee’s request, and at least ten (10) additional days per year of

uncompensated time pursuant to Section 10.37.2(b). The LWO requires employers to inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the federal Earned Income Tax Credit (“EITC”) and to make available the forms required to secure advance EITC payments from the employer pursuant to Section 10.37.4. Concessionaire shall permit access to work sites for authorized City representatives to review the operation, payroll, and related documents, and to provide certified copies of the relevant records upon request by the City. Whether or not subject to the LWO, Concessionaire shall not retaliate against any employee claiming non-compliance with the provisions of the LWO, and, in addition, pursuant to Section 10.37.6(c), Concessionaire agrees to comply with federal law prohibiting retaliation for union organizing.

(i) *Living Wage Coverage Determination.* The CAO has made the initial determination that this Agreement, as a public lease or a public license, is subject to the LWO. Concessionaire, although subject to the LWO, may be exempt from most of the requirements of the LWO if Concessionaire qualifies for such exemption under the provisions of the LWO. Determinations as to whether an employer or employee is exempt from coverage under the LWO are not final, but are subject to review and revision as additional facts are examined and/or other interpretations of the law are considered. Applications for exemption must be renewed every two (2) years. To the extent Concessionaire claims non-coverage or exemption from the provisions of the LWO, the burden shall be on Concessionaire to prove such non-coverage or exemption, and, where applicable, renew such exemption.

(j) *Compliance; Termination Provisions and Other Remedies.* Living Wage Policy. If Concessionaire is not initially exempt from the LWO, Concessionaire shall comply with all of the provisions of the LWO, including payment to employees at the minimum wage rates, effective on the Execution Date of this Agreement, and shall execute a Declaration of Compliance Form contemporaneously with the execution of this Agreement. If Concessionaire is initially exempt from the LWO, but later no longer qualifies for any exemption, Concessionaire shall, at such time as Concessionaire is no longer exempt, comply with the provisions of the LWO and execute the then-currently used Declaration of Compliance Form, or such form as the LWO requires. Under the provisions of Section 10.37.6(c) of the Los Angeles Administrative Code, violation of the LWO shall constitute a material breach of this Agreement and City shall be entitled to terminate this Agreement and otherwise pursue legal remedies that may be available, including those set forth in the LWO, if City determines that Concessionaire violated the provisions of the LWO. The procedures and time periods provided in the LWO are in lieu of the procedures and time periods provided in Section 15.1 of this Agreement. Nothing in this Agreement shall be construed to extend the time periods or limit the remedies provided in the LWO.

(k) *Tax Registration Certificates and Tax Payments.* This Section 11.2(k) is applicable where Concessionaire is engaged in business within the City of Los Angeles and Concessionaire is required to obtain a Tax Registration Certificate (“TRC”) pursuant to one or more of the following articles (collectively “Tax Ordinances”) of Chapter II of the Los Angeles Municipal Code: Article 1 (Business Tax Ordinance) [section 21.00, *et seq.*], Article 1.3 (Commercial Concessionaire’s Occupancy Tax) [section 21.3.1, *et seq.*], Article 1.7 (Transient Occupancy Tax) [section 21.7.1, *et seq.*], Article 1.11 (Payroll Expense Tax) [section 21.11.1, *et seq.*], or Article 1.15 (Parking Occupancy Tax) [section 21.15.1, *et seq.*]. Prior to the execution

of this Agreement, or the effective date of any extension of the Term or renewal of this Agreement, the Concessionaire shall provide to the CAO proof satisfactory to the CAO that Concessionaire has the required TRCs and that Concessionaire is not then currently delinquent in any tax payment required under the Tax Ordinances. City may terminate this Agreement upon thirty (30) days' prior written notice to Concessionaire if City determines that Concessionaire failed to have the required TRCs or was delinquent in any tax payments required under the Tax Ordinances at the time of entering into, extending the Term of, or renewing this Agreement. City may also terminate this Agreement upon ninety (90) days prior written notice to Concessionaire at any time during the Term of this Agreement if Concessionaire fails to maintain required TRCs or becomes delinquent in tax payments required under the Tax Ordinances and Concessionaire fails to cure such deficiencies within the ninety (90) day period (in lieu of any time for cure provided in Section 16.1).

(l) *Slavery Disclosure Ordinance.* This Agreement is subject to the applicable provisions of the Slavery Disclosure Ordinance ("SDO") (Section 10.41, *et seq.*, of the Los Angeles Administrative Code. Unless otherwise exempt in accordance with the provision of the Ordinance, Concessionaire certifies that it has complied with the applicable provisions of the Ordinance. Under the provisions of Section 10.41.2(b) of the Los Angeles Administrative Code, City has the authority, under appropriate circumstances, to terminate this Agreement and otherwise pursue legal remedies that may be available to City if City determines that the Concessionaire failed to fully and accurately complete the SDO affidavit or otherwise violated any provision of the SDO.

(m) *Americans With Disabilities Act.* Concessionaire hereby certifies that the Structures will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and its implementing regulations during the term of this Agreement. Concessionaire will provide reasonable accommodations to allow qualified individuals with disabilities to have access to the Parking Garage System and have the benefit of the Parking Garage Services in accordance with the provisions of the Americans with Disabilities Act. Concessionaire will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by Concessionaire, relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this Section 11.2(m).

(n) *Contractor Responsibility Ordinance.* This Agreement is subject to the Contractor Responsibility Ordinance ("CRO") (Section 10.40, *et seq.*, of the Los Angeles Administrative Code "LAAC") and the rules and regulations promulgated pursuant thereto as they may be updated. The CRO requires that, unless specific exemptions apply as specified in LAAC 10.40.4(a), lessees or licensees of City property who render services on the leased or licensed premises are covered by the CRO if any of the following applies: (1) the services are rendered on premises at least a portion of which are visited by substantial numbers of the public on a frequent basis, (2) any of the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources, or (3) designated administrative agency of the City has determined in writing that coverage would further the proprietary interests of the City. Lessees or licensees of City property who are not exempt pursuant to LAAC 10.40.4 (a) or (b), unless subject to the CRO solely due to an amendment to an existing lease or license, are required to have completed a questionnaire ("Questionnaire")

signed under penalty of perjury designed to assist the City in determination that the lessee or licensee is one that has the necessary quality, fitness and capacity to perform the work set forth in the contract. All lessees or licensees of City property who are covered by the CRO, including those subject to the CRO due to an amendment, are required to complete the following Pledge of Compliance (“POC”):

(1) comply with all applicable federal state, and local laws and regulations in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees;

(2) notify the awarding authority within thirty (30) calendar days after receiving notification that any government agency has initiated an investigation that may result in a finding that the lessee or licensee did not comply with clause (1) of this Section 11.2(n) in the performance of the lease or license;

(3) notify the awarding authority within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that the lessee or licensee has violated clause (1) of this Section 11.2(n) above in the performance of the lease or license;

(4) ensure within thirty (30) days (or such shorter time as may be required by the awarding authority) that subcontractors working on the lease or license submit a POC to the awarding authority signed under penalty of perjury; and

(5) ensure that subcontractors working on the lease or license abide by the requirements of the POC and the requirement to notify the awarding authority within thirty (30) calendar days that any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated clause (1) of this Section 11.2(n) above in the performance of the lease or license.

Concessionaire shall ensure that their subcontractors meet the criteria for responsibility set forth in the CRO and any rules and regulations promulgated thereto. Concessionaires may not use any subcontractor that has been determined or found to be a non-responsible contractor by City. The listing of non-responsible contractors may be accessed on the internet at: <http://www.lacity.org/bidresp>. Subject to approval by the awarding authority, Concessionaire may substitute a non-responsible subcontractor with another subcontractor with no change in the consideration for this Agreement. Concessionaire shall submit to City a Pledge of Compliance for each subcontractor listed by the Concessionaire in its Questionnaire, as performing work on this Agreement within thirty (30) calendar days of execution of this Agreement, unless the Department of General Services requires in its discretion the submission of a Pledge of Compliance within a shorter time period. The signature of Concessionaire of this Agreement shall constitute a declaration under penalty of perjury that Concessionaire shall comply with the POC.

(o) The Concessionaire shall:

(1) notify the awarding authority within thirty (30) calendar days after receiving notification that any governmental agency has initiated an investigation that may result in a finding that Concessionaire did not comply with any applicable federal, state, or local law in



the performance of this Agreement, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees;

(2) notify the awarding authority within thirty (30) calendar days of receiving notice of any findings by a government agency or court of competent jurisdiction that Concessionaire violated any applicable federal, state, or local law in the performance of this Agreement including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees; and

(3) notify the awarding authority within thirty (30) calendar days of becoming aware of any information regarding its subcontractors and investigations or findings regarding the subcontractor's violations of any applicable federal, state, or local law in the performance of this Agreement, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees.

(p) Updates of information contained in Concessionaire's responses to the Questionnaire must be submitted to the awarding authority within thirty (30) days of any changes to the responses if the change would affect Concessionaire's fitness and ability to continue performing this Agreement. Notwithstanding the above, Concessionaire shall not be required to provide updates to the Questionnaire if Concessionaire became subject to the CRO solely because of an amendment to the original lease or license. Concessionaire shall cooperate in any investigation pursuant to CRO by providing such information as shall be requested by City. Concessionaire agrees that City may keep the identity of any complainant confidential. Concessionaire shall ensure that subcontractors who perform work on this Agreement abide by these same updating requirements including the requirement to:

(1) notify the awarding authority within thirty (30) calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the subcontractor did not comply with any applicable federal, state, or local law in the performance of this Agreement, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees; and

(2) notify the awarding authority within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that the subcontractor violated any applicable federal, state, or local law in the performance of this Agreement, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees.

The requirement that Concessionaire provide Questionnaires and updates to Questionnaire responses does not apply to subcontractors.

(q) If the Concessionaire is not exempt from the CRO, Concessionaire shall comply with all of the provisions of the CRO and this Agreement. Failure to comply with the provisions of the CRO, including without limitation the requirements that all responses to the Questionnaire are complete and accurate, to provide updates as provided therein and to correct any deficiencies within ten (10) days of notice by City, or failure to comply with the provisions of this Agreement shall constitute a material breach of this Agreement and City shall be entitled

to terminate this Agreement and otherwise pursue any legal remedies that may be available, including those set forth in the CRO. Nothing in this Agreement shall be construed to extend the time periods or limit the remedies provided in the CRO.

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

**Section 11.3. Prevailing Wage.** Concessionaire is aware of the provisions of Section 1720 of the California Labor Code and has made its own evaluation of whether or not the work of renovation of the Structures may be considered “public work” within the meaning of that Section and therefore agrees, to the extent that such work is determined to be “public work,” that all workers employed thereon shall be paid not less than the general prevailing rate of wages for work of a similar nature in the Los Angeles area.

## **ARTICLE 12 INDEMNIFICATION**

### **Section 12.1. Indemnification by the Concessionaire.**

(a) Except for the active negligence or willful misconduct of City, Concessionaire undertakes and agrees to defend, indemnify and hold harmless City and any and all of City’s boards, officers, agents, and employees from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to attorney’s fees and cost of litigation, damage or liability of any nature whatsoever, that may arise out of or in connection with this Agreement or the use of the Parking Garage System by Concessionaire, its agents, employees, customers, or any other person using or attending any project or program on the Premises. This Section 12.1(a) does not apply to claims or liabilities involving Hazardous Materials which are covered under Section 4.2(c) of this Agreement.

(b) The Concessionaire shall defend, indemnify and hold harmless the City and any and all of City’s boards, officers, agents, and employees from and against any Losses actually suffered or incurred by the City, or any of City’s boards, officers, agents, and employees based upon, arising out of, occasioned by or attributable to (i) any Assumed Liabilities, (ii) any Tax or mortgage recording charge attributable to any Transfer of the Concessionaire Interest or any part thereof by the Concessionaire or (iii) any claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the Concessionaire or its Representatives in connection with this Agreement, any Transfer of the Concessionaire Interest or any part thereof or any other matter affecting the Parking Garage System.

**Section 12.2. Indemnification by the City.** The City shall defend, indemnify and hold harmless the Concessionaire and each of its Representatives from and against any Losses actually suffered or incurred by the Concessionaire or any such Representative, based upon, arising out of, occasioned by or attributable to (i) any failure by the City or its Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, subject to Section 9.4(a), any breach by the City of its

representations or warranties set forth herein, (ii) any Excluded Liabilities, (iii) any claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the City or any of its Representatives in connection with this Agreement, or any other matter affecting the Parking Garage System

**Section 12.3. Agency for Representatives.** Each of the City and the Concessionaire agrees that it accepts each indemnity in favor of any of its Representatives, as agent and trustee of that Representative and agrees that each of the City and the Concessionaire may enforce an indemnity in favor of its Representatives on behalf of that Representative.

**Section 12.4. Third Party Claims.**

(a) *Notice of Third Party Claim.* If an Indemnified Party receives notice of the commencement or assertion of any Third Party Claim, the Indemnified Party shall give the Indemnifier reasonably prompt notice thereof, but in any event no later than 45 days after receipt of such notice of such Third Party Claim. Such notice to the Indemnifier shall describe the Third Party Claim in reasonable detail (and include a copy of any complaint or related documents) and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be sustained by the Indemnified Party.

(b) *Defense of Third Party Claim.* The Indemnifier may participate in or assume the defense of any Third Party Claim by giving notice to that effect to the Indemnified Party not later than 30 days after receiving notice of that Third Party Claim (the “Notice Period”). The Indemnifier’s right to do so shall be subject to the rights of any insurer or other Party who has potential liability in respect of that Third Party Claim. The Indemnifier agrees to pay all of its own expenses of participating in or assuming each defense. The Indemnified Party shall co-operate in good faith in the defense of each Third Party Claim, even if the defense has been assumed by the Indemnifier and may participate in such defense assisted by counsel of its own choice at its own expense. If the Indemnified Party has not received notice within the Notice Period that the Indemnifier has elected to assume the defense of such Third Party Claim, the Indemnified Party may assume such defense, assisted by counsel of its own choosing and the Indemnifier shall be liable for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Indemnified Party with respect to such Third Party Claim.

(c) *Assistance for Third Party Claims.* The Indemnifier and the Indemnified Party will use all reasonable efforts to make available to the Party which is undertaking and controlling the defense of any Third Party Claim (the “Defending Party”), (i) those employees whose assistance, testimony and presence is necessary to assist the Defending Party in evaluating and in defending any Third Party Claim, and (ii) all documents, records and other materials in the possession of such Party reasonably required by the Defending Party for its use in defending any Third Party Claim, and shall otherwise co-operate with the Defending Party. The Indemnifier shall be responsible for all reasonable expenses associated with making such documents, records and materials available and for all expenses of any employees made available by the Indemnified Party to the Indemnifier hereunder, which expense shall not exceed the actual cost to the Indemnified Party associated with such employees.

**Section 12.5. Direct Claims.** Any Direct Claim shall be asserted by giving the Indemnifier reasonably prompt notice thereof, but in any event not later than 90 days after the Indemnified Party becomes aware of such Direct Claim. The Indemnifier shall then have a period of 45 days within which to respond in writing to such Direct Claim. If the Indemnifier does not so respond within such 45-day period, the Indemnifier shall be deemed to have rejected such Claim, and in such event the Indemnified Party may submit such Direct Claim to the dispute resolution process set forth in Article 19.

**Section 12.6. Failure to Give Timely Notice.** A failure to give timely notice in accordance with this Article 12 shall not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, a Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise directly and materially damaged as a result of such failure. However, this Section 12.6 shall have no effect whatever on the survival provisions set out in Section 9.4 and the rights of the Parties with respect thereto.

**Section 12.7. Reductions and Subrogation.** If the amount of any Loss incurred by an Indemnified Party at any time subsequent to the making of an indemnity payment hereunder (an “Indemnity Payment”) is reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the amount of such reduction (less any costs, expenses (including Taxes) or premiums incurred in connection therewith), together with interest thereon from the date of payment thereof at the Bank Rate, shall promptly be repaid by the Indemnified Party to the Indemnifier. Upon making a full Indemnity Payment, the Indemnifier shall, to the extent of such Indemnity Payment, be subrogated to all rights of the Indemnified Party against any third party in respect of the Loss to which the Indemnity Payment relates. Until the Indemnified Party recovers full payment of its Loss, any and all claims of the Indemnifier against any such third party on account of such Indemnity Payment shall be postponed and subordinated in right of payment to the Indemnified Party’s rights against such third party.

**Section 12.8. Payment and Interest.** All amounts to be paid by an Indemnifier hereunder shall bear interest at a rate per annum equal to the Bank Rate, calculated annually and payable monthly, both before and after judgment, from the date that the Indemnified Party disbursed funds, suffered damages or losses or incurred a loss, liability or expense in respect of a Loss for which the Indemnifier is liable to make payment pursuant to this Article 12, to the date of payment by the Indemnifier to the Indemnified Party.

**Section 12.9. Limitation on Certain Claims.** No Claim may be made by the Concessionaire or its Representatives against the City for the breach of any representation or warranty made or given by the City in Section 9.1 unless (i) the Loss suffered or incurred by the Concessionaire or its Representatives in connection with such breach is in excess of \$50,000 and (ii) the aggregate of all Losses suffered or incurred by the Concessionaire or its Representatives in connection with breaches of representations and warranties in Section 9.1 exceeds \$2,000,000 in the aggregate, in which event the amount of all such Losses in excess of such amount may be recovered by the Concessionaire or its Representatives; *provided, however*, that the maximum aggregate liability of the City to the Concessionaire or its Representatives in respect of such Losses shall not exceed 50% of the Base Rent; *provided further* that this Section 12.9 shall not

apply to Claims for the breach of the representations or warranties in Section 9.1(a), (b), (c), (d), (e), (f) or (g) or to Claims for fraud, intentional misrepresentation or intentional breach of the representations or warranties in Section 9.1.

**Section 12.10. Other Matters.** To the extent permissible by applicable law, the Concessionaire waives any limits to the amount of its obligations to defend, indemnify, hold harmless or contribute to any sums due under any Losses, including any claim by any employee of the Concessionaire, that may be subject to the provisions of Section 3700 *et seq.* of the California Labor Code or any other related law or judicial decision.

**Section 12.11. Offset Rights; Limitations on Certain Damages.**

(a) Any other provision herein notwithstanding, each Party's obligations under this Agreement are subject to, and each Party shall have the benefit of, all defenses, counterclaims, rights of offset or recoupment or other claims and rights, including the right to deduct payments due to the other Party hereunder (collectively, "Offsets") which such Party may have at any time against such other Party (or any of their respective successors and assigns) or any transferee or assignee of any such other Party's rights as against such Party or any part thereof or interest therein, whether the claim or right of such Party relied upon for such purpose is matured or unmatured, contingent or otherwise, and no transfer or assignment of this Agreement or any other obligation of such other Party, or of any rights in respect thereof, pursuant to any plan of reorganization or liquidation or otherwise shall affect or impair the availability to each Party of the Offsets.

(b) In no event shall any Party be liable to the other Party under this Agreement for consequential, indirect, exemplary or punitive damages (except for claims for fraud or for intentional misrepresentation or intentional breach).

**Section 12.12. Survival.** This Article 12 shall remain in full force and effect in all circumstances and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants hereunder or by any termination or rescission of this Agreement by any Party.

## **ARTICLE 13 INSURANCE**

**Section 13.1. Insurance Coverage Required.** The Concessionaire shall provide and maintain at the Concessionaire's own expense, or cause to be maintained, during the Term and during any time period following expiration if the Concessionaire is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring the Parking Garage System, all Structures, and all Parking Garage System Operations (the "Required Coverages").

**Section 13.2. General Liability Insurance.** Concessionaire shall provide and maintain general liability insurance in an amount not less than Ten Million Dollars (\$10,000,000) per occurrence, Twenty Million Dollars (\$20,000,000) aggregate for bodily injury and property damage.

**Section 13.3. Automobile Liability Insurance.** When any motor vehicles (owned, non-owned or hired) are used in connection with this Agreement, Concessionaire shall provide automobile liability insurance in an amount not less than Ten Million Dollars (\$10,000,000) per accident for bodily injury and property damage.

**Section 13.4. Garage Liability Insurance.** Concessionaire shall provide and maintain garage liability insurance in an amount not less than Ten Million Dollars (\$10,000,000) per occurrence for bodily injury and property damage. Coverage extension shall include garagekeepers legal liability insurance.

**Section 13.5. Property Insurance.** Concessionaire shall provide and maintain all risk property insurance at full replacement cost, covering all loss, damage or destruction to the Parking Garage System, including improvements and betterments.

**Section 13.6. Builder's Risk Insurance.** When Concessionaire undertakes any construction, maintenance or repairs to the Parking Garage System, Concessionaire shall provide and maintain all risk builder's risk insurance covering loss, damage or destruction of property, including materials in transit and stored on and off site, in an amount equal to the value of construction and materials on hand.

**Section 13.7. Workers' Compensation and Employer's Liability Insurance.** By signing this Agreement, Concessionaire hereby certifies that it is aware of the provisions of Sections 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 such times as they may apply during the Term of this Agreement. A Waiver of Subrogation in favor of City is required. Concessionaire shall provide and maintain workers' compensation covering all employees who agree to provide a service under this Agreement and employer's liability insurance in an amount not less than \$1,000,000 per accident for bodily injury or disease.

**Section 13.8. Additional Insureds/Additional Interest/Loss Payee.** Concessionaire agrees that City, its boards, officers, agents and employees shall be included as:

- a) Additional insureds in all required general liability, automobile liability and garage liability insurance.
- b) Named insured in all required builder's risk insurance.
- c) Loss payee as its interests may appear in all required property insurance.

**Section 13.9. Concessionaire's Property.** City will not insure Concessionaire's equipment, stored goods, other personal property, fixtures, or Concessionaire improvements, nor such personal property owned by Concessionaire's subconcessionaires or assignees, if any, or invitees. City shall not be required to repair any injury or damage to any personal property or trade fixtures installed in the Parking Garage System by Concessionaire caused by fire or other casualty, or to replace any such personal property or trade fixtures. Concessionaire may, at Concessionaire's sole option and expense, obtain physical damage insurance covering

Concessionaire's equipment, stored goods, other personal property, fixtures or Concessionaire improvements or obtain business interruption insurance.

**Section 13.10. Notice of Change In Insurance.** All insurance policies required under this Agreement shall expressly provide that such insurance shall not be canceled or materially reduced in coverage or limits except after thirty (30) days' (ten (10) days for non-payment of premium) written notice has been given to City Administrative Officer, Risk Management, City Hall East, Room 1240, 200 North Main Street, Los Angeles, California 90012.

**Section 13.11. Default.** If insurance is canceled, lapsed, or reduced below minimums required in this Article 13, City may consider this Agreement to be in default and may terminate it. Termination shall occur at the expiration of a three (3) day notice given in accordance with the provisions of the Code of Civil Procedure Section 1162. At the termination of three (3) days or sooner, the Concessionaire shall vacate the Parking Garage System and the Concessionaire shall have no right to possess or control the Parking Garage System or the operations conducted therein. If the Concessionaire does not vacate, City may utilize any and all court proceedings to obtain a right to possession.

**Section 13.12. Adjustment of Insurance Levels.** The City reserves the right at any time during the Term or any extension or holdover of this Agreement, applying generally accepted risk management principles, to change the amounts and types of insurance required hereunder upon giving Concessionaire ninety (90) days prior written notice in order to insure that the Concessionaire is maintaining customary and reasonable insurance amounts and types during the Term of the Agreement.

**Section 13.13. Waiver of Subrogation.** With respect to property damage, each Party agrees to waive its rights of subrogation for any claim applicable to the California Standard Fire Policy with Extended Coverage and Vandalism and Malicious Mischief endorsements.

**Section 13.14. Admitted Carrier/Licensed California Broker.** 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.

**Section 13.15. Contribution Not Required.** Concessionaire's insurance shall be primary and will not require contribution or shall be endorsed to effect these provisions.

**Section 13.16. Separation of Insureds.** Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whom a claim or suit is brought. The inclusion of any person or organization as an insured shall not affect any right such person or organization would have as a claimant if not so included.

**Section 13.17. Insurance Approval.** All insurance required hereunder shall conform to the City requirements established by Charter, ordinance or policy. Evidence of Insurance shall be approved by the Office of the Administrative Officer, Risk Management prior to tenancy under this Agreement in accordance with the Los Angeles Administrative Code.

**Section 13.18. Evidence of Insurance.** Electronic submission via Track4LA<sup>®</sup>, the City's online insurance compliance system (<http://track4la.lacity.org>), is the preferred method for

submitting evidence of insurance. Track4LA<sup>®</sup> can be used by insurance brokers and agents to submit Concessionaire insurance certificates directly to the City using the ACORD 25 Certificate of Liability Insurance in electronic format. Insurance Industry Certificates of Insurance other than the ACORD 25 may also be accepted. However all Certificates must provide a thirty (30) days' notice provision (ten (10) days for non-payment of premium) and an Additional Insured Endorsement naming the City an additional insured completed by Concessionaire's insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Insurance Certificate must state that the City is an automatic or blanket additional insured. An endorsement naming the City as an insured is required on all builder's risk policies. An endorsement naming the City as Loss Payee as its Interest may appear is required on all property coverages. Alternatively, the Concessionaire may submit a copy of the full insurance policy containing language which complies with the requirements of this Article. Additional Insured Endorsements do not apply to the following: Indication of compliance with statute, such as Workers' Compensation Law.

### **Section 13.19. Damage and Destruction.**

(a) *Obligations of Concessionaire.* If all or any part of any of the Parking Garage System shall be destroyed or damaged during the Term in whole or in part by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen, the Concessionaire shall: (i) give the City notice thereof promptly after the Concessionaire receives actual notice of such casualty; (ii) at its sole cost and expense, whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restorations, replacement and rebuilding (the "Casualty Cost"), proceed diligently to repair, restore or rebuild the same to the condition existing prior to the happening of such fire or other casualty (any such activity being a "Restoration"); and (iii) deposit all insurance proceeds received by the Concessionaire in connection with any Restoration with a Depositary; *provided, however*, that if at any time the Casualty Cost exceeds the net insurance proceeds actually deposited with the Depositary, then the Concessionaire shall also deposit with the Depositary such cash as is sufficient to cover the difference between the Casualty Cost and the net insurance proceeds (collectively, with any interest earned thereon, the "Restoration Funds"); *provided further* that the procedures of this clause (iii) of this Section 13.19(a) shall only apply to casualty events in which the cost of Restoration exceeds \$5,000,000. Any Restoration undertaken pursuant to this Section 13.19 shall be undertaken in accordance with and subject to the terms of this Agreement.

(b) *Rights of City.* If (i) the Concessionaire shall fail or neglect to commence the diligent Restoration of the Parking Garage System or the portion thereof so damaged or destroyed, (ii) having so commenced such Restoration, the Concessionaire shall fail to diligently complete the same in accordance with the terms of this Agreement or (iii) prior to the completion of any such Restoration by the Concessionaire, this Agreement shall expire or be terminated in accordance with the terms of this Agreement, the City may, but shall not be required to, complete such Restoration at the Concessionaire's expense and shall be entitled to be paid out of the Restoration Funds, but such payment shall not limit the Concessionaire's obligation to pay the City's reasonable Restoration expenses, less amounts received by the City from such Restoration Funds. In any case where this Agreement shall expire or be terminated prior to the completion of the Restoration, the Concessionaire shall (x) account to the City for all amounts



spent in connection with any Restoration which was undertaken, (y) pay over or cause the Depositary to pay over to the City, within 30 days after demand therefor, the remainder, if any, of the Restoration Funds received by the Concessionaire prior to such termination or cancellation and (z) pay over or cause the Depositary to pay over to the City, within 30 days after receipt thereof, any Restoration Funds received by the Concessionaire or the Depositary subsequent to such termination or cancellation. The Concessionaire's obligations under this Section 13.19(b) shall survive the expiration or termination of this Agreement.

(c) *Payment of Restoration Funds to Concessionaire.* Subject to the satisfaction by the Concessionaire of all of the terms and conditions of this Section 13.19, the Depositary shall pay to the Concessionaire from time to time, any Restoration Funds, but not more than the amount actually collected by the Depositary upon the loss, together with any interest earned thereon, after reimbursing itself therefrom, as well as the City, to the extent, if any, of the reasonable expenses paid or incurred by the Depositary and the City in the collection of such monies, to be utilized by the Concessionaire solely for the Restoration, such payments to be made as follows:

(i) prior to commencing any Restoration, the Concessionaire shall furnish the City with an estimate of the cost of such Restoration, prepared by an architect or engineer;

(ii) the Restoration Funds shall be paid to the Concessionaire in installments as the Restoration progresses, subject to Section 13.19(c)(iii), based upon requisitions to be submitted by the Concessionaire to the Depositary and the City in compliance with Section 13.19(d), showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by the Concessionaire; *provided, however*, that if any lien (other than a Permitted Concessionaire Encumbrance) is filed against the Parking Garage System or any part thereof in connection with the Restoration, the Concessionaire shall not be entitled to receive any further installment until such lien is satisfied or discharged (by bonding or otherwise); *provided further* that notwithstanding the foregoing, but subject to the provisions of Section 13.19(c)(iii), the existence of any such lien shall not preclude the Concessionaire from receiving any installment of Restoration Funds so long as such lien will be discharged with funds from such installment and at the time the Concessionaire receives such installment the Concessionaire delivers to the City and the Depositary a release of such lien executed by the lien or and in recordable form;

(iii) the amount of any installment to be paid to the Concessionaire shall be the amount of Restoration Funds incurred by the Concessionaire in connection therewith, less 10% of such amount as a retainage (which 10% retainage shall (i) be reserved without duplication of any retainage reserved by the Concessionaire under its contracts for the Restoration work and (ii) shall be released to the Concessionaire upon completion of the Restoration work), except that such retainage shall not include any amounts for architects' or engineers' fees or permitting or other governmental fees in connection with the Restoration or with respect to each Contractor upon the final completion of each such Contractor's respective work, *provided* that the unapplied portion of the funds held by the Depositary are sufficient to complete the Restoration; *provided, however*, that all disbursements to the Concessionaire shall be made based upon an architect's or engineer's certificate for payment in accordance with

industry standards, and disbursements may be made for advance deposits for material and Contractors to the extent that such disbursements are customary in the industry and *provided* that the unapplied portion of the funds held by the Depositary are sufficient to complete the Restoration; and

(iv) except as provided in Section 13.19(b), upon completion of and payment for the Restoration by the Concessionaire, subject to the rights of any Leasehold Mortgagee, the Depositary shall pay the balance of the Restoration Funds, if any, to the Concessionaire; *provided, however*, that if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), the Concessionaire shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 13.19(a)(iii).

(d) *Conditions of Payment.* The following shall be conditions precedent to each payment made to the Concessionaire as provided in Section 13.19(c):

(i) at the time of making such payment, no Concessionaire Default exists, except if such Concessionaire Default is the result of the damage or destruction for which such payment is being made;

(ii) the Restoration shall be carried out under the supervision of the architect or engineer, and there shall be submitted to the Depositary and the City the certificate of the architect or engineer (or other evidence reasonably satisfactory to the City) stating that (A) the materials and other items which are the subject of the requisition have been delivered to the Parking Garage System (except with respect to requisitions for advance deposits permitted under Section 13.19(c)(iii)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's or other liens have been claimed, except for any mechanic's lien for claims that will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (*provided* that a release of such lien is delivered to the Depositary in accordance with Section 13.19(c)(ii)), or insured over by title insurance reasonably acceptable to the City, (B) the sum then requested to be withdrawn either has been paid by the Concessionaire or is due and payable to Contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (C) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Restoration Funds or has been made out of the Restoration Funds received by the Concessionaire, (D) the sum then requested does not exceed the value of the services and materials described in the certificate, (E) the work relating to such requisition has been performed in accordance with this Agreement, (F) the balance of the Restoration Funds held by the Depositary will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion and (G) in the case of the final payment to the Concessionaire, the Restoration has been completed in accordance with this Agreement.

(e) *Payment and Performance Bonds.* If the Concessionaire obtains payment or performance bonds related to a Restoration (which the Concessionaire may or may not obtain in its sole discretion), the Concessionaire shall name the City and the Concessionaire and the Leasehold Mortgagee, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to the City promptly upon obtaining them.

(f) *Benefit of City.* The requirements of this Section 13.19 are for the benefit only of the City, and no Contractor or other Person shall have or acquire any claim against the City as a result of any failure of the City actually to undertake or complete any Restoration as provided in this Section 13.19 or to obtain the evidence, certifications and other documentation provided for herein.

(g) *Investment of Restoration Funds.* Restoration Funds deposited with a Depository shall be invested and reinvested in Eligible Investments at the direction of the Concessionaire, and all interest earned on such investments shall be added to the Restoration Funds.

(h) *Rights of Leasehold Mortgagee.* The City acknowledges and agrees that any Restoration Funds not applied to a Restoration as provided in this Section 13.19 shall be subject to the lien or liens of any Leasehold Mortgage.

## **ARTICLE 14 ADVERSE ACTIONS**

### **Section 14.1. Adverse Actions.**

(a) An “Adverse Action” shall occur if the City or CRALA takes any action at any time during the Term (including enacting any Law) and the effect of such action is reasonably expected (i) to be principally borne by the Concessionaire and (ii) to have a material adverse effect on the fair market value of the Concessionaire Interest (whether as a result of decreased revenues, increased expenses or both), except where such action is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of the Adverse Action) or such action is otherwise permitted under this Agreement; *provided, however*, that none of the following shall be an Adverse Action: (A) the development, redevelopment, construction, acquisition, sale, lease, maintenance, operation, modification or change in the operation of any existing or new parking facility or mode of parking (including a Competing Parking Action) or of transportation (including a road, street or highway) or any park or recreation (including harbor, marina, athletic field or any existing or new stadium) facility whether or not it results in the reduction of Parking Fee Revenues or Other Concessionaire Revenues or in the number of vehicles using the Parking Garage System; *provided* that a Competing Parking Action shall constitute a Compensation Event with respect to which Concession Compensation shall be payable upon the occurrence thereof, (B) the imposition of a Tax of general application or an increase in Taxes of general application, including parking Taxes of general application imposed on customers or operators of parking facilities, (C) requirements generally applicable to either (i) public garage licensees, and/or (ii) private garages, (D) Competing Parking Actions, (E) Adverse Actions which (i) by their

terms will expire within one year, or (ii) do not have a material adverse effect on the fair market value of the Concessionaire Interest greater than five percent (5%) of the Base Rent, (F) funding of a garage to be owned and operated by others, (G) disposition and development agreements, (H) development agreements under Government Code § 65864, *et seq.*, (I) zoning activities, including conditional use permits and variances, (J) the City's exercise of its Reserved Powers, (K) the granting of approvals or permits, or (L) the construction, acquisition, ownership, operation and/or sale of parking structures at or about the following addresses: at or about 1001 N. Judge John Aiso Street, Los Angeles, 1633 N. Vine Street, Hollywood, Public Parking Lot No. 689 located at 8866 Pico Boulevard, Los Angeles, Public Parking Lot No. 742 located at 1633 N. Wilcox Avenue, Hollywood, 621, 629, and 635 South Broadway, 628 - 630 South Hill Street, Los Angeles, 100 S. Grand Avenue, Los Angeles, 440 W. First Street, Los Angeles, 220 S. Hope Street, Los Angeles, or 236 S. Hope Street, Los Angeles, or associated with the Broad museum on Grand Avenue, Los Angeles (tentatively located at 221 N. Grand Avenue, Los Angeles).

(b) Subject to the provisions of Section 14.3 and the other provisions of this Article 14, if an Adverse Action occurs, the Concessionaire shall have the right to (i) be paid by the City the Concession Compensation with respect thereto (the "AA-Compensation") or, (ii) if the value of the Concession Compensation exceeds twenty five percent (25%) of the Parking Garage System Concession Value, terminate this Agreement and be paid by the City the "Termination Compensation" being the greater of (A) the Parking Garage System Concession Value and (B) the lesser of (i) the amount required to retire all Leasehold Mortgage Debt and (ii) Remaining Amortized Rent, in either case by giving notice in the manner described in Section 14.1(c).

(c) Concessionaire shall give written notice (the "AA-Preliminary Notice") to the City within 30 days following the earliest time that the Concessionaire became aware that the City either (i) intended to consider approving, authorizing, or undertaking an Adverse Action or (ii) that an Adverse Action had occurred, been authorized, or approved. For purposes of this Section 14.1(c), the City may, at its discretion, give Concessionaire written notice that it was considering authorizing, approving or performing an action which could potentially constitute an Adverse Action, in which case the time within which to serve an AA-Preliminary Notice for such action shall commence upon service of the first of such written notice. The AA-Preliminary Notice shall describe, to the extent reasonably known, the details of the anticipated material adverse effects of said action on the fair market value of the Concessionaire Interest and cooperate with the City in evaluating said adverse effects and means of avoiding or mitigating them. Failure to timely give notice in accordance with this Subsection shall be a waiver of that Adverse Action.

(d) If Concessionaire serves a timely AA-Preliminary Notice and the Adverse Action occurs, then within 90 days following the later of the date of delivery of the AA-Preliminary Notice or the occurrence of the Adverse Action, the Concessionaire shall give the City another notice (the "AA-Notice") setting forth (i) details of the effect of said occurrence that is principally borne by the Concessionaire generally and not by others, (ii) details of the material adverse effect of the said occurrence on the fair market value of the Concessionaire Interest, (iii) a statement as to which right in Section 14.1(b) the Concessionaire elects to exercise, and (iv) if the Concessionaire elects to exercise the right to Concession Compensation under

Section 14.1(b), the amount claimed as either AA-Compensation or Termination Compensation, as the case may be, together with supporting documentation and details of the calculation thereof. The City shall, after receipt of the AA-Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the City may reasonably consider necessary. Failure to timely give notice in accordance with Section 14.1(d) shall be a waiver of that Adverse Action.

(e) If the City wishes to dispute the occurrence of an Adverse Action claimed in the AA-Preliminary Notice or the amount of Concession Compensation or Termination Compensation, if any, claimed in the AA-Notice, the City shall give notice of dispute (the “AA-Dispute Notice”) to the Concessionaire at any time prior to 30 days following the date of receipt of the AA-Notice stating in reasonable detail the grounds for such dispute. If neither the AA-Notice nor the AA-Dispute Notice has been withdrawn within 30 days following the date of receipt of the AA-Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 19.

(f) If the Concessionaire has elected to exercise its right to Concessionaire Compensation, the City shall pay the amount of Concession Compensation claimed to the Concessionaire within 90 days following the date of receipt of the AA-Notice, or if a AA-Dispute Notice has been given, then not later than 90 days following the date of determination of the Concession Compensation (together with interest at the Bank Rate from the date of receipt of the AA-Dispute Notice to the date on which payment is made), *provided* that, subject to the right of the Concessionaire to receive interest at the Bank Rate on the payment owed by the City from the date of receipt of the AA-Dispute Notice to the date on which payment is made, the City may defer any such payment for an additional 120 days if the City determines, in its reasonable discretion, that such additional period is necessary in order to obtain financing or otherwise to obtain the necessary funds to make such a payment.

## **Section 14.2. Termination.**

(a) If the Concessionaire has the right to terminate this Agreement for an Adverse Action, and elects to do so by the service of the AA-Preliminary Notice and AA-Notice pursuant to Section 14.1, this Agreement, subject to Section 14.1(f), Sections 14.2(b) and (c) and Section 14.3, shall terminate 90 days following the date of receipt of the AA-Notice, by the City, or if a AA-Dispute Notice has been given, then not later than 90 days following the date of determination of the Termination Compensation, and the City shall pay an amount equal to the aggregate of (i) the Termination Compensation as of the date of termination, plus (ii) the reasonable out-of-pocket and documented expenses incurred by the Concessionaire as a result of such termination, less (iii) any insurance or condemnation proceeds received in respect of all or a portion of the Parking Garage System as a result of such Adverse Action (collectively, the “Termination Damages”) to the Concessionaire on the Reversion Date or, if the Termination Damages are determined on a date subsequent to the Reversion Date, then not later than 60 days following the date of determination of the Termination Damages (together with interest at the Bank Rate from the Reversion Date to the date on which payment is made), *provided* that, subject to the right of the Concessionaire to receive interest at the Bank Rate on the payment owed by the City from the date of receipt of the AA-Dispute Notice to the date on which payment is made, the City may defer any such payment for an additional 120 days if the City

reasonably determines that such additional period is necessary in order to obtain financing to make such a payment; *provided, however*, that any amounts received by the Concessionaire or any Leasehold Mortgagee from any insurance policies payable as a result of damage or destruction to the Parking Garage System that has not been remedied prior to the Reversion Date, shall, to the extent not used to remedy such effects, be deducted from the amount payable by the City to the Concessionaire.

(b) Any dispute arising out of the determination of the Termination Damages shall be submitted to the dispute resolution procedure in Article 19.

(c) This Agreement shall not terminate pursuant to Section 14.2(a) unless the Concessionaire has first obtained and delivered to the City the written consent of the Leasehold Mortgagee to such termination.

(d) Payment of the entire sum of Termination Damages or the AA-Compensation, as the case may be, by the City to the Concessionaire, shall constitute full and final satisfaction of all amounts that may be claimed by the Concessionaire for and in respect of the occurrence of the Adverse Action, and, upon such payment, the City shall be released and forever discharged by the Concessionaire from any and all liability in respect of such Adverse Action.

**Section 14.3. Right of City to Remedy an Adverse Action.** If the City wishes to remedy the occurrence of an Adverse Action, the City shall give notice thereof to the Concessionaire within 60 days following the date of receipt of the AA-Notice. If the City gives such notice it must remedy the Adverse Action within 180 days following the date of receipt of the AA-Notice, or, if a AA-Dispute Notice, has been given, within 180 days following the final award pursuant to Article 19 to the effect that an Adverse Action occurred. If the City elects to remedy the occurrence of an Adverse Action within the applicable period of time, the right of the Concessionaire shall be limited to a claim for AA-Compensation with respect to such Adverse Action.

**Section 14.4. Other Actions by Governmental Authorities.** In the event that any Governmental Authority (other than the City) proposes to take any action at any time during the Term (including or enacting any Law) and the effect of such action is reasonably expected (i) to be principally borne by the Concessionaire and not by others and (ii) to have a material adverse effect on the fair market value of the Concessionaire Interest, except where such action is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of an Adverse Action or such action by any such other Governmental Authority), then at the request of the Concessionaire the City shall use its reasonable efforts to oppose and challenge such action by any such other Governmental Authority; *provided, however*, that all reasonable out-of-pocket costs and expenses incurred by the Government Parties in connection with such opposition or challenge shall be borne by the Concessionaire.

## **ARTICLE 15 DELAY EVENTS**

### **Section 15.1. Delay Events.**

(a) If the Concessionaire is affected by a Delay Event, it shall give notice within 10 Business Days following the date on which it first became aware of such Delay Event to the City (*provided* that in the case of such Delay Event being a continuing cause of delay, only one notice shall be necessary), which notice shall include (i) a statement of which Delay Event the claim is based upon, (ii) details of the circumstances from which the delay arises and (iii) an estimate of the delay in the performance of obligations under this Agreement attributable to such Delay Event and information in support thereof, if known at that time. The City shall, after receipt of any such notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the City may reasonably consider necessary.

(b) The Concessionaire shall notify the City within 10 Business Days following the date on which it first became aware that a Delay Event has ceased.

(c) Subject to the Concessionaire giving the notice required in Section 15.1(a), a Delay Event shall excuse the Concessionaire from whatever performance is prevented by the Delay Event referred to in such notice for such appropriate number of days as the City and the Concessionaire jointly determine, each acting reasonably. If the City and the Concessionaire cannot agree upon the period of extension, then either Party shall be entitled to refer the matter to the dispute resolution procedure in Article 19. This Section 15.1(c) shall not excuse the Concessionaire from the performance and observance under this Agreement of all obligations and covenants not affected by the Delay Event. Notwithstanding the occurrence of a Delay Event, the Concessionaire shall continue its performance and observance under this Agreement of all of its obligations and covenants to the extent that it is reasonably able to do so and shall use its reasonable efforts to minimize the effect and duration of the Delay Event. Nothing herein shall permit or excuse noncompliance with a change to applicable Laws.

(d) If a Delay Event occurs that has the effect of causing physical damage or destruction to the Parking Garage System that results in the Parking Garage System being substantially unavailable for Parking Garage Purposes and such effect continues for a period in excess of 120 days and has a material adverse effect on the fair market value of the Concessionaire Interest, and insurance policies payable (or that should have been payable but for the breach of an obligation to take out and maintain such insurance policy by the Concessionaire) or condemnation or other similar proceeds are insufficient to restore the Concessionaire to the same economic position as it would have been in the absence of such event, then, notwithstanding Section 3.1, the Concessionaire shall have the right to extend the Term for a period that would be sufficient so to compensate the Concessionaire and to restore it to the same economic position as it would have been in had such Delay Event not occurred (a “Delay Event Remedy”), which time period shall not exceed the length of time during which the Parking Garage System was substantially unavailable for Parking Garage Purposes.

(e) If the Concessionaire elects to exercise the right to the Delay Event Remedy, the Concessionaire shall give notice (“Delay Event Notice”) to the City within 30 days

following the date on which the Concessionaire first became aware of its right to the Delay Event Remedy occurring setting forth (i) the details of the Delay Event and its effect on either causing physical damage or destruction to the Parking Garage System that results in the Parking Garage System being substantially unavailable for Parking Garage Purposes or suspending parking fee collection at the Parking Garage System, (ii) the amount claimed as compensation to restore the Concessionaire to the same economic position as it would have been in had such Delay Event not occurred (including the details of the calculation thereof) and (iii) the details of the relationship between such compensation and the Delay Event Remedy that it proposes. The City shall, after receipt of the Delay Event Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the City may reasonably consider necessary. If the City wishes to dispute the occurrence of a Delay Event or the Delay Event Remedy claimed in the Delay Event Notice, the City shall give notice to dispute (the “Delay Event Dispute Notice”) to the Concessionaire within 30 days following the date of receipt of the Delay Event Notice stating the grounds for such dispute, and if neither the Delay Event Notice nor the Delay Event Dispute Notice has been withdrawn within 30 days following the date of receipt of the Delay Event Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 19.

**Section 15.2. Relationship to Compensation Event.** Section 15.1 shall not prevent the Concessionaire from receiving Concession Compensation for any Delay Event that constitutes a Compensation Event pursuant to the terms of this Agreement. For the avoidance of doubt, a Competing Parking Action shall not constitute a Delay Event.

## **ARTICLE 16 DEFAULTS; LETTERS OF CREDIT**

### **Section 16.1. Default by the Concessionaire.**

(a) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute a “Concessionaire Default” under this Agreement:

(i) the failure (A) by the Concessionaire to make any payment of Base Rent, Additional Rent or any other payment required to be made by Concessionaire hereunder, as and when due, (B) by the Concessionaire or the Operator or any Affiliate of the Concessionaire or the Operator, or any Equity Participant to pay when due all taxes, fees or other monetary obligations to the City or its agencies and departments, where such failure shall continue for thirty (30) calendar days after written notice thereof from City to Concessionaire;

(ii) the abandonment of one or more of the Structures by Concessionaire, as defined in California Civil Code section 1951.3. However, any notice of belief of abandonment shall be served not less than thirty (30) calendar days prior to the termination date set forth in such notice. Concessionaire may, with the consent of City at its sole discretion, allow one or more Structures, or any portion thereof, to become or remain vacant without such vacancy constituting an abandonment, subject to compliance with reasonable requests of City related to the security of the Structures. Any failure to pay Base Rent or



Additional Rent, by itself, shall not be considered a Concessionaire Default, except pursuant to Article 3 and Section 16.1(a);

(iii) if the Concessionaire fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement, and such failure continues unremedied for a period of thirty (30) calendar Days following notice thereof (giving particulars of the failure in reasonable detail) from the City to the Concessionaire or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the City, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the City, acting reasonably and (C) such failure is in fact cured within such period of time;

(iv) if this Agreement or all or any portion of the Concessionaire Interest is Transferred in contravention of Article 17 and such failure continues unremedied for a period of 10 Business Days following notice thereof from the City to the Concessionaire;

(v) if the Concessionaire fails to comply with the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 19, and such failure continues unremedied for a period of 30 days following notice thereof from the City to the Concessionaire, or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the City, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the City, acting reasonably and (C) such failure is in fact cured within such period of time;

(vi) if the Concessionaire (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 11 of the U.S. Code, or if such petition is filed against it and an order for relief is entered, or if the Concessionaire files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties or of the Parking Garage System or any interest therein, or (D) takes any corporate action in furtherance of any action described in this Section 16.1(a)(vi);

(vii) if within sixty (60) Days after the commencement of any proceeding against the Concessionaire seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within ninety (90) Days after the appointment, without the consent or acquiescence of the Concessionaire, of any trustee, receiver, custodian, assignee, sequestrator,

liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties or of the Parking Garage System or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or if, within ninety (90) Days after the expiration of any such stay, such appointment has not been vacated; or

(viii) if a levy under execution or attachment has been made against all or any part of the Parking Garage System or any interest therein as a result of any Encumbrance (other than a Permitted Concessionaire Encumbrance) created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within 60 Business Days after the Concessionaire becomes aware of such levy, unless such levy resulted from actions or omissions of the City or its Representatives.

(b) *Remedies of the City Upon Concessionaire Default.* Upon the occurrence of a Concessionaire Default, the City may, by notice to the Concessionaire with a copy to the Leasehold Mortgagee in accordance with the terms hereof, declare the Concessionaire to be in default and may, subject to the provisions of Articles 18 and 19, do any or all of the following as the City, in its discretion, shall determine:

(i) upon the failure of the Concessionaire to pay any installment of Additional Rent, the City may terminate Concessionaire's right to possession of the Parking Garage System by any lawful means, in which case this Agreement shall terminate and Concessionaire shall immediately surrender possession of the Parking Garage System to City;

(ii) the City may terminate this Agreement by giving sixty (60) days' prior notice to the Concessionaire upon the occurrence of a Concessionaire Default other than payment of rent; *provided, however*, that the Concessionaire shall be entitled to cure a Concessionaire Default pursuant to Section 16.1(a)(iii) by providing the City with a written work plan within such sixty (60) day period outlining the actions by which the Concessionaire will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement or (y) the requirements or directives of the issued final award in accordance with Article 19 that the Concessionaire failed to perform or observe, which work plan is Approved by the City, but any failure of the Concessionaire to comply in any material respect with such Approved work plan following thirty (30) days' notice of such failure from the City to the Concessionaire shall be deemed to be a Concessionaire Default described in Section 16.1(a)(ii) and the entitlement of the Concessionaire to cure such Concessionaire Default by the delivery of an Approved work plan shall not apply thereto;

(iii) if the Concessionaire Default is by reason of the failure to pay any monies to third parties, the City may (without obligation to do so) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the City shall be payable by the Concessionaire to the City within 10 Business Days after demand therefor;

(iv) subject to the cure rights of the Leasehold Mortgagee set forth in Section 18.3, the City may cure the Concessionaire Default (but this shall not obligate the City to cure or attempt to cure a Concessionaire Default or, after having commenced to cure or attempted to cure a Concessionaire Default, to continue to do so), and all costs and expenses

reasonably incurred by the City in curing or attempting to cure the Concessionaire Default, together with an administrative fee equal to 15% of such costs and expenses, shall be payable by the Concessionaire to the City within 10 Business Days after written demand therefor; *provided, however*, that (A) the City shall not incur any liability to the Concessionaire for any act or omission of the City or any other Person in the course of remedying or attempting to remedy any Concessionaire Default and (B) the City's cure of any Concessionaire Default shall not affect the City's rights against the Concessionaire by reason of the Concessionaire Default;

(v) the City may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Concessionaire Default;

(vi) the City may seek to recover its Losses arising from such Concessionaire Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;

(vii) with respect to those Concessionaire Defaults that entitle the City to terminate this Agreement pursuant to Section 16.1(b)(i) or (ii), the City may terminate the Concessionaire's right of possession of the Parking Garage System, and in such event, the City or the City's agents and servants may immediately or at any time thereafter re-enter the Parking Garage System and remove all Persons and all or any property therefrom, by any available action under law or proceeding at law or in equity, and with or without terminating this Agreement, and repossess and enjoy the Parking Garage System; *provided, however*, that no reentry by the City shall be construed as an election on its part to terminate this Agreement unless a notice of such intention is given to the Concessionaire; *provided further* that any re-entry or termination of this Agreement made in accordance with this Agreement as against the Concessionaire shall be valid and effective against the Concessionaire even though made subject to the rights of a Leasehold Mortgagee to cure any default of the Concessionaire and continue as in the place of the Concessionaire under this Agreement or a new concession and lease agreement as provided herein;

(viii) the City may, subject to applicable Law, distrain against any of the Concessionaire's goods situated on the Parking Garage System and the Concessionaire waives any statutory protections and exemptions in connection therewith;

(ix) subject to the cure rights of the Leasehold Mortgagee set forth in Section 18.3, the City may close any and all portions of the Parking Garage System; and

(x) the City may exercise any of its other rights and remedies provided for hereunder or at law or equity.

## **Section 16.2. Defaults by the City.**

(a) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute a "City Default" under this Agreement:

(i) if the City fails to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement (other than an Adverse Action) and such failure continues unremedied for a period of 90 Days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the City or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the City has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that (A) it is proceeding with all due diligence to cure or cause to be cured such failure, and (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably and (C) such failure is in fact cured within such period of time;

(ii) if the City fails to comply with the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 19 and such default continues unremedied for a period of 30 days following notice thereof from the Concessionaire to the City, or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the City has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably and (C) such failure is in fact cured within such period of time;

(iii) if a levy under execution or attachment has been made against all or any part of the Parking Garage System or the Concessionaire Interest as a result of any Encumbrance (other than a Permitted City Encumbrance) created, incurred, assumed or suffered to exist by the City or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 days, unless such levy resulted from actions or omissions of the Concessionaire or its Representatives or if all or a material part of the Parking Garage System shall be subject to a condemnation or similar taking by the City or any agency thereof.

(b) *Remedies of Concessionaire Upon City Default.* Upon the occurrence of a City Default, the Concessionaire may by notice to the City declare the City to be in default and may, subject to the provisions of Article 19, do any or all of the following as the Concessionaire, in its discretion, shall determine:

(i) the Concessionaire may terminate this Agreement by giving 60 days' prior notice to the City; *provided, however*, that the City shall be entitled to cure a City Default pursuant to Section 16.2(a)(i) by (i) agreeing within such 60-day period to pay any Losses sustained as a result of such City Default or (ii) providing the Concessionaire with a written work plan within such 60-day period outlining the actions by which the City will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement or (y) the requirements or directives of the issued final award in accordance with Article 19 that the City failed to perform or observe, which work plan is approved by the Concessionaire (which approval shall not be unreasonably withheld, delayed or conditioned), but any failure of the City to comply in any material respect with such approved work plan following 60 days' notice of such failure from the Concessionaire to the City shall be deemed to be a City

Default described in Section 16.2(a)(i) and the entitlement of the City to cure such City Default by the delivery of an approved work plan shall not apply thereto; and upon such termination the City shall be obligated to pay to the Concessionaire the Parking Garage System Concession Value plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination;

(ii) the Concessionaire may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a City Default;

(iii) the Concessionaire may seek to recover its Losses and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt; and

(iv) the Concessionaire may exercise any other rights and remedies provided for hereunder or available at law or equity, including the right to undertake a cure of the City Default (but this shall not obligate the Concessionaire to cure or attempt to cure a City Default or, after having commenced to cure or attempted to cure a City Default, to continue to do so), and all costs and expenses reasonably incurred by the Concessionaire in curing or attempting to cure the City Default, together with an administrative fee equal to 15% of such costs and expenses, shall be payable by the City to the Concessionaire within 10 Business Days after written demand therefor; *provided, however*, that (A) the Concessionaire shall not incur any liability to the City for any act or omission of the Concessionaire or any other Person in the course of remedying or attempting to remedy any City Default and (B) the Concessionaire's cure of any City Default shall not affect the Concessionaire's rights against the City by reason of the City Default.

### **Section 16.3. Letters of Credit.**

(a) The Concessionaire shall deliver no later than the first day of the Lease Year that is five years prior to the final Lease Year of the Term, a Letter of Credit in the amount then to be calculated equal to the amount that the City's Bureau of Engineering reasonably determines is appropriate to cover all costs of maintenance and repairs for the remainder of the Term.

(b) Such Letter of Credit shall be replaced on every anniversary of such Lease Year until the date that is two years after (i) the expiration of the Term and (ii) such time as there being no unresolved disputes with respect to the Concessionaire complying with, performing or observing any obligation, covenant, agreement, term or condition in this Agreement with a Replacement Letter of Credit in the amount of the undrawn balance of such Letter of Credit plus the amount of interest that would have been earned on such balance if invested for the next 12-month period at the Bank Rate. Subject to Approval, the required amount of any Letter of Credit with respect to a Lease Year (but only with respect to such Lease Year) may be reduced from time to time (at intervals that may be shorter than one year) by the amount that the City's Bureau of Engineering reasonably determines is appropriate such that the amount of the Letter of Credit remains sufficient to cover all costs of capital improvements for the remainder of the Term in light of the condition of the Parking Garage System (including the City's Bureau of

Engineering's assessment of the present and future condition of the Parking Garage System, and all costs and expenses of capital improvements to be performed in connection therewith, during the remaining years of the Term) and the Concessionaire's compliance with this Agreement in connection therewith. Upon the occurrence of a Concessionaire Default (or if there is a dispute as to the occurrence of a Concessionaire Default, upon the final decision of the arbitral panel pursuant to Article 19 that a Concessionaire Default has occurred), the City shall have the right (in addition to all other rights and remedies provided in this Agreement, but with the understanding that any other monetary damages that the City may recover will be reduced by the amount so drawn, and without the City's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform and whether or not this Agreement is thereby terminated), with three Business Days' prior notice to the Concessionaire, to draw against such Letter of Credit or any replacement thereof, upon presentation of a sight draft and a certificate confirming that the City has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount due to the City with respect to such Concessionaire Default.

(c) The Concessionaire shall replace each Letter of Credit with a replacement Letter of Credit (the "Replacement Letter of Credit") at least 30 days prior to the expiry date of a Letter of Credit which is expiring. If the Concessionaire does not deliver to the City a Replacement Letter of Credit within such time period, the City shall have the right (in addition to all other rights and remedies provided in this Agreement and without the City's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform and whether or not this Agreement is thereby terminated) to immediately draw the full amount of the Letter of Credit upon presentation of a sight draft and a certificate confirming that the City has the right to draw under such Letter of Credit in the amount of such sight draft. After the Concessionaire delivers to the City a Replacement Letter of Credit complying with the provisions of this Agreement, the City shall deliver in accordance with the Concessionaire's reasonable instructions the Letter of Credit being replaced (except to the extent that at such time no sight draft under such Letter of Credit is outstanding and unpaid). Any Replacement Letter of Credit shall be upon the same terms and conditions as the Letter of Credit replaced and satisfy the requirements for a Letter of Credit, but in any event (i) the amount of each Replacement Letter of Credit, except as provided in Section 16.3(a), shall equal or exceed the amount of the Letter of Credit being replaced at the time of replacement and (ii) the date of the Replacement Letter of Credit shall be its date of issuance. The expiry date of the Replacement Letter of Credit, as referred to in the opening paragraph of such Replacement Letter of Credit, shall be not earlier than one year later than the expiry date of the Letter of Credit being replaced.

(d) If this Agreement is terminated by the City prior to the expiration of the Term as a result of a Concessionaire Default, the City shall have the right (in addition to all other rights and remedies provided in this Agreement and without the City's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform), with three Business Days' prior notice to the Concessionaire, to draw against any Letter of Credit, upon presentation of a sight draft and a certificate confirming that the City has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount due to the City pursuant to the terms of this Agreement.

(e) The City will accept the Letters of Credit to be delivered pursuant to this Section 16.3 as security for the Concessionaire's obligations under this Agreement, in place of a

cash deposit in the same amount, with the understanding that the Letters of Credit are to be the functional equivalent of a cash deposit. The Concessionaire's sole remedy in connection with the improper presentment or payment of sight drafts drawn under the Letter of Credit shall be the right to obtain from the City a refund of the amount of any sight draft the proceeds of which were drawn inappropriately or misapplied and the reasonable costs incurred by the Concessionaire as a result of such inappropriate draw or misapplication; *provided, however*, that at the time of such refund, the Concessionaire increases the amount of the Letter of Credit to the amount (if any) then required under the applicable provisions of this Agreement. The Concessionaire acknowledges that the presentment of sight drafts drawn under the Letter of Credit could not under any circumstances cause the Concessionaire injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy therefor. The Concessionaire shall not request or instruct the issuer of the Letter of Credit to refrain from paying any sight draft drawn under a Letter of Credit.

(f) If the City desires to assign its rights and obligations in accordance with Section 17.2 of this Agreement, the Concessionaire shall cooperate so that concurrently with the effectiveness of such assignment, either Replacement Letters of Credit as described in Section 16.3(c) for, or appropriate amendments to, the Letters of Credit then held by the City, in either case identifying as beneficiary the appropriate party after the assignment becomes effective, shall be delivered to the City, at no cost to the Concessionaire.

(g) The Concessionaire shall obtain and furnish all Letters of Credit and Replacement Letters of Credit at its sole cost and expense and shall pay all charges imposed in connection with the City's presentation of sight drafts and drawing against the Letters of Credit or Replacement Letters of Credit.

(h) In lieu of any Letter of Credit to be provided by the Concessionaire pursuant to the terms of this Section 16.3, the Concessionaire shall, at the Concessionaire's sole discretion, have the option to deposit with a Depositary for the benefit of the City, as collateral security, cash or Eligible Investments in an amount equal to the amount of such Letter of Credit at the time of such deposit. Such Depositary shall invest and reinvest such amounts in Eligible Investments at the direction of the City, *provided* that earnings thereon shall be paid to the Concessionaire not less frequently than quarterly. If, at any time during the Term, the City would have the right to draw any amount on a Letter of Credit for which the Concessionaire has substituted cash or Eligible Investments pursuant to this Section 16.3(h), the Depositary shall pay such amount to the City from such cash deposit or Eligible Investments in accordance with the terms of this Section 16.3 and all rights and remedies of the City and the Concessionaire with respect to such cash deposits or Eligible Investments, if any, shall be the same as those provided in this Section 16.3 with respect to any Letter of Credit; *provided, however*, that the certification that would have been provided by the City with the sight draft had cash or Eligible Investments not been so substituted shall be made to the Depositary and delivered to the Depositary together with the City's written demand for payment.

(i) If Letters of Credit shall not in the future be available at commercially reasonable terms and rates or shall not be a commercially reasonable form of security in similar transactions, the Concessionaire shall furnish the City with comparable security instruments or Eligible Investments that then are commonly used in similar transactions and which are

Approved; and if no such comparable security instruments shall be available, the Concessionaire shall deposit with the City cash as security.

**Section 16.4. Consequences of Termination or Reversion.** Upon the termination of this Agreement, notwithstanding any claims the Parties may have against each other and subject to Section 16.2(b)(iii) and Article 18, the following provisions shall apply:

(a) the Concessionaire shall, without action whatsoever being necessary on the part of the City, well and truly surrender and deliver to the City the Parking Garage System (including all alterations and improvements to the Parking Garage System), the Parking Garage System Assets and all tangible and intangible personal property of the Concessionaire (including inventories) that is located on the Parking Garage System and used in connection with the Parking Garage System Operations (except in the case of a termination in the circumstance contemplated by Section 13.19(b)) in good order, condition and repair (reasonable wear and tear excepted), determined reasonably in accordance with the then applicable Operating Standards, free and clear of all Encumbrances other than (w) Permitted Concessionaire Encumbrances set forth in clause (iv), clause (vii) and clause (viii) as it pertains to clauses (iv) and (vii) of the definition of that term, (x) Permitted City Encumbrances, (y) those created by or suffered to exist or consented to by the City or any Person claiming through it, and (z) with respect to any property added to the Parking Garage System after the Time of Closing, title defects affecting such property in existence on the date such property is added to the Parking Garage System;

(b) the Concessionaire hereby waives any notice now or hereafter required by Law with respect to vacating the Parking Garage System on the Reversion Date;

(c) the City shall, as of the Reversion Date, assume full responsibility for the Parking Garage System Operations, and as of such date, the Concessionaire shall have no liability or responsibility for Parking Garage System Operations occurring after such date;

(d) the Concessionaire shall be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to but not including the Reversion Date, and the City shall be liable for all costs, expenses and amounts incurred in connection with the Parking Garage System Operations on and after the Reversion Date;

(e) the City shall have the option by providing notice to the Concessionaire of requiring that the Concessionaire assign, without warranty or recourse to the Concessionaire, to the fullest extent permitted by Authorizations and applicable Law, all of its right, title and interest in, to and under (in each of the following cases, to the extent assignable) all or any of the Operating Agreements then in effect and all Authorizations to the City or its nominee for the remainder of their respective terms; *provided, however*, that if the City exercises such option, the right, title and interest of the Concessionaire in, to and under such Operating Agreements and Authorizations shall be assigned to the City or its nominee as of the Reversion Date and the Concessionaire shall surrender the Parking Garage System to the City and shall cause all Persons claiming under or through the Concessionaire to do likewise, and the City shall assume in writing, pursuant to an assumption agreement satisfactory to the Concessionaire, the Concessionaire's obligations under the Operating Agreements that arise in respect of, or relate to, any period of time falling on and after the Reversion Date; *provided further* that if the City



does not exercise such option, the Concessionaire shall, unless the City has granted to a Leasehold Mortgagee or its nominee a new concession agreement containing the same provisions as are contained in this Agreement, take such steps as are necessary to terminate the Operating Agreements to the extent permitted thereunder and in accordance with the terms thereof;

(f) all plans, drawings, specifications and models prepared in connection with construction at the Parking Garage System and in the Concessionaire's possession and all "as-built" drawings shall become the sole and absolute property of the City, and the Concessionaire shall promptly deliver to the City all such plans, drawings, specifications and models and all such as-built drawings (but may keep copies of those plans, drawings, specifications and models that were developed by the Concessionaire or its Representatives);

(g) the Concessionaire, at its sole cost and expense, shall promptly deliver to the City copies of all records and other documents relating to the Parking Fee Revenues and Other Concessionaire Revenues that are in the possession of the Concessionaire or its Representatives and all other then existing records and information relating to the Parking Garage System as the City, acting reasonably, may request;

(h) the Concessionaire shall execute and deliver to the City a quitclaim deed in recordable form or other release or other instrument reasonably required by the City or its title insurer to evidence such expiration or termination;

(i) the Concessionaire shall assist the City in such manner as the City may require to ensure the orderly transition of control, operation, management, maintenance and rehabilitation of the Parking Garage System, and shall, if appropriate and if requested by the City, take all steps as may be necessary to enforce the provisions of the Operating Agreements pertaining to the surrender of the Parking Garage System;

(j) the City and the Concessionaire shall make appropriate adjustments, including adjustments relating to any Operating Agreements assigned to the City, fees and other similar charges collected on and after the Reversion Date that are incurred prior to the Reversion Date, and utilities, and any adjustments and payment therefor shall be made by the appropriate Party on the Reversion Date, but shall be subject to readjustment if necessary because of error in matters such as information, calculation, payments and omissions that are identified within the period of 180 days following the Reversion Date; *provided, however*, that the City and the Concessionaire acknowledge that certain adjustments or readjustments may have to be made when a third party provides to the City or the Concessionaire a final adjustment amount in respect of a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended; and

(k) if this Agreement is terminated as a result of an Adverse Action, the payment by the City to the Concessionaire of the amounts required under Article 14 or Article 19 shall constitute full and final settlement of any and all Claims the Concessionaire may have against the City for and in respect of the termination of this Agreement and upon such payment, the Concessionaire shall execute and deliver all such releases and discharges as the City may reasonably require to give effect to the foregoing.

This Section 16.4 shall survive the expiration or any earlier termination of this Agreement.

**Section 16.5. Termination Other Than Pursuant to Agreement.** If this Agreement is terminated by the City other than pursuant to Section 16.1 or is canceled, rescinded or voided during the Term for any reason over the objection and without action by the Concessionaire, any Leasehold Mortgagee and their respective Affiliates, the City shall pay to the Concessionaire the Parking Garage System Concession Value as of the date of such termination, cancellation, rescinding or voiding, plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a direct result of such termination, cancellation, rescinding or voiding. The City hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof and shall not, in any event, have the right to terminate this Agreement for convenience.

## **ARTICLE 17 RESTRICTIONS ON TRANSFERS**

### **Section 17.1. Transfers by the Concessionaire.**

(a) The Concessionaire shall not Transfer, or otherwise permit the Transfer of, any or all of the Concessionaire Interest to or in favor of a Transferee, unless (i) the City has Approved (based upon a determination in accordance with Section 17.1(b)) such proposed Transferee (unless it is a Leasehold Mortgagee permitted under Article 18) and (ii) the proposed Transferee (unless it is a Leasehold Mortgagee permitted under Article 18) enters into an agreement with the City in form and substance satisfactory to the City, acting reasonably, wherein the Transferee acquires the rights and assumes the obligations of the Concessionaire and agrees to perform and observe all of the obligations and covenants of the Concessionaire under this Agreement. Any Transfer made in violation of the foregoing provision shall be null and void ab initio and of no force and effect.

(b) Approval of a proposed Transferee may be withheld if the City reasonably determines that (i) such proposed Transfer is prohibited by applicable Law, (ii) such proposed Transferee's entering into this Agreement with the City is prohibited by Law, (iii) such proposed Transfer would result in a violation of Law, (iv) such proposed Transfer would result in a Tax liability to the City (unless the City shall have received indemnification, as determined in the City's discretion, with respect thereto), (v) such proposed Transferee, any Affiliate of the proposed Transferee, any proposed Operator, any Affiliate of any proposed Operator or any Equity Participant is delinquent in the payment of any taxes, fees or other monetary obligations due and payable to the City or its agencies or departments, (vi) such proposed Transferee, any proposed Operator or any Affiliate of the proposed Transferee or the proposed Operator is listed on any of the following lists maintained by the Officer of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of the Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of Persons with which the City may not do business under applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, and the Debarred List, or (vii) such proposed Transferee is not capable of performing the obligations and covenants of the Concessionaire under this

Agreement, which determination shall be based upon and take into account the following factors: (a) the financial strength and integrity of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (b) the experience of the proposed Transferee or the Operator to be engaged by the proposed Transferee in operating parking garages and performing other relevant projects; (c) the background and reputation of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory adjudications, claims or actions against any such Person and the quality of any such Person's past or present performance on other projects); and (d) the Operator engaged by the proposed Transferee, including the ability of the Operator to meet the requirements then generally applied by the City to applicants for a license to operate a public garage.

(c) No Transfer of all or any of the Concessionaire Interest (except a Transfer to a Leasehold Mortgagee or its nominee upon the Leasehold Mortgagee's exercise of remedies under its Leasehold Mortgage and a subsequent transfer to the transferee of the Leasehold Mortgagee or its nominee that has been Approved under Section 17.1(b)) shall be made or have any force or effect if, at the time of such Transfer there has occurred a Concessionaire Default that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute a Concessionaire Default.

(d) A Change in Control of the Concessionaire shall be deemed to be a Transfer of the Concessionaire Interest for purposes of the foregoing provisions.

(e) Nothing contained in the foregoing shall be deemed to prohibit or limit the Concessionaire from changing its organizational form or status (including a change from a limited liability company to a corporation or limited partnership), *provided* that such change in organizational form or status does not result in a Change of Control of the Concessionaire.

(f) Neither (i) a change of ownership that is attributable to a lease, sublease, concession, management agreement, operating agreement or other similar arrangement that is subject and subordinate in all respects to the rights of the City under this Agreement, nor (ii) the creation of a trust or any other transaction or arrangement that is solely a transfer of all or part of the Concessionaire's economic interest under this Agreement to another entity shall be deemed to be a Transfer of the Concessionaire Interest for purposes of Section 17.1(a).

**Section 17.2. Assignment by the City.** The City shall have the right to Transfer any or all of the City's interest in the Parking Garage System and this Agreement, *provided* that it shall be jointly and severally liable with the Transferee for the performance and observance of the obligations and covenants of the City under this Agreement and any agreement entered into by the City under this Agreement (including agreeing directly with any Leasehold Mortgagee to be bound by the agreement entered into in accordance with Section 18.3) and that any such Transfer by the City shall not materially limit or reduce any of the Concessionaire's other rights, benefits, remedies or privileges under this Agreement.

## ARTICLE 18 LENDER'S RIGHTS AND REMEDIES

**Section 18.1. Leasehold Mortgages.** The Concessionaire shall have the right, at its sole cost and expense, to grant one or more (subject to Section 18.7) Leasehold Mortgages, if at the time any such Leasehold Mortgage is executed and delivered to the Leasehold Mortgagee, no Concessionaire Default exists unless any such Concessionaire Default will be cured pursuant to Section 18.3 in connection with entering into such Leasehold Mortgage, and upon and subject to the following terms and conditions:

(a) a Leasehold Mortgage may not cover any property of, or secure any debt issued or guaranteed by, any Person other than the Concessionaire, but may cover shares or equity interests in the capital of the Concessionaire and any cash reserves or deposits held in the name of the Concessionaire;

(b) no Person other than an Institutional Lender shall be entitled to the benefits and protections accorded to a Leasehold Mortgagee in this Agreement; *provided, however,* that lessors and lenders to the Concessionaire (and lenders to a Leasehold Mortgagee that is a Lessor) may be Persons other than Institutional Lenders so long as any Leasehold Mortgage securing the loans made by such Persons is held by an Institutional Lender acting as collateral agent or trustee;

(c) no Leasehold Mortgage or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against any or all of the Concessionaire Interest shall extend to or affect the fee simple interest in the Parking Garage System, the City's interest hereunder or its reversionary interest and estate in and to the Parking Garage System or any part thereof;

(d) the City shall have no liability whatsoever for payment of the principal sum secured by any Leasehold Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and, except for violation by the City of express obligations set forth herein, the Leasehold Mortgagee shall not be entitled to seek any damages or other amounts against the City for any or all of the same;

(e) the City shall have no obligation to any Leasehold Mortgagee in the enforcement of the City's rights and remedies herein and by Law provided, except as expressly set forth in this Agreement and unless such Leasehold Mortgagee has provided the City with notice of its Leasehold Mortgage in accordance with the Leasehold Mortgagee Notice Requirements;

(f) each Leasehold Mortgage shall provide that if the Concessionaire is in default under the Leasehold Mortgage and the Leasehold Mortgagee gives notice of such default to the Concessionaire, then the Leasehold Mortgagee shall give notice of such default to the City;

(g) subject to the terms of this Agreement, all rights acquired by a Leasehold Mortgagee under any Leasehold Mortgage shall be subject and subordinate to all of the provisions of this Agreement and to all of the rights of the City hereunder;

(h) while any Leasehold Mortgage is outstanding, the City shall not agree to any amendment or modification of this Agreement that could reasonably be expected to have a material adverse effect on the rights or interests of the Leasehold Mortgagee or agree to a voluntary surrender or termination of this Agreement by the Concessionaire without the consent of the Leasehold Mortgagee;

(i) notwithstanding any enforcement of the security of any Leasehold Mortgage, the Concessionaire shall remain liable to the City for the payment of all sums owing to the City under this Agreement and the performance and observance of all of the Concessionaire's covenants and obligations under this Agreement; and

(j) a Leasehold Mortgagee shall not, by virtue of its Leasehold Mortgage, acquire any greater rights or interest in the Parking Garage System than the Concessionaire has at any applicable time under this Agreement, other than such rights or interest as may be granted or acquired in accordance with Section 18.2, 18.3, 18.4 or 18.5; and each Leasehold Mortgagee, the City and the Concessionaire shall enter into a consent agreement in a form acceptable to all parties; *provided* that such consent agreement shall be in a customary form and shall include the rights and protections provided to the Leasehold Mortgagees in this Agreement.

**Section 18.2. Notices and Payments to Leasehold Mortgagees.** Whenever a Leasehold Mortgage exists as to which the City has been provided notice by the holder thereof in accordance with the Leasehold Mortgagee Notice Requirements, the City shall, simultaneously with providing the Concessionaire any required notice under this Agreement, provide a copy of such notice to such Leasehold Mortgagee, and no such notice to the Concessionaire shall be effective against the Leasehold Mortgagee until a copy thereof is duly provided to such Leasehold Mortgagee at its address specified in its notice given to the City in accordance with the Leasehold Mortgagee Notice Requirements (or any subsequent change of address notice given to the City pursuant to the requirements of Section 21.1). With respect to a Leasehold Mortgage regarding which the City has been provided notice in accordance with the Leasehold Mortgage Notice Requirements, unless the Leasehold Mortgagee has otherwise advised the City in writing, all payments to the Concessionaire to be made by the City under this Agreement shall be made to the institution acting as the collateral agent or depository under the financing secured by such Leasehold Mortgage.

**Section 18.3. Leasehold Mortgagee's Right to Cure.** The Leasehold Mortgagee shall have a period of 60 days with respect to any Concessionaire Default beyond any cure period expressly provided to the Concessionaire herein, in which to cure or cause to be cured any such Concessionaire Default; *provided, however*, that as to non-rent defaults, such 60-day period shall be extended if the Concessionaire Default may be cured but cannot reasonably be cured within such period of 60 days, and the Leasehold Mortgagee begins to cure such default within such 60-day period (or if possession is necessary in order to effect such cure, the Leasehold Mortgagee files the appropriate legal action to foreclose the liens of the Leasehold Mortgage (or takes other appropriate action to effect a transfer of title to the property subject to the liens) and take possession of the Parking Garage System within such period) and thereafter proceeds with all due diligence to cure such Concessionaire Default (including by proceeding with all due diligence to effect such foreclosure and during such foreclosure action (to the extent practicable) and thereafter to effect such a cure) within a reasonable period of time acceptable to the City,

acting reasonably; *provided further* that if a Leasehold Mortgagee's right to cure a Concessionaire Default has not expired, and the Leasehold Mortgagee is acting to cure such Concessionaire Default in accordance with this Section 18.3 then the City shall not exercise its right to terminate this Agreement by reason of such Concessionaire Default. In furtherance of the foregoing, the City shall permit the Leasehold Mortgagee and its Representatives the same access to the Parking Garage System as is permitted to the Concessionaire hereunder. The City shall accept any such performance by a Leasehold Mortgagee as though the same had been done or performed by the Concessionaire. Any payment to be made or action to be taken by a Leasehold Mortgagee hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Leasehold Mortgagee if such payment is made or action is taken by a nominee, agent or assignee of the rights of such Leasehold Mortgagee.

#### **Section 18.4. Rights of the Leasehold Mortgagee.**

(a) Subject to the provisions of this Agreement, a Leasehold Mortgagee may (i) enforce its Leasehold Mortgage in any lawful way, (ii) acquire the Concessionaire Interest in any lawful way or (iii) take possession of in any lawful way and manage the Parking Garage System. Upon foreclosure of (or without foreclosure upon exercise of any contractual or statutory power of sale under such Leasehold Mortgage or a deed in lieu) and subject to the provisions of Article 17 (applied to the Leasehold Mortgagee as if it were the Concessionaire), a Leasehold Mortgagee may Transfer the Concessionaire Interest; *provided, however*, that no Transfer by a Leasehold Mortgagee shall be effective unless the Transfer is made in accordance with Section 17.1. Any Person to whom the Leasehold Mortgagee Transfers the Concessionaire Interest (including such Leasehold Mortgagee) shall take the Concessionaire Interest subject to any of the Concessionaire's obligations under this Agreement.

(b) Except as provided in Section 18.3, unless and until a Leasehold Mortgagee (i) forecloses or has otherwise taken ownership of the Concessionaire Interest or (ii) has taken possession or control of the Concessionaire Interest, whether directly or by an agent as a mortgagee in possession or a receiver or receiver and manager has taken possession or control of the Concessionaire Interest by reference to the Leasehold Mortgage, the Leasehold Mortgagee shall not be liable for any of the Concessionaire's obligations under this Agreement or be entitled to any of the Concessionaire's rights and benefits contained in this Agreement, except by way of security. If the Leasehold Mortgagee itself or by an agent or a receiver or a receiver and manager is the owner, or is in control or possession of, the Concessionaire Interest, it shall be bound by all liabilities and obligations of the Concessionaire under this Agreement (including the obligation to engage an Operator). Once the Leasehold Mortgagee goes out of possession or control of the Concessionaire Interest or Transfers the Concessionaire Interest to another Person in accordance with the provisions of this Agreement, the Leasehold Mortgagee shall cease to be liable for any of the Concessionaire's obligations under this Agreement accruing thereafter and shall cease to be entitled to any of the Concessionaire's rights and benefits contained in this Agreement, except, if the Leasehold Mortgage remains outstanding, by way of security.

### **Section 18.5. City's Termination of this Agreement; New Agreement.**

(a) Without prejudice to the rights of a Leasehold Mortgagee under Section 18.3, if this Agreement is terminated prior to the expiration of the Term due to a Concessionaire Default (in which case the City shall notify the Leasehold Mortgagee of such termination) or if this Agreement is rejected or disaffirmed pursuant to any bankruptcy Law or proceeding or other similar Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Concessionaire or otherwise, the City agrees to enter into a new concession and lease agreement of the Parking Garage System with the Leasehold Mortgagee (or its designee or nominee, *provided* that such designee or nominee either is controlled by the Leasehold Mortgagee or is Approved by the City as Transferee under Section 17.1) for the remainder of the original stated Term upon all of the covenants, agreements, terms, provisions and limitations of this Agreement (the "New Agreement"), effective as of the date of such termination, but only on and subject to the satisfaction of all of the following requirements and conditions: (i) such Leasehold Mortgagee commits in writing to the City, in a notice delivered to the City, within 30 days after the City delivers the termination notice to Leasehold Mortgagee (or, if later, upon the termination of any cure period granted to the Leasehold Mortgagee pursuant to Section 18.3) or within 30 days after the effective date of such rejection or disaffirmance, as the case may be, that the Leasehold Mortgagee (or its designee or nominee) will enter into the New Agreement, which notice is accompanied by a copy of such New Agreement, duly executed and acknowledged by the Leasehold Mortgagee (or its designee or nominee); (ii) the Leasehold Mortgagee (or its designee or nominee) pays or causes to be paid to the City, at the time of the execution and delivery of the New Agreement, all amounts which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Agreement but for such termination; (iii) provided the City furnishes a statement or invoice for such costs the Leasehold Mortgagee pays or causes to be paid to City all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements paid or incurred by the City in connection with such defaults and termination, the recovery of possession from the Concessionaire, and in connection with the preparation, execution and delivery of the New Agreement and related agreements and documents specified in such statement or invoice; and (iv) such Leasehold Mortgagee (or its designee or nominee), at the time of such written request, cures all defaults under this Agreement (curable by the payment of money) existing immediately prior to the termination of this Agreement, or, if such defaults cannot be cured by the payment of money, such Leasehold Mortgagee (or its designee or nominee) commits to the City in the New Agreement to proceed both promptly and diligently, upon the execution of the New Agreement, to cure all such other defaults and, if possession is necessary in order to cure such other Concessionaire Defaults, to proceed both promptly and diligently to obtain the possession required to cure any such other defaults (and such cure shall be a covenant in the New Agreement).

(b) Nothing contained in this Section 18.5 shall be deemed to limit or affect the City's interest in and to such Parking Garage System upon the expiration of the Term of the New Agreement. The provisions of this Section 18.5 shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 18.5 were a separate and independent contract made by the City, the Concessionaire and the Leasehold Mortgagee and, if the Leasehold Mortgagee satisfies the conditions to a New Agreement from the effective date of such termination of this Agreement to the date of execution

and delivery of the New Agreement, the Leasehold Mortgagee may use and enjoy the leasehold estate created by this Agreement without hindrance by the City, but only on and subject to the terms and provisions of this Agreement.

**Section 18.6. Right to Non-binding Mediation and Judicial Reference.** In each case specified in this Agreement in which resort to non-binding mediation or judicial reference is authorized, the Leasehold Mortgagee shall have the right and privilege if an event of default under the Leasehold Mortgage then exists and notice has been given to the City as contemplated by Section 18.1(vi), in the Concessionaire's name, place and stead, to obtain and participate in such non-binding mediation or judicial reference upon notice to the City in accordance with Article 19, *provided* that the Leasehold Mortgagee agrees to be bound by the result of any judicial reference.

**Section 18.7. Recognition by the City of Leasehold Mortgagee.** Notwithstanding anything in this Agreement to the contrary, if there is more than one Leasehold Mortgagee, only that Leasehold Mortgagee, to the exclusion of all other Leasehold Mortgagees, whose notice was earliest received by the City pursuant to the Leasehold Mortgagee Notice Requirements, shall have the rights as a Leasehold Mortgagee under this Article 18, unless such Leasehold Mortgagee has designated in writing another Leasehold Mortgagee to exercise such rights.

**Section 18.8. City's Right to Purchase Leasehold Mortgage.**

(a) If any default by the Concessionaire has occurred under a Leasehold Mortgage, or any act, condition or event has occurred which would permit a Leasehold Mortgagee to declare all or part of the indebtedness secured by a Leasehold Mortgage to be immediately due and payable (or, in the case of a Leasehold Mortgage that is a lease, to terminate the lease), then the City shall have 30 days after the date on which such Leasehold Mortgagee shall serve notice upon the City in writing ("Leasehold Mortgagee's Notice") that such Leasehold Mortgagee intends to commence proceedings to foreclose the Leasehold Mortgage or, in the case of a Leasehold Mortgagee that is a Lessor to terminate the lease (stating the calculation of the purchase price pursuant Section 18.8(c)), during which 30-day period the City shall have the right and option (the "City's Option") to purchase from all Leasehold Mortgagees their Leasehold Mortgages, upon the terms and subject to the conditions contained in this Section 18.8.

(b) The City's Option shall be exercised by notice served upon the Concessionaire and all Leasehold Mortgagees within such 30-day period. Time shall be of the essence as to the exercise of the City's Option. If the City's Option is duly and timely exercised, the City shall purchase and all Leasehold Mortgagees shall assign their Leasehold Mortgages to the City (or its designee) on the date which is 60 days after the date on which a Leasehold Mortgagee's Notice is served upon the City. The closing shall take place at a mutually convenient time and place.

(c) The purchase price payable by the City shall be 100% of the aggregate amounts secured by such Leasehold Mortgages (including principal, interest, fees, premiums, breakage and other costs, expenses (including attorneys' fees) and any other amounts secured thereby) as of the closing date of the purchase. The purchase price shall be paid in full in cash at



closing by wire transfer or other immediately available funds. The purchase price shall be paid by the City to each respective Leasehold Mortgagee, to be applied by the Leasehold Mortgagee to the amounts secured by the Leasehold Mortgage owed to such Leasehold Mortgagee, subject to the priorities of lien of such Leasehold Mortgages.

(d) At the closing and upon payment in full of the purchase price each Leasehold Mortgagee shall assign its Leasehold Mortgage to the City, together with any security interest held by it in the Concessionaire's leasehold interest in the Parking Garage System, without recourse, representations, covenants or warranties of any kind, *provided* that such Leasehold Mortgages and security interests shall be deemed modified to secure the amount of the aggregate purchase price paid by the City to all Leasehold Mortgagees (rather than the indebtedness theretofore secured thereby) payable on demand, with interest and upon the other items referred to in this Section 18.8(d). Each such assignment shall be in form for recordation or filing, as the case may be. The City shall be responsible for paying any Taxes payable to any Governmental Authority upon such assignment. Such assignment shall be made subject to such state of title of the Parking Garage System as shall exist at the date of exercise of the City's Option.

(e) Any Leasehold Mortgage shall contain an agreement of the Leasehold Mortgagee to be bound by the provisions of this Section 18.8.

(f) The City shall have the right to receive all notices of default under any Leasehold Mortgage, but the City shall not have the right to cure any default under any Leasehold Mortgage, except to the extent provided in this Section 18.8.

## **ARTICLE 19 DISPUTE RESOLUTION**

**Section 19.1. Scope.** Any dispute arising out of, relating to, or in connection with this Agreement shall be resolved as set forth in this Article 19.

**Section 19.2. Informal Dispute Resolution Procedures.** The Parties shall attempt in good faith to resolve such dispute within 15 days following receipt by the other party of notice of such dispute. If the Parties are unable to resolve the dispute within such 15-day period, and upon notice by either Party to the other, the dispute shall be referred to the Designated Senior Person of each Party. The Designated Senior Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary. Statements made by representatives of the Parties during the dispute resolution procedures set forth in this Section 19.2 and documents specifically prepared for such dispute resolution procedures shall be considered part of settlement negotiations and shall not be admissible as evidence in any arbitration or other litigation proceeding between the Parties without the mutual consent of the Parties.

**Section 19.3. Non-Binding Mediation.** Non-binding mediation of a dispute under this Agreement may not be commenced until the earlier of: (i) such time as both of the Designated Senior Persons, after following the procedures set forth in Section 19.2, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) 15 days after the notice referring the dispute to the Designated Senior Persons, pursuant to

Section 19.2. If, after such time period, the dispute remains unresolved, the Parties shall attempt to resolve the dispute through non-mediation administered by the American Arbitration Association (“AAA”) under its Commercial Mediation Procedures before resorting to judicial reference of the dispute for a binding decision, as provided by Section 19.4.

**Section 19.4. Judicial Reference of Disputes.** All controversy arising out of this Agreement shall be heard by a referee pursuant to the provisions of the California Code of Civil Procedure Section 638, *et seq.* The parties shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon. If the parties are unable to agree upon a referee, either party may seek to have one appointed, pursuant to Sections 638 *et seq.* of the California Code of Civil Procedure. The cost of such proceeding shall initially be borne equally by the parties. However, the prevailing party shall be entitled, in addition to all other costs, to the costs of the reference as an item of recoverable costs.

**Section 19.5. Provisional Remedies.** No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager in connection with the collection and retention of Other Concessionaire Revenues.

**Section 19.6. Tolling.** If a Party receiving a notice of default under this Agreement contests, disputes or challenges the propriety of such notice by making application to the dispute resolution procedure in this Article 19, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final award or determination.

## **ARTICLE 20 OPTION TO LEASE**

**Section 20.1. Inclusion of New Parking Garages.** The City is in the process of constructing new public parking garages located at (i) 1001 N. Judge John Aiso Street, Los Angeles (the “Aiso Street Garage”), (ii) 1633 N. Vine Street, Hollywood (the “Vine Street Garage”), and (iii) 8866 Pico Boulevard, Los Angeles (the “Pico Boulevard Garage”), (individually, a “New Parking Garage” or collectively, the “New Parking Garages”). So long as Concessionaire is not in default of any terms of this Agreement, the City agrees to negotiate in good faith, in accordance with this Section 20.1, with the Concessionaire to include each New Parking Garage as part of the Parking Garage System on the same terms as contained in this Agreement except for the Additional Rent for the New Parking Garage and any new terms specific to the particular New Parking Garage. Concessionaire may, at its sole discretion, decline to negotiate and neither Party will be under any duty or obligation to agree upon Additional Rent or terms. Any agreement reached by the negotiators for the Parties must be approved by the City Council and Mayor, at their sole discretion. The tentative completion dates for the New Parking Garages are as follows: Aiso Street Garage - \_\_\_\_\_; Vine Street Garage - \_\_\_\_\_; and Pico Boulevard Garage - \_\_\_\_\_. Either Party may initiate negotiations for the inclusion of a particular New Parking Garage by serving the other Party a request to negotiate (a “Request to Negotiate”) under this Section 20.1 specifying the particular New Parking Garage

involved. The Request to Negotiate must be served on the other Party at least six months prior to the above completion date for the particular New Parking Garage (regardless of whether or not the actual completion date is different) and if neither Party serves a Request to Negotiate in accordance with the foregoing, this provision will terminate and the City will have no obligation to negotiate for inclusion of the New Parking Garage. If the Request to Negotiate is served by the City, the Concessionaire must notify City within ten (10) business days of service of whether or not it will negotiate for the New Parking Garage, or lose the right to negotiate for the New Parking Garage. If the Concessionaire consents to negotiate, then the Parties will commence negotiation within thirty (30) days of service of the Concessionaire's notice that it will negotiate. If the Request to Negotiate is served by the Concessionaire, then the Parties will commence negotiation within 30 days after service of the Request to Negotiate. If the negotiators for the Parties either (1) fail to reach an agreement approved by the Concessionaire (but not yet approved by City Council and Mayor) within three months of the Request to Negotiate, or (2) mutually agree to abandon attempts to negotiate, then this provision will terminate and the City will be free to obtain a different operator for the particular New Parking Garage or otherwise operate or dispose of the New Parking Garage at its sole discretion.

## **ARTICLE 21 MISCELLANEOUS**

**Section 21.1. Notice.** All notices and demands which may or are to be required or permitted to be given by either Party to the other hereunder shall be in writing. All notices and demands shall be personally delivered (including by means of professional messenger service), sent by United States registered or certified mail, postage prepaid, return receipt requested, or transmitted by telecopier (e.g., Fax), in which case the receiving Party shall immediately confirm receipt of such notice. All notices are effective upon receipt. For the purposes of such notices, the addresses for the parties are set forth in Section 21.2 below. Either Party may from time to time designate another Person or place in a notice.

**Section 21.2. Notices - Where Sent.** All notices given under this Agreement which are mailed or telecopied shall be addressed to the respective parties as follows:

To City:

City of Los Angeles  
City Administrative Officer  
200 North Main Street, 15<sup>th</sup> Floor  
Los Angeles, California 90012  
Telecopier: (213) 473-7540

*with a copy of any notice to:*

Office of the City Attorney  
Real Property/Environment Division  
City Hall East, Room 701  
200 North Main Street  
Los Angeles, California 90012  
Telecopier: (213) 978-8090

To Concessionaire:

*with a copy to:*

**Section 21.3. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or that induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement. The Parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) the provisions and language of this Agreement have been fully negotiated and (iii) no provision of this Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Agreement having been drafted on behalf of one Party rather than the other.

**Section 21.4. Agent for Service of Notice and Process.** If neither California legal entities nor licensed to do business in the State of California, both Concessionaire and Operator shall each designate an agent located within the County of Los Angeles, State of California, for service of legal process.

**Section 21.5. Amendment.** This Agreement may be amended, changed or supplemented only by a written agreement signed by the Parties.

**Section 21.6. Waiver of Rights.** Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

**Section 21.7. Severability.** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Law. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof. If any provision of this Agreement or the application thereof to any Person or circumstances is held or deemed to be or determined to be invalid, inoperative or unenforceable in any particular case in any particular jurisdiction or jurisdictions because it conflicts with any other provision or provisions hereof or of any applicable Law, or public policy, or for any other reason, (i) such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever, and (ii) the Parties shall negotiate in good faith to amend this Agreement to implement the provisions set forth herein. If the Parties cannot agree on an appropriate amendment, either Party may refer the matter for determination pursuant to the dispute resolution procedure in Article 19. If, by means of the dispute resolution procedure, the Parties are unable, as a result of applicable Law, to resolve the matter in a manner that effectively entitles the City to have the same rights after the aforesaid determination of invalidity or unenforceability as before, the City shall have the right to enact, and cause to come into force, any Law to provide for the same or substantially the same rights as were determined to be invalid or unenforceable.

**Section 21.8. Bonds.** All bonds which may be required hereunder shall conform to City requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

**Section 21.9. Reservation of Mineral Rights.** City hereby reserves all right, title, and interest in any and all gas, oil, minerals, and water beneath the site on which any Structure is located (“Site”), below a plane five hundred (500) feet below the surface of the Site, but without the right to use the surface of the Site, or any area above a plane five hundred (500) feet below the surface of the Site, for the extraction of such gas, oil, minerals, and water.

**Section 21.10. No Accord and Satisfaction.** No payment by Concessionaire or receipt by City of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction and City may accept such check or payment without prejudice to City’s right to recover the balance of such rent or pursue any other remedy provided in this Agreement. Concessionaire agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this or imposed by any statute or at common law.

**Section 21.11. No Partnership or Third Party Beneficiaries.** Except as expressly provided herein to the contrary (including with respect to such rights as are expressly granted to each Leasehold Mortgagee pursuant to this Agreement), nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the City and the Concessionaire, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any Person not a Party to this Agreement.

**Section 21.12. Agreement a Lease and Not a Franchise.** It is the intent of the parties hereto to enter into a lease of certain real property. The parties do not intend to enter into a franchise agreement of any kind and the parties stipulate and agree that this Agreement is a lease of certain real property and should be interpreted as such and not as a franchise.

**Section 21.13. Governing Law.** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of California.

**Section 21.14. Submission to Jurisdiction.** Subject to Article 19, any action or proceeding against the Concessionaire or the City relating in any way to this Agreement may be brought and enforced in the Federal Court of the Central District of California or the Superior Court of the County of Los Angeles, State of California and each of the Concessionaire and the City hereby irrevocably submits to the jurisdiction of said courts with regard to any such action or proceeding, and irrevocably waives, to the fullest extent permitted by applicable Law, any objection it may have now or hereafter have to the laying of venue of any such action or proceeding in said court and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Service of process on the City may be made only by personal delivery on the City Clerk or Deputy City Clerk of the City with courtesy copies sent in accordance with Sections 21.1 and 21.2. Service of process on the Concessionaire may be made either by registered or certified mail addressed as provided for in Section 21.1 or by delivery to the Concessionaire's registered agent for service of process in the State of California. If the Concessionaire is presented with a request for Documents by any administrative agency or with a *subpoena duces tecum* regarding any Documents which may be in its possession by reason of this Agreement, the Concessionaire shall give prompt notice to the City Attorney of the City. The City may contest such process by any means available to it before such Documents are submitted to a court or other third party; *provided, however*, that the Concessionaire shall not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency or required by Law, unless the *subpoena* or request is quashed or the time to produce is otherwise extended.

**Section 21.15. Further Acts.** The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each Party will, at any time and from time to time, execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution and/or delivery of this Agreement.

**Section 21.16. Costs.** Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

**Section 21.17. Inurnment and Binding Effect.** This Agreement shall inure to the benefit of the Parties and their respective permitted successors and assigns and be binding upon the Parties and their respective successors and assigns.

**Section 21.18. Cumulative Remedies.** The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

**Section 21.19. Counterparts; Facsimile Execution.** This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each Party and delivered to all Parties. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by facsimile transmission. Such Party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

[Intentionally Left Blank]

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed on its behalf by its Mayor pursuant to due authorization of the City Council and the Concessionaire has caused this Agreement to be duly executed pursuant to due authorization. If the space provided in Section 1.1 of this Agreement is blank, such date shall be entered in such space, although such date shall be deemed to be the date of this Agreement in any case.

**CITY OF LOS ANGELES**, a municipal corporation,

By: \_\_\_\_\_  
ANTONIO R. VILLARAIGOSA  
Mayor

DATE:

**[CONCESSIONAIRE]**

By: \_\_\_\_\_  
[NAME]  
[TITLE]

By: \_\_\_\_\_  
[NAME]  
[TITLE]

DATE:

APPROVED BY:

**CITY OF LOS ANGELES**, a municipal corporation, acting  
by and through its Department of Recreation and Parks

By: \_\_\_\_\_  
JON KIRK MUKRI  
General Manager  
Department of Recreation and Parks



DATE:

**APPROVED AS TO FORM:**

**CARMEN A. TRUTANICH**, City Attorney

By: \_\_\_\_\_  
ANDREW J. NOCAS  
Deputy City Attorney

DATE:

**ATTEST:**

**JUNE LAGMAY**, City Clerk

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

DATE:

**SCHEDULE 1**  
**PARKING GARAGE SYSTEM**

Structures located as follows:

Hollywood and Highland Garage,  
6801 Hollywood Boulevard, Hollywood

Cinerama Dome Garage,  
6389 DeLongpre Avenue, Hollywood

Pershing Square Garage,  
441 West Sixth Street, Los Angeles

Studio City Garage,  
12225 Ventura Boulevard, Studio City

Cherokee Avenue Garage,  
1710 Cherokee Avenue, Hollywood

Broxton Avenue Garage,  
1036 Broxton Avenue, Westwood

Robertson Boulevard Garage,  
123 S. Robertson Boulevard, Los Angeles

Friar Street Garage,  
14401 Friar Street, Van Nuys

Dickens Street Garage,  
14591 Dickens Street, Sherman Oaks

**SCHEDULE 2**  
**PARKING GARAGE SYSTEM CONTRACTS**

**SCHEDULE 3**  
**MAINTENANCE AND OPERATING MANUAL**

## **SCHEDULE 4**

### **PARKING GARAGE SYSTEM ASSETS**

1. The items listed on the attached spreadsheet are incorporated herein by reference.

**SCHEDULE 5**  
**MEMORANDUM OF LEASE**

## SCHEDULE 6

### MAXIMUM PARKING RATES

	Current Rates	Maximum Parking Rates Year 1	Maximum Parking Rates Year 2	Maximum Parking Rates Year 3	Maximum Parking Rates Year 4	Maximum Parking Rates Year 5
<b>Pershing Square</b>						
Monthly/Annual	\$228.00	\$228.00	\$228.00	\$228.00	\$228.00	\$264.00
Transient(Regular)	\$9.26	\$9.60	\$9.60	\$10.80	\$10.80	\$12.00
Transient(EarlyBird)	\$11.22	\$12.00	\$12.00	\$14.40	\$14.40	\$18.00
After5PM	\$7.92	\$7.20	\$7.20	\$9.60	\$9.60	\$12.00
<b>Cinerama Dome *</b>						
Monthly	\$120.00	\$120.00	\$120.00	\$120.00	\$120.00	\$144.00
Transient	\$4.80	\$6.00	\$7.20	\$8.40	\$9.60	\$10.80
Event	\$12.00	\$12.00	\$14.40	\$16.80	\$19.20	\$24.00
<b>Friar Street</b>						
Monthly	\$59.40	\$72.00	\$72.00	\$84.00	\$84.00	\$96.00
Transient	\$1.32	\$1.80	\$1.80	\$2.40	\$2.40	\$2.40
<b>Dickens Street</b>						
Monthly	\$46.20	\$60.00	\$60.00	\$60.00	\$60.00	\$60.00
Transient	\$1.80	\$1.80	\$1.80	\$1.80	\$1.80	\$1.80
<b>Cherokee</b>						
Monthly	\$120.00	\$120.00	\$120.00	\$144.00	\$144.00	\$144.00
Transient	\$4.80	\$7.20	\$7.20	\$9.60	\$9.60	\$12.00
Event	\$9.60	\$12.00	\$12.00	\$14.40	\$14.40	\$18.00
<b>Broxton</b>						
Monthly	\$150.00	\$150.00	\$168.00	\$168.00	\$168.00	\$192.00
Transient-PayingCustomer	\$5.40	\$3.60	\$3.60	\$4.80	\$4.80	\$4.80
Transient-ParkingforFree	\$0.00	\$0.00	\$0.00	\$3.60	\$3.60	\$4.80
Event	\$3.60	\$6.00	\$6.00	\$6.00	\$9.60	\$9.60
<b>Ventura Boulevard</b>						
Monthly	\$46.20	\$47.40	\$49.20	\$50.40	\$51.60	\$52.80
Transient	\$0.60	\$0.60	\$0.60	\$0.66	\$0.66	\$0.66
<b>Robertson</b>						
Monthly	\$150.00	\$150.00	\$150.00	\$168.00	\$168.00	\$168.00
Transient	\$2.40	\$2.40	\$2.40	\$3.60	\$3.60	\$4.80
<b>Larchmont</b>						
Monthly	\$72.00	\$72.00	\$72.00	\$72.00	\$72.00	\$84.00
Transient	\$1.80	\$1.80	\$1.80	\$1.80	\$1.80	\$2.10
<b>Hollywood &amp; Highland *</b>						
Monthly	\$114.00	\$120.00	\$120.00	\$144.00	\$144.00	\$156.00
Transient	\$3.60	\$4.80	\$4.80	\$7.20	\$7.20	\$9.60
Event	\$12.00	\$18.00	\$18.00	\$24.00	\$24.00	\$30.00

\* Rate adjustments are subject to Reciprocal Easement Agreement

**SCHEDULE 7**  
**CITY'S ESTOPPEL CERTIFICATE**



**SCHEDULE 8**  
**CONCESSIONAIRE'S ESTOPPEL CERTIFICATE**

**SCHEDULE 9**

**FORM OF LEGAL OPINION OF THE CITY ATTORNEY**

[Letterhead of City Attorney]

**SCHEDULE 10**

**FORM OF LEGAL OPINION OF OUTSIDE COUNSEL TO THE CITY**

## **SCHEDULE 11**

### **FORM OF LEGAL OPINION OF THE CONCESSIONAIRE**

[Letterhead of Counsel to the Concessionaire]

[Closing Date]

City of Los Angeles  
121 North LaSalle Street  
Los Angeles, California 60602

Ladies and Gentleman:

We have acted as special counsel to \_\_\_\_\_, a \_\_\_\_\_ (the “Concessionaire”), in connection with the lease of the Parking Garage System, and the grant of the right to operate the Parking Garage System, from the City to the Concessionaire pursuant to the Parking Garage System Concession and Lease Agreement, dated as of \_\_\_\_\_, 20\_\_ (the “Agreement”), by and between the City and Concessionaire. This opinion is being delivered to you pursuant to Section 2.4(b) of the Agreement. Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Agreement.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Agreement; and (ii) such other records and writings as we have deemed necessary as the basis for the opinions set forth below. In connection with such examination, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to authentic, original documents of all documents submitted to us via facsimile or otherwise as certified, conformed or photostatic copies, and the completeness of all records of corporate proceedings provided to us.

We express no opinion as to the applicability or effect of the laws of any state or jurisdiction other than the laws of the State of [●].

Based on and subject to the foregoing and the qualifications referred to below, we are of the opinion that, on the date hereof:

1. The Concessionaire is duly organized, validly existing and in good standing as a \_\_\_\_\_ under the laws of the \_\_\_\_\_.
2. The Concessionaire has the power and authority to enter into the Agreement and to do all acts and things and execute and deliver all other documents as are required under the Agreement to be done, observed or performed by the Concessionaire in accordance with the terms thereof.

3. The Concessionaire has duly authorized, executed and delivered the Agreement, and the Agreement constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

This opinion is rendered solely for your information in connection with the transaction described above and may not be relied upon by you in any other capacity or for any other purpose and may not be used or relied upon by any other Person for any purpose without our express prior written consent.

Very truly yours,

[Counsel to the Concessionaire]

## SCHEDULE 12

### ANNUAL BASE AMOUNTS

	Lease Year Ending in the Calendar Year	Base Amount
1	2011	\$38,530,304
2	2012	49,231,567
3	2013	50,086,628
4	2014	57,362,136
5	2015	57,716,428
6	2016	58,074,476
7	2017	58,436,341
8	2018	58,802,081
9	2019	59,171,758
10	2020	59,545,435
11	2021	59,923,175
12	2022	57,586,616
13	2023	57,920,208
14	2024	58,202,889
15	2025	58,485,226
16	2026	58,769,823
17	2027	59,056,701
18	2028	59,345,881
19	2029	59,637,384
20	2030	59,931,231
21	2031	60,227,446
22	2032	60,526,049
23	2033	60,827,064
24	2034	61,130,512
25	2035	61,436,418
26	2036	61,744,803
27	2037	62,055,693
28	2038	62,369,109
29	2039	62,685,077
30	2040	63,003,621
31	2041	63,324,765
32	2042	63,648,535
33	2043	63,974,955
34	2044	64,304,051
35	2045	64,635,849
36	2046	64,970,375
37	2047	65,307,655
38	2048	65,647,717
39	2049	65,990,588
40	2050	66,336,294
41	2051	66,684,863
42	2052	67,036,325
43	2053	67,390,706
44	2054	67,748,037
45	2055	68,108,346
46	2056	68,471,662
47	2057	68,838,016
48	2058	69,207,438
49	2059	69,579,959
50	2060	69,579,959
51	2061	69,579,959

**SCHEDULE 13<sup>1</sup>**  
**Remaining Amortized Rent**

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<sup>1</sup> This schedule will include 80% of the Base Rent amortized quarterly on a mortgage style basis, over 50 years, assuming an interest rate of 8% p.a.

## **SCHEDULE 14**

### **Special Provisions**

#### **1. Hollywood and Highland Garage**

- (A) Recorded Agreements. The operation of the Hollywood and Highland Garage is subject to the Hollywood and Highland Agreement.
- (B) Cirque de Soleil Lease. The Hollywood and Highland Garage serves adjacent entertainment space that is used pursuant to the Cirque de Soleil Lease (the "Lease"). The Concessionaire shall report to the City the monthly gross revenues of the Garage in order to enable the City to calculate the rent credit under the Lease.
- (C) New Revenue Control System. The Concessionaire shall provide access to the Garage for installation in 2011 of a new revenue control system.

#### **2. Cinerama Dome Garage**

- (A) Recorded Agreements. The operation of the Cinerama Dome Garage is subject to the Cinerama Dome Agreement.
- (B) [Purchase and Sale Agreement]

#### **3. Broxton Avenue Garage**

The Concessionaire shall continue the free validation system at the Broxton Avenue Garage for a period of two years following the Closing Date.

#### **4. Pershing Square Garage**

- (A) Congestion Reduction Program. The City is engaged in a traffic congestion reduction program which will be evaluated for one year, beginning January 1, 2011. The ExpressPark system is to be installed in the Pershing Square Garage in 2010 and be fully operational by December 31, 2010. Concessionaire shall permit access to the Pershing Square Garage and cooperate with the installation and maintenance of the occupancy reporting systems which may include individual sensors, cordon counting systems, or advanced revenue control systems to collect parking date and a real-time parking guidance system to inform the public of available spaces. The Concessionaire shall also permit the placement and maintenance of signs which will inform the public of the available spaces.
- (B) Installation of Emergency Generator. Within the first year after the Closing Date, the Concessionaire shall install a emergency generator pursuant to specification provided by the Board. The City shall reimburse the Concessionaire for the reasonable cost of the installation of the generator, in an amount not to exceed \_\_\_\_\_.



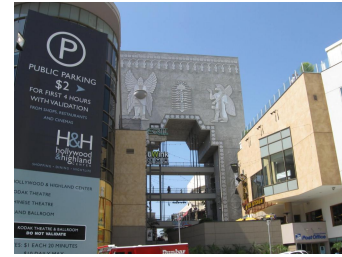
- (C) Reservation of Designated Park Maintenance Area Parking Spaces and Access to all Designated Storage, Mechanical and Maintenance Areas. In addition to the areas currently used for storage, mechanical and maintenance activities (which areas shall be delineated in a map to be attached to this Agreement), four (4) designated parking spaces within the Garage, two (2) of which shall be adjacent to the reserved maintenance area, will not be part of the Parking System and instead continue to be used by the Department of Recreation and Parks for storage, mechanical and maintenance work areas for the Pershing Square Park as well as for a grease trap for current and future restaurants in the Pershing Square Park. Concessionaire shall provide access to permit the use of such spaces and storage, mechanical and maintenance areas by the Department of Recreation and Parks.
- (D) Access to Garage by public including vendors. Concessionaire shall provide full access to the escalators, elevators and garage restrooms for the general public including vendors.
- (E) Access to Garage by City staff and contractors. Concessionaire shall provide full access to the escalators, elevators, garages, park fountain mechanical areas and related work areas, plumbing heating and HVAC panels, equipment and related work areas.
- (F) Payment for Utility Bill. Until such time as separate meters are installed, the Concessionaire shall be responsible for paying 60% of the utility bill and the City shall be responsible for paying 40%.
- (G) Tunnel Access. Concessionaire shall maintain access free and clear to the tunnel which connects the Garage with the building located at 606 S. Olive.
- (H) Nighttime Transient Parking. Notwithstanding the general transient space requirement, the Concessionaire shall accommodate up to Twelve Hundred (1200) vehicles for transient parking between the hours of 5:00 p.m. and 2:30 a.m., Monday through Sunday. The rate for parking during these hours shall not exceed the flat rate set forth in the rate schedule subject to adjustment as permitted by the rate schedule set forth in Schedule 6 of this Agreement.
- (I) Employee Parking. Concessionaire shall dedicate four (4) parking spaces for use by employees of the Department of Recreation and Parks. Two (2) of the four dedicated spaces shall be large enough to accommodate commercial/craft work/equipment vehicles. The Board shall pay for these parking spaces at the market rate charged to other long term users.
- (J) Validation Program. Concessionaire shall provide the Board with a validation program, at no cost to the Concessionaire, to permit the Department of Recreation and Parks to validate parking for its vendors, park visitors, event sponsors, performers and dignitaries.

- (K) Advertising Space. Concessionaire will be required to make reasonable accommodations for Department of Recreation and Park advertising of Department activities in the Garage lobby and entrances.
- (L) Park Accommodations. Concessionaire will be required to make reasonable good faith efforts to make accommodations relative to Pershing Square Park improvements from time to time for the continued effective use of the Park.
- (M) Restrooms. Concessionaire will be required to clean and maintain the restrooms located in the Garage in a clean, sanitary and fully functioning condition.

# OPERATIONS AND MAINTENANCE MANUAL

## FOR THE CITY OF LOS ANGELES PARKING FACILITIES LOS ANGELES, CALIFORNIA

MARCH 2010



PREPARED BY:

**DESMAN**  
ASSOCIATES

# OPERATIONS AND MAINTENANCE MANUAL

## CITY OF LOS ANGELES PARKING FACILITIES

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## **1.0 Introduction**

This document includes the Operations and Procedures Manual and the Maintenance Recommendation Manual for the City of Los Angeles Concession Facilities (the “Facilities”). The purpose of the Operations and Procedures Manual and the Maintenance Recommendation Manual is to provide the Concessionaire a methodology to establish the minimum requirements necessary for the Concessionaire to develop an annual Operations Plan and to also provide a maintenance schedule for each of the Facilities over the life of the Concession Agreement. This document is divided into ***Section A: Operations and Procedures Manual*** and ***Section B: Maintenance Recommendation Manual***

### **Section A**

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The Operations and Procedures Manual provides the Concessionaire a guideline in their development of an Operations Manual. Section A lists the major categories that must be outlined in the Concessionaire’s Operations Manual. The Concessionaire must update and submit their Operations Manual annually to the City. The following sections and subsections are the minimum that must be included in the Concessionaire’s Operations Manual:

- Staffing Identification
- Interagency Coordination
- Parking System Operations Plan
  - Parking Operations Requirements
  - Facility Systems Maintenance Plan
  - Customer Service Plan
  - Custodial Plan
  - Security Plan
  - Emergency Plan
  - Safety Plan
  - Equipment Plan
  - Capital Asset Management Plan

### **Section B**

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The Maintenance Recommendation Manual is provided to outline the recommended maintenance protocols in each of the Concession Facilities. Due to the constant exposure to weather and traffic, an appropriate maintenance and repair program must be instituted to ensure that all the Facilities are safe and have a satisfactory level of service. The Maintenance Recommendation Manual is provided to maximize each facility’s service life. The Maintenance Recommendation Manual describes each facility and the maintenance program includes the following sections:

- |                            |   |
|----------------------------|---|
| ➤ General Cleaning         | ➤ Heating, Ventilation and Cooling (HVAC) Systems |
| ➤ Structural System        | ➤ Electrical System                               |
| ➤ Waterproofing System     | ➤ Parking Control Equipment                       |
| ➤ Architectural Components | ➤ Security Systems                                |
| ➤ Elevators and Escalators | ➤ Landscaping                                     |
| ➤ Fire Protection System   |   |
| ➤ Plumbing System          |   |

## **SECTION A**

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### **1.0 Introduction**

The purpose of the Operations and Procedures Manual is to provide the Concessionaire a methodology to establish the minimum requirements necessary for the basic development of an annual Operations Plan for the Los Angeles Public Parking System. All of the facilities (the “Facilities”) included in the Concession are subject to the terms of the Concession Agreement (the “Concession Agreement”) between the Concessionaire and the City of Los Angeles (the “City”). The City of Los Angeles has implemented a “Going Green” initiative. The Concessionaire is expected to adhere to the “Going Green” initiative and find ways to implement energy efficient practices in their parking operations in the Concession facilities.

The Operations and Procedures Manual is divided into specific areas that are critical to the overall operation of the Facilities. Each of these sections provides a general overview for the Concessionaire regarding their responsibilities for each of these sections. These responsibilities must be addressed in the Concessionaire’s annual Operations Plan for the Facilities. Each of the sections introduces the overall policies, procedures and practices that will be implemented in respect to the specific section. These sections include:

- Staffing Identification (*Section 2.0*)
- Interagency Coordination (*Section 3.0*)
- Parking System Operations Plan (*Section 4.0*)

### **2.0 Staffing Identification**

The Concessionaire has the sole responsibility to determine its staffing needs to adequately fulfill the maintenance, contractual and operation obligations as described in the Concession Agreement. The Concessionaire is additionally solely responsible for any and all acts, errors and omissions of its personnel, staff, employees, agents and consultants. The Concessionaire must schedule employees to ensure that there are always adequate personnel in all of the Facilities’ during all hours of operation. The Staffing requirement is based on the current and future needs of each of the Facilities.

#### **2.1 Staff Personnel**

In the annual Operations Plan, the Concessionaire must identify key Facilities’ staff. The Concessionaire will provide to the City, an organizational chart of the key personnel and updated when appropriate. The organization chart includes: the name and title of each employee and the employee’s primary and secondary contact information.

### **3.0 Interagency Coordination**

The Facilities are located within the City limits of Los Angeles, the County limits of Los Angeles County and the State Limits of California and are thus subject to the ordinances, codes and laws set by the city, county, state and federal governments. The Concessionaire must cooperate with the Los Angeles Department of Transportation (“LADOT”), the Office of Homeland Security, the Department of Recreation and Parks, the Los Angeles Police Department (“LAPD”) the Los Angeles Community Redevelopment Agency (“CRA”) and the General Services Department (“GSD”) These agencies may require access to the Facilities, surveillance camera footage or any other evident that they deem necessary in the process of maximizing public safety during non-emergency and emergency situations.

The Concessionaire must maintain only the Facility property which is included in the Concession Agreement. For example, the Pershing Square Garage is located underneath Pershing Square, the Concessionaire is not responsible for maintenance of the Pershing Square Park. Any area that the Concessionaire is not responsible for the maintenance is listed as “excluded areas”, as listed in the Concession Agreement. If the facility is located or attached to property which is not included in the Concession Agreement, the Concessionaire will not be held responsible for the maintenance of the attached property, unless otherwise stated in the Concession Agreement.

### **4.0 Parking Systems Operations Plan**

A general outline for the Parking Operations Plan is provided in this section. This outline is a basic template for the Concessionaire to use when developing their Parking Operations Plan. It is understood that over time, new needs or concerns arise and that the Parking Operations Plan will need to be revised and modified to address these new needs or concerns of the Facilities. All sections of the Operations Plan are subject to local, state and federal laws, as well as codes and requirements pertaining to each Facility. The Parking Operations Plan and all its subsections will need to be updated annually and approved by the City. The Concessionaire will develop an Operations Plan which must include, as a minimum, the following sections:

- Parking Operations Requirements
- Facility Systems Maintenance Plan
- Customer Service Plan
- Custodial Plan
- Security Plan
- Emergency Plan
- Safety Plan
- Equipment Plan
- Capital Asset Management Plan

The initial Operations Plan will be submitted to the City for approval within three months (90 days) of the Concession Agreement closing date. An updated Operations Plan must be submitted



to the City at the anniversary of the Concession Agreement closing date. The annual updated Operations Plan must have each of its sections updated annually.

#### **4.1 *Parking Operations Requirements***

In the Parking Operations Requirement section, the Concessionaire will include a brief discussion regarding the essential staff and their titles, functions, duties and responsibilities as it pertains to the operation of the parking facilities. This section also discusses all major equipment that will be used in each facility and its role in the operations of the facility.

This section includes the procedures when an event, incident or unusual occurrence occurs at the Parking Facility. These events include, but are not limited to:

- Emergency
- Insurance claims
- Accident claims
- Criminal acts
- Abandoned vehicles
- Unusual events

#### **4.2 *Facility Systems Maintenance Plan***

The Facility Systems Maintenance Plan section of the Operations Plan outlines processes and procedures that will be implemented to ensure the sustainability and continuous operation of the Facilities. The guidelines for each of the subsections in the Facility Systems Maintenance Plan are detailed in a separate document, *Maintenance Recommendations Manual*. The written plan ensures that both long-term and short-term maintenance and improvements are completed in a way that ensures the Facilities remain fully operational, safe, user friendly and productive at all times.

##### **4.2.1 *Maintenance***

The Facility Systems Maintenance Plan addresses, at a minimum, the following systems to ensure the continual operation of the Facility:

- Operations Systems
- Structural Systems
- Waterproofing, sealer & Sealant Systems
- Architectural systems, escalators and elevators
- Signage and graphics
- Pavement markings and traffic striping
- Fire Protection System
- Heating, Ventilating and air conditioning (HVAC) mechanical systems
- Utility Systems
- Plumbing Systems

- Electrical and Lighting Systems
- Communication and Security Systems
- Emergency Systems
- All Affected Property such as, parks, roadways and other elements which are required to preserve the Facility

#### 4.2.2 *Life Systems*

The Facility Systems Maintenance Plan must also address any and all Life Safety Systems within the Facility. The Life Safety Systems are essential to provide safety, communication and systems necessary for the operation of the Life Safety Systems. The Concessionaire must provide in the Facility Systems Maintenance Plan, at a minimum, the following Life Safety Systems operational procedures and policies.

- Intercoms
- Telephones
- Mobile communications
- Video surveillance system
- Alarms
- Fire precaution systems
- Fire Alarms
- Sprinkler systems
- Heat sensors
- Smoke detectors
- Carbon monoxide detectors
- Emergency call stations
- The computer hardware and software required to operate or monitor the Life Safety Systems

#### 4.2.3 *Energy Systems*

The constant energy flow to and from the Facilities is critical in keeping the Facilities in a fully operational mode at all times. In the Energy Systems section of the Maintenance Plan, the Concessionaire outlines the policy and procedures that will be executed to ensure that there is a constant stream of energy to all of the systems in the Facility. The Energy System plan will also outline the actions taken in the event of a power failure. The Energy system plan will discuss, at a minimum, the following systems and the Concessionaire's policy and procedures for each section.

- Life Safety Systems
- Mechanical Systems
- Electrical Supply
- The coordination efforts with the electrical, phone, natural gas, water and sewer companies/agencies

### **4.3     *Customer Service Plan***

The Customer Service Plan outlines the minimum policies and procedures necessary to ensure that the Concessionaire's staff utilizes an efficient system of handling customer service concerns, protocol for customer inquiries, protocol for responding to and recording customer inquiries/concerns. The Customer Service Plan is intended to increase the Concessionaire's staffs' handling of customer service related issues and to ensure the satisfaction of the customers.

#### **4.3.1   *Customer Service Complaints and Inquiries***

The Customer Service Complaints and Inquiries section includes the Concessionaire's policies and procedures in handling complaints and inquiries. The Concessionaire establishes a customer service log to be used when receiving a customer's complaints, comments and concerns regarding the Parking Facility. This section includes, at a minimum, the following procedures to ensure proper handling of customer complaints and inquiries.

- The Concessionaire will establish a minimum set of requirements to ensure that all complaints and inquiries that are received are resolved in a reasonable length of time. All complaints and inquiries will be documented in the customer service log. The length of time that a response will be expected for various levels of customer related inquiries and comments will be outlined in the section.
- The procedures that will be developed in responding to concerns will be differentiated by degree and priority.

### **4.4     *Custodial Plan***

The Custodial Plan documents the policies and procedures that the Concessionaire will undertake to ensure that the Facilities are clean for the general public. The Custodial Plan outlines the janitorial and general maintenance guidelines within the Facilities. These maintenance guidelines include, at a minimum, the following:

- Sweeping of parking and public areas
- Cleaning of all surfaces of the parking Facility
- Trash removal
- Pressure washing of parking decks and walls
- Chemical storage protocol
- Equipment

### **4.5     *Security Plan***

The Security Plan documents the policies and procedures that the Concessionaire will develop with respect to the security and safety of the general public. The Plan includes staff training and supervisory policies and procedures, as well as the Concessionaire's general approach to the safety of the public. This section includes, at a minimum, the following criteria:

- A description of all security related systems and their location with respect to the parking facility
- The safety patrol routes

- CCTV monitoring
- Supervision of the security personnel and coverage
- Incident and Accident reporting protocols
- The emergency notification system
- Recordkeeping protocols

#### **4.6     *Emergency Plan***

The Emergency Plan documents the policies and procedures that the Concessionaire will develop in response to an emergency situation either at or around the parking facility. This section outlines the general protocols that will be enacted in the case of a natural or man-made disaster. The Concessionaire will also provide a staff training program in the case of an emergency. This section will include, at a minimum, the following criteria:

- The command structure which details the organization of staff and their responsibilities during an emergency
- The communication flow between emergency responders
- The protocols for providing accurate and timely information to the general public
- The protocols for the evacuation of the public from the at risk area
- Staff training program

#### **4.7     *Safety Plan***

The Safety Plan documents the policies and procedures that the Concessionaire will develop to ensure the safety of its staff and the public. The Safety Plan ensures that all employees are fully trained in the Occupational Safety and Health Administration (“OSHA”) standards. This section includes, at a minimum, the following criteria:

- An employee safety training program which trains each employee on specific hazards related to their specific job role
- Policies and procedures required during facility work zone maintenance

#### **4.8     *Equipment Plan***

The Concessionaire has the sole responsibility for the operation, management and maintenance of the required equipment within the parking facility. The Equipment Plan documents the policies and procedures that will be undertaken in order to ensure that all the equipment is maintained according to the manufacturers’ requirements. The Equipment Plan includes, at a minimum the following criteria:

- Staff equipment training program
- Licensing of equipment
- Insurance
- Subcontractor equipment conformance
- Equipment operators are currently state registered and licensed.
- Vehicle safety equipment, such as, amber warning lights and back-up alarms
- Staff equipment training program
- Equipment maintenance schedule

#### **4.9 Capital Asset Management Plan**

The Capital Asset Management Plan (“CAMP”) is required to preserve the facility and ensure the continual operation. The general goals of the CAMP are to provide a pleasant and safe experience for the parking patrons as well as to preserve the facility over time. The CAMP section includes, but is not limited to, the following sections:

- Planning of routine and preventative maintenance requirements
- Capital repair requirements
- An independent inspection and reporting by a Professional Consulting Firm, not affiliated in any way to the Concessionaire, for each facility

The CAMP must provide a general summary of the condition of the facilities as well as the implementation of strategies to preserve the facility. These strategies must be in compliance with the minimum requirements detailed in each parking facility’s Maintenance Manual.

The independent consulting firm’s qualified engineer (the “Project Manager”) will direct the CAMP. The Consulting Firm must develop an annual inspection schedule for the facilities’ infrastructure, electrical, architectural and mechanical elements. The Project Manager will insure that its crew complies with all safety protocols outlined in the Safety Plan while performing inspections of the facilities’. The Concessionaire will provide the Project Manager with each facility’s general plan and drawings prior to the onsite inspections. The Project Manager must review the site plans prior to the onsite inspections. The Concessionaire and/or the Professional Consulting Firm must have all required permits, insurance and access requirements to perform site inspections. The Firm will supply the following:

- An Annual CAMP which outlines a general summary of the annual recommendations and capital improvements required for the next ten years
- Long-Term CAMP which provides a general summary of the recommendations and capital improvements necessary at ten year increments for the remaining Concession Agreement term
- Condition Assessment Report which provides any changes in conditions of the Facilities that were noted during that particular year
- The Concessionaire must supply an electronic copy of the annual CAMP and Condition Assessment Reports to the City.

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# 1. INTRODUCTION

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## **1.1 Objective**

Due to direct exposure to traffic and weather, all parking structures need an appropriate maintenance and repair program to provide a safe and satisfactory level of service and maximize their service life. Without such a program, the structure may sustain premature deterioration, undue repair expense, interrupted service, inconvenience, or an unpleasant experience for the patrons, resulting in a loss of cash flow.

This manual is intended to provide the minimum requirements to ensure a satisfactory and safe level of service in the City of Los Angeles Parking Structures. Criteria for an effective maintenance program will be presented, and specific practices and procedures considered applicable and essential to the program will be described in detail in the subsequent chapters.

In addition to the maintenance requirements detailed in this manual, the recommended repairs detailed in Desman Associate's 'Physical Due Diligence Review and Evaluation' dated November 2009 should be performed. Performing both the recommended repairs and following the minimum maintenance requirements will allow for the continued safe and satisfactory use of the garages and maximize their service life.

## **1.2 Maintenance Program Overview**

Even with the highest quality of construction and repair practices, it is imperative to implement a maintenance program to maximize service life and provide a safe and pleasant parking experience for garage users. A comprehensive maintenance program typically includes the following:

- Establishing a record database of garage systems, components, and repairs and keeping the database up-to-date
- Regular inspections of the facility systems and components by in-house personnel
- Initiation of a capital asset management program, which shall included a detailed annual

condition assessment of the garages by qualified engineers that will establish a prioritized list of capital expenditures (i.e. repairs) within each facility

- Routine operational and preventative maintenance by in-house personnel and under service contracts
- Emergency repairs as necessary

#### *Record Database*

A record database of the garage systems and components should be created and maintained for each facility. The database should include As-Built drawings and specifications, a comprehensive list of garage components, warranty and maintenance information, and records of previous repairs/replacements/upgrades. The purpose of the database is to:

- Track inventory with a record of the garage systems and components
- Detail preventative maintenance, particularly for equipment, necessary to minimize breakdowns and maximize service life
- Provide copies of warranties to ensure work to components under warranty is not performed at the Owner's cost
- Track previous work and maintenance performed in the garage

A copy of the record database should be available at each facility and/or at the garage operator's office for review by LADOT upon request.

#### *Regular Inspections*

Regular inspection of the various systems and components in each of the facilities shall be performed by maintenance personnel who are familiar with the operation of the structure. Deficiencies should be noted in a concise report with recommendations for additional investigation or remedial action. Records of all regular inspection should be included in the record database in each facility.

A discussion of the specific items to review during the regular inspections is provided in Chapter 3,

and the minimum inspection schedule detailing the specific items to review and their frequency is provided in Chapter 4.

#### *Capital Asset Management Program*

Initiation of a Capital Asset Management Program (CAMP) will be required for the entire garage system. The CAMP program shall include a detailed condition assessment report on an annual basis and shall be performed by qualified engineers. The report shall detail all deficiencies noted with each facility, and the recommended repairs to address the deficiencies on a prioritized basis. In addition, the CAMP report shall include the anticipated repairs for the remainder of the lease term based on the current condition and the expected life cycles of the various garage components to aid the Owner in budgeting for future repairs.

The CAMP report will provide the basis for the on-going repairs, modifications, and enhancement projects in the garages. It is imperative that the prioritized repairs in the CAMP report be performed as recommended in the report to ensure a safe and satisfactory level of service and to maximize the useful service life of the facility. The annual CAMP report can also be utilized to compare the current condition of each garage against the initial condition noted in the November 2009 'Physical Due Diligence Review and Evaluation' in an effort to maintain the garages' condition.

#### *Routine and Operational Maintenance*

Routine and operational maintenance should be performed in each of the garages. Routine and operation maintenance includes items such as janitorial services, lubrication/adjustment of equipment, filter and light bulb replacement, drain and pipe cleaning, etc. Routine and operation maintenance should be performed by both in-house maintenance personnel and under service contracts for the various equipment (i.e. elevators, escalators, revenue control, etc.) within the garages. Further discussion regarding routine and operational maintenance issues is provided in Chapter 3.

#### *Emergency Repairs*



Even with the most diligent maintenance program in place, emergency repairs to various garage components will be required from time to time. Events such as extreme weather conditions, earthquakes, utility service outages/overloads, vandalism and vehicular accidents can cause unanticipated damage to garage equipment or components. As necessary, emergency repairs should be performed promptly to ensure the garage is properly operating and providing a safe and pleasant experience for garage users. Depending on the type of emergency situation, repairs may be performed by maintenance personnel or a qualified engineer and contractor may need to be retained to address the situation.

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## **2. GENERAL INFORMATION**

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### **2.1 Facility Information**

In July of 2009, DESMAN performed a physical due diligence review and evaluation of the City of Los Angeles Parking Facilities. A brief description of each of the structures is provided below, including a listing of those features usually most sensitive to a maintenance program. A more detailed description and condition rating of each of the facilities can be found in our report dated November 2009.

#### **1. City Lot 680 - Broxton Avenue Parking Structure**

This is a six level, 366 vehicle parking structure constructed in 1997. The structural system of the facility is a combination of precast double tee members and wall panels with cast-in-place, conventionally reinforced concrete slab infill areas, beams, columns, and shear walls. This type of system contains many sealant filled joints.

This structure includes a traffic bearing, waterproofing membrane at the entrance and exit lanes, on Level 2 above the retail space, and on the roof level.

The structure is fully sprinklered. Fire extinguisher cabinets are also located throughout the garage, along with a fire alarm system consisting of audible/visual alarm signaling devices and manual pull stations at the stairwells.

Trench drains are provided at Levels 3 and 4 near the south stairs, and an emergency drain and sump pump are provided at the lowest level.

The two basement levels and street level are mechanically ventilated. Three exhaust fans are located along the outside walls in mechanical rooms at the Level 2 and the supply fan is

located on the Level 3. All of the fans are connected to the lower floors thru vertical shafts. A carbon monoxide system is present in the two basement levels and first level of the garage. Each sensor covers approximately 5,000 square feet.

Electrical equipment includes an 800 amp, 480 volt, 3-phase service. In addition, a 100 KW emergency generator backs up the emergency lighting and some minimal power requirements.

Lighting on all levels except the roof level is provided with 175 watt, HID fixtures.

The structure includes two elevators, both of which are heavily utilized and subjected to frequent vandalism. Regular maintenance of the equipment on a minimum of a monthly basis as part of a service contract and daily inspections for vandalism by in-house personnel is required.

## 2. **Arc Light Parking Structure (Cinerama Dome)**

This is a seven level, 1717 vehicle parking structure constructed in 2002. The structural system of the facility is cast-in-place, post-tensioned slabs and beams supported by cast-in-place conventionally reinforced columns. Lateral loads are resisted by shear walls in the east-west direction and a moment frame in the north-south direction.

Typically, this type of structural system should be reviewed for the overall integrity of the post-tensioning components via indirect means, cracking, spalling, and delaminations along construction joints, pour strips, or directly above the beams where the reinforcing steel and post-tensioning components are closest to the slab surface.

A traffic bearing, waterproofing membrane was installed on Level 2 above the occupied spaces and over the pour strips on the roof level.

The garage is fully sprinklered, and four stand pipes are provided with a hose connection at each level. In addition, multiple fire hose cabinets are provided on the roof level.

Fire extinguishers are provided at various locations on each level.

Large roof drains are provided at six locations on the roof. The other levels also have six drain locations that repeat down thru the structure.

Since the garage is an 'open' structure, it is not mechanically ventilated.

The majority of the lighting fixtures, other than the roof, are 4' long, twin tube T8 fluorescent fixtures. In most cases, two of these fixtures are mounted end to end and do not have a cover of any type.

Vertical transportation includes four elevators.

### 3. **Pershing Square Parking Structure**

This is a three level, 1,750 vehicle underground parking structure integrated with the park and plaza areas above that appears to be approximately 58 years old. The structural system of the facility consists of conventionally reinforced, two-way slabs supported by cast-in-place conventionally reinforced columns with drop panels. Lateral loads are resisted by a combination of the foundation walls, shear walls, and lateral bracing. The majority of the deterioration was observed on or near the entrance, exit, or helix ramps and along the construction joints. Due to the structural behavior and distribution of loads in a two-way structural system, extensive slab cracking is common.

A traffic bearing waterproofing membrane has been previously installed on the entrance and exit ramps to/from the street level.

Steel expansion joint assemblies on the helix ramps appear to be from original construction and do not provide a water tight seal.

Overall, the stair towers will require a diligent effort from the standpoint of cleaning and lighting to avoid being uninviting to users.

The garage is divided into three fire sprinkler zones and is fully sprinklered using a wet sprinkler system. The piping is not painted, and corrosion was observed on some of the piping.

A limited amount of storm drainage is present in the garage, with most of the piping typically cast iron hub and spigot showing signs of corrosion in many locations.

Sump pumps are located at the lowest level, which must be regularly maintained on a minimum of a monthly basis to ensure their continued and safe use.

The garage is mechanically ventilated with four large exhaust fans connected by tunnels underneath the lowest parking level. The tunnels are connected to vertical ducts that rise into the parking structure at multiple column locations. These ducts are provided with grilles that allow the exhaust air to enter the duct, be pulled down thru the duct into the tunnel system, and be exhausted to the outside through shafts at the street level. In many locations, the grilles and ducts are damaged, with some of the damaged ducts being used as trash receptacles.

A carbon monoxide detection system was recently installed in the garage, with the sensors

divided in four zones that control the four exhaust fans. The sensors are require regular maintenance on a minimum of a monthly basis, which shall be provided per the manufacturer's recommendations as part of a service contract.

Power is distributed to multiple transformers that are located in the garage, typically found close to a column, that serve local lighting power panels. Lighting in the garage was recently upgraded to energy efficient 8'-long fluorescent fixtures with two 4' long 25 watt T8 tubes. No covers are provided over the lamps. Regular maintenance on the computerized lighting controls is required on a minimum of a weekly basis.

Emergency lighting is provided with battery back-up flood lights and an automatic emergency power system powered by emergency generators. The emergency generators require regular maintenance on a minimum of a monthly basis as part of a service contract to ensure their continued ad safe use.

Vertical transportation includes one elevator and one pair of escalators between the plaza and the first parking level and two pair of escalators providing access to the second and third parking levels. Both the escalators and the elevators are subjected to heavy usage and regular maintenance on a minimum of a monthly basis as part of a service contract is required to ensure the safe and continued use of the vertical transportation.

4. **Lot 745 - Hollywood & Highland Parking Structure**

This six level, 3006 vehicle underground parking structure was constructed in 2001. The structural system of the facility consists of precast double tee members, beams, columns, and walls. Existing control joints were observed to be saw cut, but have not been caulked.

A traffic bearing, waterproofing membrane has been installed on the Highland Avenue

entrance ramps into the facility.

The garage is fully sprinklered. In addition, fire extinguisher cabinets are scattered throughout each level of the garage, along with a fire alarm system consisting of audible/visual alarm signaling devices and manual pull stations at the stairwells is present in the structure.

Trench drains are located at the exit and entrance ramps, and the lowest level is provided with an emergency drain and sump pump.

The garage is mechanically ventilated, with the supply fans and shafts generally located on the west side of the structure and the exhaust fans and shafts generally located on the east side. Supply air is blown out of the shaft thru louvers except at the lowest level where a duct was extended from the shaft to better distribute the air.

A carbon monoxide detection system is used to control the fans. Each sensor covers approximately 5,000 square feet, which is typically recommended by the sensor manufacturers.

The majority of the garage's lighting fixtures are end-to-end, 8' long each fluorescent fixtures containing four 4' long T8 fluorescent lamps. Each fixture has a plug in type connection, and the bulbs are covered with a wrap-around lens. At the stairs and center escalator core, additional wall mounted fluorescent lighting is present.

Emergency call-in intercom stations are located throughout the structure.

Vertical transportation includes multiple elevators and escalators.

Due to the heavy usage and frequent vehicle turn-over in this garage, more frequent sweeping and power washing of the facility will be required.

5. **Lot 690 - Studio City Parking Structure**

This four level, 397 vehicle parking structure was constructed in 2004. The structural system of the facility consists of cast-in-place post-tensioned slabs and beams supported by cast-in-place conventionally reinforced columns. Lateral loads are resisted by shear walls in both north-south and east-west directions.

Typically, this type of structural system should be reviewed for the overall integrity of the post-tensioning components via indirect means, cracking, spalling, and delaminations along construction joints, pour strips, or directly above the beams where the reinforcing steel and post-tensioning components are closest to the slab surface.

At the roof, visible cracking was extensive has been previously treated by application of a crack filling material.

A traffic bearing waterproofing membrane was originally installed at the roof level in front of the elevator and on Level 2 over the elevator machine room, employee's rest room and equipment room on Level 1.

Re-painting of the architectural railings and other features should be included in a long-term maintenance program.

The garage is fully sprinklered, and a standpipe is provided in each of the stairwells with a fire hose connection available at each floor. In addition, there are three combination hose cabinets and fire extinguishers at the roof level and three fire extinguisher cabinets on the other levels.



The sprinkler system is a wet system, with a post indicator valve and pumper connector located near the street.

A fire alarm system consisting of audible/visual alarm signaling devices and manual pull stations at the stairwells is present in the structure. Due to frequent vandalism, the fire alarm shall be inspected on a daily basis to ensure its safe and proper operation.

The floors are sloped to two locations that serve as the primary deck drains. In addition, there are trench drains on the ramps. All drains appear to flow into a garage interceptor located outside the structure's footprint. A set of overflow drains discharge directly out the rear of the structure at grade.

One restroom is located inside the garage for use by the attendants. Hot water is provided to the sink by an instantaneous heater.

Since the garage is an open structure, it is not mechanically ventilated. However, exhaust fans were provided to ventilate the staff toilet, elevator machine room, and electrical room. The exit booth is cooled with a smaller 'Trailer' roof mounted AC unit.

The building electrical service is located in an electrical room under the ramp and consists of a 120/208 volt 600 amp service. Emergency power is provided to emergency and egress lighting by a UPS system, which is not backed up by a generator.

Lighting on the roof level is provided by both single and double shoe box style metal halide pole fixtures. The remaining levels of the garage are lighted using square 100 watt metal halide fixtures.

The stairs are illuminated with both metal halide fixtures and fluorescent fixtures.

The structure includes one elevator.

Tree and bush trimming along the exterior of the facility will be required at a minimum of a weekly basis to prevent overgrowth.

6. **Lot 601 - Friar Street Parking Structure**

This two level, 225 vehicle parking structure appears to be 30 to 40 years old. The structural system of the facility is presumed to be precast, prestressed hollow core planks with a cast-in-place concrete topping supported on a structural steel frame. The lateral (seismic) load resistance system is provided by diagonal steel bracing at various locations in each principal direction in the structure. Some on-going repairs and re-coating of the waterproofing membrane system can be anticipated due to normal wear and use.

A fire sprinkler system is not provided in the garage. However, fire extinguisher cabinets have been provided at multiple locations on both levels.

No interior storm drainage piping was observed. It appears that the floor is sloped to drain to the perimeter of the building, with gutters provided to divert water at the stair and entrance and exit lanes.

A sprinkler system has been provided for the landscaping.

The only HVAC provided in the garage is a small fan for the staff restroom. No air conditioning is provided for the ticket booth.

The garage electrical service is located at the lower level at the back of the garage. The main

service, disconnect, and lighting panels are mounted on a unistrut and located under an open stair.

Lighting on Level 1 is high pressure sodium fixtures mounted to the soffit of roof deck. It was noted by the attendant that a timer controls the lighting.

Lighting for the roof deck is provided by 2 four head shoe box style pole lights controlled with a photocell.

There are no elevators in the structure.

Tree trimming on the roof level will be required at a minimum of twice a year to prevent drains from clogging.

#### 7. **Lot 629 - Dickens Street Parking Structure**

This two level, 198 vehicle parking structure was constructed around 1993. The structural system of the facility consists of cast-in-place, conventionally reinforced concrete slabs, beams, and columns. As a conventionally reinforced slab, it contains a multitude of cracking (many visible, many not visible). The cracking is normal and expected, but since this slab is potentially exposed to moisture brought in by cars on rainy days or during wash downs, water leakage through the cracks can be expected. At a minimum, caulking of the cracks is suggested to minimize future leakage. The lateral (seismic) load resistance system is provided by shear walls in each principal direction in the structure.

The garage is fully sprinklered, and three standpipes with fire hose connections are provided. Two of the standpipes are located at the stairs, and the other is located near the center of the building.

Fire extinguisher cabinets are located throughout the structure, along with a fire alarm system consisting of audible/visual alarm signaling devices and manual pull stations at the stairwells is present in the structure. Due to frequent vandalism, all fire extinguishers should be checked at a minimum of a weekly basis and repaired/replaced as necessary.

No interior storm drainage is provided for the garage. It appears that the drainage is designed to flow out of the building to the street level and/or the lower level tenant parking. The drainage within the tenant parking may be pumped back to the storm system, but this area was not included in our review.

Since the garage is an 'open' structure, no mechanical ventilation is present. The electrical room is ventilated, but it appears to be part of the tenant portion of the building.

The lighting consists of two-tube 1' x 4' fluorescent fixtures. The tubes are covered with a wrap-around prismatic lens. Exit lighting is illuminated and showed some damage from vandalism.

There are no elevators in the structure.

Frequent vandalism in the facility may require re-painting in various areas to blend frequent graffiti paint-overs.

8. **Lot 732 - Larchmont Blvd. Parking Structure**

This four level, 167 vehicle facility was constructed around 2000. The structural system of the facility consists of cast-in-place conventionally reinforced or post-tensioned slabs and beams supported by concrete walls and columns. There was extensive cracking observed on the parking floor slabs. The lateral (seismic) load resistance system is provided by the

concrete framing system and perimeter walls of the structure. These appeared to be in excellent condition.

The exterior, street level and ingress/egress ramp for traffic to Levels P1 through P3 were protected with a thin, traffic bearing membrane system that appears to date back to the original construction. The membrane is exhibiting significant wear in the traffic lane areas along the entrance and exit lanes. Hand washing of the existing membrane is required in lieu of power washing.

The garage is fully sprinklered, except for the north stair. One standpipe is located in the south stair, but fire hose cabinets are not provided.

Fire extinguisher cabinets are located throughout the garage. No fire alarm system is present in the garage, except that a flow monitoring device is present to monitor and alarm flow for the sprinkler system.

A trench drain was provided for at the bottom of the entrance/exit ramp, and a sump pump was provided at the lowest level.

The three lower underground levels of the parking structure are mechanically ventilated with one supply fan and one exhaust fan. The exhaust fan is located on Level 1 and discharges through the street level parking in a vertical shaft that has side discharge louvers approximately 10'-0" above the level. Air is forced into the garage by a supply fan set on the roof of the retail space and discharges through grilles next to the elevator shaft. The exhaust fan is ducted to multiple inlet grilles along the outside walls of the garage.

There is no carbon monoxide detection system in the garage, and the fans appear to run continuously.

The main electrical service is located behind the retail space at the street level. The street level lighting is provided by pole lights at the property line and wall pack fixtures mounted on the back of the retail spaces. Lighting fixtures within the garage consist of a combination of 8' long and 4' foot long single tube fluorescent fixtures with T8 lamps. The fixtures are only covered with a wire guard.

The structure contains one elevator, which is scheduled to be replaced in May 2010. The new equipment will require regular maintenance on a minimum of a monthly basis as part of a service contract to ensure its proper and safe operation.

9. **Lot 703 - Robertson Blvd. Parking Structure**

This six level, 335 vehicle facility was constructed in 1998. The structural system consists of a combination of nominal 8 foot wide, precast, prestressed double tee floor planks for the 'flat' parking floors and cast-in-place, reinforced concrete beam and slab system for the ramps at either end of the structure interconnecting the floors. The lateral (seismic) load resistance system is provided by cast in place concrete shear walls in each principal direction in the structure.

All supported floor surfaces are protected with a thin, traffic bearing waterproofing membrane system. It appears that this membrane product was installed at the time of original construction, based on the 10 year age of the structure and the level of wear observed. Hand washing of the existing membrane is required in lieu of power washing.

The stucco exterior facade is in need of a proper cleaning.

Some very limited concrete repairs, caulking at the tee to tee joints and regularly scheduled re-coating of the waterproofing membrane system in heavy traffic areas and at the tee to tee

joints can be anticipated due to normal wear and use.

The structure is fully sprinklered, and standpipes are located in the stairs. However, no fire hose cabinets are provided.

Fire extinguisher cabinets are located throughout the garage, along with a fire alarm system consisting of audible/visual alarm signaling devices and manual pull stations at the stairwells is present in the structure.

Trench drains were provided at the low point of the main ramps inside the garage. In addition, an emergency drain and sump pump were provided at the lowest level.

Two restrooms were provided at the retail/street level for the retail spaces.

The two lowest levels are ventilated by a supply fan located on the Basement Level 1 connected through a shaft to an intake grille at the roof. Exhaust from these levels is provided by a fan located on Basement Level 1 that discharges vertically through a shaft to a roof grate. Exhaust for the Levels 1 and 2 are provided by an exhaust fan located on the Level 3. This fan also discharges to the roof level through a vertical shaft. Make-up air for Levels 1 and 2 is provided through openings in the exterior walls.

A carbon monoxide detection system is present in the basement levels and the Levels 1 and 2. Each sensor covers approximately 5,000 square feet, which is typically recommended by the sensor manufacturers. The entire mechanical ventilation system requires regular maintenance as part of a service contract to ensure its proper and safe operation.

On a day when the garage was lightly loaded, the fans were running continuously. This may indicate that some adjustments need to be made or possibly the sensors need calibration or

replacement.

Lighting on all levels, except the roof level, is provided with high pressure sodium fixtures. In addition to these fixtures, 2/4 pendent mounted fluorescent fixtures are used at the elevator entrance and exit lanes.

The roof level lighting is provided by wall pack fixtures mounted on the parapet wall and twin shoe box style pole fixtures, which are approximately 12 feet high.

The structure contains two elevators.

#### 10. **Lot 670 - Cherokee Parking Structure**

This four level, 397 vehicle facility appears to be approximately 15 to 20 years old. The structural system of the facility consists of cast-in-place, post-tensioned slabs and beams supported by cast-in-place conventionally reinforced columns. Lateral loads are resisted by concrete shear walls in both north-south and east-west directions along the perimeter.

Typically, this type of structural system should be reviewed for the overall integrity of the post-tensioning components via indirect means, cracking, spalling, and delaminations along construction joints, pour strips, or directly above the beams where the reinforcing steel and post-tensioning components are closest to the slab surface.

A traffic bearing, waterproofing membrane was installed during original construction at the roof level. This membrane exhibited significant wear in the drive aisles and should be re-coated. A membrane was also installed on the floor area over the parking offices.



Ponding was noted in several corner areas due to lack of proper slopes to floor drains. The parking operator should be diligent in power washing the areas on a periodic basis to improve the appearance of the structure.

The garage is fully sprinklered, and one standpipe is located in the building next to the elevator. In addition to the main standpipe, two additional fire hose cabinets are provided at each level, and a third fire hose cabinet is provided at the corner of the highest point of the roof level.

Fire extinguisher cabinets are provided throughout the garage, typically four per floor.

Very little storm drainage is in the garage, and it appears that storm drainage was designed to sheet drain back thru the structure. French drains are provided at the entrance/exit lanes into the garage.

Since the garage is an 'open' structure, it is not mechanically ventilated. The existing elevator machine room and electrical room appear to be ventilated.

Lighting in the garage has been previously upgraded. The original lighting system utilized metal halide or sodium pendent mounted fixtures on the lower levels. These fixtures have been replaced with 8' long by 6" wide single tube fluorescent fixtures with two T8 lamps. The fixtures do not have a lens, but were provided with a wire cover.

The roof deck is illuminated with multiple twin shoe box type pole fixtures on 20 foot poles.

The structure contains one elevator, which is heavily utilized and subjected to frequent vandalism. Regular maintenance of the equipment on a minimum of a monthly basis as part of a service contract and daily inspections for vandalism by in-house personnel is required.

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### **3. REQUIRED MAINTENANCE PROGRAM**

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#### **3.1 Overview**

The required maintenance program includes regular inspections, repairs, modifications, enhancements, and routine/operation maintenance to each of following systems:

1. General Cleaning
2. Structural Systems
3. Waterproofing Systems
4. Architectural Components
5. Elevators and Escalators
6. Fire Protection System
7. Plumbing System
8. Mechanical System
9. Electrical System
10. Parking Control Equipment
11. Security System
12. Landscaping

The following sections further detail the maintenance required to maximize each system's performance and service life.

#### **3.2 General Cleaning**

While most cleaning relates to the appearance of the parking garage and the resulting image that is portrayed to the public, some items can cause problems if neglected. For example, trash can clog drains and result in flooding, and trash left on stairs or landings may result in liability for any resulting personal injury. A cleaning program should be established for each facility that directs personnel to perform the required cleaning tasks on a regular basis.

In part, the suggested frequencies of cleaning are based upon the concept that users have a lower tendency to litter a clean, neat environment than an environment which is already messy. A clean, well kept parking garage promotes a good reputation and invites users to return to the facility. Often, the increased revenue more than offsets the cost of keeping the facility clean.

One of the most frequently overlooked aspects of parking garage maintenance is proper floor cleaning. All parking floor areas shall be swept on at least a weekly basis. Sweeping can be done either with hand brooms or mechanized sweepers designed for use in parking garages. Between sweepings litter shall be picked up from general parking areas and trash cans are emptied daily.

Some floor areas should have daily cleaning by sweeping, mopping, or vacuuming, including lobbies, restrooms, offices, cashiers booths, and entrance/exit lanes. Stairs should be cleaned on the same frequency as the parking areas, unless they are heavily used and more frequent cleaning is warranted. Stair handrails and walls should be cleaned each time the stairs are swept.

In addition to sweeping, a semi-annual wash down, or power-washing, of the parking floors with a high volume, low pressure water hose is recommended. In high traffic areas, such as entrance lanes and main driving aisles, more frequent power-washing may be desirable. During power-washing operations, grease and oil drippings from vehicles that build up in parking stalls and entrance and exit lanes should be removed with degreasers, such as an industrial detergent. Before and after washing the floors, floor drains should be checked to see that they are functioning properly. Temporary burlap or straw filters may be used to prevent dirt/debris from getting into drains, but those temporary filters must be removed immediately after washing.

Windows in cashier booths should be washed daily. Other windows, such as those in stairways or offices, should be washed monthly or quarterly, depending upon their condition. Walls in restrooms, elevator cabs, lobbies, and other public use areas should be cleaned on a weekly basis.

Vandalism to various components in the garages (such as graffiti) shall be identified on a daily basis and addressed immediately. Based on the conditions observed in each facility, consideration should be given to the installation of vandalism and/or graffiti deterrents.

Insect, pest, and bird control devices should also be installed, maintained, and inspected on a weekly basis and replaced as required.

### **3.3 Structural System**

The structural system represents the largest portion of the initial construction investment. Protection of that investment requires an on-going program of regular inspection, repairs, and preventative maintenance. Deferred repairs and maintenance can lead to more costly repairs and greater disruption to the operations of the garage.

The structural system should be regularly inspected for deterioration due to weather, wear, vehicular damage, and any other deterioration mechanisms. Chapter 4 provides the minimum requirements for the inspection frequency of the different structural components. During the inspections, the location and extent of conditions which could cause, or have already caused, concrete or steel deterioration should be noted. Items to be looked for include surface deterioration on the top and bottom of the floor slabs, evidence of water leakage, cracks, and corrosion of exposed steel. As noted in Chapter 1, this survey can be performed by maintenance personnel familiar with the facility, supplemented by a more detailed walk-through inspection by a qualified engineer on a yearly or as-needed basis. Based on these inspections, an itemized list of capital expenditures (or repairs) for the current and subsequent years can be developed and budgeted for.

The structural system shall be considered to be performing adequately when the following criteria are met or exceeded:

1. The structure can adequately support the imposed loading conditions
2. Driving and walking surfaces are safe for vehicular and pedestrian traffic
3. Deteriorated areas marked for repair have been properly repaired or are scheduled to be

repaired

4. Repair areas encompass all deteriorated concrete and are structurally sound
5. Repair areas maintain the structural integrity of the facility as a whole
6. Repair materials are well bonded and compatible with the substrate
7. Repair areas closely match existing color, finish, and profile

### *Floor Slabs*

In most garages, the floor slab is subjected to the most severe load, wear, and weather conditions, requiring the largest portion of repairs and maintenance over the life of the facility. In particular, floor slabs at entrance and exit lanes, drive lanes, and turn aisles are subject to the most extreme conditions. To minimize deterioration and repair costs, all slab areas should be regularly inspected and timely repairs should be performed.

To address potential liability issues, any potential tripping hazards noted in the floor slab should be filled immediately, even if only on a temporary basis until proper repairs can be performed. Additionally, any loose overhead or vertical concrete on the underside of the slabs should be removed as soon as possible to avoid potential safety hazards to vehicles or facility users.

Types of potential slab deterioration include spalling, delamination, and cracking. Any deterioration observed should be repaired in a timely manner using proper repair techniques and materials. Improper repair techniques and materials hide, but do not cure, the problem. An example is an area of slab spalling patched with an asphalt material. While the asphalt material will infill the spall and provides a level driving surface, asphalt tends to trap and retain moisture. The entrapped moisture can accelerate deterioration and potentially create a more severe spalled area.

Proper repair of concrete spalling or delamination includes the removal of all unsound and delaminated concrete, cleaning of exposed reinforcing steel, and touching-up any reinforcing steel that was originally epoxy-coated. The repair areas should then be completely cleaned of loose dust or

debris and patched back with a high-quality, portland cement repair material that is compatible with the substrate concrete. During annual inspections, previous repair locations should be sounded to ensure they are performing adequately.

The proper repair of slab cracking consists of routing the crack to an approximate ½” by ½” V-groove, priming the substrate concrete, and caulking with a flexible urethane or silicone sealant. This repair will minimize the ingress of moisture into the floor slabs and reduce subsequent corrosion-related deterioration. Typically, crack sealant has a useful service life of 8 to 12 years before it needs to be replaced.

In addition to the repairs described, it may be prudent to install a waterproofing membrane system over critical areas of the floor slabs to minimize water penetration into the slab and future deterioration. See Section 3.5 for a further discussion of waterproofing membrane systems.

#### *Beams, Columns, and Walls*

Deterioration of the beams, columns, and walls can adversely affect the structural integrity of structure as a whole. Beam, column, and wall deterioration is typically due to the ingress of moisture into the structural elements and corrosion of the embedded steel reinforcing. Any loose overhead or vertical concrete noted should be removed as soon as possible to avoid potential safety hazards to vehicles or facility users. Repairs to corrosion-related beam, column, and wall spalling and delamination are nearly identical to those detailed for floor slab repairs in the previous section.

Beam, column, and wall deterioration can also be caused by restraint and/or excessive load. Conditions of this nature are beyond the scope of this manual and should be evaluated by a structural engineer experienced in the repair and maintenance of parking facilities. An example of this type of deterioration is extensive cracking at beam-column joints, which may be caused by restraint and require a combination of epoxy injection of the cracks and carbon fiber reinforcement of the joint.

### *Structural Steel*

Structural steel in garages is generally limited to lintels, connection hardware, stairs, guardrails, and bollards. However, the primary structural framing in the Friar Street Garage consists of structural steel beams and columns. All structural steel components should be regularly inspected for the onset of corrosion. When corrosion is observed, the steel component should be cleaned and the painting or protective coating should be touched-up. If heavy corrosion or significant deterioration of the structural steel elements is observed, a qualified structural engineer should be consulted.

As preventative maintenance, complete re-painting or re-coating of exposed structural steel elements should be performed at regular intervals. See Section 3.5 for a further discussion on re-painting and re-coating intervals.

### *Miscellaneous Metals*

Metal handrails, guardrails, and bollards are also subject to damage from impact. Handrails and guardrails shall be checked regularly to verify that they are rigid, not damaged, and can serve their intended purpose as crash wall and/or fall protection.

### *Exterior Facades*

The exterior facades of garages typically consist of a combination of concrete beams, columns, panels, or spandrels, structural steel, and ornamental finishes. As described in previous sections, all façade elements shall be regularly inspected for deterioration and repaired in a timely fashion. Additionally, potential loose concrete or other elements that could potentially fall should be identified and removed on a regular basis.

## **3.4 Waterproofing System**

The waterproofing system consists of waterproofing membranes, joint sealants (i.e. caulking), and expansion joint seals. The purpose of this system is to prevent water movement into or through the structure in an effort to minimize future deterioration.

The waterproofing system shall be regularly inspected for water leakage and locations of damage, wear, or missing components. Chapter 4 provides the minimum requirement for the inspection frequency of the waterproofing system components. As noted in Chapter 1, this survey can be performed by maintenance personnel familiar with the facility, supplemented by walk-through inspections by a qualified engineer on a yearly or as-needed basis. Based on these inspections, an itemized list of capital expenditures for the current and subsequent years can be developed and budgeted for.

The waterproofing system shall be considered to be performing adequately when the following criteria are met or exceeded:

1. The waterproofing components are free of leaks, defects, damage, and deterioration
2. The waterproofing components are properly installed and adhered to substrates
3. The waterproofing components allow for proper movement associated with temperature changes, long-term creep, and shrinkage
4. The waterproofing components provide a smooth and safe transition for users

#### *Waterproofing Membranes*

Elastomeric waterproofing membranes are cold, liquid applied urethane systems on the order of 20 to 30 mils thick (1 mil = 0.001 inch) with sand added to a 20 to 30 mil top coat for skid resistance. They are designed for use under direct exposure to vehicular traffic and come in a variety of colors. Once installed, a waterproofing membrane provides a waterproof surface over the protected area. Typically, waterproofing membranes are installed over occupied spaces, in high traffic areas, or in critical slab locations for protection from concrete deterioration.

During inspections, signs of leakage beneath the waterproofing membrane, damage or de-bonding of the membrane, and general wear and tear should be noted. Locations of damaged or de-bonded membrane should be repaired in a timely manner by removing the membrane in question, cleaning the slab, and re-applying the membrane with a proper overlap of the existing, well-bonded membrane. If



active water leakage is observed, the source or location of the leak should be determined, which may involve a visual inspection or a flood test. Once the source of the leak is identified, the proper repair to the membrane should be performed in a timely manner. It may be necessary to consult an engineer experienced in the design and maintenance of parking facilities and/or the membrane manufacturer proper materials and methods of repair.

Typical waterproofing membranes have a useful service life of 6 to 8 years in high traffic areas (entrance and exit lanes, drive aisle, and turning lanes) before re-coating is necessary. Moderate traffic areas (parking stalls and pedestrian traffic areas) have a useful service life of 8 to 12 years before re-coating is necessary. The condition of the membrane should be noted and monitored during the on-going inspections to determine the optimal time for re-coating as the membranes near the end of their useful service life. A complete removal and replacement of waterproofing membrane systems can be expected approximately every 15 to 20 years.

Particular care should be given to areas covered with waterproofing membranes during power-washing and de-greasing so the membrane is not damaged. The waterproofing membrane manufacturer should be contacted for recommendations regarding power-washing guidelines and cleaning materials utilized. It may be prudent to sample the cleaning materials and procedures on a small sample area prior to full-scale cleaning.

#### *Sealants and Caulking*

Sealants and caulking are used to seal joints and slab cracks by adhering to the surrounding concrete to protect against moisture infiltration into the slab. The materials may be self-leveling or non-sag, depending on whether they are intended for use on horizontal or vertical surfaces. Sealants and caulking should conform to the requirements of Federal Specification TT S-00227OE, Class A, Type 1 or 2 and remain bonded to the substrate concrete and flexible during their service life.

All sealants and caulking must be inspected regularly for wear, damage, and failure. Deterioration

can be caused by cohesion failure within the material itself, adhesion failure between the material and concrete, incorrect joint design, abrasion or damage by traffic, rapid temperature changes, freeze-thaw damage, and ultra-violet light induced embrittlement. When deterioration is observed, repairs should be performed in a timely manner. If left un-repaired, sealant deterioration can impair the serviceability of the structure and accelerate deterioration of the structural system due to moisture intrusion into the slab.

Typically, repairs include the removal of deteriorated sealant and caulking material, examination of the underlying concrete substrate for deterioration, repairs to the concrete substrate as necessary, and installation of new sealant or caulking materials. As a rule of thumb, when 30% of the sealant or caulking is deteriorated, planned replacement of all sealants should be budgeted for. A qualified engineering consultant and the manufacturer of the material should be consulted for proper materials and methods of repair.

Sealants and caulking usually have a useful service life of 8 to 12 years when they are not directly exposed to ultra-violet light. Sealants and caulking directly exposed to ultra-violet light, such as on the roof level of a parking structure, usually have a service life of between 8 and 10 years. The general wear and tear of all sealant and caulking materials should be noted and monitored during the on-going inspections to determine the optimal time for replacement.

#### *Expansion Joint Seals*

Expansion joint openings are used to provide separation between sections of a garage and accommodate movements associated with temperature changes, creep, and long-term shrinkage. These openings are filled with a flexible material, or an expansion joint seal. Because expansion joint seals are direct exposure to wheel traffic, they are very vulnerable to wear and damage. Therefore, they must be regularly inspected for damage, deterioration, and signs of leakage beneath the joints.

Various repairs and specialized expansion joint seal systems may be utilized to correct deterioration

observed. Consultation with a qualified engineer and the expansion joint seal manufacturer is recommended prior to specifying any expansion joint repair or replacement. It is also recommended that expansion joint seals be installed or repaired by experienced and manufacturer-licensed contractors to ensure optimum performance.

Expansion joint seals typically have a useful service life of 5 to 10 years before some repairs are necessary to ensure their performance and long-term durability. Complete replacement of expansion joint seals can be expected approximately every 10 to 20 years. The general condition of the seals should be noted and monitored during the on-going inspections to determine the optimal time for repair and/or replacement.

#### *Foundation Walls*

In below-grade parking structures, such as the Pershing Square, Hollywood & Highland and Larchmont Parking Structures, small cracks in the foundation can develop and water from the saturated soils retained by the foundation walls may begin to leak through the cracks. During the regular inspections, foundation walls should be reviewed to determine locations of leaking foundation wall cracks.

Leaking foundation wall cracks should be addressed in a timely manner to minimize water infiltration into the walls and reduce subsequent corrosion-related damage. Often times, leaking foundation wall cracks may be sealed from the inside using a quick-setting or pressure injected grouts. If injecting the crack from the interior does not properly address the water infiltration, additional repair options include the injection of bentonite, finely divided clay which swells considerably when wetted, into the soil adjacent to the leak or excavating the retained soil and repairing the leaks from the exterior face of the wall. Consultation with a qualified engineer is recommended to determine the proper repairs.

### **3.5 Architectural Components**

Architectural components include non-structural walls, surface finishes, windows, doors, painting, striping, and signage. All architectural components should be regularly inspected for deterioration

due to weather, wear, damage, age, etc. Chapter 4 provides the minimum requirements for the inspection frequency of the different architectural components. As noted in Chapter 1, this survey can be performed by maintenance personnel familiar with the facility, supplemented by walk-through inspections by a qualified engineer or architect on a yearly or as-needed basis. Based on these inspections, an itemized list of capital expenditures for the current and subsequent years can be developed and budgeted for.

The architectural components shall be considered to be performing adequately when the following criteria are met or exceeded:

1. Components remain in a safe and operable condition
2. Components contribute to a smooth operation of the parking facility
3. Components contribute to a safe and positive parking experience

#### *Walls and Surface Finishes*

Walls and surface finishes include exposed, non-structural walls (i.e. non-load bearing masonry walls), wall finishes (i.e. drywall, tile), ceiling finishes (i.e. suspended acoustical ceiling, drywall), and floor surface finishes (i.e. tiles, carpet). These elements are typically used in garages for privacy, aesthetics, safety, security, and to enclose temperature controlled spaces.

During inspections, the walls and surface finishes should be inspected for deterioration due to water damage, chips, cracks, general wear and tear, etc. Locations of deterioration should be recorded, and repairs should be performed in a timely manner.

The various walls and surface finishes have different useful service lives based on their composition, location of use, and exposure. In general, walls and surface finishes directly exposed to the weather or the exterior will have shorter life spans than walls and surface finishes on the interior or protected from the weather.

### *Doors*

Most of the garages have both pedestrian access doors and overhead vehicular doors. Pedestrian access doors are typically utilized at entrance to stairs, lobbies, and occupied spaces for temperature control, security, and safety. Overhead vehicular doors are typically utilized for restricting after hour vehicular access into the garage or to provide fire separation.

Both pedestrian and vehicular doors should be checked regularly to ensure they operate properly and swing in the proper direction. The door hardware, including latches, panic hardware, closers, locks, and manual operation devices, should be inspected at the same time. When a malfunction is noted, it should be corrected immediately to maintain the safety and security of the parking garage. Lubrication of all moving parts should be performed in accordance with manufacturer's recommendations.

All doors, frames, and hardware should also be inspected for corrosion. When corrosion is observed, the component should be properly cleaned and re-painted/re-coated. See the following section for a further discussion on re-painting and re-coating.

Typical pedestrian access doors and overhead vehicular doors have a useful service life of approximately 20 years. However, the service life of specific doors will depend on the door material, painting or protective coating, maintenance, and exposure conditions. Individual doors should be monitored on a regular basis to determine the optimum time frames for repairs and/or replacement.

### *Painting*

Painting enhances the overall appearance of a component, while also providing protection from water infiltration and/or corrosion. Painted surfaces should be inspected as detailed Chapter 4 to determine their condition. Small rust spots or areas of paint deterioration should be cleaned and touched up each year. Complete repainting should be performed as required by the element, type of paint, and the exposure conditions. Most painted surfaces in the parking garage will need repainting at intervals

in the 3 to 7 year range.

Regular painting of doors, door frames, pipes, and pipe guards not only helps prevent corrosion deterioration but provides a pleasant and well kept appearance. The re-painting of interior or exterior concrete and masonry is usually done for appearance, while some masonry paints also serve as waterproofing. Some of the new anti-graffiti paints are effective for that purpose and should be considered when graffiti is or may be a problem. The face of concrete curbs should be re-painted semi-annually to minimize potential tripping hazards.

Structural steel (including metal pan stairs) should be regularly inspected for signs of corrosion and/or paint deterioration. Minor corrosion or peeling paint can be touched up by maintenance personnel as needed. However, if heavy corrosion or deterioration of the structural steel elements is observed, a qualified structural engineer should be consulted. Handrails and guardrails serve safety related functions in the facilities and should be inspected and re-painted in a similar fashion to structural steel.

All paint should be carefully selected to ensure it is appropriate for the particular application. As a protective coating, painting depends principally upon its adherence to the underlying surface. Therefore, before painting any surface, it is extremely important to properly clean and prepare the substrate surface.

### *Striping*

Striping is essential to maintain the safe and orderly movement of vehicles and pedestrians, while ensuring smooth operation of the facility. Therefore, directional and informational floor striping should be inspected regularly and kept in good condition, and pedestrian walkways and lobby areas should be properly striped, signed, and well lit. All striping shall be clear and straight, and all numbers and letters shall be easily readable.

Re-striping should be performed whenever striping begins to fade or is deteriorated. Localized areas

of re-striping, particularly at entrance, exits, and heavy traffic areas, can be expected on a regular basis. Re-striping of a garage as a whole can be anticipated every 2 to 5 years, depending on the amount of use and weather exposure.

Occasionally, striping layouts are changed within a garage to accommodate changes in traffic flow, smaller vehicles, etc. When changes in the striping layout are performed, the old striping shall be completely removed before the new striping is applied. Painting over old stripes will often times confuse users due to two layers of striping being visible. The Owner should also check with local and state traffic departments for the preferred or required striping color and dimensions.

### *Signage*

Properly installed and maintained signage ensures that regulatory, warning, guide, informational, and advisory information is relayed to the garage users. The signage inside and outside a facility plays an important role in directing and informing the users of the traffic flow into and within the garage, while ensuring the safe and orderly movement of vehicles and pedestrians.

All signage should be regularly inspected and kept clean, legible, and well lit. Any deterioration to signage painting, coating, and facing materials should be promptly repaired and any illuminated signs or lighting damaged near signage should be replaced in a timely manner. Level indicator signage, stair or elevator location signage, and general information signage should be kept at eye level and be visible from entrances and exits. All entrances to the garages shall indicate the overhead clearance in the facility and any obstructions into drive aisles or parking spaces shall be clearly marked. Temporary signage within each garage shall also be regularly inspected to ensure it is kept clean, legible, and well lit.

### *Stairways and Pedestrian Walkways*

All stairways and pedestrian walkways shall be inspected daily to ensure they are safe and free of tripping hazards, unsafe short-cuts should be blocked by safe means, all protrusions are clearly marked and padded, and there are no sharp edges are present. Additionally, all stair tread and

walkway surfaces should be checked to ensure they are rigid and slip-resistant. All deficiencies noted shall be addressed immediately to ensure the safe usage of the stairways and walkways.

### *Miscellaneous Architectural Components*

Miscellaneous architectural components such as bicycle racks, wheel stops, fences, and gates shall also be inspected on a regular basis. These components should be inspected to ensure their continued safe usage and for general wear and tear. In addition, wheel stops should be inspected to ensure they are intact and in proper position and alignment.

## **3.6 Elevators and Escalators**

The purpose of escalators and elevators is to allow for safe, quick, and efficient pedestrian entrance into and exit from the facility. All elevators and escalators, along with their associated components, require regular safety checks and maintenance services. In addition to on-going operation inspections by in-house maintenance personnel described in Chapter 4, a service contract with the equipment manufacturer or a reputable service company should be in place. The service contract should include regular and code required inspections, maintenance recommended by the manufacturer, and emergency service as necessary.

The elevators and escalators shall be considered to be performing adequately when the following criteria are met or exceeded:

1. The elevators and escalators are in safe and operable condition
2. The elevators and escalators allow for quick and efficient entrance and exit from the facility
3. The elevators and escalators contribute to the overall positive performance of the facility

In addition to the inspections and on-going maintenance and repairs, particular care should be given to frequent and regular cleaning of the elevator/escalator components. For instance, excessive dirt or grime the tracks or grooves in elevator floor sills and/or landing floor sill can cause the elevator doors to malfunction.



### **3.7 Fire Protection System**

The fire protection system consists of fire alarms (i.e. smoke detectors, visual notification devices, etc.) and fire suppression (i.e. sprinklers, fire extinguishers). The purpose of this system is to detect, notify, and protect the garage users and fire department in the event of a fire.

The fire protection system shall be regularly inspected for proper operation, damage, and code compliance. In addition to on-going general operation inspections by in-house maintenance personnel described in Chapter 4, the fire protection components should be routinely inspected by qualified personnel as required by the local, state, and federal regulations. Based on these inspections, an itemized list of capital expenditures for the current and subsequent years can be developed and budgeted for.

The fire protection system shall be considered to be performing adequately when the following criteria are met or exceeded:

1. The fire protection system properly detects a fire in the facility
2. The fire protection system properly notifies both the users of the facility and the fire department in the event a fire is detected
3. The fire protection system ensures the safety of garage users in the event of a fire
4. The fire protection system minimizes damage to the facility in the event of a fire

#### *Fire Alarms*

Fire alarms consist of smoke and heat detectors and audio and visual notification devices (i.e. strobes and horns). The detectors and notification devices should be connected to a fire alarm panel with the ability to notify both the garage users and fire department if a fire is detected. It is imperative that all components of the fire alarm be in an operable condition at all times.

The fire alarm system components should be regularly inspected and tested per all applicable local, state, and building codes and as detailed in Chapter 4. Proper and on-going maintenance of the

components should be performed according to the manufacturer's recommendations. All defective or damaged components should be repaired or replaced in a timely manner in accordance with building code requirements and manufacturer's recommendations. A stock of replacement detectors, strobes, horns, wires, etc. shall be kept to allow for efficient repairs to defective or damaged components. Qualified personnel shall perform all repairs and may include licensed electricians and certified technicians.

### *Fire Suppression*

Fire suppression components typically consist of a fire pump, standpipes, fire sprinklers, and fire extinguishers. The objective of a fire suppression system is to provide a safe environment for garage users and to minimize facility damage in the event of a fire. Therefore, it is imperative that the fire suppression components be properly maintained, repaired, and replaced prior to failure.

Similar to the fire alarm, the fire suppression components should be regularly inspected and tested per all applicable local, state, and building codes and as detailed in Chapter 4. Proper and on-going maintenance of the components should be performed according to the manufacturer's recommendations, and defective or damaged components should be repaired or replaced in a timely manner in accordance with building code requirements and manufacturer's recommendations. A stock of replacement sprinkler heads, fire extinguisher, etc. shall be kept to allow for efficient repairs to defective or damaged components. Qualified personnel should perform all repairs and may include licensed electricians and certified technicians.

In addition to the inspections, regular reviews should be performed to ensure the proper fire suppression components are present in the garage. Examples include checking that the proper number and location of fire extinguishers are available for use and that the extinguishers are adequately charged.

### **3.8 Plumbing System**

The plumbing system consists of storm water drainage (i.e. drains and associated piping), sump

pumps, and plumbing fixtures. All plumbing components should be regularly inspected for deterioration due to damage, leakage, wear, and obsolescence. Chapter 4 provides minimum requirements for the inspection frequency of the different plumbing components. As noted in Chapter 1, this survey can be performed by maintenance personnel familiar with the facility, supplemented by walk-through inspections by a qualified engineer on a yearly or as-needed basis. Based on these inspections, an itemized list of capital expenditures for the current and subsequent years can be developed and budgeted for.

The plumbing system shall be considered to be performing adequately when the following criteria are met or exceeded:

1. Proper drainage is provided from all areas of the facility
2. Plumbing components are free of leaks
3. Plumbing components are and operating properly and safely

#### *Storm Water Drainage*

Storm water drainage mainly consists of floor drains, trench drains, and drainage piping. Neglecting frequent inspections of the storm water drainage may have adverse effects of the garage. The most common issue with the storm water drainage in the garage is infrequent cleaning and rodding out floor and trench drains. Floor and trench drains should be cleaned at least once a month to ensure they are free flowing to prevent ponding around the drains. Sediment baskets should be utilized to prevent pipes from clogging, and drains at the lowest floor may have backwater valves which should be checked for operation.

Drainage piping, sleeves, and hangers should be regularly inspected for corrosion, damage, or signs of leakage. Minor areas of corrosion should be properly cleaned and protected. If the corrosion has significantly deteriorated the piping, sections of pipe may need to be removed and replaced. Damaged piping should also be removed and replaced in a timely manner.

Some garages also have triple basins, which are used to filter the storm water drainage before it enters the municipal storm water system. Triple basins should also be regularly inspected and cleaned out as necessary to ensure storm water does not back-up within the garage.

### *Sump Pumps*

Sump pumps are typically utilized in garages to remove water from below grade areas containing electrical or mechanical equipment. As an example, most elevator and escalator pits contain sump pumps to ensure water is quickly removed from areas surrounding the operating equipment. It is imperative that all scheduled maintenance be performed per the manufacturer's recommendations to ensure the continual operation of the sumps. In addition, all deterioration or damage observed during inspections should be repaired in a timely manner. Improper maintenance practices or untimely repairs can lead to breakdowns of the pumps and potential costly damage to electrical or mechanical equipment.

### *Plumbing Fixtures*

Some of garages have plumbing fixtures, such as toilets and sinks, which must also be inspected regularly. Signs of water leakage should be addressed immediately, and any damage to the fixtures should be repaired in a timely manner. Fixtures should also be cleaned on a daily basis.

## **3.9 Heating, Ventilation, and Cooling (HVAC) Systems**

The HVAC consists of heating, cooling, and ventilation equipment and the associated ductwork, control, dampers, pumps, and piping. All mechanical components should be regularly inspected for deterioration due to damage, wear, and obsolescence and should be properly maintained and serviced.

Chapter 4 provides the minimum requirements for the inspection frequency of the different mechanical components. Inspections, maintenance, and service should be performed by qualified personnel, such as mechanical engineers or certified technicians. Based on these inspections, an itemized list of capital expenditures for the current and subsequent years can be developed.

The mechanical system shall be considered to be performing adequately when the following criteria are met or exceeded:

1. The mechanical system is providing a safe environment for garage users.
2. The mechanical system is adequately heating and cooling the areas intended to be heated or cooled.
3. The mechanical system is adequately ventilating all areas of the garage, including the proper removal of carbon monoxide from enclosed garages.

Service or maintenance manuals for all equipment should be followed for the proper on-going maintenance action. All required servicing should be performed as scheduled and per the manufacturer's requirements. This includes general lubrication of moving parts, replacement of worn belts or pulleys, filter replacement, etc. A stock of common replacement parts shall be kept to expedite maintenance procedures.

Heating and cooling systems should be tested before seasonal temperature changes to ensure they are operating properly before they are required. In addition, HVAC ductwork should be regularly inspected for damage, wear, and air leakage and be repaired in a timely manner.

If in use, carbon monoxide detectors should be regularly inspected and tested. In addition, the area covered by each detector should be in compliance with the applicable building codes and manufacturer's recommendations. Repairs and/or modifications to the sensors should be performed as necessary based on the results of the inspections and testing.

As the HVAC ages, the performance and efficiency of the systems will begin to fade and breakdowns may occur more often. As the HVAC equipment nears the end of its service life, consideration should be given to the replacement or upgrade of the systems to more efficient and current technology. Depending on the size, use, and exposure conditions, HVAC equipment has a typical useful service life of between 20 and 30 years.

### **3.10 Electrical System**

The electrical system consists of the electrical distribution and lighting fixtures. All electrical

components should be regularly inspected for deterioration due to damage, wear, and obsolescence. Chapter 4 provides the minimum requirements for the inspection frequency of the different electrical components. In addition to on-going general operation inspections by in-house maintenance personnel described in Chapter 4, an annual maintenance contract with an electrical firm is strongly recommended. Based on these inspections, an itemized list of capital expenditures for the current and subsequent years can be developed and budgeted for.

The electrical shall be considered to be performing adequately when the following criteria are met or exceeded:

1. The electrical system provides a safe environment for garage users.
2. The electrical system provides an adequate power source to all areas of the facility.
3. Proper lighting levels are provided in all areas of the facility.

#### *Electrical Distribution*

A detailed annual inspection of the electrical distribution (including equipment such as generators, distribution panels, etc.) is required, and on-going maintenance and minor repairs should be included in a maintenance contract with a reputable electrical firm. Any damage, corrosion, or wear of the distribution panels or components should be repaired or replaced.

Electrical panels should be regularly checked for overloaded circuits, there are no fuse jumps, and there is no exposed wiring. Outlets should be regularly tested to ensure they are properly working and with cover plates attached. If a back-up power supply or emergency generator is present in the facility, regular testing and maintenance of the equipment should be performed per the manufacturer's recommendations to ensure the reliability of the power source.

Electrical conduit should be regularly inspected, cleaned, and protected as required. Damaged conduit, conduit that is not well supported, or shows exposed wiring should be replaced and properly supported. Replacement conduit and wiring shall be kept in stock to expedite replacement.

### *Lighting Fixtures*

Adequate lighting is required in all areas of the garage, including stairs, pedestrian walkways, parking areas, and elevators, to allow for proper operation of the facility and safe and secure movement of vehicles and pedestrians. The most common problem lighting fixtures is burnt out lamps and ballasts.

Lamps should be replaced regularly, either when identified during inspections or during scheduled replacement based on anticipated lamp life. It is important to note that lamp life can vary substantially based on the type of fixture, amount of usage, and exposure conditions. Replacement lamps and ballasts shall be kept in stock to expedite replacement.

Efficiency lighting controls, such as timers and photocells, should be checked routinely to ensure proper operation and maintained as required. In addition, timers may have to be reset occasionally to account for seasonal changes in dark hours. If lighting controls are not used in the facility, consideration should be given to their installation in an effort to conserve on electricity use.

Pedestrian exit lighting fixtures and emergency lighting fixtures should be visually inspected on a regular basis to ensure proper operation. Emergency lighting battery packs should be tested regularly and will need to be replaced per the manufacturer's recommendations or after extended use during a power loss.

Damage noted to any lighting fixtures should be repaired in a timely manner. All work should be performed per the manufacturer's recommendations and by qualified personnel, such as electrical engineers and certified technicians.

### **3.11 Parking Control Equipment**

Parking control equipment consists of gates, ticket dispensers, fee computers, controllers, detector loops, and card readers. All parking control equipment should be regularly inspected for proper operation and deterioration due to damage, wear, and obsolescence. Chapter 4 provides the minimum requirements for the inspection frequency of the parking control equipment components. In

addition to general operation inspections by in-house personnel, a service contract with an authorized parking equipment supplier is strongly recommended. The service contract should include regular inspections, preventative maintenance, and emergency repairs as necessary. Consideration should also be given to providing training to in-house staff to deal with limited maintenance issues and emergency situations.

The parking control equipment shall be considered to be performing adequately when the following criteria are met or exceeded:

1. Parking control equipment is operating properly.
2. Garage users can smoothly and efficiently enter and exit the parking facility.
3. Breakdowns in the parking control equipment are minimal and addressed in a timely manner when they do occur.

It is strongly encouraged that copies of the operation and service manuals for the equipment be kept on hand for easy access. Key garage personnel should be familiar with the location of the manuals and be properly trained to address breakdowns as they occur. In addition, it is desirable to establish a log of maintenance and service work performed for each piece of equipment. In addition, all revenue control equipment shall be regularly cleaned and paint kept in good condition.

Preventative maintenance should be performed under the service contract with the authorized parking equipment supplier. This includes detailed inspections of the components, lubrication, adjustments as necessary, and cleaning. Reports of each inspection should be provided and deficiencies to address should be noted.

Any deterioration to the parking control equipment should be addressed in a timely manner to keep the facilities operating smoothly. Minor repairs or complete replacement of the equipment may be necessary, depending on the type and extent of deterioration observed. If new equipment is installed, compatibility with the existing equipment must be verified prior to installation.



### **3.12 Security Systems**

The security system consists of the audio monitoring, call for assistance buttons, and closed circuit television/cameras. Chapter 4 provides the minimum requirements for the inspection frequency of the security system components. Based on these inspections, an itemized list of capital expenditures for the current and subsequent years can be developed and budgeted for.

The security system shall be considered to be performing adequately when the following criteria are met or exceeded:

1. All security components are operational.
2. The security system provides a safe environment for garage users.
3. The security system covers all critical areas of the garage.

Similar to the parking control equipment, a service contract with the manufacturer or their registered service representative is strongly recommended in addition to the general inspections performed by in-house personnel. The service contract should include regular preventative maintenance and emergency repair service. Additionally, it is recommended that consideration be given to providing training to in-house staff to deal with limited maintenance issues and emergency situations. Any deficiency should be corrected immediately.

Copies of the operation and service manuals for all equipment in the facility should be kept on hand for easy access. It is desirable that a log of maintenance and service work done on each piece of equipment is established and maintained.

### **3.13 Landscaping**

Landscaping features of a parking garage can either enhance its appearance when well maintained or be an eyesore if maintenance is neglected. Daily removal of trash from landscaped areas is necessary to maintain a pleasing appearance.

On-going landscaping should be performed either by in-house maintenance personnel or under an

annual contract with a landscaping contractor. Typical landscaping includes mowing, fertilizing, weed removal, tree trimming, tree care, planting replacement, with the extent dependent on the type of planting at the facility and the time of year. Judicious landscaping will reduce hiding spaces and increase the overall security of the facility.

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## 4. MINIMUM INSPECTION REQUIREMENTS

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### **4.1 General**

Regular inspection of the various systems and components within each of the facilities is essential to determining the necessary repairs in the current and coming years. However, different systems and components should be inspected at different intervals. The minimum inspection requirements for the various systems and component are provided in Table 1. The following notes apply to Table 1:

- Table 1 lists the minimum inspection requirements for an all-inclusive garage. **It is likely that not all systems or components will be present or applicable for each garage, so the inspection schedule should be customized for each garage for it to be meaningful. It is suggested that a separate schedule be developed for each of the included structures on a monthly basis, and prominently displayed in the particular maintenance or parking management office where it can be viewed by all appropriate personnel.**
- A management control system shall be used to verify that the inspections and maintenance is being performed as scheduled and is effective.
- Records of all inspections, preventative maintenance, and repairs performed should be kept and maintained in the record database.
- If significant deficiencies are noted, a qualified engineer should be consulted to review the deficiencies and recommend remedial action.
- As detailed in Chapter 3, much of the preventative maintenance and detailed inspections of specialty equipment such as parking control equipment, elevators and escalators should be included in a service contract. This will ensure all work on the equipment is performed by qualified and/or trained personnel with proper parts and will maintain warranties and maximize the service life.

Table 1. Minimum Inspection Requirements		
General Cleaning		
Component	Task to be Performed	Minimum Requirement
General	Pick-Up Litter and Empty Garbage Cans	Daily
Floors - High Traffic Pedestrian Areas	Sweep/Vacuum/Mop (Lobbies, Restrooms, Offices, etc.)	Daily
Floors - General Parking Areas	Sweep	Weekly
Floors - General Parking Areas	De-Grease and Power Wash Clean	Semi-Annually
Restrooms	General Cleaning of Fixtures, Mirrors, etc.	Daily
Stairs	Sweep, Remove Litter, Clean Handrails & Walls	Weekly or As Necessary
Windows - General	General Cleaning	Monthly to Quarterly
Windows - Cashier Booths	General Cleaning	Daily
Walls - Restrooms, Lobbies, etc	General Cleaning	Weekly
Insect and Pest Control	General Cleaning	Weekly
Graffiti	General Cleaning	Daily
Vandalism	General Cleaning	Daily
Structural System		
Component	Task to be Performed	Minimum Requirement
All Structural System Components	In-House Maintenance Personnel Walk-Through Observation	Monthly
Floor Slabs	Visual Inspection and Sounding/Testing As Necessary by Engineer	Yearly or As Necessary
Beams	Visual Inspection and Sounding/Testing As Necessary by Engineer	Yearly or As Necessary
Columns	Visual Inspection and Sounding/Testing As Necessary by Engineer	Yearly or As Necessary
Walls	Visual Inspection and Sounding/Testing As Necessary by Engineer	Yearly or As Necessary
Structural Steel	Visual Inspection and Sounding/Testing As Necessary by Engineer	Yearly or As Necessary
Miscellaneous Steel (Bollards, Posts, Guardrails, Handrails, etc.)	General Visual Observation	Weekly
	Detailed Visual Inspection	Yearly or As Necessary
Façade	Visual Inspection and Sounding/Testing As Necessary by Engineer	Yearly or As Necessary
Waterproofing System		
Component	Task to be Performed	Minimum Requirement
All Waterproofing System Component	In-House Maintenance Personnel Walk-Through Observation	Monthly
Waterproofing Membrane	Visual Inspection and Sounding As Necessary by Engineer	Yearly or As Necessary
Sealants and Caulking	Visual Inspection by Engineer	Yearly or As Necessary
Expansion Joints	Visual Inspection by Engineer	Yearly or As Necessary
Foundation Walls	Visual Inspection for Water Leakage by Engineer	Yearly or As Necessary
Architectural Components		
Component	Task to be Performed	Minimum Requirement
All Architectural Components	Complete/Update Inventory	Yearly
	In-House Maintenance Personnel Walk-Through Observation	Monthly
Walls and Wall Finishes	Detailed Visual Inspection	Yearly
Ceilings Finishes	Detailed Visual Inspection	Yearly
Floors Finishes	Detailed Visual Inspection	Yearly
Windows	General Operation Check	Weekly
	Detailed Visual and Operational Inspection	Monthly
Doors and Hardware	General Operation Check	Daily
	Adjust and Lubricate	Monthly or As Required
	Detailed Visual and Operational Inspection	Monthly
Stairs/Pedestian Walkways	General Condition and Safety Check	Daily
	Visual Inspection and Sounding/Testing As Necessary	Yearly
Painting	General Visual Observation	Monthly
	Detailed Visual Inspection	Yearly
Striping	General Visual Observation	Monthly
	Detailed Visual Inspection	Yearly
Signage	General Visual Observation	Monthly
	Detailed Visual Inspection	Yearly
Wheel Stops	General Visual Observation	Weekly
	Detailed Visual Inspection	Yearly
Fences/Gates/Bike Racks	General Visual Observation	Weekly
	Detailed Visual Inspection	Yearly
Elevators and Escalators		
Component	Task to be Performed	Minimum Requirement
Elevators and Escalators	Complete/Update Inventory	Yearly
Elevators	General Operation, Condition, and Safety Check	Daily
	General Cleaning of Cabs, Sills, etc	Daily
	Detailed Operation, Condition, and Safety Inspection and Testing	Per Manufacturer's Guidelines/Code
	Preventative Maintenance - Clean, Lube, Adjust, etc.	Per Manufacturer's Guidelines
Escalators	General Operation, Condition, and Safety Check	Daily
	General Cleaning of Handrails, Walls, etc	Daily
	Detailed Operation, Condition, and Safety Inspection and Testing	Per Manufacturer's Guidelines/Code
	Preventative Maintenance - Clean, Lube, Adjust, etc.	Per Manufacturer's Guidelines

Table 1. Minimum Inspection Requirements		
Fire Protection System		
Component	Task to be Performed	Minimum Requirement
Fire Protection Components	Complete/Update Inventory	Yearly
Fire Alarm (Heat & Smoke Detectors, Audio/Visual Notification Devices)	General Condition Inspection	Weekly
	General Operation Inspection	Weekly
	System Test and Certification	Per Code
Sprinkler System	General Condition/Operation Inspection for Leaks, Corrosion, etc.	Monthly
	Drain Sprinkler Lines and Standpipes	Per Code
	Detailed Condition/Operation Inspection and Testing	Per Code
Fire Extinguishers	Verify Extinguishers are Present and Charged at Marked Locations	Weekly
	Detailed Inspection and Certification	Per Code
Fire Doors	General Condition Inspection	Monthly
	General Operation Inspection	Weekly
	Detailed Condition/Operation Inspection and Testing	Per Code
Pumps	General Condition/Operation Inspection for Leaks, Oil Levels, Noise, etc.	Daily
	Detailed Condition/Operation Inspection and Testing	Per Manufacturer's Guidelines
	Preventative Maintenance - Clean, Lube, Adjust, etc.	Per Manufacturer's Guidelines
Air Compressor	General Condition/Operation Inspection for Leaks, Oil Levels, Noise, etc.	Daily
	Detailed Condition/Operation Inspection and Testing	Per Manufacturer's Guidelines
	Preventative Maintenance - Clean, Lube, Adjust, etc.	Per Manufacturer's Guidelines
Plumbing System		
Component	Task to be Performed	Minimum Requirement
Plumbing Components	Complete/Update Inventory	Yearly
Service Water	General Condition Observation	Weekly
	Cross Flow Prevention Device Test and Certificate	Per Code
Fixtures	General Condition/Operation Observation	Daily
	General Cleaning of Restroom Fixtures	Daily
Drains and Piping	General Condition Observation for Leaks, Corrosion, Cracking, etc.	Monthly
	Inspect for Damaged or Missing Insulation or Pipe/Valve Labels	Monthly
	Clean/Rod Out Drains	Monthly
	Evacuate Triple Basins and Ejector Pump Pit	Monthly
Pumps	General Condition/Operation Inspection for Leaks, Oil Levels, Noise, etc.	Daily
	Detailed Condition/Operation Inspection and Testing	Per Manufacturer's Guidelines
	Preventative Maintenance - Clean, Lube, Adjust, etc.	Per Manufacturer's Guidelines
Heating, Ventilation, and Air-Conditioning (HVAC) System		
Component	Task to be Performed	Minimum Requirement
HVAC Components	Complete/Update Inventory	Yearly
Ventilation Fans	General Condition/Operation Inspection	Daily
	Detailed Condition/Operation Inspection and Testing	Per Manufacturer's Guidelines
	Preventative Maintenance - Clean, Lube, Adjust, Drive Belts, etc.	Per Manufacturer's Guidelines
Carbon Monoxide Detectors	General Condition/Operation Inspection	Daily
	Detailed Condition/Operation Inspection and Testing	Per Manufacturer's Guidelines
Heating and Cooling Equipment	General Condition/Operation Inspection	Daily
	Check/Adjust Thermostat for Season Changes	Seasonal
	Replace Disposable Media Filter	Every 3 Months or As Required
	Detailed Condition/Operation Inspection and Testing	Per Manufacturer's Guidelines
	Preventative Maintenance - Clean, Lube, Adjust, Drive Belts, etc.	Per Manufacturer's Guidelines
Dampers	General Condition/Operation Inspection	Daily
	Detailed Condition/Operation Inspection and Testing	Monthly
	Preventative Maintenance - Clean, Lube, Adjust, etc.	Per Manufacturer's Guidelines
Ductwork	General Condition Observation for Leaks, Corrosion, Cracking, etc.	Monthly
	General Cleaning	Monthly
	Inspect for Damaged or Missing Insulation or Pipe/Valve Labels	Monthly
Pumps	General Inspection for Leaks, Oil Levels, Noise, Vibration, etc.	Daily
	Detailed Operation Inspection and Testing	Per Manufacturer's Guidelines
	Preventative Maintenance - Clean, Lube, Adjust, etc.	Per Manufacturer's Guidelines
Piping	General Condition Observation for Leaks, Corrosion, Cracking, etc.	Monthly
	Inspect for Damaged or Missing Insulation or Pipe/Valve Labels	Monthly

Table 1. Minimum Inspection Requirements		
Electrical System		
Component	Task to be Performed	Minimum Requirement
Electrical Components	Complete/Update Inventory	Yearly
Electrical Distribution (Switchgear, Panelboard, Outlets, Conduit etc.)	General Condition/Operation Inspection	Monthly
	Detailed Condition/Operation Inspection and Testing	Per Manufacturer's Guidelines
	Preventative Maintenance - Clean, Lube, Adjust, etc.	Per Manufacturer's Guidelines
Generators & Switching Equipment	Emergency Generators and Switching Equipment Testing	Monthly
	Emergency Generators and Switching Equipment Maintenance	Per Manufacturer's Guidelines
Safety Switches	Inspect Equipment Disconnects	Per Manufacturer's Guidelines
Lighting Fixtures	General Garage Lighting and Conduit Inspection - Daytime Hours	Weekly
	Replace Burnt Out Lamps and Ballasts	As Required
	General Garage Lighting and Sign Illumination Inspection - Evening Hours	Weekly
	Pedestrian Walkways and Stairwell Illumination Inspection - Evening Hours	Weekly
	Clean Fixture Lamps	Monthly
Exit Lighting Fixtures	General Condition/Operation Inspection	Daily
Emergency Lighting Fixtures	General Condition/Operation Inspection	Daily
	Test Battery Backup	Monthly
Lighting Controls	General Condition/Operation Inspection	Weekly
	Re-Set for Seasonal Changes	As Required
Electirc Car Charging Stations	General Condition/Operation Inspection	Weekly
	Re-Set for Seasonal Changes	As Required
Parking Control Equipment		
Component	Task to be Performed	Minimum Requirement
Parking Control Components	Complete/Update Inventory	Yearly
	General Condition/Cleaning	Weekly
Collection Booths	General Condition/Operation Inspection	Daily
	General Cleaning	Weekly
Parking Control Equipment (Gates, Ticket Dispensers, Fee Computers, Loops, etc.)	General Condition/Operation Inspection	Daily
	Detailed Condition/Operation Inspection and Testing	Per Manufacturer's Guidelines
	Preventative Maintenance - Clean, Lube, Adjust, etc.	Per Manufacturer's Guidelines
Security System		
Component	Task to be Performed	Minimum Requirement
Security Components	Complete/Update Inventory	Yearly
	General Condition/Operation Inspection	Daily
Emergency Intercom/Call for Distress	Detailed Condition/Operation Inspection and Testing	Per Manufacturer's Guidelines
	Preventative Maintenance - Clean, Lube, Adjust, etc.	Per Manufacturer's Guidelines
CCTV Cameras/System	General Condition/Operation Inspection	Daily
	Detailed Condition/Operation Inspection and Testing	Per Manufacturer's Guidelines
	Preventative Maintenance - Clean, Lube, Adjust, etc.	Per Manufacturer's Guidelines
Landscaping		
Component	Task to be Performed	Minimum Requirement
General	Remove Trash	Daily
	Mowing, Weed Removal, Trimming, Fertilizing, etc.	Weekly or As Necessary