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**AMENDED AND RESTATED  
MASTER RECIPROCAL EASEMENT AGREEMENT**

TABLE OF CONTENTS

Page

ARTICLE 1 DEFINITIONS..... 2

ARTICLE 2 EASEMENTS ..... 9

    2.1 Grants of Easements..... 9

    2.2 Duration of Easements; Exclusive Use; Permittees; Benefited Owners .....17

ARTICLE 3 USE, MAINTENANCE AND OPERATION; COST ALLOCATION .....18

    3.1 Use and Operation; Special Issues and Rules.....18

    3.2 Governmental Compliance.....20

    3.3 Operation, Maintenance, Repair and Replacement.....20

ARTICLE 4 PUBLIC AREAS .....24

    4.1 Use and Operation.....24

    4.2 Standards of Maintenance .....24

ARTICLE 5 TAXES .....25

    5.1 Payment of Taxes.....25

    5.2 Non-Payment of Taxes by an Owner.....26

ARTICLE 6 INDEMNIFICATION AND INSURANCE.....26

    6.1 Indemnities .....26

    6.2 Insurance.....26

    6.3 Blanket Insurance.....27

    6.4 Form of Policies.....27

    6.5 Mutual Releases; Waiver of Subrogation.....27

    6.6 Failure to Maintain Insurance.....28

ARTICLE 7 DAMAGE AND DESTRUCTION.....28

    7.1 Restoration Obligation .....28

    7.2 Restoration Obligation; Purchase Rights After Damage or Destruction  
    to Certain Parcels .....30

    7.3 Damage to or Destruction of Public Areas.....31

    7.4 Quality of Restoration and Reconstruction .....32

    7.5 Safety.....32

    7.6 Disputes .....32

    7.7 Liability of Mortgagee .....32

TABLE OF CONTENTS

Page

ARTICLE 8	ADDITIONAL CONSTRUCTION, REPAIRS, RESTORATION AND ALTERATIONS .....	33
8.1	General .....	33
8.2	Alterations; Additional Construction .....	34
8.3	Construction Indemnities .....	35
ARTICLE 9	RIGHTS UPON DEFAULT .....	35
9.1	Right to Cure .....	35
9.2	Legal and Equitable Relief .....	37
9.3	Costs of Cure .....	37
9.4	Arbitration .....	37
9.5	Waiver of Default .....	37
9.6	Remedies Cumulative .....	38
9.7	Estoppel Certificate .....	38
ARTICLE 10	CONDEMNATION .....	38
10.1	Determination of Award; Allocation .....	38
10.2	Condemnation of Easement Areas .....	39
10.3	Restoration of Support Elements Upon Condemnation .....	39
10.4	Unresolved Issues .....	39
10.5	Rebuilding .....	39
10.6	Waiver of Award .....	39
10.7	No Termination of Easements and Licenses .....	40
10.8	Termination of Benefits .....	40
10.9	Mortgagee Participation .....	40
ARTICLE 11	TRANSFER OF INTERESTS .....	40
11.1	Release .....	40
11.2	Assumption Statement .....	40
11.3	Joint Tenancies or Common Interests .....	40
ARTICLE 12	EFFECT OF BREACH UPON PURCHASERS AND MORTGAGEES .....	41
12.1	No Termination .....	41
12.2	Mortgagee Protection .....	41
12.3	Title by Foreclosure .....	42

TABLE OF CONTENTS

Page

ARTICLE 13 COVENANTS AND RECORDATION .....43

    14.1 Covenants Run With the Land.....43

    14.2 Recordation.....44

ARTICLE 15 AMENDMENT .....44

    15.1 Method of Amendment .....44

    15.2 No Third Party Beneficiary .....44

ARTICLE 16 TERMINATION.....44

    16.1 Termination of Agreement .....44

ARTICLE 17 DEDICATION.....44

    17.1 Joinder in Necessary Dedications .....44

ARTICLE 18 NOTICES .....45

    18.1 Notices to Owners .....45

    18.2 Mortgagees’ Notice and Right to Cure .....46

ARTICLE 19 MISCELLANEOUS .....47

    19.1 Captions; Interpretation.....47

    19.2 Consents and Approvals.....47

    19.3 Exercise of Approval Rights.....47

    19.4 Governing Law .....47

    19.5 Injunctive Relief .....47

    19.6 No Partnership .....47

    19.7 Not a Public Dedication .....47

    19.8 Force Majeure.....48

    19.9 Payment on Default.....48

    19.10 Severability .....48

    19.11 Successors.....49

    19.12 Time of Essence.....49

    19.13 Attorneys’ Fees.....49

    19.14 Exhibits.....49

    19.15 Agents.....49

    19.16 Conflicts .....50

    19.17 Anti-Merger .....50

## TABLE OF CONTENTS

	<b>Page</b>
19.18	Further Assurance and Definition of Easement Locations.....50
19.19	Certain Contributions to Restoration Costs.....50
19.20	Proprietary and Governmental Roles; Actions by Parties.....50
EXHIBIT A-1	Legal Description of Event Center Parcel.....A-1
EXHIBIT A-2	Legal Description of Convention Center Parcel.....A-2
EXHIBIT A-3	Legal Description of LA Live Way Garage Parcel.....A-3
EXHIBIT A-4	Legal Description of Bond Street Garage Parcel.....A-4
EXHIBIT A-5	Legal Description of Staples Center Parcel.....A-5
EXHIBIT B	Depiction of Easements.....B
EXHIBIT C	Project Site Plan.....C
EXHIBIT D-1	Non-discrimination.....D-1
EXHIBIT D-2	Child Support Orders.....D-2
EXHIBIT D-3:	Service Contract Worker Retention.....D-3
EXHIBIT D-4	Living Wage.....D-4
EXHIBIT D-5	Contractor Responsibility.....D-5
EXHIBIT D-6	Anti-Slavery Ordinance.....D-6
EXHIBIT D-7	First Source Hiring.....D-7
EXHIBIT D-8	Public Infrastructure Stabilization Ordinance.....D-8
EXHIBIT D-9	Local Business Preference Program.....D-9

AMENDED AND RESTATED  
MASTER RECIPROCAL EASEMENT AGREEMENT

THIS AMENDED AND RESTATED MASTER RECIPROCAL EASEMENT AGREEMENT (this "Agreement") is made as of the \_\_\_ day of \_\_\_\_\_, 2013 (the "Effective Date") by and among: THE CITY OF LOS ANGELES, a municipal corporation ("City"), L.A. EVENT CENTER, LLC, a Delaware limited liability company ("Event Center Ground Lessee"), L.A. PARKING STRUCTURES, LLC, a Delaware limited liability company ("Parking Garage Ground Lessee"), and L.A. ARENA LAND COMPANY, LLC., a Delaware limited liability company ("Staples Center Ground Lessee," and together with the Event Center Ground Lessee and the Parking Garage Ground Lessee, the "Ground Lessees"), as a declaration and agreement establishing a common plan for the use of the Parcels (and portions thereof) that will be binding on all present and future Owners of the Parcels (all as defined in Article 1 below).

RECITALS

A. Capitalized terms not defined herein where used are defined in ARTICLE 1 of this Agreement.

B. Anschutz Entertainment Group, Inc., a Colorado corporation ("AEG"), and its affiliates desire to develop and construct an event center, which will include a stadium sufficient to accommodate a National Football League team, concert and other uses, meeting, and exhibit space (the "Event Center") on certain real property which is currently owned by the City, is generally located at the southeast corner of LA Live Way and Chick Hearn Court, and which is described on Exhibit A-1 attached hereto and made a part hereof (the "Event Center Parcel"). As of the date of this Agreement, portions of the West Hall of the Los Angeles Convention Center are located on the Event Center Parcel. The Event Center Parcel is depicted on the Site Plan. Concurrently with the execution of this Agreement, the City intends to enter into a ground lease agreement, pursuant to which the City, as landlord, will ground lease the Event Center Parcel to the Event Center Ground Lessee (an affiliate of AEG), as tenant, pursuant to which the Event Center Ground Lessee will demolish portions of the West Hall of the Los Angeles Convention Center and develop, construct and operate the Event Center on and within the Event Center Parcel.

C. The City is also the current fee-simple owner of the "Convention Center Parcel." The "Convention Center Parcel" is described on Exhibit A-2 attached hereto and made a part hereof, and consists of, among other things: (i) that certain real property on which the South Hall of the Los Angeles Convention Center (the "South Hall Convention Center Parcel"), and which is depicted on the Site Plan, (ii) that certain real property on which Gilbert Lindsay Plaza is located (the "Gilbert Lindsay Plaza Parcel"), and which is depicted on the Site Plan, (iii) that certain real property on which the "New Hall" (as defined in Recital D below) will be constructed, and which is depicted on the Site Plan (the "New Hall Parcel"), and (iv) that certain real property on which a certain parking structure is located (the "Venice Boulevard Garage Parcel"), and which is depicted on the Site Plan.

D. Prior to the construction of the Event Center, AEG, by and through its affiliates, will develop and construct on behalf of the City an exhibit hall, meeting rooms, and ancillary and

supporting spaces to replace for the City the spaces, functions, and facilities provided by its existing West Hall (the "New Hall") pursuant to various contractual agreements with the City. The New Hall will be located on and within the New Hall Parcel, which is directly adjacent to the Event Center Parcel. Upon completion of its construction, the New Hall will be owned and operated by the City.

E. In connection with the construction of the Event Center and the New Hall, AEG and its affiliates intend to construct and develop: (i) an above ground parking structure on the "LA Live Way Garage Parcel" (as hereinafter defined) which will provide parking for the Event Center and the New Hall, and (ii) an above ground parking structure on the "Bond Street Garage Parcel" (as hereinafter defined) which will also provide parking for the Event Center and the New Hall. The City is currently the fee-simple owner of that certain real property located at the northwest corner of Pico Boulevard and LA Live Way, and which is described on Exhibit A-3 attached hereto and made a part hereof (the "LA Live Way Garage Parcel"), and that certain real property located at the southwest corner of Pico Boulevard and LA Live Way, and which is described on Exhibit A-4 attached hereto and made a part hereof (the "Bond Street Garage Parcel"). The LA Live Way Garage Parcel and the Bond Street Garage Parcel are depicted on the Site Plan. Concurrently with the execution of this Agreement, the City intends to enter into separate ground lease agreements, pursuant to which the City, as landlord, will ground lease each of the LA Live Way Garage Parcel and the Bond Street Parking Garage Parcel to Parking Garage Ground Lessee (an affiliate of AEG), as tenant.

F. The City is currently the fee-simple owner of that certain real property located at the southwest corner of Figueroa Boulevard and Chick Hearn Court, and which is described on Exhibit A-5 attached hereto and made a part hereof (the "Staples Center Parcel"). The Staples Center Parcel is depicted on the Site Plan. Pursuant to that certain Arena Ground Lease dated March 26, 1998, as amended (the "Arena Ground Lease"), the City, as landlord, ground leased the Staples Center Parcel to Staples Center Ground Lessee (an affiliate of AEG), as tenant. Staples Center Ground Lessee owns and operates the "Staples Center Arena", a sports, entertainment and event arena for the exhibition of professional basketball, hockey, concerts and other events, on the Staples Center Parcel.

G. The Event Center Parcel, Convention Center Parcel, Staples Center Parcel and other real property described therein, if any, are currently subject to that certain Reciprocal Easement and Environmental Restriction Agreement dated as of March 26, 1998, and recorded on March 27, 1998, as Instrument No. 98-501502, as amended (the "Existing REA"). The parties hereto intend to amend and restate the Existing REA in its entirety, it being the intent of the parties hereto that the terms and conditions set forth in this Agreement shall supersede in all respects the terms and conditions of the Existing REA.

H. The use and development of the Event Center Parcel, Convention Center Parcel, LA Live Way Garage Parcel and Bond Street Garage Parcel shall be governed, among other things, by the Convention and Event Center Specific Plan (as defined in ARTICLE 1), and for purposes of this Agreement, may be referred to collectively herein as the "Event Center/New Hall Project".

I. The City and Ground Lessees desire to establish reciprocal easements and related agreements for the mutual benefit of the Parcels, all as specified in this Agreement.

NOW, THEREFORE, with reference to the foregoing recitals, in consideration of the promises, covenants and agreements set forth in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the parties to this Agreement hereby agree that each of the Parcels shall be held, improved, developed, sold, conveyed, hypothecated, encumbered, leased, rented, used, operated and occupied subject to the limitations, restrictions, reservations, agreements, rights, easements, conditions, and covenants set forth herein, to the extent made applicable to such Parcel by the terms of this Agreement (collectively, the "Restrictions").

These Restrictions are intended to be in furtherance of the protection, maintenance, improvement and operation of the Parcels and for the purpose of enhancing and preserving the value, desirability and attractiveness of the Parcels. All provisions of this Agreement, including the Restrictions, shall be enforceable equitable servitudes upon the applicable Parcel or Parcels affected thereby.

Subject to the terms hereof, these Restrictions shall run with and burden the Parcel or Parcels affected thereby, and shall be binding upon and, as applicable, inure to the benefit of the applicable Parcel or Parcels, and shall be binding upon and inure to the benefit of each Person having or acquiring any right, title or interest as an Owner of any of the Parcels, and their respective successors and assigns.

The Parties hereby further agree as follows:

## ARTICLE 1

### DEFINITIONS

In addition to any other terms herein defined, the capitalized terms set forth in this ARTICLE 1, as used in this Agreement, shall have the following meanings:

"Affiliate" shall mean as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"Agreement" shall mean this Amended and Restated Master Reciprocal Easement Agreement.

"As-Built Plans" shall mean the as-built plans and specifications for any Improvements constructed on a Parcel once such Improvements have been constructed and completed.

"Automobile and Truck Access Ramp" shall mean the automobile and truck access ramp and subterranean access road and service corridor (as depicted on Exhibit B) used for purposes of accessing the Loading Dock.

"Bond Street Garage Parcel Owner" means the Owner of the Bond Street Garage Parcel.

“Bond Street Pedestrian Bridge” shall mean the pedestrian bridge at the “250” level of the Project which will cross over LA Live Way and connect the New Hall and the parking garage on the Bond Street Garage Parcel, as shown on Exhibit B.

“Building” or “Buildings” shall mean the building or buildings constructed or to be constructed on each Parcel. If the context is applicable, the term “Building” will be deemed to include each of the parking garages to be constructed on the LA Live Way Garage Parcel and the Bond Street Garage Parcel.

“Communications Systems” shall have the meaning given such term in Section 2.1G(i).

“Condemnation” shall mean: (i) the taking of all or any part of any Parcel or the possession thereof under the power of eminent domain; (ii) the voluntary sale (with the consent of the Owner then in possession, the other Owners and any other Persons having an interest therein) of all or any part of a Parcel to any Person having the power of eminent domain, provided that the Parcel or such part thereof is then under the threat of condemnation from such Person; or (iii) inverse condemnation resulting by reason of actions of a public authority and confirmed by a final judgment of a court of competent jurisdiction.

“Construction” shall have the same meaning as “Work” set forth below.

“Convention and Event Center Specific Plan” shall mean the Convention and Event Center Specific Plan approved by the Los Angeles City Council on [\_\_\_\_\_] as Ordinance Nos. [\_\_\_\_\_] , as may be amended from time to time.

“Convention Center Parcel Owner” means the Owner of the Convention Center Parcel.

“Cure Period” shall mean (i) if the default involves the failure to pay money, ten (10) business days after notice has been given to the Owner, and (ii) if the default involves the failure to satisfy an obligation other than the payment of money, thirty (30) calendar days after notice has been given to the Owner; provided, however, that, if the nature of such default is such that the same cannot reasonably be cured within a 30-day period, an Owner shall not be deemed to be in default if it diligently commences the cure within such 30-day period and thereafter diligently and continuously proceeds to cure such default to completion within a reasonable time.

“Development Agreement” means that certain Development Agreement by and between City, Event Center Ground Lessee and Parking Garage Ground Lessee dated as of \_\_\_\_\_, 201\_\_, which is to be recorded in the Official Records of the County.

“Event Center Parcel Owner” means the Owner of the Event Center Parcel.

“Event Day” means any date on which an event is scheduled to take place either at the Event Center or Staples Center Arena (or both the Event Center and Staples Center Arena).

“Event of Default” will occur after (i) an Owner has defaulted in any of its obligations under this Agreement, (ii) the defaulting Owner has received written notice of such

default, and (iii) the defaulting Owner has failed to cure such default within the Cure Period, if any, specified in this Agreement.

“Gilbert Lindsay Plaza Agreement” shall mean that certain agreement captioned “GILBERT LINDSAY PLAZA USE AGREEMENT” by and between (i) L.A. Live Properties, LLC, a Delaware limited liability company and (ii) the City, made as of the Effective Date of this Agreement.

“Gilbert Lindsay Plaza Parcel Owner” shall mean the Owner of the Gilbert Lindsay Plaza Parcel.

“Governing Documents” shall mean, collectively, the Convention and Event Center Specific Plan, the Development Agreement, and the Signage District, all as may be amended from time to time.

“Improvements” shall mean all of the improvements constructed upon each Parcel from time to time including, without limitation, the Buildings, the Automobile and Truck Access Ramp, the Loading Dock, the central plant, the Bond Street Pedestrian Bridge, the LA Live Way Pedestrian Bridge, and all other improvements constructed on any Parcel from time to time.

“LA Live Way Garage Parcel Owner” means the Owner of the LA Live Way Garage Parcel.

“LA Live Way Pedestrian Bridge” shall mean the pedestrian bridge at the “270” level of the Project which will cross over LA Live Way and connect the Event Center and the parking garage on the LA Live Way Garage Parcel, as shown on Exhibit B.

“Legal Requirements” shall mean all laws, statutes, ordinances, rules, regulations and other legal requirements at any time applicable to a Parcel or Building or activities conducted on or at the Project, or any portion thereof, whether imposed by a governmental authority or by binding agreement, including, without limitation, the Governing Documents and applicable land use, zoning, and building and safety laws and regulations.

“Loading Dock” shall mean the loading dock and mechanical components related thereto located at the ground level on portions of the Event Center Parcel, as depicted on Exhibit “B.”

“Macro-Booking Policy” shall mean Article IX of that certain Implementation Agreement by and among the City, Event Center Ground Lessee, L.A. Arena Land Company, LLC, a Delaware corporation, L.A. Convention Hall LLC, a Delaware limited liability company, and Parking Garage Ground Lessee, dated as of \_\_\_\_\_, 201\_\_, a memorandum of which was recorded in the Official Records of Los Angeles County, California, on \_\_\_\_\_, 201\_\_ (which Article IX is titled “Campus Operation and Cooperation Policy”), and all future policies adopted pursuant to such Article IX.

“Maintenance and Operating Charges” means the maintenance and operating charges associated with use of any Easement, area or Improvement including: (i) costs of repair, maintenance and similar operating costs (including costs relating to wear and tear

repairs/maintenance) associated with use of Easements or facilities; (ii) costs of management, security, parking attendants, janitorial and other personnel services which may be required to prepare, implement, supervise, coordinate and clean up before, during and after an event and to return the facilities or areas to their condition preceding the event, and (iii) utility costs, insurance costs (including insurance premiums and expenditures to cover reasonable deductible amounts) and all direct fees and charges associated with such use.

“Mortgage” shall mean (i) a mortgage or deed of trust encumbering the fee interest in a Parcel which has first priority under the recording statutes of the State of California over all other Mortgagees encumbering the fee interest in such Parcel, (ii) a mortgage or deed of trust encumbering the leasehold interest in a Parcel which has first priority under the recording statutes of the State of California over all other Mortgagees encumbering the leasehold interest in such Parcel, or (iii) a Sale and Leaseback; provided that in the event a Mortgage as defined by clause (i) above and a Mortgage as defined by clause (ii) above both exist, both Mortgages shall be considered Mortgages affecting the applicable Parcel, and provided further that in the event a Mortgage as defined by clause (i) and/or (ii) above and a Mortgage as defined by clause (iii) above both exist, only the Mortgage(s) as defined by clauses (i) and (ii) above shall be considered Mortgage(s) for purposes of this Agreement.

“Mortgagee” shall mean (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under federal and/or state law as a company that lends money, or any subsidiary of any of the foregoing, or any pension fund or trust, group trust, real estate investment trust, savings fund society, private equity firm, or other entity in the business of lending money acting as mortgagee, beneficiary or trustee under a Mortgage; (ii) an insurer or governmental guarantor of a Mortgage; (iii) a federal or state agency; or (iv) the Owner owning the fee interest following a Sale and Leaseback. The term “Mortgagee” shall not refer to any of the foregoing Persons after (x) acquisition of title to the Parcel of any Owner by the Mortgagee through foreclosure or deed in lieu thereof, or (y) termination of the lease by the Owner owning the fee interest of a Parcel under a Sale and Leaseback.

“New Hall Parcel Owner” shall mean the Owner of the New Hall Parcel.

“Occupant” shall mean the Owners and any other Person from time to time entitled to the use and occupancy of floor area or other areas in the Buildings or the Project as owner or under any lease, deed or other written instrument or agreement whereunder such Person has acquired a right to such use and occupancy.

“Owner” shall mean, with respect to any particular Parcel, the City for the period that the City owns such Parcel, and thereafter any Person succeeding to the City’s fee simple interest during the period such successor owns such Parcel, except as is otherwise provided in subparagraphs (i), (ii), (iii), (iv), or (v) below:

- (i) the transferring Owner retains the entire possessory interest in the Parcel or portion thereof so conveyed by the terms of a Mortgage or Sale and Leaseback, in which event the Person owning such possessory interest shall have the status of Owner;

(ii) the transfer or conveyance is a Sale and Leaseback, in which event only the Person entitled as of the time in question to possession of the Parcel shall have the status of Owner, so long as the lease in question has not expired or been terminated;

(iii) the transfer or conveyance is by way of lease, other than as provided in subparagraphs (i) and (ii) above and subparagraph (v) below, in which event the fee simple owner shall have the status of Owner;

(iv) the successor acquires less than the entire interest of an Owner in its Parcel, such as that of joint tenant or tenant-in-common, in which event, the Persons holding all of the interests in such Parcel shall be jointly considered a single Owner;

(v) during the period any Parcel is encumbered by a ground lease that is in full force and effect and to the extent the ground lessee under such ground lease has right to possession to the leased premises, the ground lessee under such ground lease shall be deemed the "Owner" (of both the land and the improvements thereon) for all purposes under this Agreement and shall have the right to exercise all rights and remedies of the Owner of such Parcel. In particular, the Parties hereby acknowledge and agree that (i) for so long as the Event Center Ground Lease is in full force and effect, and to the extent the Event Center Ground Lessee is entitled under such ground lease to the possession of the leased premises, Event Center Ground Lessee shall be the "Owner" with respect to the Event Center Parcel for all purposes under this Agreement, (ii) for so long as the Staples Center Ground Lease is in full force and effect, and to the extent the Staples Center Ground Lessee is entitled under such ground lease to the possession of the leased premises, Staples Center Ground Lessee shall be the "Owner" with respect to the Staples Center Parcel for all purposes under this Agreement, (iii) for so long as the LA Live Way Garage Ground Lease is in full force and effect, and to the extent the LA Live Way Garage Ground Lessee is entitled under such ground lease to the possession of the leased premises, LA Live Way Garage Ground Lessee shall be the "Owner" with respect to the LA Live Way Garage Parcel for all purposes under this Agreement, and (iv) for so long as the Bond Street Garage Ground Lease is in full force and effect, and to the extent the Bond Street Garage Ground Lessee is entitled under such ground lease to the possession of the leased premises, Bond Street Garage Ground Lessee shall be the "Owner" with respect to the Bond Street Garage Parcel for all purposes under this Agreement. With respect to each of the above-referenced ground-leased Parcel, immediately upon expiration of the term of such ground lease or earlier termination thereof for whatever reason, the then fee-simple owner of such Parcel shall automatically be deemed the sole Owner of such Parcel (of both the land and the Improvements thereon) for all purposes of this Agreement.

"Parcel" or "Parcels" shall mean, individually or collectively as the context requires, the Convention Center Parcel, the Event Center Parcel, the LA Live Way Garage Parcel, the Bond Street Garage Parcel and the Staples Center Parcel.

"Permittees" shall mean all Occupants and their respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires.

“Permitted Nonrestoration Circumstance” means that a Substantial Destruction Event has occurred and the Substantial Destruction Restoration Requirements have not been satisfied.

“Person” shall mean individuals, partnerships, limited liability companies, firms, associations, trusts and corporations, or any other form of business or government entity and may refer to, where the context may require, any Owner, and the use of the singular shall include the plural.

“Project” shall mean collectively, the Event Center/New Hall Project and the Staples Center Arena.

“Project Ground Leases” shall mean collectively, those certain ground leases to be entered into between the City and Event Center Ground Lessee or Parking Garage Ground Lessee regarding the Event Center Parcel, the LA Live Way Garage Parcel, and the Bond Street Garage Parcel, as applicable, together with the Arena Ground Lease.

“Public Areas” shall mean those portions and components of the Project that are made available for the use, convenience and benefit of the general public. The Public Areas do not include any interior portion of any Building.

“Sale and Leaseback” shall mean a transaction whereby an Owner who is the fee owner of a Parcel conveys the fee interest in such Parcel (or any portion thereof) and such conveyance is followed immediately by a leaseback of the Parcel (or portion thereof) to such Owner or its Affiliate (or an assignment of a leasehold interest and such assignment is followed immediately by a subleaseback).

“Signage District” shall mean that certain Convention and Event Center Sign District approved by the Los Angeles City Council on [ ] as Ordinance Nos. [ ], as may be amended from time to time.

“Site Plan” shall mean the Site Plan of the Project attached hereto as Exhibit C.

“South Hall Convention Center Parcel Owner” shall mean the Owner of the South Hall Convention Center Parcel.

“Specific Surface Area Access” shall mean the specified pedestrian easement areas located within certain Parcels that may consist of exterior walkways, passageways, and general pedestrian areas, as such easement areas are shown on Exhibit B.

“Staples Center Parcel Owner” means the Owner of the Staples Center Parcel.

“Substantial Destruction Event” means that the Improvements on a Parcel have been substantially damaged or destroyed.

“Substantial Destruction Restoration Requirements” means (a) available insurance proceeds, plus the deductible amount under the applicable insurance policy(ies), are sufficient to pay for the cost of restoring, repairing, rebuilding, and/or replacing the damaged or destroyed

Improvements or facilities after a Substantial Destruction Event, and such insurance proceeds have been released for application to payment of such costs by Mortgagees, and (b) it is economically feasible to restore, repair, rebuild and/or replace such damaged or destroyed Improvements.

“Support Elements” shall mean any footings, foundations, columns and other structural elements that support any Buildings and Improvements.

“Transfer” shall have the meaning specified in Section 11.1.

“Utilities” shall mean sanitary sewers, storm drains, water and gas mains, electrical power lines, cable television, telephone lines, heating, ventilating and air conditioning lines, data lines, fiber optic lines, security systems, fire and life safety service lines and other utility lines and facilities, other than conduits and cables.

“Work” or “Construction” shall mean initial construction under this Agreement and, except where otherwise specified, subsequent construction, alteration, repair, restoration, rebuilding, demolition, removal and razing related to any of the easements granted by this Agreement or with respect to a portion of any Parcel that is burdened by such an easement. “Work” and “Construction” shall not include any construction that takes place entirely within a Building (such as tenant improvements) or Parcel and does not affect any easement granted pursuant to this Agreement.

## ARTICLE 2

### EASEMENTS AND OTHER RIGHTS

2.1 Grants of Easements. The following grant of easements shall be subject to the terms and conditions of this Agreement, including without limitation use and operation limitations set forth in Section 3.2 and operation, maintenance, repair and replacement obligations set forth in Sections 3.4 and 3.5, as well as, to the greatest extent applicable, the Macro-Booking Policy, together with all applicable provisions of the Event Center Ground Lease, the LA Live Way Garage Ground Lease, and the Bond Street Garage Ground Lease, but in all events, at no rent, license fee or other similar charge.

A. Pedestrian and Service Vehicle Access.

(i) Specific Surface Area Access. The Staples Center Parcel Owner, the Event Center Parcel Owner, and the New Hall Parcel Owner each hereby grants to the Owners of all other Parcels, for the benefit of such grantee Owners' Parcels and burdening such grantor Owner's Parcel, a nonexclusive easement appurtenant over the portions of their respective Parcels that constitute Specific Surface Area Access easement areas (as depicted on Exhibit B) for the passage and accommodation of pedestrians. In no event shall this easement be applicable to any interior space of any Building.

(ii) Bond Street Pedestrian Bridge. The New Hall Parcel Owner and the Bond Street Garage Parcel Owner each hereby grants to the Owners of all other Parcels, for the benefit of such grantee Owners' Parcels and burdening the New Hall Parcel and the Bond Street Garage Parcel, a nonexclusive easement appurtenant over the portions of each of the New Hall

Parcel and Bond Street Garage Parcel, respectively, that are part of the Bond Street Pedestrian Bridge for the passage and accommodation of pedestrians (and certain limited service vehicles for use by the Convention Center Parcel Owner in connection with its Convention Center operations). The location of this easement is depicted on Exhibit B.

(iii) Bond Street Pedestrian Bridge Access Way (New Hall Segment).

The New Hall Parcel Owner hereby grants to the Event Center Parcel Owner, for the benefit of the Event Center Parcel and burdening the New Hall Parcel, a nonexclusive easement appurtenant over certain portions located along the western side of the New Hall at the "250" level of the Project for the passage and accommodation of pedestrians. The location of this easement is depicted on Exhibit B.

(iv) Bond Street Pedestrian Bridge Access Way (Event Center Segment).

The Event Center Parcel Owner hereby grants to the Convention Center Parcel Owner, for the benefit of the Convention Center Parcel and burdening the Event Center Parcel, a nonexclusive easement appurtenant over certain portions located along the southern side of the Event Center at the "250" level of the Project for the passage and accommodation of pedestrians and service vehicles. The location of this easement is depicted on Exhibit B.

(v) Bond Street Pedestrian Bridge Vertical Element.

The New Hall Parcel Owner hereby grants to the Owners of all other Parcels, for the benefit of such grantee Owners' Parcels and burdening the New Hall Parcel, a nonexclusive easement appurtenant over certain vertical elements of the Improvements to be located within the New Hall Parcel connecting the "230" and "250" levels of the Project for the vertical passage and accommodation of pedestrians. The location of this easement is depicted on Exhibit B.

(vi) LA Live Way Pedestrian Bridge.

Each of the Event Center Parcel Owner and the LA Live Way Garage Parcel Owner hereby grants to the Owners of all other Parcels, for the benefit of such grantee Owners' Parcels and burdening the Event Center Parcel and LA Live Way Garage Parcel, a nonexclusive easement appurtenant over the portions of each of the Event Center Parcel and the LA Live Way Parcel, respectively, that are part of the LA Live Way Pedestrian Bridge for the passage and accommodation of pedestrians. The location of this easement is depicted on Exhibit B.

(vii) LA Live Way Pedestrian Bridge Vertical Elements.

It is the parties' mutual intent that the Event Center Parcel Owner will grant to the Owners of all other Parcels, for the benefit of such grantee Owners' Parcels and burdening the Event Center Parcel, a nonexclusive easement appurtenant over certain vertical elements of the Improvements to be located within the Event Center Parcel connecting the "270," "250," and "230" levels of the Project for the vertical passage and accommodation of pedestrians. The location of this easement is depicted on Exhibit B. It is intended that the vertical elements may include both: (i) a pedestrian ramp that complies with all then applicable Legal Requirements, including the Americans with Disabilities Act of 1990, and (ii) one or more elevator(s) adjacent to or nearby the pedestrian bridge. The parties to this easement hereby agree to use good faith efforts to work together to either: (a) confirm and consummate, in a recorded document, the granting of this easement as currently intended and proposed above; (b) modify the currently-proposed vertical element(s) and consummate, in a

recorded document, the granting of a similar easement for such modified vertical element(s); or (c) eliminate, in a recorded document, this vertical element easement in its entirety.

(viii) LA Live Way Pedestrian Bridge Vertical Element Connector. It is the parties' mutual intent that the Event Center Parcel Owner will grant to the Owners of all other Parcels, for the benefit of such grantee Owners' Parcels and burdening the Event Center Parcel, a nonexclusive easement appurtenant over certain portions of the Improvements to be located on the Event Center Parcel connecting the LA Live Way Pedestrian Bridge with the vertical elements referenced in subsection (vii) above for the passage and accommodation of pedestrians. The location of this easement is depicted on Exhibit B. The parties to this easement hereby agree to use good faith efforts to work together to grant, modify, or eliminate this easement, in a recorded document, to reflect and accommodate the final resolution of the granting of that easement contemplated under subsection (vii) above.

(ix) West Hall Tower. The Convention Center Parcel Owner hereby grants to the Event Center Parcel Owner, for the benefit of the Event Center Parcel and burdening the Convention Center Parcel, a nonexclusive easement appurtenant for the passage and accommodation of pedestrians over and across the north lobby of that portion of the West Hall of the Convention Center that will remain following completion of the Event Center (the "West Hall Tower") consisting of the hallways, corridors and other lobby areas at the "230" and "250" levels of the West Hall Tower, all as depicted on Exhibit B attached hereto.

(x) Passage through Event Center. The Event Center Parcel Owner hereby grants to the Convention Center Parcel Owner, for the benefit of the Convention Center Parcel and burdening the Event Center Parcel, a nonexclusive easement appurtenant over certain portions of the Event Center at the "230" level of the Project for the passage and accommodation of pedestrians. The location of this easement is depicted on Exhibit B.

(xi) Passage through Concourse Hall Parking Area. It is the parties' mutual intent that the Convention Center Parcel Owner will grant to the Event Center Parcel Owner, for the benefit of the Event Center Parcel and burdening the Convention Center Parcel, a nonexclusive easement appurtenant over certain portions of the Convention Center Parcel at the "230" level of the Project solely for pedestrian egress out of the Event Center during emergency situations. The location of this easement is depicted on Exhibit B. The parties to this easement hereby agree to use good faith efforts to work together to either: (a) confirm and consummate, in a recorded document, the granting of this easement as currently intended and proposed above; (b) modify the currently-proposed emergency exit easement area and consummate, in a recorded document, the granting of a similar easement for such modified emergency exit easement area; or (c) eliminate, in a recorded document, this emergency exit easement in its entirety. In any event, if and to the extent that any emergency exit easement is granted pursuant to this subsection (xi), the Event Center Parcel Owner agrees that the cumulative use of such easement by the Event Center Parcel Owner for its use will not exceed 50% of the time that such easement area is used in the aggregate by Convention Center Parcel Owner and Event Center Parcel Owner.

B. [Reserved]

C. Gilbert Lindsay Plaza Easement

The Gilbert Lindsay Plaza Parcel Owner hereby grants to the Event Center Parcel Owner and the Staples Center Parcel Owner, for the benefit of the Event Center Parcel and the Staples Center Parcel and burdening the Gilbert Lindsay Plaza Parcel, a nonexclusive easement appurtenant across the surface of the Gilbert Lindsay Plaza, subject to the terms and conditions set forth in the Gilbert Lindsay Plaza Agreement. Notwithstanding anything to the contrary, this easement shall terminate automatically and immediately upon termination or expiration of the Gilbert Lindsay Plaza Agreement.

D. Loading Dock and Automobile and Truck Access Ramp.

(i) (a) The New Hall Parcel Owner hereby grants to the Event Center Parcel Owner and the Staples Center Parcel Owner, for the benefit of the Event Center Parcel and the Staples Center Parcel and burdening the New Hall Parcel, a nonexclusive easement appurtenant over the portions of the Convention Center Parcel that are part of the Automobile and Truck Access Ramp (the location of which is depicted on Exhibit B), and (b) the Event Center Parcel Owner grants to the Staples Center Parcel Owner, for the benefit of the Staples Center Parcel and burdening the Event Center Parcel, a nonexclusive easement appurtenant over the portions of the Event Center Parcel that are part of the Automobile and Truck Access Ramp, in the event of both subparagraphs (a) and (b) herein, for truck and other vehicle ingress, egress and access to and from the Loading Dock. As shall be more specifically set forth in the Macro-Booking Policy, the Event Center Parcel Owner shall control the shared use and operation by each of the Convention Center Parcel Owner, the Event Center Parcel Owner and the Staples Center Parcel Owner of the Automobile and Truck Access Ramp.

(ii) The Event Center Parcel Owner hereby grants to the Staples Center Parcel Owner, for the benefit of the Staples Center Parcel and burdening the Event Center Parcel, and the Staples Center Parcel Owner grants to the Event Center Parcel Owner, for the benefit of the Event Center Parcel and burdening the Staples Center Parcel, nonexclusive reciprocal easements appurtenant, for use by each of the respective Parcel Owners of the shared areas surrounding the Loading Dock (the location of which is depicted on Exhibit B), including (1) the loading and unloading of goods to and from the Loading Dock, (2) the placement, maintenance and removal of trash receptacles, compactors and bins, and (3) truck and other vehicle ingress and egress for, and access to, the Loading Dock.

E. Central Plant.

The Event Center Parcel Owner hereby grants to the Staples Center Parcel Owner, for the benefit of the Staples Parcel and burdening the Event Center Parcel, a nonexclusive easement appurtenant for the purpose of the construction, installation, operation, maintenance, modification, repair, and replacement of any systems or equipment necessary or appropriate to connect the facilities and equipment located on the Event Center Parcel, to the shared central plant, including ingress, egress and access to the shared central plant. The location of this easement is depicted on Exhibit B.

F. Signage.

The Convention Center Parcel Owner, on the one hand, and L.A. Live Properties, LLC (an affiliate of Event Center Parcel Ground Lessee, and the “AEG Signage Party”), on the other hand, have entered or will enter into a separate signage agreement pursuant to which the AEG Signage Party (for itself and on behalf of certain other AEG Affiliates) has been granted the right to install, operate and maintain certain signage in, on or about the Convention Center Parcel and the Improvements located thereon (the “AEG Signage Agreement”). In furtherance thereof, the Convention Center Parcel Owner hereby grants to the AEG Signage Party a nonexclusive easement in gross for the benefit of the AEG Signage Party and burdening the entire Convention Center Parcel for purposes of installing, using and maintaining the signage described in the AEG Signage Agreement, together with such ingress, egress and access as is necessary or desirable for the construction, installation, use, operation, maintenance, modification, repair, and replacement of the signage described in the AEG Signage Agreement. The exact location of such signage will be as set forth in the AEG Signage Agreement. Notwithstanding anything to the contrary, this easement shall terminate automatically and immediately upon termination or expiration of the AEG Signage Agreement.

G. Conduits and Cabling; Utilities.

(i) Communications Cabling. Each Owner hereby grants to the Owners of all other Parcels, for the benefit of such grantee Owners’ Parcels and burdening such grantor Owner’s Parcel, a nonexclusive easement appurtenant over the portions of their respective Parcels as reasonably necessary or appropriate for the installation, use, maintenance, repair, relocation and removal of conduit and cabling for communications, data transmission and/or audio/visual transmission purposes and uses (“Communication Systems”) in dedicated areas within such Parcels and in Buildings on each such Parcel to connect each Parcel and Building in the Project to the other Buildings or Parcels in the Project.

(ii) Separate Utility Lines. Each Owner hereby grants to the Owners of all other Parcels, for the benefit of such grantee Owners’ Parcels and burdening such grantor Owner’s Parcel, a nonexclusive easement appurtenant in, to, over, under and across the portion of their respective Parcels as reasonably necessary or appropriate for the installation, operation, flow and passage, use, maintenance, repair, relocation and removal of Utilities serving the respective Parcels.

(iii) Common Utility Lines. Each Owner hereby grants to the Owners of all other Parcels, for the benefit of such grantee Owners’ Parcels and burdening such grantor Owner’s Parcel, a nonexclusive easement appurtenant in, to, over, under and across the portion of their respective Parcels as reasonably necessary or appropriate for the installation, operation, flow and passage, use, maintenance, repair, relocation and removal of Utilities, including access hatches to utility vaults, servicing all or a portion of the Parcels and for use in common with one or more other Owners.

(iv) Location of Easements. Cables and conduits for the easements granted pursuant to this Section 2.1G shall be located within dedicated ducts and shall be either underground or enclosed within a Building. All Utilities shall be either underground or enclosed within a Building. The location or relocation of all easements described in this Section 2.1G shall be subject to the prior written approval of the Owner in, to, over and under whose Parcel or in

whose Building the same is to be located, which approval shall not be unreasonably withheld, conditioned or delayed. Upon completion of the initial installation of such Communication Systems and/or Utilities, and upon completion of any relocation thereof, the relevant Owners shall join in the execution of an agreement, in recordable form, appropriately identifying the type and location of such easements.

(v) Use and Connections. The Owners shall cooperate with one another to permit the installation, maintenance, replacement and repair of Utilities and Communication Systems permitted under this Agreement, which shall be subject to available capacity (as reasonably determined by the applicable burdened Owner) and such other reasonable restrictions imposed by the burdened Owner. Any such Utilities and Communication Systems shall (a) be constructed, installed, maintained, replaced and repaired so as not to interfere unduly with the use and enjoyment (including business operations) of any Parcel by the respective Owner, (b) not diminish the Utility services to any Parcel, (c) not result in damage or injury to the Buildings or other Improvements of any other Owner, (d) not materially increase the cost of the burdened Owner's initial construction of the improvements on its Parcel, and (e) shall otherwise conform to the applicable requirements of this Agreement. Whenever feasible, such Utilities shall be separately metered or separately assessed to the Owner benefited or using such Utility. Any installation, maintenance, replacement, repair or removal of Utilities shall be performed only after thirty (30) days prior written notice to the grantor of the grantee's intention to do such work, except in the case of emergency (in which event notice shall be given as soon as practicable), and any such work shall be done without cost or expense to the grantor (except as provided in Section 3.4), and in such manner as to reasonably minimize disturbance in the use of the grantor's Parcel as may be practicable under the circumstances and shall not interfere with or diminish the Utility services to the grantor; provided, however, that temporary interference with and/or diminution in Utility services shall be permitted if they occur during non-business hours of the affected Owner. Upon completion of such work, the grantee shall restore the Parcel affected by such work to the same condition as before the commencement of the work.

H. Foundation and Encroachment Easements.

(i) The Convention Center Parcel Owner and the Event Center Parcel Owner each hereby grants to the other Owner, for the benefit of such grantee Owner's Parcel and burdening such grantor Owner's Parcel, a nonexclusive easement appurtenant over the portions of the grantor Owner's Parcel immediately adjacent to the grantee Owner's Parcel for the construction, use, maintenance and repair of footings, foundations, columns and other structural elements to support the Buildings and Improvements on the grantee Owner's Parcel in order to provide the grantee Owner's Parcel with reasonable lateral and subjacent support of its Building without unreasonably interfering with the grantor Owner's use and enjoyment of its Parcel.

(ii) Each Owner hereby grants to the Owner of an adjoining Parcel, for the benefit of such grantee Owner's Parcel and burdening such grantor Owner's Parcel, a nonexclusive easement appurtenant for minor encroachments onto the burdened Parcel and the maintenance or repair thereof, for the purpose of accommodating any encroachment due to the actual physical location of Improvements that are built in accordance with the original design, plans and specifications as are shown in the working drawings of such Improvements, due to attachments to an Improvement (such as lights, signs, etc.) that encroach to a minor extent onto the

adjoining Parcel, or due to engineering errors, errors or adjustments in the original construction, settlement or shifting of an Improvement, or similar causes due to minor variations from working drawings of such Improvements in the construction of such Improvements. If an Improvement is partially or totally destroyed, and then repaired or rebuilt, then the Owner of the burdened Parcel hereby agrees that minor encroachments for the same reasons specified above are hereby granted.

I. INTENTIONALLY DELETED.

J. Maintenance, Repair, Restoration and Replacements Easement.

Each Owner hereby grants to the Owners of all other Parcels, for the benefit of such grantee Owners' Parcels and burdening such grantor Owner's Parcel, a non-exclusive easement appurtenant for ingress and egress, subject to reasonable prior notice, to any easement areas located on every other Parcel as reasonably necessary for the Owner of the benefitted Parcel to exercise such Owner's inspection, maintenance, repair, restoration and replacement rights and obligations as set forth in this Agreement.

2.2 Duration of Easements; Exclusive Use; Permittees; Benefited Owners.

A. Duration of Easements. Unless terminated as provided herein, each easement established herein shall exist until City becomes the Owner of all of the burdened Parcels and all of the benefitted Parcels by virtue of this Agreement, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Parcel as provided in this Agreement, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. Upon the request of any other Owner, however, each Owner will sign and acknowledge a document, in form and substance reasonably approved by each Owner, memorializing the existence (including the location and any conditions), termination (in whole or in part), or release (in whole or in part), as the case may be, of any easement.

B. Exclusive Use; Permittees. Unless otherwise provided in this Agreement, each easement established herein shall be used by the Owners as an appurtenance to and for the benefit of the benefitted Parcel, and solely for, the purpose of using, operating and enjoying the benefitted Parcel(s) as provided in this Agreement. The foregoing notwithstanding, each Owner may permit and designate, from time to time, its Permittees to use such easements, subject to rules and regulations imposed by the applicable burdened Owner as provided in Section 3.2A, and provided that no such permission shall (i) authorize a use of the easements in excess of the use intended as of the effective date of this Agreement or in conflict with any provision of this Agreement or (ii) result in the grant of any easement rights to any Permittee except as expressly provided herein.

C. Benefited Owners. Each easement granted pursuant to the provisions hereof is expressly for the benefit of the Parcel of the grantee, and the Parcel so benefitted shall be the dominant estate and the Parcel upon which such easement is located shall be the servient estate, but where only a portion thereof is bound and burdened, or benefitted by a particular easement, only that portion so bound and burdened, or benefitted, as the case may be, shall be deemed to be the servient or dominant tenement, as the case may be.

2.3 Signage License. Pursuant to the Existing REA, the Convention Center Owner previously granted to the Staples Center Parcel Owner a license to enter onto the Convention Center Parcel in order to, among other things, install, maintain and operate one pylon sign to be located upon the Convention Center Property. The Staples Center Parcel Owner has erected such pylon sign upon the Convention Center Property. The Convention Center Parcel Owner and Staples Center Parcel Owner intend for all of the rights, terms and agreements with respect to such license and the pylon sign to continue in full force and effect throughout the Term of this Agreement. In furtherance thereof, the Convention Center Parcel Owner hereby grants to the Staples Center Parcel Owner a license to install and maintain one pylon-mounted reader board sign, for message display and Staples Center Owner-designated sponsorship, at locations reasonably agreed upon by Convention Center Owner and Staples Center Parcel Owner (provided, that the current location is hereby approved) such that the pylon sign can be viewed from the Interstate 110 Freeway (the "Pylon Sign"). The rights and obligations of Convention Center Parcel Owner and Staples Center Parcel Owner with respect to the Pylon Sign shall be on all of the same terms and conditions as set forth in the Existing REA with respect to the Pylon Sign, and all of such terms and conditions shall be deemed incorporated herein as if set forth herein, and in any event, such use by the Staples Center Parcel Owner shall be subject to and in accordance with all Legal Requirements.

### ARTICLE 3

#### USE; MAINTENANCE AND OPERATION; COST ALLOCATION

3.1 Intent. Except as otherwise expressly set forth in this Agreement, nothing herein is intended to restrict or interfere with the legal use of all or any portion of any Parcel, provided such use is in accordance with all Legal Requirements, this Agreement or the Macro-Booking Policy, as applicable.

3.2 Use and Operation; Special Rules.

A. Rules and Regulations. Each Owner may, in its discretion, adopt reasonable rules and regulations pertaining to the use of the easements granted hereby that are located on or in its Parcel, and to such other matters as are identified herein as subject to such rules and regulations, including availability and other reasonable restrictions and penalties; provided, however, that no such rules and regulations shall be incompatible with or serve to diminish any right conferred or obligations created hereunder or under the Macro-Booking Policy, as applicable. Such rules and regulations shall be binding upon all Owners and Permittees from and after the date of notice thereof, given as provided herein.

B. Automobile and Truck Access Ramp. Any Owner benefiting from any easements granted in Section 2.1A shall use such easements solely for the purposes of ingress and egress, the loading and unloading of goods and equipment, and for the installation, operation and maintenance of equipment and trash receptacles that commonly are used or placed in loading dock areas from time to time. No benefited Owner shall allow any trucks or other vehicles to park in such easement area or otherwise block access to or from the loading docks or vehicular downramps to the Automobile and Truck Access Ramp, except for trucks temporarily parked in any parking areas designated by the burdened Owner during loading and unloading activities;

provided that no such temporary parking shall block ingress and egress to and from the public street. Pursuant to Section 2.1D(i) above, the Event Center Parcel Owner shall at all times operate and maintain the Automobile and Truck Access Ramp at the higher of (i) in a good condition, ordinary wear and tear excluded, and (ii) in accordance with operation and maintenance standards for similar first-class projects of comparable facilities, scope, quality and size to the Project.

3.3 Governmental Compliance. Each Owner, at its sole cost and expense, shall promptly comply or cause compliance with all Legal Requirements, as the same may be hereafter modified or amended, including but not limited to, the Governing Documents, as they pertain to such Owner's Parcel and/or any Owner's use of any other Owner's Parcels in connection with the easements granted herein. Notwithstanding the foregoing, each Owner shall have the right to contest by appropriate legal or administrative proceedings diligently conducted in good faith, the validity or application of any such Legal Requirement and may delay compliance until a final decision has been rendered in such proceedings and appeal is no longer possible, unless such delay would render the Project, Building or Improvements, or any portion thereof, liable to forfeiture, involuntary sale or loss, or result in the involuntary closing of any business conducted thereon, or subject any other Owner or Occupant to civil or criminal liability, in which case the contesting Owner shall immediately take such steps as may be necessary to prevent any of the foregoing, including posting bonds or security or complying with such law, ordinance or regulation. The contesting Owner shall indemnify, defend and hold all other Owners harmless from and against any and all claims, loss, cost, damage, liability, injury or expense of any kind or nature (including without limitation reasonable attorneys' fees) arising out of or in connection with such contest. No Owner shall request any change in or modification of any presently existing governmental approval, including, but not limited to the Governing Documents, if such change or modification would in any way materially and adversely affect the rights of any other Owner under such existing approval with respect to the easements granted hereby, without the prior written consent of all adversely affected Owners, which consent may be withheld in the sole and absolute discretion of such Owners.

3.4 Operation, Maintenance, Repair and Replacement.

A. General Obligations. Except as otherwise provided in Section 3.5 below, each Owner whose Parcel is burdened by an easement or similar grant provided in this Agreement shall, at such Owner's sole cost and expense, if applicable, operate, maintain, insure, repair and replace the portion of its Parcel burdened by such easement or grant (including the easement area and any Improvements thereon) in the manner and to the extent necessary to ensure that such part of its Parcel is operated and maintained in good condition at all times and in a condition sufficient to support the intended uses of all such easements as specified in this Agreement at all times. In addition to the foregoing, each Owner installing, operating, maintaining, repairing or replacing any Improvements located on any other Owner's parcel pursuant to any easement or rights granted hereunder shall ensure that all such activities are performed in a good and workmanlike manner and in a manner sufficient to cause such Improvements to be operated and maintained in good condition and otherwise operated in accordance with the terms of this Agreement at all times. Each Owner whose Parcel adjoins another Parcel (either vertically or horizontally) agrees, if requested in writing by the Owner owning an adjoining Parcel, to reasonably cooperate and coordinate with such Owner in the installation, monitoring and management of the life and fire safety systems installed on or within such Parcel or Parcels. Nothing in the foregoing, however,

shall be deemed to require any Owner to install, monitor or manage a particular type of fire or life safety system or systems, or to install, operate, manage or maintain any fire or life safety systems beyond the systems required by applicable laws and regulations. The Owner whose Parcel is burdened by an easement or similar grant provided in this Agreement may make, at its expense, improvements to any facility in such an easement, provided such improvements do not materially interfere with the use, operation or maintenance of such facility.

B. Specific Obligations. Notwithstanding Section 3.4(A) above, responsibility for the installation, operation, maintenance, insurance, repair and replacement of the following easement areas and Improvements shall be as follows:

(i) Communication Conduits and Cabling: Utilities. In the case of easements for Communication Systems and/or Utilities: (a) where only one Parcel is benefited by such easement or other similar grant provided in this Agreement, then the Owner whose Parcel is benefited shall operate, maintain, insure (to the extent coverage is available under an all risk of physical loss policy), repair and replace the physical facilities and equipment installed in such easement (e.g., the pipelines, wire, fiber, conduit, cable, etc.), but not the underlying area of the burdened Parcel (which shall be covered by the owner of such Parcel as provided in Section 3.4(A) above), in the manner and to the extent necessary to ensure that such facilities and equipment are operated and maintained in good condition at all times; and (b) where more than one Parcel is benefited by such easement or other similar grant provided in this Agreement, then the Owner on whose Parcel the easement is located shall operate, maintain, insure (to the extent coverage is available under an all risk of physical loss policy; provided, however, that if such Owner's Parcel is not benefited by such easement and/or in the event such coverage cannot be procured by that Party, then such Party on whose Parcel the easement is located shall designate, by written notice to all benefited Owners, which benefited Owner shall insure the easement, provided that the cost thereof shall be equitably allocated among the Parcel Owners benefited by such easement), repair and replace the portion of the physical facilities and equipment installed in such easement within its Parcel (e.g., the pipelines, wire, fiber, conduit, cable, etc.), in the manner and to the extent necessary to ensure that such facilities and equipment are operated and maintained in good condition at all times, but the cost thereof shall be equitably allocated among the Parcel Owners benefited by such shared Communication Systems or Utilities.

(ii) Foundations. Each Owner, at its sole cost and expense, shall maintain, insure (to the extent coverage is available under an all risk of physical loss policy), repair and replace (except in the case of a Permitted Nonrestoration Circumstance) the portions of its Building foundations and other Improvements located on any other Owner's Parcel, so that such items are in good condition at all times.

(iii) Rights of Owner of Underlying Parcel. Notwithstanding anything to the contrary in this Section, if the Owner(s) responsible for operating, maintaining, insuring, repairing and replacing any easement (including facilities located thereon) or similar grant (a) fails to commence the proper maintenance, repair or replacement of such benefited Owner's physical facilities or equipment located in such easement area within fifteen (15) days after written notice from the Owner on whose Parcel the easement is located that such failure is materially interfering with such Owner's use and enjoyment of its Parcel, or after commencing such Work fails to diligently prosecute such Work to completion within a reasonable time, or (b) the Owner(s)

responsible for operating, maintaining, insuring, repairing and replacing such easement or similar grant is/are otherwise unable or unwilling to perform immediately an emergency repair or replacement after the occurrence of an emergency that threatens life or property, then the Owner on whose Parcel the easement is located may perform such reasonably necessary maintenance, repair or replacement work and the Owner(s) whose Parcel(s) are benefited shall reimburse the Party on whose Parcel the easement is located for the reasonable costs thereof within thirty (30) days after receipt of an invoice for such work; provided, however, that no Party shall be obligated to share costs of Work pursuant to this Section 3.4(B)(iii) following the occurrence of a Permitted Nonrestoration Circumstance with respect to its own Parcel(s).

3.5 Shared Maintenance and Operating Charges. Notwithstanding Section 3.4 above, the parties hereto agree that multiple Owners shall pay the Maintenance and Operating Charges relating to the use of those easements granted under Sections A(i) through A(xi), inclusive, of this Agreement and Sections D(i) through D(ii), inclusive, of this Agreement. The Maintenance and Operating Charges relating to the use of such easements shall be allocated and paid as follows:

3.5.1 Maintenance and Operating Charges shall be equitably allocated based upon use by Permittees of each applicable Owner, or such other formula as the affected Owners may agree upon.

3.5.2 The Owners shall cooperate with each other to determine and reevaluate such allocation from time to time upon request by any Owner, but not less frequently than on an annual basis.

3.5.3 Any Owner responsible for payment of Maintenance and Operating Charges shall pay its share of such costs to the billing Party ("Billing Party") within thirty (30) days after receipt of a statement from the Billing Party showing the amount payable by such other Owner (determined in accordance with this Section) together with appropriate supporting information. All invoices shall be subject to audit by the billed Owner.

#### ARTICLE 4

#### PUBLIC AREAS

4.1 Use and Operation. Except as otherwise provided herein, each Owner covenants to keep any portion of its respective Parcel that constitutes a Public Area open and available for the accommodation and passage of pedestrians or vehicles, as applicable, at all times during their respective operating hours, which shall be reasonable; provided, however, that (a) the Owners may impose rules and regulations with respect to the use thereof as provided in Section 3.2A, and (b) access to and use of the Public Areas is subject to reasonable limitations on access and other reasonable restrictions (including temporary closure of portions thereof for emergency, maintenance and repairs or special events being held at or adjacent to the Project) imposed by the applicable burdened Owner in its operation of its applicable Parcel(s).

4.2 Standards of Maintenance. Except as otherwise provided herein, the Owner responsible for maintenance of a Public Area shall maintain that area in good condition at all times. All Improvements repaired or replaced by any Owner shall be repaired or replaced with

materials, equipment, apparatus and facilities of quality equal or superior to the quality of the materials, equipment, apparatus and facilities repaired or replaced and so as to maintain the architectural and aesthetic quality as well as the physical condition of the Improvements as a whole. Each Owner's responsibilities under this Section shall include but not be limited to the following:

A. Paved Areas. Maintaining all sidewalks, driveways, delivery areas, curbs and other surface areas of the Public Areas and public sidewalks in a smooth and evenly covered condition, including, without limitation, cleaning, sweeping, repainting, repairing and resurfacing, using surfacing material of a quality equal or superior to the original surfacing material.

B. Debris and Refuse. Removal of all papers, debris and refuse and washing or sweeping surfaces to the extent necessary to keep the Public Areas in a clean and orderly condition.

C. Signs and Markers. Placing, installing, keeping in repair, replacing, relamping and repainting any appropriate identity and directional signs, markers and graphics for the Project or any Public Areas.

D. Lighting. Operating, keeping in repair, cleaning and replacing when necessary such lighting facilities as may be reasonably required in the Public Areas.

E. Landscaped Areas. Cleaning and maintaining all landscaped areas, repairing automatic sprinkler systems or water lines, weeding, pruning, fertilizing and replacing shrubs and other landscaping in the Public Areas as necessary.

F. Fire and Life Safety Systems. Repairing and maintaining in good operating order all fire detection, warning, suppression systems and apparatus and all life safety systems constituting part of the Public Areas. Nothing in the foregoing, however, shall be deemed to require any Owner to install, monitor or manage a particular type of fire or life safety system(s), or to install, operate, manage or maintain any fire or life safety systems beyond the systems required by applicable laws and regulations.

G. Utilities. Maintaining, cleaning, repairing and replacing any and all Utility systems constituting part of the Public Areas.

H. Obstructions. Keeping the Public Areas free from obstructions not required or permitted hereunder.

I. Legal Requirements. Complying with all Legal Requirements pertaining to the Public Areas and performing any repairs, alterations or additions required to be made to, or safety appliances and devices or personnel required to be maintained in or about, the Public Areas.

## ARTICLE 5

### MORTGAGES AND MORTGAGEE PROTECTION

5.1 Right To Encumber. Subject to the restrictions imposed in this Agreement with respect to assignment or collateral assignment, any Owner shall have the right to encumber its interest in its respective Parcel by any Mortgage, provided such Mortgage is expressly made subject and subordinate to this Agreement.

5.2 Default: Prior Claims and Obligations. Except as set forth in this Agreement, no breach or default under this Agreement, nor any entry upon a Parcel by reason of such breach or default, shall defeat or render invalid the lien of any Mortgage made in good faith and for value on any Parcel. The provisions, easements, conditions, restrictions, and covenants hereof shall be binding and effective against any Person whose title is acquired by foreclosure, deed in lieu of foreclosure, trustee' sale, or otherwise; provided, however, that, except as set forth in this Agreement, a Mortgagee which takes title to a Parcel pursuant to foreclosure of its Mortgage, or any purchaser at a foreclosure or trustee's sale under a Mortgage, shall take such Parcel free of any prior claims, obligations or charges under this Agreement, including any obligation to repair or restore (or to contribute to the repair or restoration of) any damage or destruction to or Condemnation of the Property or any portion thereof occurring prior to the taking of title to such parcel by such Mortgagee or purchaser.

5.3 Notice to Mortgagees. The Mortgagee under any Mortgage affecting a Parcel shall be entitled to receive concurrent notice of any default by any Owner hereunder, provided that such Mortgagee shall have delivered written request for such notice of default to the Owner from whom the Mortgagee wishes to receive such notice of default, specifying both the Mortgagee's name and address and the name of the Owner as to whose default the Mortgagee wishes to receive such notice. Failure of a Owner to deliver a concurrent copy of such notice of default to the Mortgagee shall not affect in any way the validity of the notice of default as it relates to the defaulting Owner, but in any subsequent proceedings arising from the notice of default without the requested concurrent notice to the Mortgagee, the interest of the Mortgagee and its lien upon the affected Parcel shall not be affected in any way until such time as it has received proper notice. Any such notice to a Mortgagee shall be given in the same manner as provided in Section 17.2. The giving of any notice of default or the failure to deliver a copy to any Mortgagee shall in no event create any liability on the part of the Person so declaring a default.

5.4 Right To Cure. In the event that (a) any Owner gives notice to any other Owner of the default of such other Owner under this Agreement, and (b) the defaulting Owner fails to cure or to commence to cure such default as provided in this Agreement, then any Mortgagee under any Mortgage affecting the Parcel of the defaulting Owner which has requested notice pursuant to Section 5.3 shall be entitled to receive an additional notice from the Owner giving the original notice, given in the manner provided in Section 5.3, stating that the defaulting Owner has failed to cure such default. Following the delivery of the additional notice, provided, such Mortgagee shall have thirty (30) days after the receipt of said additional notice to cure such default, or, if such default cannot be cured within thirty (30) days, to commence curing within such time and diligently cure within a reasonable time thereafter. Mortgagees may jointly or singly pay any sum or take any other action reasonably

necessary to cure any default of their Mortgagors hereunder with the same effect *as* cure by the Mortgagor itself.

5.5 Amendment. No amendment to this Agreement made without the consent of any Mortgagee of any Parcel shall be binding upon it or its successors in interest should it become an Owner.

5.6 Condemnation or Insurance Proceeds. Except as otherwise expressly set forth in this Agreement, the rights of any Mortgagee, pursuant to its Mortgage, to receive Proceeds which are otherwise payable to such Mortgagee or to an Owner which is its Mortgagor shall not be impaired.

5.7 Title by Foreclosure. Except as otherwise expressly set forth herein, all of the provisions contained in this Agreement shall be binding upon and benefit any Person who acquires title to a Parcel by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise under a Mortgage.

5.8 Modification of Article: Conflicts. No Owner shall unreasonably withhold its consent to such modifications of this Agreement as are reasonably requested by a Mortgagee, provided that the rights of any such Owner will not be materially impaired, diminished, limited or delayed, nor the obligations of such Owner increased in any material respect as a result of such modifications. If there is any conflict between this Article 5 and any other provision contained in this Agreement, this Article 5 shall control.

## ARTICLE 6

### INDEMNIFICATION AND INSURANCE

6.1 Indemnities. Except as expressly provided in Section 6.5, each Owner shall indemnify, defend and hold the other Owners harmless from and against any and all claims, expenses, liabilities, loss, damages and costs, including, without limitation, court costs and reasonable attorneys' fees (in this ARTICLE 6, such claims, costs, expenses and liabilities are collectively referred to as "Loss"), arising from, due to or as a result of the negligence or willful misconduct of the indemnifying Owner or its contractors, agents or other authorized representatives in the exercise or use of the easements or other rights granted by this Agreement, except to the extent such Losses (i) result from the negligence or willful act or omission of the indemnified Owner or its contractors, agents or other authorized representatives, and/or (ii) are mutually released under Section 6.5, but only to the extent of such release, and/or (iii) are covered by Section 8.3, in which case Section 8.3, as applicable, shall control. The provisions of this Section shall survive the expiration or sooner termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

6.2 Insurance.

A. By the Owners. During the term of this Agreement, each Owner shall maintain or cause to be maintained on (and with respect to) any Parcel owned by said Owner and the Improvements located thereon (i) a general liability (“GL”) insurance with limits of not less than Fifty Million Dollars (\$50,000,000) per occurrence (such limits may be satisfied by any combination of primary and umbrella limits), (ii) all risk property insurance policy in an amount not less than the full replacement cost for the Improvements located on said parcel (to the extent the components are insurable) for coverage for any occurrence on its Parcel or Building, including to the extent required to be insured pursuant to Section 3.4, any Public Areas located on its Parcel, with commercially reasonable terms and conditions, and (iii) earthquake and terrorism insurance policies to the extent available on commercially reasonable terms and commercially reasonable rates.

B. Policy Requirements. The GL insurance required under Section 6.2A shall name all other Owners (including, if requested by any Owner, any ground lessee of such Owner) as additional insureds thereunder. Upon request, each Owner shall furnish a certificate of insurance or other evidence of such insurance to the other Owners at least five (5) days prior to the effective date of any such policy to evidence that the insurance required by this ARTICLE 6 is in full force and effect and furnishing entity shall endeavor to provide at least thirty (30) days’ prior notice of any cancellation or termination of such policy to each certificate holder.

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6.3 Blanket Insurance. Any Owner may carry the insurance described in Section 6.1 under a policy or policies covering other liabilities and locations of such Owner, or a subsidiary, successor, affiliate or controlling corporation of such Owner, so long as the coverage substantially complies with the requirements of this Agreement.

6.4 Form of Policies. The policies of insurance required under this ARTICLE 6 shall in no event limit the liability of the Owners under this Agreement. Each insurance policy required hereunder shall (i) be issued by an insurance company having a Best’s rating of at least A-VII or equivalent and licensed or eligible to do business in the State of California; (ii) be primary insurance to the extent of the indemnity obligations in Section 6.1 as to all claims thereunder and provide that any insurance carried by the non-insuring Owner is excess and is non-contributing with any insurance requirement of the insuring Owner; (iii) be on commercially reasonable terms and conditions; (iv) provide that said insurance shall not be reduced in limits, terminated or canceled unless thirty (30) days’ prior written notice shall have been given to the named insured(s), and (v) shall contain deductible and/or self insured retention amounts that do not exceed at the time obtained or renewed what would then be commercially reasonable and customary deductibles and/or self insured retentions for insurance policies covering facilities similar in use, size and nature of risks to the facilities and risks covered by such policies.

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6.5 Mutual Releases: Waiver of Subrogation. Notwithstanding Section 6.1, each Owner for itself and, to the extent it is legally possible for it to do so on behalf of its insurer and without affecting the coverage required to be maintained hereunder, hereby releases and waives any right to recover against the other Owners by reason of any damage to property to the extent such damages and/or claims are covered by property insurance (and only to the extent the proceeds of such coverage are actually available and paid to such Owner, exclusive of deductibles) actually carried by each Owner. No Owner shall be liable to any other Owner for such covered loss or damage, irrespective of any negligence on the part of such Owner which may have contributed to

such loss or damage. The provisions of this Section are intended to restrict each Owner and each Occupant (to the extent permitted by law) to recovery against insurance carriers to the extent of such coverage, and to waive fully, and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. Each Owner shall, to the extent such insurance endorsement is available, obtain or cause to be obtained, for the benefit of the other Owners, a waiver of any right of subrogation which the insurer of such Owner might acquire against any other Owner by virtue of the payment of any loss covered by such insurance. In the event any Owner is by law, statute or governmental regulation unable to obtain a waiver of the right of subrogation for the benefit of each other Owner, then, during any period of time when such waiver is unobtainable, said Owner shall be deemed not to have released any subrogated claim of its insurance carrier against the other Owners, and during the same period of time each Owner shall be deemed not to have released the other Owner who has been unable to obtain such waiver from any claims they or their insurance carriers may assert which otherwise would have been released pursuant to this Section. In the event that any Owner is unable to obtain such waiver of the right of subrogation for the benefit of any other Owner or Owners, such Owner shall, within thirty (30) days of receiving notice of such inability, give each other Owner written notice of such inability.

6.6 Failure to Maintain Insurance. If an Owner fails to maintain the insurance required to be maintained by it under the terms of this Agreement, then each such failure shall constitute an Event of Default hereunder, and each other Owner shall have all rights and remedies hereunder, at law or in equity arising from such Event of Default.

6.7 Modifications in Limits. From time to time under this Agreement, each Owner may propose to the other Owners that the policy limits set forth in this Agreement be increased or decreased, in order to bring such policy limits into conformity with the limits customarily maintained for similar agreements, including those located in Southern California. If the Owners are able to agree upon an increase or decrease, the modified limits they agreed upon shall supersede those set forth in this Agreement. If the Owners are not able to agree upon a proposed increase or decrease within 30 days after its proposal, then the matter shall be resolved through the procedure set forth in Section 6.8 below, based upon the limits customarily maintained for similar agreements, including those located in Southern California. Policy limits established pursuant to this ARTICLE 6 shall not be increased or decreased during the first five years after the Effective Date of this Agreement or more frequently than once every five years thereafter, unless a significant change in the law or in the insurance industry makes an intervening increase or decrease necessary or equitable under the circumstances. In considering any proposed modification to policy limits, the parties shall consider the frequency and nature of past claims.

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6.8 Certain Determinations. If the Owners are not able to agree upon a proposed increase or decrease within 30 days after its proposal, then the Owners agree to abide by the findings and recommendations of a reputable, independent risk management consultant who is experienced with similar agreements, including agreements in the southern California area, and who is acceptable to the Owners. An independent risk management consultant is a risk management consultant who has no affiliation with any insurance company or insurance broker and who does not receive any wages, commissions or similar compensation from any insurance company or insurance broker. Each Owner shall each pay a proportionate amount of the fees,

expenses and other costs incurred in connection with the selection and engagement of the independent risk management consultant.

## ARTICLE 7

### DAMAGE AND DESTRUCTION

#### 7.1 Restoration Obligation.

A. Owner's Duties. In the event of a casualty that results in damage or destruction to the Improvements on a Parcel or to areas containing or constituting an easement granted in this Agreement on any Parcel, the Owner owning such Parcel, shall, at its cost (whether insured or uninsured), restore, repair, rebuild or replace the damaged or destroyed Improvements substantially to their condition immediately prior to the casualty event, as soon as reasonably practicable, provided, however, such obligation shall not apply to a Permitted Nonrestoration Circumstance. Notwithstanding the foregoing, the Owner owning such Parcel shall not, as a result of this Section 7.1A, be obligated to restore, repair, rebuild or replace any damaged or destroyed facilities or equipment installed or used by a benefited Owner in an easement area on such Parcel unless (a) the Owner owning such Parcel owned such facilities or equipment or has responsibility to restore, repair, rebuild or replace such facilities or equipment under the other terms of this Agreement, and (b) such restoration, repair, rebuilding or replacement is necessary in order for the Owner(s) that benefit(s) from such easement area to use and enjoy such easement area and such benefited Owner(s) actually used such facilities and equipment prior to such damage or destruction. Notwithstanding any contrary provision in this Agreement, if the Owner whose Parcel is burdened by an easement granted in the Agreement or the Owner who is the otherwise obligated to repair and restore the damaged or destroyed easement area or any Improvements supporting or constituting an easement area, fails to or elects not to (including in case of a Permitted Nonrestoration Circumstance or pursuant to Section 7.6 hereof) promptly commence and thereafter diligently pursue and complete the proper restoration, repair, rebuilding or replacement of such damaged or destroyed Improvements as required hereunder, then any Owner which benefits from such damaged easement may give written notice to the non-performing Owner that such failure or election not to restore, repair, rebuild or replace (as the case may be) is materially interfering with such Owner's use and enjoyment of its Parcel and that if such Work is not commenced, or recommenced, within sixty (60) days after receipt of such notice the notifying Owner intends to undertake such Work on behalf of, and at the cost of, the non-performing Owner (but only to the extent (i) no Permitted Nonrestoration Circumstance has occurred with respect to the non-performing Owner's Parcel(s) or (ii) such costs are not the responsibility of another Owner under the terms of the Agreement) and the Owners benefited by such damaged or destroyed Improvements and/or easement area, and if the non-performing Owner does not commence, or recommence, such Work within sixty (60) days after receipt of such notice, then the Owner who provided the notice shall have the right to enter upon the damaged or destroyed Parcel and perform such reasonably necessary restoration, repair, rebuilding or replacement for the use and enjoyment of such benefited Owner. Notwithstanding the foregoing, if an emergency occurs that requires the immediate restoration, repair, rebuilding or replacement of such damaged or destroyed Improvements and/or easement area or equipment or facilities located therein (which would

otherwise be subject to repair, rebuilding or replacement hereunder) as reasonably determined by an Owner who benefits from such damaged easement and the Owner whose Parcel is burdened by such easement is not available or is otherwise unable or unwilling to perform such emergency repair, rebuilding or replacement, then the Owner who reasonably determined that the damaged easement requires immediate restoration, repair, rebuilding or replacement shall have the right to enter upon the damaged or destroyed Parcel and perform such reasonably necessary restoration, repair, rebuilding or replacement immediately following a reasonable attempt to notify and give the Owner whose Parcel is burdened by such damaged or destroyed easement an opportunity to perform such emergency restoration, repair, rebuilding or replacement. The Owner whose Parcel is burdened (to the extent required by this Agreement) and the Owners benefited by such damaged or destroyed Improvements and/or easement area shall reimburse the Owner who performed such restoration, repair, rebuilding or replacement for the reasonable costs thereof within sixty (60) days after receipt of an invoice therefor. In the case of an easement area whose restoration, repair, rebuilding, or replacement costs are allocated pursuant to ARTICLE 3, such costs shall be reimbursed to the Owner who performed such restoration, repair, rebuilding or replacement in accordance with ARTICLE 3 within sixty (60) days after receipt of invoice thereof. Nothing in this Section shall be deemed to be a waiver or release of any liability that any Owner may have if it is otherwise legally responsible for all or any portion of the damage or destruction of Improvements on a Parcel or an easement area or any facilities or equipment in such easement area.

B. Insurance Proceeds. Except for a Permitted Nonrestoration Circumstance, any insurance proceeds available to or received by an Owner for damage or destruction to Improvements on such Parcel shall be applied to the restoration, repair, rebuilding or replacement of such damaged or destroyed Improvements by the Owner that is the owner of such Parcel.

7.2 Damage to or Destruction of Public Areas. In the event of damage or destruction of the Public Areas or any portion thereof (whether insured or uninsured), unless the damage or destruction constitutes a Permitted Nonrestoration Circumstance, the Owner upon whose Parcel such damaged or destroyed Public Area is a part, shall promptly commence and thereafter diligently complete the restoration, repair, rebuilding or replacement of the Public Areas within its Parcel, including any equipment or facilities therein if such restoration, repair, rebuilding or replacement is necessary for the use and enjoyment of such Public Area and an Owner actively used and enjoyed such Public Area prior to such damage or destruction. If a Public Area encompasses two or more Parcels, then the costs related thereto shall be shared among the owners of the affected Parcels equitably based on the relative extent of damage and required repairs to the affected Parcels. Nothing in this Section shall be deemed to be a waiver or release of any liability that any Owner may have if it is otherwise legally responsible for all or any portion of the damage or destruction of the Public Area. The provision of Section 7.1 hereof shall apply to any failure of an Owner to promptly commence and thereafter diligently complete the restoration, repair, rebuilding or replacement of the Public Areas within its Parcel, including any equipment or facilities therein. Notwithstanding any contrary provision of this Section 7.2, no Owner shall be obligated to perform restoration, repair, rebuilding or replacement, or to contribute to the cost thereof, following the occurrence of a Permitted Nonrestoration Circumstance with respect to its Parcel(s).

7.3 Quality of Restoration and Reconstruction. The restoration or reconstruction of any Parcel, Improvements, any area containing an easement, or any portion thereof, which is required by this Agreement, shall substantially preserve and satisfy the purpose of any easement(s) thereon, modified as may be required by applicable laws (including building codes and regulations) then in effect. The restoration, repair, rebuilding or replacement of the Public Areas and any area containing an easement shall be substantially in accordance with the original As-Built Plan therefor, modified as may be required by applicable building codes and regulations then in effect. Except for changes mandated by Legal Requirements, all modifications in or deviations from such original As-Built Plans for any easement area of the Public Area shall be subject to the prior written approval of the Owners that benefit from an easement in such damaged or destroyed Parcel and that will be materially and adversely affected by such modifications, which approval shall not be unreasonably withheld, conditioned or delayed.

7.4 Safety. Notwithstanding anything to the contrary herein, promptly after the occurrence of any damage or destruction on any Improvement on any Parcel, the owner of such Parcel shall take all reasonable measures necessary to secure the damaged or destroyed area from unauthorized access and to remove or render safe any safety hazards thereon that impair access to or use of any other parcel in the Project, and in the case (i) of a Permitted Nonrestoration Circumstance or (ii) a (A) Mortgagee (or its designee), or (B) purchaser at a foreclosure sale pursuant to a Mortgagee, or (C) subsequent purchaser from a Mortgagee (or its designee), which acquires title to a Parcel by reason of foreclosure, by deed in lieu of foreclosure, or after a leaseback in a sale and leaseback terminates by reason of a default, that is not required pursuant to Section 7.6A below to restore, repair, rebuild or replace damage or destruction to its Parcel or Improvements, or an portion thereof, and elects not to restore, repair, rebuild or replace damage or destruction to its Parcel or Improvements, then the Owner that is the owner of such Parcel with respect to (i) or (ii) above shall clear the damaged or destroyed portion of the Parcel of all debris and unsafe conditions.

7.5 Liability of Mortgagee. Notwithstanding any other provision of this Agreement to the contrary, the provisions of this ARTICLE 7 shall be applicable to a Mortgagee as provided in this Section.

A. Where a Mortgagee (or its designee) or a purchaser at a foreclosure sale pursuant to a Mortgage or subsequent purchaser from a Mortgagee (or its designee) acquires title by reason of foreclosure, or by deed in lieu of foreclosure, or where a leaseback in a sale and leaseback terminates by reason of a default, and such Parcel is subsequently damaged or destroyed during the period of ownership of such Parcel or Improvement by such Mortgagee, designee or purchaser, such Mortgagee, designee or purchaser shall only be obligated to restore, repair, rebuild or replace a Parcel or Improvement if the damage or destruction does not constitute a Permitted Nonrestoration Circumstance and to the extent required by this ARTICLE 7. Where a Parcel is damaged or destroyed by a peril included within the risks required to be insured against under this Agreement, and the damage or destruction occurs prior to the foreclosure sale, conveyance or termination of a sale and leaseback, any Mortgagee (or its designee) or purchaser at a foreclosure sale pursuant to a Mortgage or subsequent purchaser from a Mortgagee (or its designee) who so acquires title shall be obligated to repair or restore the damaged Parcel or Improvement in accordance with this Agreement to the extent of the insurance proceeds actually paid therefor and

received by such Mortgagee, designee or purchaser unless such damage or destruction constitutes a Permitted Nonrestoration Circumstance; and

B. Nothing in this Section 7.5 shall be construed to relieve the original Owner whose interest has been so acquired by a Mortgagee (or its designee) or by a purchaser at a foreclosure sale, of its obligations under Section 7.1, or as terminating any other Owner's rights under Section 7.1.

## ARTICLE 8

### CONSTRUCTION, REPAIRS, RESTORATION AND ALTERATIONS

#### 8.1 General.

A. Effect on Other Parcels. Any Owner undertaking Work shall take all necessary measures to minimize any damage, disruption or inconvenience caused by such Work to the Occupants of any affected Parcels or Buildings (including the Parcel(s) on which the Work is performed), and shall make adequate provisions for the safety and convenience of all Occupants and Permittees of such Parcels or Buildings.

B. Repair of Damage; Restoration. Any Owner undertaking Work shall promptly repair at its own cost and expense any and all damage caused thereby and shall restore the affected portion of the Parcel upon which its Work is performed to a condition equal or superior to the condition existing prior to beginning the Work.

C. Coordination; Non-Interference. Each Owner, as respects its respective Work, shall use all reasonable efforts to cause its architects and contractors to cooperate with and coordinate its Work with the other Owners, as applicable, and the architects, contractors and Work of the other Owners. Each Owner shall perform its respective Work so as not to unreasonably interfere with (i) any Work being performed on the remainder of the Project or any part thereof, or (ii) the use, occupancy or enjoyment of the remainder of the Project or any part thereof.

D. Payment of Costs. Subject to the other terms of this Agreement, each Owner shall be responsible for the payment of costs for Work performed by it on its Parcel or on any other Parcel in connection with the exercise of its easement rights herein granted. Each Owner shall keep its Parcel and all other Parcels free from any and all liens arising out of any Work performed, materials, services or equipment furnished to, or obligations incurred in connection with the performance of any Work by that Owner.

E. Notices of Nonresponsibility. Any Owner upon whose Parcel any Work is to be performed by or on behalf of another Owner shall have the right, if appropriate, to post such notices of nonresponsibility and other notices as may be required to give notice that such Owner shall not be responsible for payment therefor.

F. Emergency Work. Notwithstanding any requirement for prior notice or approval contained in this Agreement, in the event of an emergency condition threatening life or

property, any Owner may undertake the necessary Work to remedy the emergency condition, provided that such Owner does so in good faith, gives notice thereof to the Owner owning any Parcel affected by the Work upon the occurrence of the emergency condition or as soon thereafter as reasonably possible, and otherwise conforms to the applicable provisions of this ARTICLE 8, to the extent feasible under the circumstances.

8.2 Alterations; Additional Construction. Except as otherwise provided herein, no Owner shall make or permit to be made any alterations, changes, enlargements, improvements, additions, replacements or new Improvement, including, without limitation, any restoration, reconstruction or new construction after a casualty event (collectively, "alterations") in or to that Owner's Parcel or Building or any Improvements located on any other Owner's Parcel which would (i) materially alter any Public Areas or easement areas contained within such Parcel or Building (unless reasonably equivalent easement areas are provided to the benefited Owner at the burdened Owner's expense), (ii) unduly interfere with the exercise by any other Owner of the easement rights created herein (including vehicular and pedestrian ingress and egress rights and the use of all Improvements and facilities constructed in connection with such easement rights) (iii) impose an additional material obligations on the Owner using an easement hereunder, (iv) materially increase the use of such easements beyond the uses contemplated on the effective date of this Agreement, or (v) materially increase the obligations of any other Owner without the prior written consent of each Owner whose Parcel or easement rights will be affected, which consent may be withheld in the sole discretion of such Owners; provided that clauses (i) through (iv) above shall not apply to alterations required by applicable laws (including building codes and regulations) or in the event of an emergency threatening life or property. Subject to the foregoing, each Owner may (x) construct within its Parcel or Building additional improvements; and (y) remodel and reconstruct existing improvements within its Parcel or Building, in each case without the need for the consent of other Owners.

8.3 Construction Indemnities. Any Owner undertaking Work on a Building or Parcel that is not owned by it shall pay all costs and expenses associated therewith and shall indemnify, defend and hold all other Owners and the Parcel of each other Owner harmless from any and all claims, loss, cost, damages, liability, injury or expense (including, but without limitation, reasonable attorneys' fees, costs and disbursements) caused by or arising from any mechanics' lien or other claim regarding materials supplied or work performed or the death of, or accident, injury, loss or damage caused to any natural Person, or to the Property of any Person, as shall occur by reason of the performance of any Construction by or at the request of the indemnitor, except for claims caused by the negligence or willful act or omission of the indemnitee, its licensees, concessionaires, agents, servants or employees. The indemnitee shall give the indemnitor notice of any suit or proceeding entitling the indemnitee to indemnification pursuant to this Section and the Indemnitor shall defend the indemnitee in such suit or proceeding with counsel approved by the indemnitee.

## ARTICLE 9

### DEFAULTS AND REMEDIES

9.1 Legal and Equitable Relief. Upon any Event of Default by an Owner under this Agreement, each non-defaulting Owner shall have the right to prosecute any proceedings at law or in equity against such Owner hereto, or against any other person, in order to prevent or restrain any violation or attempted violation of or default in the provisions of this Agreement, and to recover damages therefor. The remedies available under this Section 9.1 shall include, by way of illustration but not limitation, temporary restraining orders obtained with or without notice, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Agreement.

9.2 Right to Cure. After the occurrence of an Event of Default with respect to an Owner, a non-defaulting Owner shall have the right, but not the obligation, upon 20 business days written notice, to cure such Event of Default for the account of and at the expense of the defaulting Owner; provided, however, that (a) in the event of emergency conditions constituting default, a non-defaulting Owner acting in good faith shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter, and (b) the defaulting Owner shall have such additional period of time as it may reasonably need to effect a cure so long as it commences such cure within such 20-day period and thereafter diligently prosecutes such cure to completion. Any notice hereunder shall specify with reasonable particularity the nature of the default claimed and shall set forth in detail the action which the non-defaulting Owner proposes to take or has taken in order to cure the claimed default. A non-defaulting Owner shall have the further right to recover from the defaulting Owner all costs or other sums expended in connection with the cure of the default hereunder, plus interest thereon at the maximum rate allowed by law. A non-defaulting Owner shall have the right to recover such costs or other sums from the defaulting.

9.3 Costs of Cure. All costs and expenses reasonably incurred by a non-defaulting Owner to cure an Event of Default of a defaulting Owner under the provisions of this Agreement, together with interest thereon at the maximum rate allowed by law, and all costs and expenses of any proceedings at law or in equity, including reasonable attorneys' fees awarded to the non-defaulting Owner by a court in any proceeding pursuant to Section 9.3 shall be assessed against and paid by the defaulting Owner.

9.4 Remedies Cumulative. The rights and remedies given to any Owner by this Agreement shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity (except as otherwise provided in this Agreement) which any such Owner might otherwise have under this Agreement, and the exercise of one such right or remedy by any such Owner shall not impair such Owner's standing to exercise any other right or remedy.

9.5 No Consequential Damages. Except as otherwise specifically set forth in this Agreement, whenever an Owner has a right to damages for the default of another Owner: (a) such damages shall be limited to direct (actual) damages for the default of any other Owner under this Agreement; and (b) each of the Owners, on behalf of itself and its successors and assigns, hereby expressly waives, releases and relinquishes any and all right to any expectation, anticipation, indirect, consequential, exemplary or punitive damages.

9.6 No Termination. No breach, default or Event of Default by any Owner under this Agreement shall entitle any other Owner to cancel, rescind or otherwise terminate this Agreement, provided that such limitation shall not affect any other rights or remedies that any Owner may have by reason of such default.

9.7 Waiver of Default. No waiver by any Owner of any default under this Agreement shall be effective or binding on such Owner unless made in writing by such Owner, and no such waiver shall be implied from any omission by an Owner to take action in respect to such default. No express written waiver of any default shall extend to any default or period of time other than the default and/or period of time specified in such express waiver, or constitute a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement. The consent or approval by any Owner to or of any act or request by any other Owner requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar acts or requests.

## ARTICLE 10

### CONDEMNATION

10.1 Determination of Award; Allocation. Any award or other compensation for damages ("Award") for Condemnation shall be paid to the owner of the affected Parcel and their respective Mortgagees as their respective interests may appear. The allocation of any Award for any portion of an easement area shall be paid to the owner of the burdened Parcel, but any award for facilities or equipment that are located in such easement area shall be awarded to the owner(s) of such facilities or equipment. Notwithstanding the foregoing, any Owner benefited by any such easement may make a claim directly to the applicable governmental authority for any compensation attributable to such easement rights to the extent such claim does not reduce or materially adversely interfere with the Owner that is the owner of the burdened Parcel's Award. If there occurs a Condemnation of a Building or Parcel and facilities or equipment located in an easement area that are owned by Owners other than the owner of the condemned Parcel, and the condemning authority does not apportion the amount of the Award attributable to each, the affected Owners shall use good faith efforts to agree as to the manner of allocation of the award as to Buildings, Parcels and such facilities or equipment. An easement area within a Parcel shall be reconfigured as may be reasonably necessary to permit restoration or rebuilding of an affected Building located thereon after the taking by Condemnation of any material portion thereof; provided, however, that such reconfiguration shall not materially and adversely affect the use of the easement area for its intended purpose by the Owners benefitting from the easement area.

10.2 Condemnation of Easement Areas. In the event of the Condemnation of any easement area, then the Owner upon whose Parcel such Condemned easement area is a part shall, to the extent the Award available to such Owner or Owners has been released for such purpose by their respective Mortgagees, if any, and if it is economically feasible to do so, rebuild, replace and repair such easement area or provide replacement easement areas of similar kind and character, in each case in order to restore the easement areas to a condition as close as reasonably possible to that existing before such Condemnation. The foregoing notwithstanding, if any easement area that is the subject of Condemnation is not required (either by its function, by Legal Requirements, or by any governmental agency having jurisdiction over the Project) for the operation as contemplated

hereunder of such Parcels or Buildings as exist following the taking, or such easement area cannot be reasonably rebuilt, replaced or repaired, then such Owner may elect not to replace such easement area. If the easement area is to be replaced, the Owners shall devote the Award received by each Owner attributable to any taking of easement areas to provide the replacement easement areas.

10.3 Restoration of Support Elements Upon Condemnation. If any Support Elements are removed as part of a Condemnation of a part of a Parcel or any Improvement situated on a Parcel, then the Owner(s) owning such Parcel(s) that benefited from such removed Support Elements may, at their cost, rebuild, replace and repair such affected portion of the Improvements on the portion, if any, of such Parcel from which the Support Elements have been removed that is still owned by an Owner in order to restore such Support Elements to a condition as close as reasonably possible to that existing before such Condemnation, without unreasonably interfering with the use or enjoyment by the Owner which owns the burdened Parcel of the remaining portion of such Parcel.

10.4 Unresolved Issues. Any issue which is not resolved by any judgment in the Condemnation proceeding or supplemental determination therein shall be resolved among the Owners by mutual agreement.

10.5 Rebuilding. Any rebuilding or reconstruction to be performed by any Owner following the Condemnation of any portion of the Project shall be performed in accordance with the terms and conditions of this Agreement and in particular in accordance with ARTICLE 8.

10.6 Waiver of Award. Except as provided in Section 10.1, in the event a Parcel, or any part thereof, is taken by Condemnation, each Owner waives, in favor of the other Owners whose property or any part thereof is taken by Condemnation, any value of the Condemnation Award attributable to any easement which the Owner holds in the property of such other Owner and no part of such Award shall be payable to the holder of the dominant tenement by virtue of such easement. However, a waiver under this Section shall not preclude the holder of any interest in another Parcel, from claiming and collecting the severance, consequential or other damages to its own Parcel or an Award for its easement rights, resulting from the Condemnation of the portion of the other Parcel.

10.7 No Termination of Easements and Licenses. No termination under this Article of any Owner's obligations to restore, operate, and maintain as provided in this Agreement shall affect the existence of the easements granted under ARTICLE 2, except to the extent such easements burden the land taken by condemnation.

10.8 Termination of Benefits. In the event of a Condemnation of any portion of the Project, all easements appurtenant to the portion so condemned shall, upon the effective date of the taking of such portion, terminate to the extent they are appurtenant to such portion, but all easements appurtenant to any portion not so condemned shall continue, subject to any reconfiguration as provided in this ARTICLE 10. Upon the request of any Owner, all Owners shall sign and exchange an instrument in recordable form evidencing the termination of the requesting Owner's obligations pursuant to this ARTICLE 10.

10.9 Mortgagee Participation. Nothing herein contained shall be deemed to prohibit any Mortgagee from participating in any eminent domain proceedings on behalf of any Owner, or in conjunction with any Owner.

## ARTICLE 11

### TRANSFER OF INTERESTS

11.1 Release. If an Owner shall sell, transfer, convey or assign all of its interest in a Parcel (each, a "Transfer"), it shall, except as otherwise provided in this Agreement, be released from any future obligations hereunder from and after the effective date of such Transfer to an Owner provided that such transferring Owner or its transferee sends notice of such Transfer to all other Owners to this Agreement at the most recent address for such other Owners known to such transferor or transferee. Nothing contained in this Section shall affect the existence, priority, validity or enforceability of any lien recorded against the affected Parcel prior to the effective date of the transfer.

11.2 Assumption Statement. Concurrently with the Transfer by an Owner of all of its interest in a Parcel, the transferee shall execute and deliver to all Owners a written statement in which (i) the name and address of the transferee is disclosed, and (ii) the transferee expressly assumes and acknowledges its obligation to be bound by this Agreement and perform all obligations hereunder in accordance with the provisions of this Agreement. Failure to deliver any such written statement shall not affect the running of any covenants herein with the land as provided by Section 12.1, nor shall such failure negate, modify, or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement, but such failure shall constitute a default by the transferee hereunder.

#### 11.3 Joint Tenancies or Common Interests.

A. In the circumstances described in subparagraph (iv) of the definition of Owner, the holders of undivided interests totaling not less than fifty-one percent (51%) of the entire estate or estates in and to such Parcel in question, shall designate one of their number or another entity as such Owner's agent to act on behalf of all such Persons. If any Parcel is owned by Persons owning an undivided interest therein under any form of joint or common ownership, then in the determination of such fifty-one percent (51%) in interest, each such owner of such undivided interest shall be deemed to represent a percentage in interest of the whole of such ownership equal to its fractional interest in such Parcel.

B. In the absence of such written designation, the acts of the Owner whose interest is so divided or held in undivided interests (whether or not it retains any interest in the Parcel or Parcels in question) shall be binding upon all Persons having an interest in said Parcel in question, until such time as written notice of such designation is given and recorded in the office of the County Recorder of Los Angeles County, and a copy thereof is served upon each of the other Owners, by registered or certified mail; provided, however, in the following instances all of the other Owners, acting jointly, or in the failure of such joint action, any other Owner at any time may make such designation of an Owner's agent:

(i) If at any time after any designation of an Owner's agent, in accordance with the provisions of this Section, there shall for any reason be no duly designated Owner's agent of whose appointment all other Owners have been notified as herein provided; or

(ii) If an Owner's agent has not been so designated and such notice has not been given thirty (30) days after any other Owner shall become aware of any change in the ownership of all or any portion of a Parcel; or

(iii) If the designation of such Owner's agent earlier than the expiration of such thirty (30) day period shall be reasonably necessary to enable any other Owner to comply with any of its obligations under this Agreement or to take any other action which may be necessary to carry out the purposes of this Agreement.

## ARTICLE 12

### COVENANTS AND RECORDATION

#### 12.1 Covenants Run With the Land.

A. All of the provisions, agreements, rights, powers, covenants, conditions, restrictions, easements and obligations contained in this Agreement shall be binding upon and inure to the benefit of the Owners, and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, and all other Persons acquiring any Parcel or portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, unless and until modified as herein provided. All of the provisions of this Agreement shall be covenants running with the land pursuant to applicable law, including but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on each Parcel hereunder (i) is for the benefit of such benefited Parcel or Parcels hereunder and is a burden upon such burdened Parcel hereunder, (ii) runs with each Parcel, and (iii) shall benefit or be binding upon each successive Owner during its ownership of such Parcel or Parcels.

B. With respect to the various covenants (whether affirmative or negative) on the part of each respective Owner contained in this Agreement, which affect or bind, or are to be performed on portions of its respective Parcel, the Parcel benefited by such covenant shall, during the term of this Agreement, be the dominant estate, and the Parcel of the respective Owner, as the case may be (or if the particular covenant affects, binds, or is to be performed on less than the whole of such Parcel, then with respect to the particular covenant, such portion thereof as is affected by, or bound by the particular covenant, or on which the particular covenant is to be performed), shall, during the term of this Agreement, be the servient estate.

12.2 Recordation. This Agreement shall become effective and binding upon the Owners and their respective successors in interest in accordance with the provisions of this ARTICLE 12 upon recording of this Agreement in the official records of Los Angeles County, California.

## ARTICLE 13

### AMENDMENT

13.1 Method of Amendment. Except as otherwise expressly provided by this Agreement with respect to the recordation of an amendment to this Agreement identifying any As-Built Plans, the Owners agree that the provisions of this Agreement may be modified or amended, in whole or in part, only by a written instrument, executed and acknowledged by each of the Owners affected by the subject matter of the amendment, and duly recorded in the official records of Los Angeles County, California. If any proposed amendment is disapproved as provided herein, the notice of disapproval must include a written explanation setting forth the reasons for such disapproval. Nothing contained herein precludes any separate agreements between two or more Owners, including, without limitation, the grant of additional or separate easements or rights, provided that the other Owners shall not be bound or affected thereby.

13.2 No Third Party Beneficiary. Except for those provisions which are specifically for the benefit of Mortgagees, the provisions of this Agreement are for the exclusive benefit of the Owners and not for the benefit of any third Person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third Person, including, without limitation, any Occupant or Permittee. Except for those provisions specifically benefitting Mortgagees, it is expressly understood and agreed that the Owners specifically intend that no Occupant, Permittee or other Person shall have any right to enforce any of the provisions of this Agreement.

## ARTICLE 14

### TERMINATION

14.1 Termination of Agreement. This Agreement shall not terminate and shall continue so long as an Owner benefits from an easement hereunder. This Agreement shall terminate upon the earlier of (i) there shall be no Owner who benefits from an easement granted hereunder, or (ii) written agreement by all the Owners to terminate this Agreement.

## ARTICLE 15

### DEDICATION

15.1 Joinder in Necessary Dedications. The Owners shall, to the extent necessary and to the extent the same shall not result in the loss of compensation otherwise obtainable from condemnation, join in the execution of such instruments as may be required in order to effectuate the installation of public utilities for the benefit of the Project or any Parcel or Parcels under and across portions of their respective Parcels, the installation, operation and maintenance of which shall be in accordance with the provisions of this Agreement.

ARTICLE 16

NOTICES

16.1 Notices to Owners. Any notice, demand, request, consent, approval, designation or other communication required or desired to be given under this Agreement shall be in writing and shall be personally served with receipt acknowledged by the individual accepting service or given by (i) certified mail, return receipt requested, (ii) personal delivery, or (iii) overnight courier, to their respective addresses set forth below, and in the case of any other Owner, to the address delivered to all other Owners at the time such Owner acquires its interest in its Parcel.

To Convention Center Parcel Owner, Event Center Parcel Owner, Staples Center Parcel Owner, Bond Street Garage Parcel Owner and/or LA Live Way Garage Parcel Owner:

The City of Los Angeles

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

To Event Center Ground Lessee:

L.A. Event Center LLC  
c/o Anschutz Entertainment Group  
800 W. Olympic Blvd., Suite 305  
Los Angeles, CA 90015  
Attention: \_\_\_\_\_

To Staples Center Ground Lessee:

L.A. Arena Land Company, LLC  
c/o Anschutz Entertainment Group  
800 W. Olympic Blvd., Suite 305  
Los Angeles, CA 90015  
Attention: \_\_\_\_\_

To Bond Street Garage Ground Lessee and/or LA Live Way Garage Parcel Owner:

L.A. Parking Structures LLC  
c/o Anschutz Entertainment Group  
800 W. Olympic Blvd., Suite 305  
Los Angeles, CA 90015

Attention: \_\_\_\_\_

Any such notice or communication given by (i) mail shall be effective upon receipt, as evidenced by the date of receipt or refusal by the addressee, as specified on the return receipt or, if no such date is set forth on the return receipt, three (3) business days following its deposit in the United States mail, or (ii) by personal delivery or overnight courier shall be effective upon receipt, as evidenced by a signature of the addressee or its refusal to accept delivery. Any Owner may change its address for purposes of notice by giving notice of such change in the manner herein specified, which change of address shall be effective five (5) calendar days after the giving of notice thereof. If any such notice requires any action or response by the recipient or involves any consent or approval solicited from the recipient, such fact shall be clearly stated in the notice in the manner provided for in Section 17.3.

16.2 Mortgagees' Notice and Right to Cure. Each Mortgagee shall be entitled to receive notice of any default by any Owner upon whose Parcel it has a Mortgage, provided that such Mortgagee shall have delivered to each Owner a notice in the manner provided in Section 16.1 and in the form hereinafter contained. The form of such notice shall be as follows:

The undersigned, whose address is \_\_\_\_\_, does hereby certify that it is a Mortgagee, as defined in that certain Master Reciprocal Easement Agreement for the Event Center Project recorded on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ in the Official Records of Los Angeles County, California (the "Agreement"), of the tract of land described on the exhibit attached hereto and made a part hereof and being the [\_\_\_\_\_] Parcel in the Project. In the event that any notice of default under the Agreement shall be given to the [\_\_\_\_\_] Parcel Owner, a copy thereof shall be delivered to the undersigned who shall have all rights of such Owner to cure such default pursuant to the terms of the Agreement. Failure to deliver a copy of such notice to the undersigned shall in no way affect the validity of the notice of default as it respects such Owner, but shall toll any applicable time period for cure by the Mortgagee, or the taking of any other action required under this Agreement with respect to the interest of the undersigned, until a copy of such notice is properly delivered to the undersigned.

Any such notice to a Mortgagee shall be given in the same manner as provided in Section 16.1. The giving of any notice of default or the failure to deliver a copy of such notice to any Mortgagee shall in no event create any liability on the part of the Owner so declaring a default or affect the validity of the notice of default but shall toll any applicable time period for cure by the Mortgagee. In the event that any notice shall be given of the default of any Owner and such defaulting Owner has failed to cure or commence to cure such default as provided in the Agreement, then and in that event, any such Mortgagee, under any Mortgage affecting the Parcel of the defaulting Owner which has given notice as above provided, shall be entitled to receive an additional notice given in the manner provided in Section 16.1, that the defaulting Owner has failed to cure such default and such Mortgagee shall have thirty (30) days after said additional notice to cure any such default, or, if such default cannot be cured within thirty (30) days, to

diligently commence curing within such time and diligently cure within a reasonable time thereafter.

## ARTICLE 17

### MISCELLANEOUS

17.1 Captions; Interpretation. The captions of the Sections and Articles of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction. For purposes of ARTICLE 2, the word "in" with respect to an easement created "in" a particular Parcel or Building means, as the context may require, "in," "to," "on," "over," "through," "upon," "across" and "under," or any one or more of the foregoing.

17.2 Consents and Approvals. In any instance in which any Owner to this Agreement shall be requested to consent to or approve of any matter with respect to which such Person's consent or approval is required by any of the provisions of this Agreement, such consent or approval shall be given in writing, and such consent or approval shall not be unreasonably withheld, conditioned or delayed, unless the provisions of this Agreement with respect to a particular consent or approval expressly provide otherwise. Requests for consent or approval shall be subject to the provisions of Section 17.3.

17.3 Exercise of Approval Rights. Wherever in this Agreement approval or consent of any Owner is required, and unless a different time limit is specifically provided, such approval or disapproval shall be given within sixty (60) days following the receipt by the consenting Owner of the item to be so approved or disapproved, or the same shall be conclusively deemed to have been approved by such Owner. Any disapproval shall specify with particularity the reasons therefor and shall include recommendations for change, where appropriate; provided, however, that wherever in this Agreement any Owner is given the right to approve or disapprove in its sole and absolute judgment or discretion, it may disapprove without specifying a reason therefore and such disapproval shall not be subject to contest in any judicial, arbitration or other proceeding.

17.4 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California and any applicable federal laws and regulations.

17.5 Injunctive Relief. In the event of any violation or threatened violation by any Person of any of the terms, restrictions, covenants and conditions of this Agreement, any of the Owners shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

17.6 No Partnership. None of the terms or provisions of this Agreement shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Owners.

17.7 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project or any Parcel or create prescriptive rights to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention of the Owners that this Agreement shall be strictly limited to and for the purposes herein expressed.

Each Owner, by appropriate rules and regulations adopted pursuant to this Agreement, shall have the right to regulate any use of its Parcels by any Person and prohibit such use for any purpose which is adverse to the operation of its Parcel. Nothing herein contained, however, shall be deemed to limit or restrict public access to those portions of the Project to which such access is required by reason of conditions imposed by any applicable public authority.

17.8 Force Majeure. Whenever performance is required of any Owner hereunder, that Owner shall use all due diligence to perform and take all necessary measures in good faith to perform. If, however, completion of performance of any obligation (except any obligation to pay any sums of money under the applicable provisions hereof) shall be delayed at any time by reason of acts of God, fire, earthquake, floods, explosion, acts of the elements, war, invasion, insurrection, riot, mob violence, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lock-outs, actions of labor unions, condemnation, requisition, Legal Requirements, orders of governmental or military authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner (financial inability, imprudent management or negligence excepted), then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. Notwithstanding any specific references in certain other sections of this Agreement to this Section, the absence of such specific reference in any other provisions shall not affect the general applicability of this Section.

17.9 Severability. If any term, provision, covenant or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision, covenant or condition to Persons or circumstances other than those in respect of which it is invalid or unenforceable), except those terms, provisions, covenants or conditions which are made subject to or conditioned upon such invalid or unenforceable term, provision, covenant or condition, shall not be affected thereby, and each term, provision, covenant and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

17.10 Successors. This Agreement shall, except as otherwise specifically provided herein, run with the land, both as respects benefits and burdens created herein.

17.11 Time of Essence. Time is of the essence with respect to the performance of each of the terms, conditions, covenants and agreements contained in this Agreement.

17.12 Attorneys' Fees. In the event any Owner shall institute any action or proceeding (including arbitration) relating to violations, threatened violations or failure of performance of or under this Agreement, or any default hereunder, or to enforce the provisions hereof, then the prevailing party shall not be entitled to recover any attorneys' fees and costs.

17.13 Exhibits. All exhibits and schedules attached to this Agreement shall be deemed to be incorporated herein by the individual reference to each such exhibit or schedule, and all such exhibits and schedules shall be deemed to be a part of this Agreement as though set forth in full in the body of the Agreement. In the event of any conflict between the terms and conditions of this Agreement and any exhibit or schedule, the terms and conditions of this Agreement shall control.

17.14 Agents. The exercise of any powers and rights of an Owner under this Agreement by such Owner's agent shall be binding upon all Persons having an interest in any such Parcel owned by such Owner. Such Owner's agent shall, so long as such designation remains in effect, be deemed to be an Owner hereunder and the remaining Persons owning (or otherwise having an interest in) such Parcel shall be deemed not to be Owners, but such designation shall not relieve any Person from the obligations created by this Agreement. The other Owners shall have the right to deal with and rely upon the acts or omissions of such Owner's agent in the performance of this Agreement. Any Person designated an Owner's agent pursuant to the provisions of this Section shall be the agent of its principals, upon whom service of any process, writ, summons, order or other mandate of any nature, of any court in any action, suit or proceeding arising out of this Agreement, or any demand for arbitration may be made, and service upon such Owner's agent shall constitute due and proper service of any such matter upon his principal. Until a successor Owner's agent has been appointed and notice of such appointment has been given pursuant to the provisions of this Section, the designation of an Owner's agent shall remain irrevocable.

17.15 Conflicts. In the event that any of the terms and provisions of any other agreement (other than a Mortgage) encumbering the Project conflict or are inconsistent with any of the terms and provisions hereof, for purposes of determining the duties and obligations of the parties hereto, the terms and provisions of this Agreement shall govern and control in all respects.

17.16 Anti-Merger. No union of the interests of any Owner with respect to more than one Parcel shall result in a merger of the easement and other rights granted under this Agreement with respect to such Parcels or any other Parcel.

17.17 Further Assurance and Definition of Easement Locations. Each Owner will cooperate with any other Owner in good faith in identifying and providing, and hereby agrees to grant or provide, such additional easements or rights over such Owner's Parcel to the extent that such other easements or rights are reasonably necessary for the use or operation of any other Parcel so long as such easements or other rights do not adversely affect the granting Owner's rights or obligations under this Agreement or the use or operation of its Parcel or any Improvements thereon. At the request of any Owner, the Owner(s) whose Parcel(s) are benefited and/or burdened by an easement granted or encroachment permitted under this Agreement shall cooperate to designate the nature and location(s) of such easement support structure or encroachment on a map, diagram or As-Built Plan, and when approved and executed by all of the Owners benefited and/or burdened thereby, an amendment to this Agreement incorporating such map, diagram and/or As-Built Plans shall constitute the nature and location of such easement for purposes of this Agreement (subject to relocation or modification as provided herein), which amendment may be recorded in the Official Records of Los Angeles County. Without limiting the foregoing, each party hereby agrees to the recordation of an amendment to this Agreement, executed by the Owner(s) whose Parcels or easement rights is/are affected thereby, identifying the As-Built Plans for the Improvements so completed on such Owner's Parcel.

17.18 Rule Against Perpetuities. To the extent that any provision of this Agreement would otherwise be invalid or unenforceable due to a violation of the rule against perpetuities, the same shall be construed and interpreted, ut res magis valeat quam pereat (so that it shall have effect rather than be destroyed), as though it were expressly stated that the happening of any contingency or

event must take place, if at all, within the maximum period permitted therefor in order not to violate said rule.

17.19 Estoppel Certificates. Each Owner, at any time and from time to time upon not less than 20 days' prior written notice from any other Owner, shall execute, acknowledge and deliver to such other Owner, or, at such other Owner's request, to any other Person reasonably requested by such other Owner, a certificate legally sufficient to establish the following: (a) if true, that this Agreement has not been assigned by the responding Owner or amended by it, and to the best of its knowledge is unmodified and in full force and effect (or, if there have been such assignments, amendments or modifications, that this Agreement to the best of its knowledge is in full force and effect as assigned, amended or modified, and stating the nature of the assignment, amendment or modification); (b) whether, to the best of such Person's knowledge, there are then existing any defenses against the enforcement of any of the obligations of the requesting Owner under this Agreement (and, if so, specifying same); and (c) whether, to such Person's actual knowledge, there are then existing any defaults by any Owner in the performance of its obligations under this Agreement (and, if so, specifying same). It is intended that any such certificate delivered pursuant to this Section 17.19 may be relied upon by the requesting Owner and any such other Person. Such statement shall act as a waiver of any claim by the Owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement and who has acted in reasonable reliance upon the statement.

17.20 Proprietary and Governmental Roles: Actions by Parties. Except where clearly and expressly provided otherwise in this Agreement, the capacity of the City in this Agreement shall be as owner and/or lessor of property only ("Proprietary Capacity"), and any obligations or restrictions imposed by this Agreement on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the governmental capacity of the City, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions of each pursuant to federal, state or local law ("Governmental Capacity"). In addition, nothing in this Agreement shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable Legal Requirements, and no provision of this Agreement shall limit the police powers of the City.

17.21 Multiple Roles. Except where clearly and expressly provided otherwise in this Agreement, this Agreement shall be binding upon and inure to the benefit of the City (a) in its capacity as fee owner of the Parcels, (b) during such time as any of the Project Ground Leases are in effect, in its capacity as ground lessor under each applicable Project Ground Lease, and (c) during such time as there is a sublease on the Convention Center Parcel, in its capacity as the ground sublessee pursuant to such sublease (or the ground sublessor, if ever applicable). The provisions of this Section 17.21 shall survive the termination of this Agreement.

17.22 Ordinance Mandated Provisions.

17.22.1 Attached Ordinance Provisions. The parties to this Agreement hereby acknowledge that the City of Los Angeles Administrative Code contains various ordinances that mandate certain provisions in certain types of agreements to which City is a

party. Some of such ordinances are codified in the following City of Los Angeles Administrative Code Sections:

- (a) Section 10.8 (Mandatory Provisions Pertaining to Non-discrimination in Employment in the Performance of City Contracts), including without limitation Section 10.8.2 (Non-discrimination clause), Section 10.8.2.1 (Equal Benefits Ordinance), Section 10.8.3 (Equal Employment Practices Provisions), and Section 10.8.4 (Affirmative Action Program Provisions), all of which are set forth in Exhibit D-1.
- (b) Section 10.10 (Child Support Assignment Orders), which is set forth in Exhibit D-2.
- (c) Section 10.36 (Service Contractor Worker Retention), which is set forth in Exhibit D-3.
- (d) Section 10.37 (Living Wage), which is set forth in Exhibit D-4.
- (e) Section 10.40 (Contractor Responsibility Program), which is set forth in Exhibit D-5.
- (f) Section 10.41 (Regulations Regarding Participation in or Profits Derived from Slavery by any Company Doing Business with the City), which is set forth in Exhibit D-6.
- (g) Section 10.44 (First Source Hiring), which is set forth in Exhibit D-7.
- (h) Section 10.45 (Public Infrastructure Stabilization Ordinance), which is set forth in Exhibit D-8.
- (i) Section 10.47 (Local Business Preference Program), which is set forth in Exhibit D-9.

The parties agree that the applicability of the above-referenced Administrative Code Sections to this Agreement will need to be determined from time to time during the term of this Agreement, and such determination shall be made in accordance with and pursuant to such Administrative Code Sections, the rules and regulations, if any, promulgated therefor, all judicial and/or regulatory determinations interpreting, administering, and/or applying in any way to such Administrative Code Sections or the enforcement thereof. To the extent any of the Administrative Code Sections listed above is determined to be applicable to this Agreement: (i) this Agreement shall be subject to such Administrative Code Section, as amended, (ii) the applicable Ground Lessee who is required to comply with such Administrative Code Section shall so comply, and to the extent required by such ordinance, ensure compliance with all applicable obligations and requirements set forth in such Administrative Code Section, as amended; and (iii) to the extent such Administrative Code Section requires inclusion in this Agreement certain language or provision, the parties hereto agree that such language/provision shall be deemed included in this Agreement (with the appropriate adjustment for defined terms) and shall have the same effect as if it were fully set forth in this Section 17.22.

To the extent that Section 10.10 (Child Support Assignment Order) of the Administrative Code: (i) is applicable to this Agreement and (ii) contains terms and provisions that conflict with terms and provisions of this Agreement, the terms and provisions of Section 10.10 of the Administrative Code shall govern.

17.22.2 Tax Registration Certificates And Tax Payments. This Section 17.22.2 is applicable to a particular Ground Lessee where such Ground Lessee is engaged in business within the City of Los Angeles and such Ground Lessee is required to obtain a Tax Registration Certificate ("TRC") pursuant to one or more of the following article (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 Tenant'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 of this Agreement, each Ground Lessee shall provide to the City Administrative Officer proof satisfactory to the City Administrative Officer that such Ground Lessee has the required TRCs and that it is not then currently delinquent in any tax payment required under the Tax Ordinances. City may terminate this Agreement as to a particular Ground Lessee upon thirty (30) days' prior written notice to such Ground Lessee if City determines that such Ground Lessee failed to have the required TRCs or was delinquent in any tax payments required under the Tax Ordinances at the time of entering into or extending the term of this Agreement. City may also terminate this Agreement as to a particular Ground Lessee upon ninety (90) days prior written notice to such Ground Lessee at any time during the term of this Agreement if such Ground Lessee fails to maintain required TRCs or becomes delinquent in tax payments required under the Tax Ordinances and such Ground Lessee fails to cure such deficiencies within the ninety (90) day period (in lieu of any time for cure provided in Section 9).

17.23 Modifications to Legal Descriptions of Property. Each of the Convention Center Parcel, the L.A. Live Way Garage Parcel and the Bond Street Garage Parcel is proposed to be modified with the addition of (a) certain areas proposed to be vacated pursuant to certain street vacations (the "Street Vacations") and (b) certain areas currently owned by the California Department of Transportation (the "Caltrans Add Areas"). Upon the recordation of each "Resolution to Vacate" with respect to the Street Vacations and upon the grant by Caltrans to the City of one or more of the Caltrans Add Areas, such property shall automatically, and without further action of the Parties, be deemed included as part of the Convention Center Parcel, the L.A. Live Way Garage Parcel or the Bond Street Garage Parcel, as the case may be, as though such property were included in the legal descriptions of the Convention Center Parcel, the L.A. Live Way Garage Parcel or the Bond Street Garage Parcel, as the case may be, and each part thereof as of the Effective Date. To reflect these changes, prior to the issuance of the certificate of occupancy for the Event Center, the Parties shall revise the legal descriptions for each of the Convention Center Parcel, the L.A. Live Way Garage Parcel and the Bond Street Garage Parcel with a final legal description and shall record the updated legal description as a correction to the legal descriptions set forth in Exhibits A-2, A-3 and A-4, respectively, to this Agreement. City Council approval shall not be required in connection with the foregoing correction of the legal descriptions.

*[Signatures on next page]*

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

**CONVENTION CENTER PARCEL OWNER, EVENT CENTER PARCEL OWNER,  
STAPLES CENTER PARCEL OWNER, LA LIVE WAY GARAGE PARCEL OWNER,  
AND BOND STREET GARAGE PARCEL OWNER:**

CITY OF LOS ANGELES,  
a municipal corporation of  
the State of California

APPROVED AS TO FORM:  
CARMEN A. TRUTANICH, City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Senior Assistant  
City Attorney

DATE: \_\_\_\_\_

ATTEST:  
June Lagmay, City Clerk

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

DATE: \_\_\_\_\_

[signatures continued on next page]

**EVENT CENTER GROUND LESSEE:**

L.A. EVENT CENTER, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STAPLES CENTER GROUND LESSEE:**

L.A. ARENA LAND COMPANY, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LA LIVE WAY GARAGE GROUND LESSEE:**

L.A. PARKING STRUCTURES, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BOND STREET GARAGE GROUND LESSEE:**

L.A. PARKING STRUCTURES, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF CALIFORNIA            }  
COUNTY OF LOS ANGELES       } S.S.

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared, \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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

(Notary Seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA            }  
COUNTY OF LOS ANGELES       } S.S.

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared, \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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

(Notary Seal)

EXHIBIT A-1

LEGAL DESCRIPTION OF EVENT CENTER PARCEL

Exhibit A-2

**Convention Center Legal Description**

Convention Center Remainder Parcel:

See attached.

Gilbert Lindsay Parcel:

See attached.

New Hall Parcel:

See attached.

EXHIBIT A-3

LEGAL DESCRIPTION OF L.A. LIVE WAY GARAGE PARCEL

EXHIBIT A-4

LEGAL DESCRIPTION OF BOND STREET GARAGE PARCEL

EXHIBIT A-5

LEGAL DESCRIPTION OF STAPLES CENTER PARCEL

EXHIBIT B  
EASEMENT AREAS

EXHIBIT C

PROJECT SITE PLAN

EXHIBIT D-1: NON-DISCRIMINATION

See attached.

**Sec. 10.8. Mandatory Provisions Pertaining to Non-discrimination in Employment in the Performance of City Contracts.**

The City of Los Angeles, in letting and awarding contracts for the provision to it or on its behalf of goods or services of any kind or nature, intends to deal only with those contractors that comply with the non-discrimination and Affirmative Action provisions of the laws of the United States of America, the State of California and the City of Los Angeles. The City and each of its awarding authorities, shall therefore require that any person, firm, corporation, partnership or combination thereof, that contracts with the City for services, materials or supplies, shall not discriminate in any of its hiring or employment practices, shall comply with all provisions pertaining to nondiscrimination in hiring and employment, and shall require Affirmative Action Programs in contracts in accordance with the provisions of this Code. The awarding authority and/or Office of Contract Compliance of the Department of Public Works shall monitor and inspect the activities of each such contractor to determine that they are in compliance with the provisions of this chapter.

Although in accordance with Section 22.359 of this Code, the Board of Public Works, Office of Contract Compliance, is responsible for the administration of the City's Contract Compliance Program, accomplishing the intent of the City in contract compliance and achieving nondiscrimination in contractor employment shall be the continuing responsibility of each awarding authority. Each awarding authority shall use only the rules, regulations and forms provided by the Office of Contract Compliance to monitor, inspect or investigate contractor compliance with the provisions of this chapter.

Each awarding authority shall provide immediate notification upon award of each contract by that awarding authority to the Office of Contract Compliance. Each awarding authority shall call upon the Office of Contract Compliance to review, evaluate and recommend on any contractual dispute or issue of noncompliance under the provisions of this chapter. The Office of Contract Compliance shall be notified by each awarding authority of any imminent announcement to bid, to allow the Office of Contract Compliance the opportunity to participate with the awarding authority in the monitoring, review, evaluation, investigation, audit and enforcement of the provisions of this chapter in accordance with the rules, regulations and forms promulgated to implement the City's Contract Compliance, Equal Employment Opportunity Program.

**SECTION HISTORY**

Based on Ord. No. 132,533, Eff. 7-25-66.

Amended by: Ord. No. 147,030, Eff. 4-28-75; Ord. No. 173,186, Eff. 5-22-00.

**Sec. 10.8.1. Definitions.**

The following definitions shall apply to the following terms used in this article:

**"Awarding Authority"** means any Board or Commission of the City of Los Angeles, or any authorized employee or officer of the City of Los Angeles, including the Purchasing Agent of the City of Los Angeles, who makes or enters into any contract or agreement for the provision of any goods or services of any kind or nature whatsoever for or on behalf of the City of Los Angeles.

**"Contract"** means any agreement, franchise, lease, or concession, including

agreements for any occasional professional or technical personal services, for the performance of any work or service, the provision of any materials or supplies, or the rendition of any service to the City of Los Angeles or to the public, which is let, awarded or entered into with, or on behalf of, the City of Los Angeles or any awarding authority thereof.

**“Contractor”** means any person, firm, corporation, partnership, or any combination thereof, who submits a bid or proposal or enters into a contract with any awarding authority of the City of Los Angeles.

**“Domestic partners”** means, for purposes of this Article, any two adults, of the same or different sex, who have registered with a governmental entity pursuant to state or local law authorizing this registration or with a internal registry maintained by an employer of at least one of the domestic partners.

**“Employment Practices”** means any solicitation of, or advertisement for, employees, employment, change in grade or work assignment, assignment or change in place or location of work, layoff, suspension, or termination of employees, rate of pay or other form of compensation including vacation, sick and compensatory time, selection for training, including apprenticeship programs, any and all employee benefits and activities, promotion and upgrading, and any and all actions taken to discipline employees for infractions of work rules or employer requirements.

**“Office of Contract Compliance”** is that office of the Department of Public Works of the City of Los Angeles created by Article X of Chapter 13 of Division 22 of the Los Angeles Administrative Code.

**“Subcontractor”** means any person, firm or corporation or partnership, or any combination thereof who enters into a contract with a contractor to perform or provide a portion or part of any contract with the City.

#### SECTION HISTORY

Amended by: Ord. No. 147,030, Eff. 4-28-75; “Affirmative Action,” Ord. No. 164,516, Eff. 4-13-89; “Affirmative Action,” Ord. No. 168,244, Eff. 10-18-92; “Domestic partners” added, Ord. No. 172,909, Eff. 1-9-00; first two definitions deleted, Ord. No. 173,186, Eff. 5-22-00; “Domestic partners,” Ord. No. 175,115, Eff. 4-12-03.

#### **Sec. 10.8.1.1. Summary of Thresholds.**

The following thresholds will be used to determine the non-discrimination and affirmative action requirements set forth in this chapter for each type of contract.

**Non-discrimination Practices** as outlined in Section 10.8.2 of this Code, apply to all contracts.

**Equal Employment Practices** as outlined in Section 10.8.3 of this Code, apply to all construction contracts of \$1,000 or more and all non-construction contracts of \$1,000 or more.

**Affirmative Action Program** as outlined in Sections 10.8.4 and 10.13 of this Code, applies to all Construction Contracts of \$5,000 or more and all non-Construction Contracts of \$100,000 or more.

#### SECTION HISTORY

Added by Ord. No. 173,186, Eff. 5-22-00.

**Sec. 10.8.2. All Contracts: Non-discrimination Clause.**

Notwithstanding any other provision of any ordinance of the City of Los Angeles to the contrary, every contract which is let, awarded or entered into with or on behalf of the City of Los Angeles, shall contain by insertion therein a provision obligating the contractor in the performance of such contract not to discriminate in his or her employment practices against any employee or applicant for employment because of the applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition. All contractors who enter into such contracts with the City shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with 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.

**SECTION HISTORY**

Amended by: Ord. No. 147,030, Eff. 4-28-75; Ord. No. 164,516, Eff. 4-13-89; Ord. No. 168,244, Eff. 10-18-92; Title and Sec., Ord. No. 172,910, Eff. 1-9-00; Title and Section, Ord. No. 173,186, Eff. 5-22-00.

**Sec. 10.8.2.1. Equal Benefits Ordinance.**

(a) **Legislative Findings.** The City awards many contracts to private firms to provide services to the public and to City government. Many City contractors and subcontractors perform services that affect the proprietary interests of City government in that their performance impacts the success of City operations. The City holds a proprietary interest in the work performed by many employees employed by City contractors and subcontractors. In a very real sense, the success or failure of City operations may turn on the success or failure of these enterprises, for the City has a genuine stake in how the public perceives the services rendered for them by these businesses.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

(b) **Definitions.** For purposes of the Equal Benefits Ordinance only, the following

shall apply.

(1) **Awarding Authority** means any Board or Commission of the City, or any employee or officer of the City, that is authorized to award or enter into any Contract, as defined in this ordinance, on behalf of the City, and shall include departments having control of their own funds and which adopt policies consonant with the provisions of the Equal Benefits Ordinance.

(2) **Benefits** means any plan, program or policy provided or offered by a Contractor to its employees as part of the employer's total compensation package. This includes but is not limited to the following types of benefits: bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits.

(3) **Cash Equivalent** means the amount of money paid to an employee with a Domestic Partner (or spouse, if applicable) in lieu of providing Benefits to the employee's Domestic Partner (or spouse, if applicable). The Cash Equivalent is equal to the direct expense to the employer of providing Benefits to an employee for his or her Domestic Partner (or spouse, if applicable) or the direct expense to the employer of providing Benefits for the dependents and family members of an employee with a Domestic Partner (or spouse, if applicable).

(4) **City** means the City of Los Angeles.

(5) **Contract** means an agreement the value of which exceeds \$5,000. It includes agreements for work or services to or for the City, for public works or improvements to be performed, agreements for the purchase of goods, equipment, materials, or supplies, or grants to be provided, at the expense of the City or to be paid out of monies under the control of the City. The term also includes a Lease or License, as defined in the Equal Benefits Ordinance.

(6) **Contractor** means any person or persons, firm, partnership, corporation, joint venture, or any combination of these, or any governmental entity acting in its proprietary capacity, that enters into a Contract with any Awarding Authority of the City. The term does not include Subcontractors.

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

(8) **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.

(9) **Equal Benefits Ordinance** means Los Angeles Administrative Code Section 10.8.2.1, *et seq.*, as amended from time to time.

(10) **Equal Benefits** means the equality of benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(11) **Lease or License** means any agreement allowing others to use property owned or controlled by the City, any agreement allowing others the use of City property in order to provide services to or for the City, such as for concession agreements, and any agreement allowing the City to use property owned or controlled by others.

(12) **Subcontractor** means any person or persons, firm, partnership, corporation, joint venture, or any combination of these, and any governmental entity, that assists the Contractor in performing or fulfilling the terms of the Contract. Subcontractors are not subject to the requirements of the Equal Benefits Ordinance unless they otherwise have a Contract directly with the City.

(c) **Equal Benefits Requirements.**

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

(d) **Other Options for Compliance.** Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

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 the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) **Applicability.**

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) **Mandatory Contract Provisions Pertaining to Equal Benefits.** Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, *et seq.*, Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits

Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, *et seq.*, Contractor Responsibility Ordinance.

(g) **Administration.**

(1) The DAA is responsible for the enforcement of the Equal Benefits Ordinance for all City Contracts. Each Awarding Authority shall cooperate to the fullest extent with the DAA in its enforcement activities.

(2) In enforcing the requirements of the Equal Benefits Ordinance, the DAA may monitor, inspect, and investigate to insure that the Contractor is acting in compliance with the Equal Benefits Ordinance.

(3) The DAA shall promulgate rules and regulations and forms for the implementation of the Equal Benefits Ordinance. No other rules, regulations or forms may be used by an Awarding Authority of the City to accomplish this contract compliance program.

(h) **Enforcement.**

(1) If the Contractor fails to comply with the Equal Benefits Ordinance:

a. The failure to comply may be deemed to be a material breach of the Contract by the Awarding Authority; or

b. The Awarding Authority may cancel, terminate or suspend, in whole or in part, the contract; or

c. Monies due or to become due under the Contract may be retained by the City until compliance is achieved;

d. The City may also pursue any and all other remedies at law or in equity for any breach.

e. The City may use failure to comply with the Equal Benefits Ordinance as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, *et seq.*, Contractor Responsibility Ordinance.

(i) **Non-applicability, Exceptions and Waivers.**

(1) Upon request of the Awarding Authority, the DAA may waive compliance with the Equal Benefits Ordinance under the following circumstances:

a. The Contract is for the use of City property, and there is only one prospective Contractor willing to enter into the Contract; or

b. The Contract is for needed goods, services, construction of a public work or improvement, or interest in or right to use real property that is available only from a single prospective Contractor, and that prospective Contractor is otherwise qualified and acceptable to the City; or

c. The Contract is necessary to respond to an emergency that endangers the public health or safety, and no entity which complies with

the requirements of the Equal Benefits Ordinance capable of responding to the emergency is immediately available; or

d. The City Attorney certifies in writing that the Contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of the Equal Benefits Ordinance; or

e. The Contract is (i) with a public entity; (ii) for goods, services, construction of a public work or improvement, or interest in or right to use real property; and (iii) that is either not available from another source, or is necessary to serve a substantial public interest. A Contract for interest in or the right to use real property shall not be considered as not being available from another source unless there is no other site of comparable quality or accessibility available from another source; or

f. The requirements of the Equal Benefits Ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of the agency with respect to the grant, subvention or agreement, provided that the Awarding Authority has made a good faith attempt to change the terms or conditions of the grant, subvention or agreement to authorize application of the Equal Benefits Ordinance; or

g. The Contract is for goods, a service or a project that is essential to the City or City residents and there are no qualified responsive bidders or prospective Contractors who could be certified as being in compliance with the requirements of the Equal Benefits Ordinance; or

h. The Contract involves bulk purchasing arrangements through City, federal, state or regional entities that actually reduce the City's purchasing costs and would be in the best interests of the City.

(2) The Equal Benefits Ordinance does not apply to contracts which involve:

a. The investment of trust monies, bond proceeds or agreements relating to the management of these funds, indentures, security enhancement agreements (including, but not limited to, liquidity agreements, letters of credit, bond insurance) for City tax-exempt and taxable financings, deposits of City's surplus funds in financial institutions, the investment of City monies in competitively bid investment agreements, the investment of City monies in securities permitted under the California State Government Code and/or the City's investment policy, investment agreements, repurchase agreements, City monies invested in U.S. government securities or pre-existing investment agreements;

b. Contracts involving City monies in which the Treasurer or the City Administrative Officer finds that either:

(i) No person, entity or financial institution doing business in the City, which is in compliance with the Equal Benefits Ordinance, is capable of performing the desired transaction(s); or

(ii) The City will incur a financial loss or forego a financial benefit which in the opinion of the Treasurer or City Administrative Officer would violate his or her fiduciary duties.

(3) The Equal Benefits Ordinance does not apply to contracts for gifts to the City.

(4) Nothing in this Subsection shall limit the right of the City to waive the provisions of the Equal Benefits Ordinance.

(5) The provisions of this Subsection shall apply to the Equal Benefits Ordinance only. The Equal Benefits Ordinance is not subject to the exemptions provided in Section 10.9 of this Code.

(j) **Consistency with Federal or State Law.** The provisions of the Equal Benefits Ordinance do not apply where the application of these provisions would violate or be inconsistent with the laws, rules or regulations federal or state law, or where the application would violate or be inconsistent with the terms or conditions of a grant or contract with the United States of America, the State of California, or the instruction of an authorized representative of any of these agencies with respect to any grant or contract.

(k) **Severability.** If any provision of the Equal Benefits Ordinance is declared legally invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

(l) **Timing of Application.**

(1) The requirements of the Equal Benefits Ordinance shall not apply to Contracts executed or amended prior to January 1, 2000, or to bid packages advertised and made available to the public, or any bids received by the City, prior to January 1, 2000, unless and until those Contracts are amended after January 1, 2000 and would otherwise be subject to the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to competitively bid Contracts that are amended after April 1, 2003, and to competitively bid Contracts that result from bid packages advertised and made available to the public after May 1, 2003.

(3) Unless otherwise exempt, the Equal Benefits Ordinance applies to any agreement executed or amended after January 1, 2000, that meets the definition of a Contract as defined within Subsection 10.8.2.1(b).

SECTION HISTORY

Added by Ord. No. 172,908, Eff. 1-9-00.

Amended by: Ord. No. 173,054, Eff. 2-27-00; Ord. No. 173,058, Eff. 3-4-00; Ord. No. 173,142, Eff. 3-30-00; Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00; In Entirety, Ord. No. 175,115, Eff. 4-12-03; Subsec. (b)(7), Ord. No. 176,155, Eff. 9-22-04.

**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 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 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 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 the 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 conduct of City Contracts.

**K.** Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Hiring practices;
2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
3. Training and promotional opportunities; and
4. Reasonable accommodations for persons with disabilities.

**L.** 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.

#### SECTION HISTORY

Amended by: Ord. No. 147,030, Eff. 4-28-75; Paragraphs A., B., C., Ord. No. 164,516, Eff. 4-13-89; Paragraphs C., Ord. No. 168,244, Eff. 10-18-92; Ord. No. 173,186, Eff. 5-22-00; Subsec. F Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00.

#### **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 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 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 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 cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City 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.

#### SECTION HISTORY

Amended by Ord. No. 147,030, Eff. 4-28-75; Paragraphs A., B., C., Ord. No. 164,516, Eff. 4-13-89; Paragraphs B. and C., Ord. No. 168,244, Eff. 10-18-92; Title and Section, Ord. No. 173,186, Eff. 5-22-00; Subsec. F, Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00.

#### **Sec. 10.8.5. Notice of Bid Announcement.**

Each awarding authority shall be responsible for giving notice to all prospective bidders of the requirements of this section and when requested by the Office of Contract Compliance, to give the Office of Contract Compliance notice of each contract proposed to be put to public bid or otherwise awarded and if requested shall provide a copy of the bid package to the Office of Contract Compliance for approval. The Office of Contract Compliance shall have a maximum of fifteen (15) calendar days after receipt of notice of imminent announcement for bid to approve the bid package and to advise the awarding authority of its participation in the contract. Lack of response by the Office of Contract Compliance shall not remove any responsibility of the awarding authority to comply with the requirements of this division.

SECTION HISTORY

Amended by Ord. No. 147,030, Eff. 4-28-75.

**Sec. 10.8.6. Exemptions.**

Exempt from application of Section 10.8 through 10.8.4 of this article are cases of urgent necessity, as provided in Section 371 of the Charter of the City of Los Angeles, and as provided in Section 10.9 (a), (b), and (d) of this article.

SECTION HISTORY

Added by Ord. No. 147,030, Eff. 4-28-75.

Amended by: Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00.

**Sec. 10.8.7. Interpretation of "Disability" and "Medical Condition."**

The terms "**disability**" and "**medical condition**" as used in this chapter shall be interpreted and construed as they are by federal and State law.

SECTION HISTORY

Added by Ord. No. 168,244, Eff. 10-18-92.

Amended by: Title and Section, Ord. No. 173,186, Eff. 5-22-00.

EXHIBIT D-2: CHILD SUPPORT ORDERS

See attached.

## Sec. 10.10. Child Support Assignment Orders.

### a. Definitions.

1. **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.

2. **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 the rendering of any service to the City of Los Angeles or to the public which is let, awarded or entered into with, or on behalf of, the City of Los Angeles or any awarding authority thereof.

3. **Contractor** means any person, firm, corporation, partnership or any combination thereof which submits a bid or proposal or enters into a contract with any awarding authority of the City of Los Angeles.

4. **Subcontractor** means any person, firm, corporation, partnership or any combination thereof who enters into a contract with a contractor to perform or provide a portion of any contract with the City.

5. **Principal Owner** means any person who owns an interest of 10 percent or more in a contractor or subcontractor as defined herein.

b. **Mandatory Contract Provisions.** Every contract that is let, awarded or entered into with or on behalf of the City of Los Angeles shall contain a provision obligating the contractor or subcontractor to fully comply with all applicable State and Federal employment reporting requirements for the contractor or subcontractor's employees. The contractor or subcontractor will also be required to certify that the principal owner(s) thereof are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally, that the contractor or subcontractor will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with California Family Code §§5230 *et seq.* and that the contractor or subcontractor will maintain such compliance throughout the term of the contract.

Failure of a contractor or subcontractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owner(s) to comply with any Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute a default under the contract. Failure of the contractor or subcontractor or principal owner thereof to cure the default within 90 days of notice of such default by the City shall subject the contract to termination.

c. **Notice to Bidders.** Each awarding authority shall be responsible for giving notice of the provisions of this ordinance to those who bid on, or submit proposals for, prospective contracts with the City.

d. **Current Contractor Compliance.** Within 30 days of the operative date of this

ordinance, the City, through its operating departments, shall serve upon existing contractors a written request that they and their subcontractors (if any) comply with all applicable State and Federal employment reporting requirements for the contractor and subcontractor's employees, that they certify that the principal owner(s) of the contractor and any subcontractor are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally, that the contractor and subcontractor will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with California Family Code §§5230 *et seq.* and that the contractor and subcontractor will maintain such compliance throughout the term of the contract.

e. **City's Compliance with California Family Code.** The City shall maintain its compliance with the provisions of California Family Code §§5230 *et seq.* and all other applicable law regarding its obligations as an employer to implement lawfully served Wage and Earnings Assignments and Notices of Assignment.

f. **Report of Employees' Names to District Attorney.**

1. The City shall maintain its current practice of assisting the District Attorney's support enforcement activities by annually reporting to the Los Angeles County District Attorney the names of all of its employees and retirees so that the District Attorney may identify those employees and retirees subject to Wage and Earnings Assignment Orders and Notices of Assignment and may establish court orders for support, where appropriate. Should the District Attorney so request it, the City will provide such information on a more frequent basis.

2. All applicants for employment with the City of Los Angeles will be asked to acknowledge their responsibility to comply with any court-ordered support obligations and will be advised of the City's practice of assisting the District Attorney as described in the provisions of Subsection f.1., above.

SECTION HISTORY

Added by Ord. No. 172,401, Eff.2-13-99.

EXHIBIT D-3: SERVICE CONTRACT WORKER RETENTION

See attached.

# ARTICLE 10

## SERVICE CONTRACTOR WORKER RETENTION

Section

- 10.36 Findings and Statement of Policy.
- 10.36.1 Definitions.
- 10.36.2 Transition Employment Period.
- 10.36.3 Enforcement.
- 10.36.4 Exemption for Successor Contractor or Subcontractor's Prior Employees.
- 10.36.5 Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.
- 10.36.6 Expenditures Covered by this Article.
- 10.36.7 Timing of Application of Ordinances Adding and Then Amending this Article.
- 10.36.8 Promulgation of Implementing Rules.
- 10.36.9 Severability.

**Sec. 10.36. Findings and Statement of Policy.**

The City awards many contracts to private firms to provide services to the public and to City government. The City also provides financial assistance and funding to others for the purpose of economic development or job growth. At the conclusion of the terms of a service contract with the City or with those receiving financial assistance from the City, competition results in the awarding of a service contract to what may be a different contractor. These new contracts often involve anticipated changes in different managerial skills, new technology or techniques, new themes or presentations, or lower costs.

The City expends grant funds under programs created by the federal and state governments. Such expenditures serve to promote the goals established for those programs by such governments and similar goals of the City. The City intends that the policies underlying this article serve to guide the expenditure of such funds to the extent allowed by the laws under which such grant programs are established.

Despite desired changes through the process of entering into new contracts, it is the experience of the City that reasons for change do not necessarily include a need to replace workers presently performing services who already have useful knowledge about the workplace where the services are performed.

Incumbent workers have already invaluable knowledge and experience with the work schedules, practices, and clients. The benefits of replacing these workers without such experiences decreases efficiency and results in a disservice to City and City financed or assisted projects.

Retaining existing service workers when a change in contractors occurs reduces the

likelihood of labor disputes and disruptions. The reduction of the likelihood of labor disputes and disruptions results in the assured continuity of services to citizens who receive services provided by the City or by City financed or assisted projects.

It is unacceptable that contracting decisions involving the expenditure of City funds should have any potential effect of creating unemployment and the consequential need for social services. The City, as a principal provider of social support services, has an interest in the stability of employment under contracts with the City or by those receiving financial assistance from the City. The retention of existing workers benefits that interest.

#### SECTION HISTORY

Article and Section Added by Ord. No. 170,784, Eff. 1-13-96.

Amended by: Article and Section, Ord. No. 171,004, Eff. 5-18-96.

#### **Sec. 10.36.1. Definitions.**

The following definitions shall apply throughout this article:

(a) **“Awarding authority”** means that subordinate or component entity or person of the City (such as a department) or of the financial assistance recipient that awards or is otherwise responsible for the administration of a service contract or, if none, then the City or the City financial assistance recipient.

(b) **“City”** means the City of Los Angeles and all awarding authorities thereof, including those City departments which exercise independent control over their expenditure of funds, but excludes the Community Redevelopment Agency of the City of Los Angeles.

(c) **“City financial assistance recipient”** means any person that receives from the City in any twelve-month period discrete financial assistance for economic development or job growth expressly articulated and identified by the City totaling at least one hundred thousand dollars (\$100,000); provided, however, that corporations organized under Section §501(c)(3) of the United States Internal Revenue Code of 1954, 26 U.S.C. §501(c)(3), with annual operating budgets of less than five million dollars (\$5,000,000) or that regularly employ homeless persons, persons who are chronically unemployed, or persons receiving public assistance, shall be exempt.

Categories of such assistance include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f). A recipient shall not be deemed to include lessees and sublessees. Service contracts for economic development or job growth shall be deemed such assistance once the \$100,000 threshold is reached.

(d) **“Contractor”** means any person that enters into a service contract with the City or a City financial assistance recipient.

(e) **“Employee”** means any person employed as a service employee of a contractor or subcontractor earning less than fifteen dollars (\$15.00) per hour in salary or wage whose primary place of employment is in the City on or under the authority of a service contract and including but not limited to: hotel employees, restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; nonprofessional health care employees; gardeners; waste management employees; and clerical employees; and does not include a person who is (1) a managerial, supervisory, or confidential employees, or (2) required to possess an occupational license.

(f) **“Person”** means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(g) **“Service contract”** means a contract let to a contractor by the City or a City financial assistance recipient primarily for the furnishing of services to or for the City or financial assistance recipient (as opposed to the purchase of goods or other property) and that involves an expenditure or receipt in excess of twenty-five thousand dollars (\$25,000) and a contract term of at least three months.

(h) **“Subcontractor”** means any person not an employee that enters into a contract with a contractor to assist the contractor in performing a service contract and that employs employees for such purpose.

(i) **“Successor service contract”** means a service contract where the services to be performed are substantially similar to a service contract that has been recently terminated.

(j) **“Designated Administrative Agency (DAA)”** means the Department of Public Works, Bureau of Contract Administration who shall bear administrative responsibilities under this article.

#### SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96.

Amended by: Ord. No. 171,004, Eff. 5-18-96; Subsec. (c), Ord. No. 172,843, Eff. 11-4-99; Subsec. (j) added, Ord. No. 176,155, Eff. 9-22-04; Subsec. (j), Ord. No. 176,283, Eff. 12-25-04, Oper. 9-22-04.

#### **Sec. 10.36.2. Transition Employment Period.**

(a) Where an awarding authority has given notice that a service contract has been terminated, or where a service contractor has given notice of such termination, upon receiving or giving such notice, as the case may be, the terminated contractor shall within ten (10) days thereafter provide to the successor contractor the name, address, date of hire, and employment occupation classification of each employee in employment, of itself or subcontractors, at the time of contract termination. If the terminated contractor has not learned the identity of the successor contractor, if any, by the time that notice was given of contract termination, the terminated contractor shall obtain such information from the awarding authority. If a successor service contract has not been awarded by the

end of the ten (10)-day period, the employment information referred to earlier in this subsection shall be provided to the awarding authority at such time. Where a subcontract of a service contract has been terminated prior to the termination of the service contract, the terminated subcontractor shall for purposes of this article be deemed a terminated contractor.

(1) Where a service contract or contracts are being let where the same or similar services were rendered by under multiple service contracts, the City or City financial aid recipient shall pool the employees, ordered by seniority within job classification, under such prior contracts.

(2) Where the use of subcontractors has occurred under the terminated contract or where the use of subcontractors is to be permitted under the successor contract, or where both circumstances arise, the City or City financial assistance recipient shall pool, when applicable, the employees, ordered by seniority within job classification, under such prior contracts or subcontracts where required by and in accordance with rules authorized by this article.

(b) A successor contractor shall retain, for a ninety (90)-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding twelve (12) months or longer. Where pooling of employees has occurred, the successor contractor shall draw from such pools in accordance with rules established under this article. During such ninety (90)-day period, employees so hired shall be employed under the terms and conditions established by the successor contractor (or subcontractor) or as required by law.

(c) If at anytime the successor contractor determines that fewer employees are required to perform the new service contract than were required by the terminated contractor (and subcontractors, if any), the successor contractor shall retain employees by seniority within job classification.

(d) During such ninety (90)-day period, the successor contractor (or subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered employees not retained by the successor contractor (or subcontractor) from which the successor contractor (or subcontractor) shall hire additional employees.

(e) Except as provided in Subsection (c) of this section, during such ninety (90)-day period the successor contractor (or subcontractor, where applicable) shall not discharge without cause an employee retained pursuant to this article. "Cause" for this purpose shall include, but not be limited to, the employee's conduct while in the employ of the terminated contractor or subcontractor that contributed to any decision to terminate the contract or subcontract for fraud or poor performance.

(f) At the end of such ninety (90)-day period, the successor contractor (or subcontractor, where applicable) shall perform a written performance evaluation for each employee retained pursuant to this article. If the employee's performance during such ninety (90)-day period is satisfactory, the successor contractor (or subcontractor) shall offer the employee continued employment under the terms and conditions established by the successor contractor (or subcontractor) or as required by law. During such ninety (90)-day period, the successor contractor shall maintain a preferential hiring list of eligible covered employees not retained by the successor contractor from which the

successor contractor shall hire additional employees.

(g) If the City or a City financial assistance recipient enters into a service contract for the performance of work that prior to the service contract was performed by the City's or the recipient's own service employees, the City or the recipient, as the case may be, shall be deemed to be a "**terminated contractor**" within the meaning of this section and the contractor under the service contract shall be deemed to be a "**successor contractor**" within the meaning of this section and Section 10.36.3.

SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96.

Amended by: Ord. No. 171,004, Eff. 5-18-96; Subsec. (g) Added, Ord. No. 172,349, Eff. 1-29-99.

**Sec. 10.36.3. Enforcement.**

(a) An employee who has been discharged in violation of this article by a successor contractor or its subcontractor may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against the successor contractor and, where applicable, its subcontractor, and may be awarded:

(1) Back pay for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

(A) The average regular rate of pay received by the employee during the last 3 years of the employee's employment in the same occupation classification; or

(B) The final regular rate received by the employee.

(2) Costs of benefits the successor contractor would have incurred for the employee under the successor contractor's (or subcontractor's, where applicable) benefit plan.

(b) If the employee is the prevailing party in any such legal action, the court shall award reasonable attorney's fees and costs as part of the costs recoverable.

(c) Compliance with this article shall be required in all City contracts to which it applies, and such contracts shall provide that violation of this article shall entitle the City to terminate the contract and otherwise pursue legal remedies that may be available.

(d) Notwithstanding any provision of this Code or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96.

Amended by: Ord. No. 171,004, Eff. 5-18-96.

**Sec. 10.36.4. Exemption for Successor Contractor or Subcontractor's Prior Employees.**

An awarding authority shall upon application by a contractor or subcontractor exempt from the requirements of this article a person employed by the contractor or subcontractor continuously for at least twelve (12) months prior to the commencement of the successor service contract or subcontract who is proposed to work on such contract or

subcontract as an employee in a capacity similar to such prior employment, where the application demonstrates that (a) the person would otherwise be laid off work and (b) his or her retention would appear to be helpful to the contractor or subcontractor in performing the successor contract or subcontract. Once a person so exempted commences work under a service contract or subcontract, he or she shall be deemed an employee as defined in Section 10.36.1(e) of this Code.

SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96.

Amended by: Ord. No. 171,004, Eff. 5-18-96.

**Sec. 10.36.5. Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.**

This article shall not be construed to limit an employee's right to bring legal action for wrongful termination.

SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96.

Amended by: Ord. No. 171,004, Eff. 5-18-96.

**Sec. 10.36.6. Expenditures Covered by this Article.**

This article shall apply to the expenditure, whether through service contracts let by the City or by its financial assistance recipients, of funds entirely within the City's control and to other funds, such as federal or state grant funds, where the application of this article is consonant with the laws authorizing the City to expend such other funds. City financial assistance recipients shall apply this article to the expenditure of non-City funds for service contracts to be performed in the City by complying themselves with § 10.36.2(g) and by contractually requiring their service contractors to comply with this article. Such requirement shall be imposed by the recipient until the City financial assistance has been fully expended.

SECTION HISTORY

Added by Ord. No. 171,004, Eff. 5-18-96.

Amended by: Ord. No. 172,337, Eff. 1-14-99; Ord. No. 172,843, Eff. 11-4-99.

**Sec. 10.36.7. Timing of Application of Ordinances Adding and then Amending this Article.**

The provisions of this article as set forth in City Ordinance No. 171,004 shall apply to contracts consummated and financial assistance provided after May 18, 1996 (the effective date of City Ordinance No. 171,004). As for contracts consummated and financial assistance provided after the original version of this article took effect on January 13, 1996 (by City Ordinance No. 170,784) and through May 18, 1996, the City directs its appointing authorities and urges others affected to use their best efforts to work cooperatively so as to allow application City Ordinance No. 171,004 rather than City Ordinance No. 170,784 to service contracts let during such period. No abrogation of contract or other rights created by City Ordinance No. 170,784, absent consent to do so, shall be effected by the retroactive application of City Ordinance No. 171,004.

SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96.

Amended by: Ord. No. 171,004, Eff. 5-18-96; Ord. No. 172,337, Eff. 1-14-99.

**Sec. 10.36.8. Promulgation of Implementing Rules.**

The DAA shall promulgate rules for implementation of this article and otherwise coordinate administration of the requirements of this article.

SECTION HISTORY

Added by Ord. No. 171,004, Eff. 5-18-96.

Amended by: Ord. No. 176,155, Eff. 9-22-04; Ord. No. 176,283, Eff. 12-25-04, Oper. 9-22-04.

**Sec. 10.36.9. Severability.**

If any severable provision or provisions of this article or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of the article that can be given effect notwithstanding such invalidity.

SECTION HISTORY

Added by Ord. No. 171,004, Eff. 5-18-96.

EXHIBIT D-4: LIVING WAGE

See attached.

## **ARTICLE 11 LIVING WAGE**

### Section

- 10.37 Legislative Findings.
- 10.37.1 Definitions.
- 10.37.2 Payment of Minimum Compensation to Employees.
- 10.37.3 Health Benefits.
- 10.37.4 Notifying Employees of Their Potential Right to the Federal Earned Income Credit.
- 10.37.5 Retaliation Prohibited.
- 10.37.6 Enforcement.
- 10.37.7 Administration.
- 10.37.8 Exclusion of Service Contracts from Competitive Bidding Requirement.
- 10.37.9 Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.
- 10.37.10 Expenditures Covered.
- 10.37.11 Timing of Application.
- 10.37.12 Supersession by Collective Bargaining Agreement.
- 10.37.13 Liberal Interpretation of Coverage; Rebuttable Presumption of Coverage.
- 10.37.14 Severability.

#### **Sec. 10.37. Legislative Findings.**

The City awards many contracts to private firms to provide services to the public and to City government. Many lessees or licensees of City property perform services that affect the proprietary interests of City government in that their performance impacts the success of City operations. The City also provides financial assistance and funding to others for the purpose of economic development or job growth. The City expends grant funds under programs created by the federal and state governments. Such expenditures serve to promote the goals established for those programs by such governments and similar goals of the City. The City intends that the policies underlying this article serve to guide the expenditure of such funds to the extent allowed by the laws under which such grant programs are established.

Experience indicates that procurement by contract of services has all too often resulted in the payment by service contractors to their employees of wages at or slightly above the minimum required by federal and state minimum wage laws. Such minimal compensation tends to inhibit the quantity and quality of services rendered by such employees to the City and to the public. Underpaying employees in this way fosters high turnover, absenteeism, and lackluster performance. Conversely, adequate compensation

promotes amelioration of these undesirable conditions. Through this article the City intends to require service contractors to provide a minimum level of compensation that will improve the level of services rendered to and for the City.

The inadequate compensation typically paid today also fails to provide service employees with resources sufficient to afford life in Los Angeles. It is unacceptable that contracting decisions involving the expenditure of City funds should foster conditions placing a burden on limited social services. The City, as a principal provider of social support services, has an interest in promoting an employment environment that protects such limited resources. In requiring the payment of a higher minimum level of compensation, this article benefits that interest.

Nothing less than the living wage should be paid by the recipients of City financial assistance themselves. Whether they be engaged in manufacturing or some other line of business, the City does not wish to foster an economic climate where a lesser wage is all that is offered to the working poor. The same adverse social consequences from such inadequate compensation emanate just as readily from manufacturing, for example, as service industries. This article is meant to protect these employees as well.

The City holds a proprietary interest in the work performed by many employees employed by lessees and licensees of City property and by their service contractors and subcontractors. In a very real sense, the success or failure of City operations may turn on the success or failure of these enterprises, for the City has a genuine stake in how the public perceives the services rendered for them by such businesses. Inadequate compensation of these employees adversely impacts the performance by the City's lessee or licensee and thereby does the same for the success of City operations. By the 1998 amendment to this article, recognition is given to the prominence of this interest at those facilities visited by the public on a frequent basis, including but not limited to, terminals at Los Angeles International Airport, Ports O'Call Village in San Pedro, and golf courses and recreation centers operated by the Department of Recreation and Parks. This article is meant to cover all such employees not expressly exempted.

Requiring payment of the living wage serves both proprietary and humanitarian concerns of the City. Primarily because of the latter concern and experience to date regarding the failure of some employers to honor their obligation to pay the living wage, the 1998 amendments introduce additional enforcement mechanisms to ensure compliance with this important obligation. Non-complying employers must now face the prospect of paying civil penalties, but only if they fail to cure non-compliance after having been given formal notice thereof. Where non-payment is the issue, employers who dispute determinations of non-compliance may avoid civil penalties as well by paying into a City holding account the monies in dispute. Employees should not fear retaliation, such as by losing their jobs, simply because they claim their right to the living wage, irrespective of the accuracy of the claim. The 1998 amendments strengthen the prohibition against retaliation to serve as a critical shield against such employer misconduct.

#### SECTION HISTORY

Article and Section Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.

**Sec. 10.37.1. Definitions.**

The following definitions shall apply throughout this article:

(a) "**Airport**" means the Department of Airports and each of the airports which it operates.

(b) "**Airport Employer**" means an Employer, as the term is defined in this section, at the Airport.

(c) "**Airport Employee**" means an Employee, as the term is defined in this section, of an Airport Employer.

(d) "**Awarding authority**" means that subordinate or component entity or person of the City (such as a department) or of the financial assistance recipient that awards or is otherwise responsible for the administration of a service contract or public lease or license, or, where there is no such subordinate or component entity or person, then the City or the City financial assistance recipient.

(e) "**City**" means the City of Los Angeles and all awarding authorities thereof, including those City departments which exercise independent control over their expenditure of funds, but excludes the Community Redevelopment Agency of the City of Los Angeles ("**CRA**"). The CRA is urged, however, to adopt a policy similar to that set forth in this article.

(f) "**City financial assistance recipient**" means any person who receives from the City discrete financial assistance for economic development or job growth expressly articulated and identified by the City, as contrasted with generalized financial assistance such as through tax legislation, in accordance with the following monetary limitations. Assistance given in the amount of one million dollars (\$1,000,000) or more in any twelve-month period shall require compliance with this article for five years from the date such assistance reaches the one million dollar (\$1,000,000) threshold. For assistance in any twelve-month period totaling less than one million dollars (\$1,000,000) but at least one hundred thousand dollars (\$100,000), there shall be compliance for one year if at least one hundred thousand dollars (\$100,000) of such assistance is given in what is reasonably contemplated at the time to be on a continuing basis, with the period of compliance beginning when the accrual during such twelve-month period of such continuing assistance reaches the one-hundred thousand dollar (\$100,000) threshold.

Categories of such assistance include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f). A recipient shall not be deemed to include lessees and sublessees.

A recipient shall be exempted from application of this article if:

- (1) it is in its first year of existence, in which case the exemption shall last for one (1) year,
- (2) it employs fewer than five (5) employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, or
- (3) it obtains a waiver as provided herein.

A recipient - who employs the long-term unemployed or provides trainee positions intended to prepare employees for permanent positions, and who claims that compliance with this article would cause an economic hardship - may apply in writing to the City department or office administering such assistance, which department or office shall forward such application and its recommended action on it to the City Council. Waivers shall be effected by Council resolution.

(g) “**Contractor**” means any person that enters into:

- (1) a service contract with the City,
- (2) a service contract with a proprietary lessee or licensee or sublessee or sublicensee, or
- (3) a contract with a City financial assistance recipient to assist the recipient in performing the work for which the assistance is being given. Vendors, such as service contractors, of City financial assistance recipients shall not be regarded as contractors except to the extent provided in Subsection (i).\*

\*Technical correction due to re-lettering of subsections: "Subsection (f)" corrected to "Subsection (i)".

(h) “**Designated Administrative Agency (DAA)**” means the Department of Public Works, Bureau of Contract Administration, who shall bear administrative responsibilities under this article.

(i) “**Employee**” means any person - who is not a managerial, supervisory, or confidential employee and who is not required to possess an occupational license - who is employed

- (1) as a service employee of a contractor or subcontractor on or under the authority of one or more service contracts and who expends any of his or her time thereon, including but not limited to: hotel employees, restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; nonprofessional health care employees; gardeners; waste management employees; and clerical employees;
- (2) as a service employee - of a public lessee or licensee, of a sublessee or sublicensee, or of a service contractor or subcontractor of a public lessee or licensee, or sublessee or sublicensee - who works on the leased or licensed premises;

(3) by a City financial assistance recipient who expends at least half of his or her time on the funded project; or

(4) by a service contractor or subcontractor of a City financial assistance recipient and who expends at least half of his or her time on the premises of the City financial assistance recipient directly involved with the activities funded by the City.

(j) **“Employer”** means any person who is a City financial assistance recipient, contractor, subcontractor, public lessee, public sublessee, public licensee, or public sublicensee and who is required to have a business tax registration certificate by Los Angeles Municipal Code §§ 21.00 - 21.198 or successor ordinance or, if expressly exempted by the Code from such tax, would otherwise be subject to the tax but for such exemption; provided, however, that corporations organized under §501(c)(3) of the United States Internal Revenue Code of 1954, 26 U.S.C. §501(c)(3), whose chief executive officer earns a salary which, when calculated on an hourly basis, is less than eight (8) times the lowest wage paid by the corporation, shall be exempted as to all employees other than child care workers.

(k) **“Person”** means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(l) **“Public lease or license”**.

(a) Except as provided in (l)(b)\*, **“Public lease or license”** means a lease or license of City property on which services are rendered by employees of the public lessee or licensee or sublessee or sublicensee, or of a contractor or subcontractor, but only where any of the following applies:

\*Technical correction due to re-lettering of subsections: "(i)(b)" corrected to "(l)(b)".

(1) The services are rendered on premises at least a portion of which is visited by substantial numbers of the public on a frequent basis (including, but not limited to, airport passenger terminals, parking lots, golf courses, recreational facilities); or

(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 DAA has determined in writing that coverage would further the proprietary interests of the City.

(b) A public lessee or licensee will be exempt from the requirements of this article subject to the following limitations:

(1) The lessee or licensee has annual gross revenues of less than the annual gross revenue threshold, three hundred fifty thousand dollars (\$350,000), from business conducted on City

property;

(2) The lessee or licensee employs no more than seven (7) people total in the company on and off City property;

(3) To qualify for this exemption, the lessee or licensee must provide proof of its gross revenues and number of people it employs in the company's entire workforce to the awarding authority as required by regulation;

(4) Whether annual gross revenues are less than three hundred fifty thousand dollars (\$350,000) shall be determined based on the gross revenues for the last tax year prior to application or such other period as may be established by regulation;

(5) The annual gross revenue threshold shall be adjusted annually at the same rate and at the same time as the living wage is adjusted under section 10.37.2 (a);

(6) A lessee or licensee shall be deemed to employ no more than seven (7) people if the company's entire workforce worked an average of no more than one thousand two-hundred fourteen (1,214) hours per month for at least three-fourths (3/4) of the time period that the revenue limitation is measured;

(7) Public leases and licenses shall be deemed to include public subleases and sublicenses;

(8) If a public lease or license has a term of more than two (2) years, the exemption granted pursuant to this section shall expire after two (2) years but shall be renewable in two-year increments upon meeting the requirements therefor at the time of the renewal application or such period established by regulation.

(m) **"Service contract"** means a contract let to a contractor by the City primarily for the furnishing of services to or for the City (as opposed to the purchase of goods or other property or the leasing or renting of property) and that involves an expenditure in excess of twenty-five thousand dollars (\$25,000) and a contract term of at least three (3) months; but only where any of the following applies:

(1) at least some of the services rendered are rendered by employees whose work site is on property owned by the City,

(2) the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources, or

(3) the DAA has determined in writing that coverage would further the proprietary interests of the City.

(n) **"Subcontractor"** means any person not an employee that enters into a contract (and that employs employees for such purpose) with

(1) a contractor or subcontractor to assist the contractor in

performing a service contract or

(2) a contractor or subcontractor of a proprietary lessee or licensee or sublessee or sublicensee to perform or assist in performing services on the leased or licensed premises. Vendors, such as service contractors or subcontractors, of City financial assistance recipients shall not be regarded as subcontractors except to the extent provided in Subsection (i).\*

\*Technical correction due to re-lettering of subsections: "Subsection (f)" corrected to "Subsection (i)".

(o) **"Willful violation"** means that the employer knew of his, her, or its obligations under this article and deliberately failed or refused to comply with its provisions.

#### SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (e), Ord. No. 176,155, Eff. 9-22-04; Subsec. (e), Ord. No. 176,283, Eff. 12-25-04, Oper. 9-22-04; Subsecs. (a) through (l) re-lettered (d) through (o), respectively and new Subsecs. (a), (b), and (c) added, Ord. No. 180,877, Eff. 10-19-09.

#### **Sec. 10.37.2. Payment of Minimum Compensation to Employees.**

(a) **Wages.** Employers shall pay Employees a wage of no less than the hourly rates set under the authority of this article. The initial rates were seven dollars and twenty-five cents (\$7.25) per hour with health benefits, as described in this article, or otherwise eight dollars and fifty cents (\$8.50) per hour without health benefits. With the annual adjustment effective July 1, 2009, together with all previous annual adjustments as provided by this subsection, such rates are ten dollars and thirty cents (\$10.30) per hour with health benefits or, if health benefits are not provided, then fourteen dollars and eighty cents (\$14.80) per hour for Airport Employees and eleven dollars and fifty-five cents (\$11.55) per hour for all other Employees. The hourly rate with health benefits to be paid to all Employees and the hourly rate without health benefits to be paid to Airport Employees shall be adjusted annually to correspond with adjustments, if any, to retirement benefits paid to members of the Los Angeles City Employees Retirement System (LACERS), made by the CERS Board of Administration under § 4.1040. The Office of Administrative and Research Services shall so advise the DAA of any such change by June 1 of each year and of the required new hourly rates, if any. On the basis of such report, the DAA shall publish a bulletin announcing the adjusted rates, which shall take effect upon such publication.

(b) **Compensated Days Off.** Employers shall provide at least twelve (12) compensated days off per year for sick leave, vacation, or personal necessity at the employee's request. Employers shall also permit employees to take at least an additional ten (10) days a year of uncompensated time to be used for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted his or her compensated days off for that year.

#### SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (a), Ord. No. 173,285,

**Sec. 10.37.3. Health Benefits.**

(a) **Health Benefits.** The health benefits required by this article shall consist of the payment of at least four dollars and fifty cents (\$4.50) per hour by Airport Employers and at least one dollar and twenty-five cents (\$1.25) per hour by all other Employers towards the provision of health care benefits for Employees and their dependents. Proof of the provision of such benefits must be submitted to the awarding authority to qualify for the wage rate in Section 10.37(a) for Employees with health benefits. Airport Employees cannot waive the health benefits offered by an Airport Employer when the Airport Employer does not require an out-of-pocket contribution by the Airport Employee. Consistent with and as shall be reflected in the hourly rates payable to Airport Employees as provided in 10.37.2(a) above, the amount of payment for health benefits by Airport Employers shall be adjusted annually to correspond with adjustments, if any, to retirement benefits paid to members of the Los Angeles City Employees Retirement System (LACERS), made by the CERS Board of Administration under § 4.1040. The Office of Administrative and Research Services shall so advise the DAA of any such change by June 1 of each year and of the required new hourly payments, if any. On the basis of such report, the DAA shall publish a bulletin announcing the adjusted payment, which shall take effect upon such publication.

(b) **Periodic Review.** At least once every three years, the Office of Administrative and Research Services shall review the health benefit payment by Airport Employers set forth in 10.37.3(a) to determine whether the payment accurately reflects the cost of health care and to assess the impacts of the health benefit payment on Airport Employers and Airport Employees and shall transmit a report with its findings to the Council.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; In Entirety, Ord. No. 180,877, Eff. 10-19-09.

**Sec. 10.37.4. Notifying Employees of their Potential Right to the Federal Earned Income Credit.**

Employers shall inform employees making less than twelve dollars (\$12) per hour of their possible right to the federal Earned Income Credit ("EIC") under Section 32 of the Internal Revenue Code of 1954, 26 U.S.C. Section 32, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments from the employer.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.

**Sec. 10.37.5. Retaliation Prohibited.**

Neither an employer, as defined in this article, nor any other person employing individuals shall discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to the employer's compliance or anticipated compliance with this article, for opposing any practice proscribed by this

article, for participating in proceedings related to this article, for seeking to enforce his or her rights under this article by any lawful means, or for otherwise asserting rights under this article.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.

**Sec. 10.37.6. Enforcement.**

(a) An employee claiming violation of this article may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against an employer and may be awarded:

(1) For failure to pay wages required by this article - back pay for each day during which the violation continued.

(2) For failure to pay medical benefits - the differential between the wage required by this article without benefits and such wage with benefits, less amounts paid, if any, toward medical benefits.

(3) For retaliation - reinstatement, back pay, or other equitable relief the court may deem appropriate.

(4) For willful violations, the amount of monies to be paid under (1) - (3) shall be trebled.

(b) The court shall award reasonable attorney's fees and costs to an employee who prevails in any such enforcement action and to an employer who so prevails if the employee's suit was frivolous.

(c) Compliance with this article shall be required in all City contracts to which it applies, and such contracts shall provide that violation of this article shall constitute a material breach thereof and entitle the City to terminate the contract and otherwise pursue legal remedies that may be available. Such contracts shall also include a pledge that there shall be compliance with federal law proscribing retaliation for union organizing.

(d) An employee claiming violation of this article may report such claimed violation to the DAA which shall investigate such complaint. Whether based upon such a complaint or otherwise, where the DAA has determined that an employer has violated this article, the DAA shall issue a written notice to the employer that the violation is to be corrected within ten (10) days. In the event that the employer has not demonstrated to the DAA within such period that it has cured such violation, the DAA may then:

(1) Request the awarding authority to declare a material breach of the service contract, public lease or license, or financial assistance agreement and exercise its contractual remedies thereunder, which are to include, but not be limited to, termination of the service contract, public lease or license, or financial assistance agreement and the return of monies paid by the City for services not yet rendered.

(2) Request the City Council to debar the employer from future City contracts, leases, and licenses for three (3) years or until all penalties and restitution have been fully paid, whichever occurs last. Such debarment shall be

to the extent permitted by, and under whatever procedures may be required by, law.

(3) Request the City Attorney to bring a civil action against the employer seeking:

(i) Where applicable, payment of all unpaid wages or health premiums prescribed by this article; and/or

(ii) A fine payable to the City in the amount of up to one hundred dollars (\$100) for each violation for each day the violation remains uncured.

Where the alleged violation concerns non-payment of wages or health premiums, the employer will not be subject to debarment or civil penalties if it pays the monies in dispute into a holding account maintained by the City for such purpose. Such disputed monies shall be presented to a neutral arbitrator for binding arbitration. The arbitrator shall determine whether such monies shall be disbursed, in whole or in part, to the employer or to the employees in question. Regulations promulgated by the DAA shall establish the framework and procedures of such arbitration process. The cost of arbitration shall be borne by the City, unless the arbitrator determines that the employer's position in the matter is frivolous, in which event the arbitrator shall assess the employer for the full cost of the arbitration. Interest earned by the City on monies held in the holding account shall be added to the principal sum deposited, and the monies shall be disbursed in accordance with the arbitration award. A service charge for the cost of account maintenance and service may be deducted therefrom.

(e) Notwithstanding any provision of this Code or any other ordinance to the contrary, no criminal penalties shall attach for violation of this article.

#### SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (d), Para. (1), Ord. No. 173,747, Eff. 2-24-01.

#### **Sec. 10.37.7. Administration.**

The City Council shall by resolution designate a department or office, which shall promulgate rules for implementation of this article and otherwise coordinate administration of the requirements of this article ("**designated administrative agency**" - DAA). The DAA shall monitor compliance, including the investigation of claimed violations, and shall promulgate implementing regulations consistent with this article. The DAA shall also issue determinations that persons are City financial assistance recipients, that particular contracts shall be regarded as "**service contracts**" for purposes of Section 10.37.1(j), and that particular leases and licenses shall be regarded as "**public leases**" or "**public licenses**" for purposes of Section 10.37.1(i), when it receives an application for a determination of non-coverage or exemption as provided for in Section 10.37.13. The DAA shall also establish employer reporting requirements on employee compensation and on notification about and usage of the federal Earned Income Credit referred to in Section 10.37.4. The DAA shall report on compliance to the City Council no less frequently than annually.

During the first, third, and seventh years of this article's operation since May 5, 1997, and every third year thereafter, the Office of Administrative and Research Services and the Chief Legislative Analyst shall conduct or commission an evaluation of this article's operation and effects. The evaluation shall specifically address at least the following matters:

- (a) how extensively affected employers are complying with the article;
- (b) how the article is affecting the workforce composition of affected employers;
- (c) how the article is affecting productivity and service quality of affected employers;
- (d) how the additional costs of the article have been distributed among workers, their employers, and the City. Within ninety days of the adoption of this article, these offices shall develop detailed plans for evaluation, including a determination of what current and future data will be needed for effective evaluation.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00; Ord. No. 173,747, Eff. 2-24-01.

**Sec. 10.37.8. Exclusion of Service Contracts from Competitive Bidding Requirement.**

Service contracts otherwise subject to competitive bid shall be let by competitive bid if they involve the expenditure of at least two-million dollars (\$2,000,000). Charter Section 372 shall not be applicable to service contracts.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00.

**Sec. 10.37.9. Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.**

This article shall not be construed to limit an employee's right to bring legal action for violation of other minimum compensation laws.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.

**Sec. 10.37.10. Expenditures Covered.**

This article shall apply to the expenditure - whether through aid to City financial assistance recipients, service contracts let by the City, or service contracts let by its financial assistance recipients - of funds entirely within the City's control and to other funds, such as federal or state grant funds, where the application of this article is consonant with the laws authorizing the City to expend such other funds.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.

**Sec. 10.37.11. Timing of Application.**

(a) **Original 1997 Ordinance.** The provisions of this article as enacted by City Ordinance No.171,547, effective May 5, 1997, shall apply to

(1) contracts consummated and financial assistance provided after such date,

(2) contract amendments consummated after such date and before the effective date of the 1998 ordinance which themselves met the requirements of former Section 10.37.1(h) (definition of “**service contract**”) or which extended contract duration, and

(3) supplemental financial assistance provided after May 5, 1997 and before the effective date of the 1998 ordinance which itself met the requirements of Section 10.37.1(c).

(b) **1998 Amendment.** The provisions of this article as amended by the 1998 ordinance shall apply to

(1) service contracts, public leases or licenses, and financial assistance agreements consummated after the effective date of such ordinance and

(2) amendments, consummated after the effective date of such ordinance, to service contracts, public leases or licenses, and financial assistance agreements that provide additional monies or which extend term.

(c) **2000 amendment.** The provisions of this article as amended by the 2000 ordinance shall apply to

(1) service contracts, public leases or public licenses and City financial assistance recipient agreements consummated after the effective date of such ordinance and

(2) amendments to service contracts, public leases or licenses and City financial assistance recipient agreements which are consummated after the effective date of such ordinance and which provide additional monies or which extend the term.

(d) **2009 Amendment.** The provisions of this article as amended by the 2009 ordinance shall become operative ninety (90) days following the effective date of the 2009 ordinance.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (b), Subsec. (c) Added, Ord. No. 173,747, Eff. 2-24-01; Subsec. (d) Added, Ord. No. 180,877, Eff. 10-19-09.

**Sec. 10.37.12. Supersession by Collective Bargaining Agreement.**

Parties subject to this article may by collective bargaining agreement provide that such agreement shall supersede the requirements of this article.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.

**Sec. 10.37.13. Liberal Interpretation of Coverage; Rebuttable Presumption of Coverage.**

The definitions of “**City financial assistance recipient**” in Section 10.37.1(c), of “**public lease or license**” in Section 10.37.1(i), and of “**service contract**” in Section 10.37.1(j) shall be liberally interpreted so as to further the policy objectives of this article. All recipients of City financial assistance meeting the monetary thresholds of Section 10.37.1(c), all City leases and licenses (including subleases and sublicenses) where the City is the lessor or licensor, and all City contracts providing for services that are more than incidental, shall be presumed to meet the corresponding definition just mentioned, subject, however, to a determination by the DAA of non-coverage or exemption on any basis allowed by this article, including, but not limited to, non-coverage for failure to satisfy such definition. The DAA shall by regulation establish procedures for informing persons engaging in such transactions with the City of their opportunity to apply for a determination of non-coverage or exemption and procedures for making determinations on such applications.

SECTION HISTORY

Added by Ord. No. 172,336, Eff. 1-14-99.

Amended by: Ord. No. 173,747, Eff. 2-24-01.

**Sec. 10.37.14. Severability.**

If any provision of this article is declared legally invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

SECTION HISTORY

Added by Ord. No. 172,336, Eff. 1-14-99.

EXHIBIT D-5: CONTRACTOR RESPONSIBILITY

See attached.

## ARTICLE 14 CONTRACTOR RESPONSIBILITY PROGRAM

### Section

- 10.40 Purpose.
- 10.40.1 Definitions.
- 10.40.2 Determination of Contractor Responsibility.
- 10.40.3 Compliance with All Laws.
- 10.40.4 Exemptions.
- 10.40.5 Administration.
- 10.40.6 Enforcement.
- 10.40.7 Application of this Article.
- 10.40.8 Consistency with Federal or State Law.
- 10.40.9 Severability.

#### **Sec. 10.40. Purpose.**

Each year the City spends millions of dollars contracting for the delivery of products and services from private sector contractors. The prudent expenditure of public dollars requires that the City's procurement process result in the selection of qualified and responsible contractors who have the capability to perform the contract. Further, many lessees or licensees of City property perform services that affect the proprietary interests of City government in that their performance impacts the success of City operations. The City also provides financial assistance and funding to others for a variety of purposes. The City expends grant funds under programs created by federal and state government. The City intends that the procurement procedures set forth in this article guide the expenditure of federal and state grant funds to the extent permitted by federal or state procurement regulations.

#### SECTION HISTORY

Article and Section Added by Ord. No. 173,677, Eff. 1-14-01.

#### **Sec. 10.40.1. Definitions.**

(a) **"Awarding Authority"** means any Board or Commission of the City of Los Angeles, or any employee or officer of the City of Los Angeles, that is authorized to award or enter into any contract as defined herein, on behalf of the City of Los Angeles, and shall include departments having control of their own funds and which adopt policies consonant with the provisions of this article.

(b) **"Contract"** means any agreement for the performance of any work or service, the provision of any goods, equipment, materials or supplies, or the rendition of any service to the City or to the public, or the grant of City financial assistance or a public lease or license, which is let, awarded or entered into by or on behalf of the City of Los Angeles. Contracts for services and for purchasing goods and products that involve a value in excess of twenty-five thousand dollars (\$25,000) and a term in excess of three

months are covered by this Article. Construction contracts are covered by this Article without regard to contract amount and term.

(c) **“Contractor”** means any person, firm, corporation, partnership, association or any combination thereof, which enters into a Contract with any awarding authority of the City of Los Angeles and includes a recipient of City financial assistance and a public lessee or licensee.

(d) **“Subcontractor”** means any person not an employee who enters into a contract with a contractor to assist the contractor in performing a contract, including a contractor or subcontractor of a public lessee or licensee or sublessee or sublicensee, to perform or assist in performing services on the leased or licensed premises. The term subcontractor does not include vendors or suppliers to City purchasing contractors, unless the purchasing contract is for the purchase of garments such as uniforms or other apparel.

(e) **“Bidder”** means any person or entity that applies for any contract whether or not the application process is through an Invitation for Bid, Request for Proposal, Request for Qualifications or other procurement process.

(f) **“Bid”** means any application submitted by a bidder in response to an Invitation for Bid, Request for Proposal or Request for Qualifications or other procurement process.

(g) **“Invitation for Bid”** means the process through which the City solicits Bids including Requests for Proposals and Requests for Qualifications.

(h) **“City Financial Assistance Recipient”** means any person who receives from the City discrete financial assistance in the amount of One Hundred Thousand Dollars (\$100,000.00) or more for economic development or job growth expressly articulated and identified by the City, as contrasted with generalized financial assistance such as through tax legislation.

Categories of such assistance shall include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f). A recipient shall not be deemed to include lessees and sublessees.

(i) **“Public Lease or License”** means a lease or license of City property as defined in the Living Wage Ordinance, Section 10.37 et seq. of Article 11, Chapter 1 of Division 10 of the Los Angeles Administrative Code.

(j) **“Designated Administrative Agency (DAA)”** means the Department of Public Works, Bureau of Contract Administration who shall bear administrative responsibilities under this article.

#### SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

Amended by: Subsec. (j), Ord. No. 176,155, Eff. 9-22-04; Subsec. (j), Ord. No. 176,283,

**Sec. 10.40.2. Determination of Contractor Responsibility.**

(a) Prior to awarding a contract, the City shall make a determination that the prospective contractor is one that has the necessary quality, fitness and capacity to perform the work set forth in the contract. Responsibility will be determined by each awarding authority from reliable information concerning a number of criteria, including but not limited to: management expertise; technical qualifications; experience; organization, material, equipment and facilities necessary to perform the work; financial resources; satisfactory performance of other contracts; satisfactory record of compliance with relevant laws and regulations; and satisfactory record of business integrity.

(b) Every bidder for a City contract must complete and submit with its bid a questionnaire developed by the DAA which will provide information the awarding authority needs in order to determine if the bidder meets the criteria set forth in Paragraph (a) of this section. If no bid is required, the prospective contractor must submit a questionnaire. The response to the questionnaire must be signed under penalty of perjury. If, after execution of a contract, the City learns that the contractor submitted false information on the questionnaire, the City may terminate the contract and pursue the remedies set forth in Section 10.40.6 of this article. The contractor shall be obligated to update its responses to the questionnaire during the term of the contract within thirty calendar days after any change to the responses previously provided if such change would affect contractor's fitness and ability to continue performing the contract. The City may consider failure of the contractor to update the questionnaire with this information as a material breach of the contract and invoke the remedies set forth in Section 10.40.6 of this article.

(c) Questionnaires will be public records and information contained therein will be available for public review, except to the extent that such information is exempt from disclosure pursuant to applicable law. The awarding authority may rely on responses to the questionnaire, information from compliance and regulatory agencies and/or independent investigation to determine bidder responsibility.

(d) Before being declared non-responsible, a bidder shall be notified of the proposed determination of non-responsibility, served with a summary of the information upon which the awarding authority is relying and provided with an opportunity to be heard in accordance with applicable law. At the responsibility hearing, the bidder will be allowed to rebut adverse information and to present evidence that it has the necessary quality, fitness and capacity to perform the work. The bidder must exercise its right to request a hearing within five calendar days after receipt of such notice. Failure to submit a written request for a hearing within the time frame set forth in this section, will be deemed a waiver of the right to such a hearing and the awarding authority may proceed to determine whether or not the award of the contract should be made to another bidder or whether or not the bidder is non-responsible for this and future contracts. The determination by an awarding authority that the bidder is non-responsible shall be final and constitute exhaustion of the bidder's administrative remedies.

(e) A list of individuals and entities which have been determined to be non-responsible by the City shall be maintained by the DAA. After two years from the date

the individual or entity has been determined to be non-responsible, the individual or entity may request removal from the list by the awarding authority. If the individual or entity can satisfy the awarding authority that it has the necessary quality, fitness, and capacity to perform work in accordance with the criteria set forth in Paragraph (a) of this section, its name shall be removed from the list. Unless otherwise removed from the list by the awarding authority, names shall remain on the list for five years from the date of being declared non-responsible.

(f) Contractors shall ensure that their subcontractors meet the criteria for responsibility as set forth in Paragraph (a) of this section, unless the subcontract is below the threshold requirements for contracts contained in Section 10.40.1(b).

#### SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

Amended by: Subsec. (c), Ord. No. 176,292, Eff. 1-1-05.

#### **Sec. 10.40.3. Compliance with All Laws.**

(a) Contractors shall comply with all applicable federal, state and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees.

(b) Contractors shall notify the awarding authority within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the contractor is not in compliance with Paragraph (a) of this section. Initiation of an investigation is not, by itself, a basis for a determination of non-responsibility by an awarding authority.

(c) Contractors shall notify the awarding authority within thirty calendar days of all findings by a government agency or court of competent jurisdiction that the contractor has violated Paragraph (a) of this section.

(d) Upon award of a contract, contractors shall complete a Pledge of Compliance attesting under penalty of perjury to compliance with Paragraph (a) of this section. Whenever any contract, which was not initially subject to this article is amended, the contractor shall complete a Pledge of Compliance attesting under penalty of perjury to compliance with Paragraph (a) of this section.

(e) Contractors shall ensure that their subcontractors complete a Pledge of Compliance attesting under penalty of perjury to compliance with Paragraph (a) of this section, unless the subcontract is below the threshold requirements for Contracts contained in Section 10.40.1(b).

(f) Contractors shall ensure that their subcontractors comply with Paragraphs (b) and (c) of this section, unless the subcontract is below the threshold requirements for contracts contained in Section 10.40.1(b).

#### SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

#### **Sec. 10.40.4. Exemptions.**

(a) In order to promote the purposes of this article and to protect the City's interests, the following contracts are exempt from its application:

(1) Contracts with a governmental entity such as the United States of America, the State of California, a county, city or public agency of such entities, or a public or quasi-public corporation located therein and declared by law to have such public status.

(2) Contracts for the investment of trust moneys or agreements relating to the management of trust assets.

(3) Banking contracts entered into by the Treasurer pursuant to California Government Code Section 53630 *et seq.*

(b) In order to promote the purposes of this article and to protect the City's interests, the following contracts are exempt from application of Section 10.40.2 of this article:

(1) Contracts awarded on the basis of exigent circumstances whenever any awarding authority finds that the City would suffer a financial loss or that City operations would be adversely impacted unless exempted from the provisions of Section 10.40.2 of this article. This finding must be approved by the DAA prior to contract execution.

(2) Contracts awarded on the basis of urgent necessity in accordance with Charter Section 371(e)(5).

(3) Contracts entered into pursuant to Charter Section 371(e)(6).

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

(5) Contracts entered into pursuant to Charter Section 371(e)(8).

(6) Contracts where the goods or services are proprietary or only available from a single source.

#### SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

#### **Sec. 10.40.5. Administration.**

(a) The DAA shall promulgate rules and regulations for implementation of this Article.

(b) The DAA shall develop a questionnaire to be used by awarding authorities for determining bidder responsibility within sixty days after the effective date of this Ordinance.

(c) The DAA shall monitor compliance with this article including investigation of alleged violations.

#### SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

Amended by: Subsec. (a), Ord. No. 176,292, Eff. 1-1-05.

#### **Sec. 10.40.6. Enforcement.**

(a) Contracts shall provide that violation of this article shall constitute a material breach thereof and entitle the City to terminate the contract and otherwise pursue legal remedies that may be available.

(b) Compliance with Section 10.40.3 of this article shall be required in contract amendments, if the initial contract was not subject to the provisions of this article. Contract amendments shall provide that violation of Section 10.40.3 shall constitute a material breach thereof and entitle the City to terminate the contract and otherwise pursue legal remedies that may be available.

(c) Violations of this article may be reported to the DAA which shall investigate such complaint. Whether based upon such complaint or otherwise, if the DAA has determined that the contractor has violated any provision of this article, the DAA shall issue a written notice to the contractor that the violation is to be corrected within ten calendar days from receipt of notice. In the event the contractor has not corrected the violation, or taken reasonable steps to correct the violation within ten calendar days, then the DAA may:

1. Request the awarding authority to declare a material breach of the contract and exercise its contractual remedies thereunder, which are to include but not be limited to termination of the contract.
2. Request the awarding authority to declare the contractor to be non-responsible in accordance with the procedures set forth in Section 10.40.2 of this article.

#### SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

#### **Sec. 10.40.7. Application of This Article.**

(a) This article shall be applicable to Invitations for Bids issued after the rules and regulations have been adopted by City Council.

(b) This article shall be applicable to contracts entered into after the rules and regulations have been adopted by City Council, unless the contract is awarded pursuant to an Invitation for Bid issued prior to adoption of the rules and regulations by City Council.

(c) Section 10.40.3 of this article shall be applicable to contract amendments, entered into after the rules and regulations have been adopted by City Council if the initial contract was not subject to the provisions of this article.

#### SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

#### **Sec. 10.40.8. Consistency with Federal or State Law.**

The provisions of this article shall not be applicable to those instances in which its application would be prohibited by federal or state law or where the application would violate or be inconsistent with the terms or condition 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 such agency with respect to any such grant or contract.

#### SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

#### **Sec. 10.40.9. Severability.**

If any provision of this article is declared legally invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

SECTION HISTORY

Added by Ord. No. 173,677, Eff. 1-14-01.

EXHIBIT D-6: ANTI-SLAVERY ORDINANCE

See attached.

**ARTICLE 15**  
**REGULATIONS REGARDING PARTICIPATION IN OR**  
**PROFITS DERIVED FROM SLAVERY BY ANY COMPANY**  
**DOING BUSINESS WITH THE CITY**

Section

10.41 Definitions.

10.41.1 Purpose of Slavery Era Business Corporate/ Insurance Disclosure.

10.41.2 [Affidavit Required.]

10.41.3 Exceptions.

10.41.4 Administration.

10.41.5 Application of This Article.

**Sec. 10.41. Definitions.**

**A. “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.

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

**C. “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.

**D. “Designated Administrative Agency (DAA)”** means the Department of Public Works, Bureau of Contract Administration.

**E. “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.

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

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

**H. “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.

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

**J. “Slavery”** means the practice of owning Enslaved Persons.

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

**L.** “**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.

**M.** “**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.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 8-16-03.

Amended by: Subsec. D., Ord. No. 176,155, Eff. 9-22-04.

**Sec. 10.41.1. Purpose of Slavery Era Business Corporate/Insurance Disclosure.**

Many early American industries including, but not limited to, insurance, banking, tobacco, cotton, railroads, and shipping, realized enormous Profits by utilizing the uncompensated labor of Enslaved Persons. Many individuals and business enterprises were directly enriched by the labor of Enslaved Persons or benefitted from insurance policies insuring Enslaved Persons.

The City of Los Angeles, whose citizenry includes descendants of Enslaved Persons, is entitled to full disclosure of any Participation in or Profits derived through Slavery by Companies seeking to do business with the City.

The State of California has implemented Insurance Code Sections 13810-13813 requiring insurance companies to provide information to the California Department of Insurance regarding Slaveholder Insurance Policies sold during the Slavery Era as part of its licensing and renewal procedure.

In further support of this legislative act and to further promote the ideals the act embraces, this ordinance requires those seeking to do business with the City to fully and accurately disclose any and all Participation in or Profits derived from Slavery.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 8-16-03.

**Sec. 10.41.2. [Affidavit Required.]**

Each Awarding Authority, shall require that any Company that enters into a Contract with the City, whether the Contract is subject to competitive bidding or not, shall complete an affidavit, prior to or contemporaneous with entering into the Contract, certifying that:

**A.** The Company has searched any and all records of the Company, or any Predecessor Company, regarding records of Participation or Investments in, or Profits derived, from Slavery, including Slaveholder Insurance Policies issued during the Slavery Era; and

**B.** Disclosed any and all records of Participation in or Profits derived by the Company, or any Predecessor Company, from Slavery, including issuance of

Slaveholder Insurance Policies, during the Slavery Era, and identified the names of any Enslaved Persons or Slaveholders described in the records.

The Awarding Authority may terminate the Contract if a Company fails to fully and accurately complete the affidavit.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 8-16-03.

**Sec. 10.41.3. Exceptions.**

This article shall not be applicable to the following Contracts:

**A.** Contracts for the investment of:

- (1) City trust moneys or bond proceeds;
- (2) pension funds;
- (3) indentures, security enhancement agreements for City tax-exempt and taxable financings;
- (4) deposits of City surplus funds in financial institutions;
- (5) the investment of City moneys in securities permitted under the California State Government Code and/or the City's investment policy;
- (6) investment agreements, whether competitively bid or not;
- (7) repurchase agreements;
- (8) City moneys invested in United States government securities; and
- (9) 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.

**B.** 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.

**C.** 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.

**D.** Contracts awarded on the basis of exigent circumstances whenever any Awarding Authority finds that the City would suffer a financial loss or that City operations would be adversely impacted unless exempted from the provisions of this article. This finding must be approved by the DAA prior to Contract execution.

**E.** 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).

**F.** Contracts for the furnishing of articles covered by letters patent granted

by the government of the United States or where the goods or services are proprietary or only available from a single source.

**G.** Contracts awarded on the basis of urgent necessity in accordance with Charter Section 371(e)(5).

**I.** Contracts entered into pursuant to Charter Section 371(e)(6).

**J.** Contracts entered into pursuant to Charter Section 371(e)(7).

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 8-16-03.

**Sec. 10.41.4. Administration.**

**A.** The DAA shall promulgate rules and regulations to implement this article within sixty days after the effective date of this ordinance.

**B.** The DAA shall develop an affidavit to be used by Awarding Authorities within sixty days after the effective date of this ordinance.

**C.** The DAA shall administer the requirements of this article and monitor compliance, including investigation of alleged violations.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 8-16-03.

**Sec. 10.41.5. Application of this Article.**

**A.** This article shall be applicable to Contracts entered into after the rules and regulations have been promulgated by the DAA.

**B.** This article shall be applicable to Contract amendments entered into after the rules and regulations have been promulgated by the DAA where the initial Contract was not subject to the provisions of this article.

SECTION HISTORY

Added by Ord. No. 175,346, Eff. 8-16-03.

EXHIBIT D-7: FIRST SOURCE HIRING

See attached.

## ARTICLE 18 FIRST SOURCE HIRING

### Section

- 10.44 Purpose.
- 10.44.1 Definitions.
- 10.44.2 First Source Hiring Procedure.
- 10.44.3 City Loan or Grant Recipients.
- 10.44.4 Compliance with the Service Contractor Worker Retention Ordinance.
- 10.44.5 Designation of a Liaison.
- 10.44.6 Transfer and Promotion.
- 10.44.7 Administration.
- 10.44.8 Enforcement.
- 10.44.9 Exemptions.
- 10.44.10 Application of this Article.
- 10.44.11 No Third Party Beneficiary.
- 10.44.12 Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.
- 10.44.13 Intentional Violation.
- 10.44.14 Severability.

#### **Sec. 10.44. Purpose.**

The City awards many contracts to private firms to provide services to the public and to City government. The City also provides grant and loan funding to others for the purpose of economic development or job growth. The City expends grant funds under programs created by the federal and state governments, which promote the goals established for those programs and similar goals of the City. The City intends that the policies underlying this article serve to guide all of these expenditures to the extent allowed by the law.

City service contracts are subject to the City's Living Wage ordinance and provide covered workers with substantially greater wages and benefits than otherwise required by law. In addition, having the opportunity to work on a City contract affords workers valuable experience that can be used to garner future employment. The City has an interest in expanding the field of competent service workers to address the problems associated with a significant local unemployed, under-employed and unskilled workforce. The City serves this interest by expanding the opportunities that workers have to be referred for employment by City contractors.

The inadequate compensation often paid to service workers who are not subject to the City's living wage requirements fails to provide those workers with resources sufficient to

afford life in Los Angeles. Further, there are many unemployed and under-employed service workers who are interested in performing work on City contracts. Young people constitute a significant portion of the unemployed and under-employed. Experience indicates that unemployment and under-employment contribute to devastating social burdens including a sustained, large population of unskilled workers, increased crime and increased need for costly social services. The City, as a principal provider of social support services, has an interest in promoting an employment environment that protects such limited resources. In creating a program that helps link Contractors with potential service workers, the City serves this interest and provides greater opportunities for employment on service contracts. To further serve this interest, the Library Department and the Department of Recreation and Parks are encouraged to adopt policies consistent with this article.

#### SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

#### **Sec. 10.44.1. Definitions.**

The following definitions shall apply throughout this article:

**"Awarding Authority"** means any subordinate or component entity or person of the City, such as a department or Board of Commissioners that has the authority to award or enter into any a Contract (as defined below). This shall not include any department that has control of its own funds or the Community Redevelopment Agency.

**"CDD"** means the City Community Development Department's Workforce Development System.

**"City"** means the City of Los Angeles, a municipal corporation, and all City Awarding Authorities.

**"Contract"** means a contract, which is in excess of \$25,000 with a term greater than three months, awarded to a Contractor by the City or by a Loan or Grant Recipient primarily to furnish services to or for the City or the Loan or Grant Recipient. This shall not include construction contracts for a public work of improvement.

**"Contractor"** means any Person that enters into a Contract with the City or a Loan or Grant Recipient.

**"Designated Administrative Agency"** or **"DAA"** means the Department of Public Works, Bureau of Contract Administration, who shall bear administrative responsibilities under this article.

**"Loan or Grant Recipient"** means any person who receives from the City a qualifying grant or loan for economic development or job growth expressly articulated and identified by the City.

**"Person"** means any individual, proprietorship, partnership, joint venture, corporation, Limited Liability Company, trust, association, or other entity that may employ individuals or enter into contracts.

**"Referral Resources"** means any resource used to locate new employees

considered for employment under this article. Referral Resources shall include Trade Unions, Community Based Organizations, City Work Source Centers and any other resources approved by CDD.

"**Subcontractor**" means any person that enters into a contract with a Contractor or Subcontractor to assist in performing the services to the City or the Loan or Grant Recipient.

SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

**Sec. 10.44.2. First Source Hiring Procedure.**

(a) Before executing a Contract, each Awarding Authority shall receive from the Contractor and provide to the DAA a list of anticipated employment opportunities that Contractor and its Subcontractors estimate they will need to fill in order to perform the services under the Contract. The list shall include:

(1) The number of anticipated employment opportunities throughout the term of the Contract; and

(2) The job title and description of each anticipated employment opportunity; and

(3) The basic qualifications necessary for each anticipated employment opportunity; and

(4) The number of anticipated hires made subject to the Service Contract Worker Retention Ordinance.

(b) During the term of the Contract, Contractor shall:

(1) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the CDD, which will refer individuals for interview; and

(2) Interview qualified individuals referred by Referral Resources; and

(3) Prior to filling any employment opportunity, the Contractor shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the Contractor or Subcontractor interviewed and the reasons why referred individuals were not hired.

(c) Managerial, supervisory or confidential positions shall not be subject to this article.

(d) Positions requiring professional licenses to perform the Contract shall not be subject to this article.

SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

**Sec. 10.44.3. City Loan or Grant Recipients.**

(a) A City Loan or Grant Recipient is subject to this article if the loan or grant is for economic development or job growth, is in an aggregate amount that exceeds \$25,000

and either:

(1) The loan is provided at an interest rate below the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f) at the time the Contract is executed; or

(2) The loan is at or above the applicable federal rate but the loan provides a mechanism for forgiving the interest.

(b) In the event that the applicable federal rate falls below the rate at which a City Loan is provided during the term of the Contract, the Awarding Authority may request the DAA to waive the requirements of this article.

SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

**Sec. 10.44.4. Compliance with the Service Contractor Worker Retention Ordinance.**

Where applicable, Contractor shall first comply with the Service Contractor Worker Retention Ordinance, Administrative Code Section 10.36 et seq., as amended from time to time.

SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

**Sec. 10.44.5. Designation of a Liaison.**

Prior to execution of the Contract, Contractor shall provide the City with the name and contact information of the liaison designated to work with the DAA to implement this article.

SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

**Sec. 10.44.6. Transfer and Promotion.**

This article does not prevent a Contractor from filling job vacancies or newly created positions by transfer or promotion of its existing staff.

SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

**Sec. 10.44.7. Administration.**

(a) The DAA shall promulgate rules and regulations to assure efficient implementation and enforcement of this article.

(b) The DAA may delegate duties to other City departments and provide for the manner in which exemptions from this article are approved and documented.

(c) The DAA shall develop the forms to be used by the Awarding Authorities toward implementing this article.

(d) The DAA may establish rules and guidelines governing pre-interview screening of individuals referred under this article.

(e) The DAA shall investigate alleged violations of this article and monitor

compliance with this article.

(f) The DAA may establish by regulation provisions under which the DAA may exempt a Contractor from the requirements of this article for specific employment opportunities.

(g) The DAA shall report to the Ad Hoc Committee on Gang Violence and Youth Development quarterly for one year after the ordinance is adopted. After the first year, the frequency of reporting requirements shall be determined by the DAA, or as otherwise instructed by City Council.

SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

**Sec. 10.44.8. Enforcement.**

If the DAA determines that a Contractor has violated this article, the DAA may recommend that the Awarding Authority take any of the following actions:

(a) Document the determination in the Awarding Authority's Contractor Evaluation required under Los Angeles Administrative Code Section 10.39 *et seq.*; and

(b) Require that the Contractor document the determination in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 *et seq.*; and

(c) Terminate the Contract.

The Awarding Authority may pursue any rights and remedies available by law.

SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

**Sec. 10.44.9. Exemptions.**

Upon request of the Awarding Authority, the DAA shall determine whether a Contract is exempt from this article because any of the following is applicable:

(a) Contracts where the provisions of this article conflict with federal or state law.

(b) Contracts with another governmental entity.

(c) Contracts where the provisions of this article would conflict with federal or state grant funded contracts, or conflict with the terms of the grant or subvention.

(d) Contracts awarded under urgent or emergency circumstances.

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

(f) Contracts where the services are available only from a single source.

(g) Contracts that involve the investment of trust monies, bond proceeds or agreements relating to the management of these funds, indentures, security enhancement agreements (including, but not limited to, liquidity agreements, letters of credit and bond insurance) for City tax-exempt and taxable financings, deposits of City's surplus funds in financial institutions, the investment of City

monies in competitively bid investment agreements, the investment of City monies in securities permitted under the California State Government Code or the City's investment policy, investment agreements, repurchase agreements, City monies invested in U.S. government securities or pre-existing investment agreements.

(h) Contracts involving City monies if the Treasurer or the City Administrative Officer finds that failure to enter into the Contract will violate his or her fiduciary duties and cause the City to incur a financial loss or forego a financial benefit.

(i) City Loans or Grants funded from the proceeds of a bond issuance, tax credits or tax increment financing.

SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

**Sec. 10.44.10. Application of this Article.**

This article is applicable to Contracts and amendments to Contracts entered into after the rules and regulations have been promulgated by the DAA.

SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

**Sec. 10.44.11. No Third Party Beneficiary.**

This article does not create beneficial interests in any person who is not a party to the Contract.

SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

**Sec. 10.44.12. Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.**

This article shall not be construed to limit a person's right to bring legal action for violation of other laws.

SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

**Sec. 10.44.13. Intentional Violation.**

If the DAA determines that a Contractor intentionally violated the ordinance or used hiring practices for the purpose of avoiding this article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 *et seq.*, and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 *et seq.* This measure does not limit the City's authority to act under this article.

SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

**Sec. 10.44.14. Severability.**

If a court of competent jurisdiction finds any provision of this article invalid, the remaining provisions shall remain in full force and effect.

SECTION HISTORY

Added by Ord. No. 179,281, Eff. 12-3-07.

EXHIBIT D-8: PUBLIC INFRASTRUCTURE STABILIZATION

See attached.

# ARTICLE 19

## PUBLIC INFRASTRUCTURE STABILIZATION ORDINANCE

Section

- 10.45 Purpose.
- 10.45.1 Definitions.
- 10.45.2 Department-Wide Project Labor Agreement.
- 10.45.3 Targeted Hiring.
- 10.45.4 Transfer and Promotion.
- 10.45.5 Administration.
- 10.45.6 Enforcement.
- 10.45.7 Exemptions.
- 10.45.8 Application of this Article.
- 10.45.9 No Third Party Beneficiary.
- 10.45.10 [Reserved.]
- 10.45.11 Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.
- 10.45.12 Severability.

**Sec. 10.45. Purpose.**

The City awards many contracts to private firms to construct public works improvements. This Article, also referred to as the Public Infrastructure Stabilization Ordinance advances the interests of the City by promoting the use of project labor agreements for those public works improvements that meet certain criteria.

Project labor agreements are the preferred tool to ensure that important proprietary goals of the City are achieved, including completion of construction projects on-time and within budget by minimizing labor misunderstandings, grievances and conflict along with emphasizing worker safety.

Project labor agreements also advance the City's interests by ensuring that unemployed and underemployed residents will receive employment opportunities at City public works construction projects. Over the years, project labor agreements have proven to be an excellent mechanism to promote the hiring of unemployed and under-employed City residents. These agreements have proven their effectiveness in targeting construction employment and training opportunities to mitigate the harms caused by geographically-concentrated poverty.

City public works of improvement construction contracts are subject to the State's Prevailing Wages Law or in some instances the Federal Davis Bacon Wage statute, each of which provides covered workers with substantially greater wages and benefits than otherwise required by law. Increasing access to employment opportunities with

prevailing wage is one way for the City directly to combat poverty and stimulate economic reinvestment.

In addition, having the opportunity to work on a City contract affords workers valuable experience that can be used to garner future employment. The City has an interest in expanding the field of competent construction workers to address the problems associated with a significant local unemployed, under-employed and unskilled workforce. The City serves this interest by expanding the opportunities that workers have to be referred for employment by City contractors.

Further, there are many unemployed and under-employed City residents who are interested in getting good work and learning a construction trade. Young people constitute a significant portion of this City's unemployed and under-employed residents. Experience indicates that unemployment and under-employment contribute to devastating social burdens including a sustained, large population of unskilled workers, increased crime and increased need for costly social services. The City, as a principal provider of social support services, has an interest in promoting an employment environment that protects such limited resources. In creating a program that helps link Contractors with potential construction workers, the City serves this interest and provides greater opportunities for employment on public improvement construction contracts.

In February 2008, the Economic Roundtable released a study commissioned by the Community Development Department on Concentrated Poverty in Los Angeles. For purposes of the study, concentrated poverty was defined as a census tract with 40 percent or more of households below the poverty level in 2000. The study found that the City of Los Angeles has higher rates of concentrated poverty than the nation and the larger Los Angeles region. In fact, "Nineteen percent or over 238,000 of the 1.3 million households in the City of Los Angeles were living below the federal poverty threshold in 2000. A quarter of the census tracts in the City (216 tracts) have poverty rates of at least 30 percent."

The City's areas of concentrated poverty are growing in size and increasing in number. The City desires to address this problem by creating programs that train and employ people living in these areas of concern.

The Public Infrastructure Stabilization Ordinance targets construction employment and training opportunities in ways calculated to mitigate harms caused by geographically concentrated poverty, to address unemployment and underemployment in concentrated poverty neighborhoods and to advance the skills of the local labor pool, especially the youth by maximizing opportunities to earn prevailing wage.

To further serve these interests, the Port of Los Angeles, the Los Angeles World Airports, the Department of Water and Power and the Housing Authority of the City of Los Angeles are encouraged to adopt policies consistent with this Article.

#### SECTION HISTORY

Added by Ord. No. 181,520, Eff. 2-20-11.

#### **Sec. 10.45.1. Definitions.**

The following definitions shall apply throughout this Article:

"**Apprentice**" means any worker who is indentured in a bona fide construction

apprenticeship program registered and approved by the State of California, Division of Apprenticeship Standards (DAS) or in the case of Projects with federal funding, in a bona fide apprenticeship program approved by the US Department of Labor (DOL) and California DAS.

**"Area Median Income" ("AMI")** means the area median income for the Los Angeles-Long Beach Metropolitan Statistical Area, as determined annually by the U.S. Department of Housing and Urban Development.

**"City"** means the City of Los Angeles, a municipal corporation.

**"Concentrated Poverty Neighborhood"** means a census tract in which 40% or more of the households have incomes below the federal poverty guidelines.

**"Contract"** means a construction contract for a public work of improvement.

**"Contractor/Subcontractor/Employer"** means any individual firm, partnership, owner-operator, or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and which has entered into a contract with Public Works or any of its contractors or subcontractors/owner-operators of any tier, with respect to the construction of any part of a Project Work.

**"Designated Administrative Agency" or "DAA"** means the Department of Public Works, Bureau of Contract Administration, who shall bear administrative responsibilities under this Article, including rule making.

**"Disadvantaged Worker"** means an individual whose primary place of residence is within the City and who, prior to commencing Project Work, either: (a) has a household income of less than 50% of the AMI; or (b) faces at least one of the following barriers to employment: being homeless, receiving public assistance; lacking a GED or high school diploma, having a history of involvement with the justice system; being a single parent; or (c) suffers from chronic unemployment or underemployment.

**"Local Resident"**: (i) means an individual whose primary place of residence is within the City and is within a zip code containing at least part of one census tract with a rate of unemployment in excess of 200% of the Los Angeles County unemployment rate at the time of application or containing all or part of a Concentrated Poverty Neighborhood; or (ii) means an individual whose primary place of residence is within the City and is within the zip code containing at least part of one census tract with a rate of unemployment in excess of 100% of the Los Angeles County unemployment rate at the time of application.

**"Project Work"** means work performed in construction of a public works improvement project subject to the Public Works project labor agreement.

**"Public Works"** means the Department of Public Works of the City.

#### SECTION HISTORY

Added by Ord. No. 181,520, Eff. 2-20-11.

#### **Sec. 10.45.2. Department-Wide Project Labor Agreement.**

The Board of Public Works shall approve a department-wide project labor agreement

and apply it to qualifying future public works improvement projects in accordance with criteria established by the Board.

SECTION HISTORY

Added by Ord. No. 181,520, Eff. 2-20-11.

**Sec. 10.45.3. Targeted Hiring.**

The Public Works project labor agreement shall include provisions that obligate a Contractor to follow targeted hiring procedures to make reasonable efforts to achieve specific hiring opportunities for Local Residents, Apprentices and Disadvantaged Workers:

(a) The Contractor and Subcontractor retain the authority in making individual hiring decisions.

(b) Hours worked by residents of states other than California shall not be included in the calculations of total hours of Project Work for purposes of determining whether the Contractor and Subcontractor achieved the percentage requirements set forth in this Article.

SECTION HISTORY

Added by Ord. No. 181,520, Eff. 2-20-11.

**Sec. 10.45.4. Transfer and Promotion.**

This Article does not prevent a Contractor from filling job vacancies or newly created positions by transfer or promotion of its existing staff.

SECTION HISTORY

Added by Ord. No. 181,520, Eff. 2-20-11.

**Sec. 10.45.5. Administration.**

(a) The DAA shall promulgate rules and regulations to assure efficient implementation and enforcement of this Article.

(b) The DAA may delegate duties to other City departments and provide for the manner in which exemptions from this Article are approved and documented.

(c) The DAA shall develop the forms to be used toward implementing this Article.

(d) The DAA shall investigate alleged violations of this Article and monitor compliance with this Article.

(e) The DAA shall annually report to the Board of Public Works after the ordinance is adopted, or as otherwise instructed by City Council.

SECTION HISTORY

Added by Ord. No. 181,520, Eff. 2-20-11.

**Sec. 10.45.6. Enforcement.**

If the DAA determines that a Contractor has violated this Article, the DAA may recommend that the Board of Public Works take any of the following actions:

(a) Withhold payments as liquidated damages pursuant to the Contract.

(b) Terminate, suspend or cancel the contract in whole or in part.

(c) Debar the contractor from bidding on City projects for up to a two-year period.

(d) Document the determination in the Contractor Evaluation required under Los Angeles Administrative Code Section 10.39, et seq.

(e) Require that the Contractor document the determination in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40, et seq.

(f) The City may pursue any and all rights and remedies available at law or in equity.

SECTION HISTORY

Added by Ord. No. 181,520, Eff. 2-20-11.

**Sec. 10.45.7. Exemptions.**

The following Contracts are exempt from this Article. The DAA shall develop rules and regulations for the application of these exemptions:

(a) Contracts where the provisions of this Article conflict with federal or state law.

(b) Contracts with another governmental entity.

(c) Contracts where the provisions of this Article would conflict with federal or state grant funded contracts, or conflict with the terms of the grant or subvention.

(d) Contracts awarded under urgent or emergency circumstances.

SECTION HISTORY

Added by Ord. No. 181,520, Eff. 2-20-11.

**Sec. 10.45.8. Application of this Article.**

This Article is applicable to Contracts entered into after the rules and regulations have been promulgated by the DAA.

SECTION HISTORY

Added by Ord. No. 181,520, Eff. 2-20-11.

**Sec. 10.45.9. No Third Party Beneficiary.**

This Article does not create beneficial interests in any person who is not a party to the Contract.

SECTION HISTORY

Added by Ord. No. 181,520, Eff. 2-20-11.

**Sec. 10.45.10. [Reserved.]**

**Sec. 10.45.11. Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.**

This Article shall not be construed to limit a person's right to bring legal action for violation of other laws.

SECTION HISTORY

Added by Ord. No. 181,520, Eff. 2-20-11.

**Sec. 10.45.12. Severability.**

If a court of competent jurisdiction finds any provision of this Article invalid, the remaining provisions shall remain in full force and effect.

SECTION HISTORY

Added by Ord. No. 181,520, Eff. 2-20-11.

EXHIBIT D-9: LOCAL BUSINESS PREFERENCE PROGRAM

See attached.

Official City of Los Angeles Charter (TM) and Administrative Code (TM)

ADMINISTRATIVE CODE / DIVISION 10 CONTRACTS / CHAPTER 1 CONTRACTS  
GENERAL / ARTICLE 4 SMALL, LOCAL BUSINESS PROGRAM

**ARTICLE 4**  
**SMALL, LOCAL BUSINESS PROGRAM**

Section

10.25	Small, Local Business.
10.26	Definitions.
10.27	Incorrect Supporting Information.
10.28	Award of Contracts.
10.29	Assistance to Small, Local Business and Awarding Authorities.
10.30	Reports.

ADMINISTRATIVE CODE / DIVISION 10 CONTRACTS / CHAPTER 1 CONTRACTS  
GENERAL / ARTICLE 4 SMALL, LOCAL BUSINESS PROGRAM / Sec. 10.25. **Small,  
Local Business.**

**Sec. 10.25. Small, Local Business.**

A business entity shall qualify as a “**Small, Local Business**” as used in this ordinance if it:

- (a) Is not (or together with an affiliate) dominant in its field of operations.
- (b) Is independently owned and operated, with its principal office located in the County of Los Angeles and holds a City business license issued by the Tax and Permit Division of the City Clerk’s office, if this firm is subject to the City Business Tax.
- (c) Has requested classification as a Small, Local Business and has been approved as such by the City. In order to be so approved, a business entity shall set forth, under penalty of perjury, such information as is requested by the City on either electronic or hardcopy forms supplied by the City as part of the supplier registration process and/or not less than five (5) calendar days before the last day for submission of the bid or proposal as to which the business entity seeks to qualify as a Small, Local Business. The forms containing the required information shall be submitted to the Department of Public Works, Bureau of Contract Administration. Among the criteria the City shall consider in

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determining whether a business entity so qualifies is whether the business entity, together with any affiliate, has annual receipts which are less than \$3 million for the previous fiscal year. The City may in the alternative request such information for the previous calendar year.

**SECTION HISTORY**

Added by Ord. No. 153,662, Eff. 6-1-80.

Amended by: Ord. No. 157,595, Eff. 5-15-83, Ord. No. 169,059, Eff. 10-24-93; Ord. No. 173,186, Eff. 5-22-00; Subsec. (c), Ord. No. 174,048, Eff. 8-5-01.

**ADMINISTRATIVE CODE / DIVISION 10 CONTRACTS / CHAPTER 1 CONTRACTS  
GENERAL / ARTICLE 4 SMALL, LOCAL BUSINESS PROGRAM / Sec. 10.26.**

**Definitions.**

**Sec. 10.26. Definitions.**

Definitions for terms used in Section 10.25 are as follows:

(a) "Affiliate" means concerns are affiliates of each other when either directly or indirectly one concern controls or has the power to control the other or a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships: Provided, however, that restraint imposed on a franchisee by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his effort, commensurate with ownership, and bears the risk of loss or failure.

In the following circumstances there will be a presumption that concerns are affiliates; however, such presumption may be rebutted by clear and convincing evidence that affiliation in fact does not exist.

(1) If the concern applying for classification as a Small Local Business has been assisted by another concern which is engaged in a similar or commonly related business activity to meet bonding requirements, and the assisting concern is listed or otherwise designated as a subcontractor or supplier for more than 25% of the contract price required to be performed per the prime bid.

**Official City of Los Angeles Charter (TM) and Administrative Code (TM)**

(2) If the controlling or majority owners of concerns which are engaged in similar or commonly related business activity are familially related, as defined herein, and have established a business or financial relationship between them.

**Nature of Control.** Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative, and it is immaterial whether it is exercised so long as the power to control exists.

**Example.** A party owning 50 percent of the voting stock of a concern would have negative power to control such concern because of the ability to negate actions desired by the other stockholder. Also, the bylaws of a corporation may be drawn up in such a manner which would permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders.

**Control Through Stock Ownership.** A party is considered to control or have the power to control a concern if he controls or has the power to control 50 percent or more of its voting stock.

A party is considered to control or have the power to control a concern even though he owns, controls, or has the power to control less than 50 percent of the concern's voting stock if the block of stock he owns, controls, or has the power to control, is large as compared with any other outstanding block of stock. If two or more parties each owns, controls, or has the power to control less than 50 percent of the voting stock of a concern and such minority block is equal or substantially equal in size, and large as compared with any other block outstanding, there is a presumption that each of such parties controls or has the power to control such concern; however, such presumption may be rebutted by clear and convincing evidence that such control or power to control, in fact, does not exist.

If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

(b) "Annual receipts" means the gross income (less returns and allowances, sales of fixed assets, and inter-affiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever source derived, as entered on its regular books of account for its most recently completed fiscal year (whether on a cash, accrual, completed contracts,

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percentage or completion, or other acceptable accounting basis) and, in the case of a concern subject to U.S. Federal income taxation, reported or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes. If a concern which has been in business more than 12 months changes its accounting period (fiscal year), its annual receipts will be determined from its most recently completed 12-month period in business.

If a concern has acquired an affiliate during the applicable accounting period, it is necessary in computing the applicant's annual receipts, to include the affiliates receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are to be included if such concern was an affiliate during a portion of the applicable accounting period.

(c) **"Familially related"** means relationships between the following family members; Husband, wife, child, stepchild, mother, father, grandparent, brother, sister, grandchild, stepbrother, stepsister, stepmother, stepfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law, and if related by blood uncle, aunt, niece, nephew.

(d) **"Non-manufacturing"** – for the purpose of purchase of materials, supplies, and equipment made by the Purchasing Agent or its successor in interest means, when concern does not manufacture, produce, or add value to the products required to be furnished by such purchase.

(e) **"Not dominant in its field of operation"** means when it does not exercise a controlling or major influence on a local Statewide basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreement, facilities, sales territory, and nature of business activity.

### SECTION HISTORY

Added by Ord. No. 153,662, Eff. 6-1-80.

## ADMINISTRATIVE CODE / DIVISION 10 CONTRACTS / CHAPTER 1 CONTRACTS

**Official City of Los Angeles Charter (TM) and Administrative Code (TM)**

**GENERAL / ARTICLE 4 SMALL, LOCAL BUSINESS PROGRAM / Sec. 10.27.**

**Incorrect Supporting Information.**

**Sec. 10.27. Incorrect Supporting Information.**

(a) A firm which has obtained classification as a Small, Local Business by reason of having furnished incorrect supporting information and which by reason of such classification has been awarded a contract to which it would not otherwise be entitled shall:

1. Pay to the City of Los Angeles any difference between the amount paid to the firm pursuant to the contract and what the City's costs would have been if the contract had been properly awarded.
2. At the option of the City be subject to having all or part of the contract terminated.
3. Be ineligible to transact any business with the City for a period of not less than three months and not more than 24 months as determined by the awarding authority.

(b) Prior to the imposition of any sanction under this section the contractor, or vendor, shall be entitled to a public hearing by the awarding authority and to a ten day notice of the time and place thereof. The notice shall state the reason for the hearing.

**SECTION HISTORY**

Added by Ord. No. 153,662, Eff. 6-1-80.

**ADMINISTRATIVE CODE / DIVISION 10 CONTRACTS / CHAPTER 1 CONTRACTS  
GENERAL / ARTICLE 4 SMALL, LOCAL BUSINESS PROGRAM / Sec. 10.28. Award  
of Contracts.**

**Sec. 10.28. Award of Contracts.**

Any supplier or contractor who qualifies as a "Small, Local Business" and is a responsible bidder or proposer shall be granted a preference as to all contracts of \$100,000 or less, for which bids or proposals were solicited, in an amount equal to 10% of the bid or proposal of the lowest and best responsible bidder or proposer, if that latter bidder or proposer has not qualified as a Small, Local Business. If, after deduction of the 10% preference from the bid or proposal of the Small, Local Business, the bid or proposal is equal to or less than the lowest bid or proposal, the bid or proposal of that Small, Local Business shall be deemed to be the lowest

**Official City of Los Angeles Charter (TM) and Administrative Code (TM)**

bid or proposal.

SECTION HISTORY

Added by Ord. No. 153,662, Eff. 6-1-89.

Amended by: Ord. No. 165,973, Eff. 7-23-90; Ord. No. 173,186, Eff. 5-22-00; Ord. No. 174,048, Eff. 8-5-01.

**ADMINISTRATIVE CODE / DIVISION 10 CONTRACTS / CHAPTER 1 CONTRACTS  
GENERAL / ARTICLE 4 SMALL, LOCAL BUSINESS PROGRAM / Sec. 10.29.**

**Assistance to Small, Local Business and Awarding Authorities.**

**Sec. 10.29. Assistance to Small, Local Business and Awarding Authorities.**

(a) The Mayor's Office of Economic Development will verify eligibility of any business applying for status as a "**Small, Local Business**" and will, to the extent feasible:

(1) Assist small, local business in complying with the procedures for bidding on City contracts;

(2) Work with appropriate State, Federal and private organizations in disseminating information on bidding procedures and the opportunities of small, local business for City contracts;

(3) Assist awarding authorities, as requested, in the performance of the awarding authorities' functions under the City's Small, Local Business Program.

(b) The Mayor's Office of Economic Development will publish and disseminate a list of approved Small, Local Businesses to all City contract-awarding authorities which shall be updated and distributed to City awarding authorities on a regular basis.

SECTION HISTORY

Added by Ord. No. 153,662, Eff. 6-1-80.

Amended by: Ord. No. 169,059, Eff. 10-24-93; Ord. No. 174,048, Eff. 8-5-01.

**ADMINISTRATIVE CODE / DIVISION 10 CONTRACTS / CHAPTER 1 CONTRACTS  
GENERAL / ARTICLE 4 SMALL, LOCAL BUSINESS PROGRAM / Sec. 10.30. Reports.**

**Official City of Los Angeles Charter (TM) and Administrative Code (TM)**

**Sec. 10.30. Reports.**

The Mayor's Office of Economic Development shall submit an annual report to the City Council no later than October 1 of each year for the previous fiscal year, containing the following information:

(1) A list of concerns which were awarded contracts as a Small, Local Business and the dollar amount of each contract.

(2) Any recommendation for changes in the ordinance or City policies to improve opportunities for small, local business.

**SECTION HISTORY**

Added by Ord. No. 153,662, Eff. 6-1-80,

Amended by: Ord. No. 168,594, Eff. 3-26-93, Ord. No. 169,059, Eff. 10-24-93; Ord. No. 174,048, Eff. 8-5-01.