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Report from the CLA

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: February 26, 2013

TO: Honorable Members of the Housing, Community and Economic Development Committee

FROM: Gerry F. Miller
Chief Legislative Analyst

Assignment No.: 13-02-0151
Council File No.: 11-1920

DISPOSITION AND DEVELOPMENT AGREEMENT WITH FOREST CITY RESIDENTIAL WEST FOR THE BLOSSOM PLAZA PROJECT IN CHINATOWN

SUMMARY

In July 2010, the City Council approved actions (CF# 10-1093) related to the acquisition of property at 900 N. Broadway in the Chinatown community for the development of a mixed-use, intermodal development at the site known as Blossom Plaza. As part of that action, the Council authorized the Community Redevelopment Agency/Los Angeles (CRA/LA) to issue a Request for Proposals (RFP) on behalf of the City to identify a developer to implement the Blossom Plaza project within approved land use entitlements and deliver the parking, intermodal, cultural, and affordable housing elements of the project. The RFP process resulted in the selection of Forest City Residential West as the developer, who has since formed a limited liability corporation under the name of Forest City Blossom LLC (Developer).

On October 13, 2011, the Board of Transportation Commissioners (Board) considered and approved recommendations by staff concerning the selection of the Developer and authorizing an exclusive negotiating agreement (ENA) to guide preparation of definitive agreements for this project. The Board's action was approved by Council on November 16, 2011 (CF# 10-1093).

The result of negotiations under the ENA is the attached Disposition and Development Agreement (DDA) for Blossom Plaza. The DDA outlines requirements for development of the project, design review, and standard contractual requirements such compliance with City contracting requirements, insurance, and assignment and transfer. The DDA is now submitted for consideration in conjunction with the Los Angeles Housing Department's selection of the project as an awardee in Round 3 of the 2012 Affordable Housing Trust Fund (AHT) selection process. This allows the Developer to seek tax credits from the State of California (CF#11-1920), final ground lease, reciprocal easement, and City funding agreements will be presented to Council for consideration at a later date.

RECOMMENDATIONS
That the City Council, with the concurrence of the Mayor, approve and authorize the General Manager, Los Angeles Department of Transportation, and General Manager, Los Angeles Housing Department, to execute a Disposition Development Agreement (DDA), between the City of Los Angeles and Forest City Blossom LLC, substantially in the form attached, for the Blossom Plaza project.

FISCAL IMPACT
There is no General Fund impact as a result of this action.

BACKGROUND
The Blossom Plaza project has been under consideration for many years. Since the development of the Chinatown Gold Line Station, efforts have been made to build an at-grade connection between the station and Broadway, providing a direct link between the Gold Line and the Chinatown retail center. Several efforts to accomplish this have been met with circumstances such as the recession in 2008 and the elimination of redevelopment agencies that have caused significant delays for this project.

Following the bankruptcy of the previous project developer and site owner in 2008, the City acquired the project site in 2010 for use by the Los Angeles Department of Transportation (LADOT) as a parking structure and intermodal transit facility to complement transit services provided by the Metropolitan Transit Authority's Gold Line which has a station stop adjacent to the site. To facilitate development of this project, the CRA/LA was authorized by the City to conduct a Request for Proposals (RFP) process on behalf of the City to identify a developer for the site.

CRA/LA, in cooperation with LADOT, General Services Department (GSD), the Chief Legislative Analyst (CLA), and the City Administrative Officer (CAO), prepared an RFP that was released in December 2010. Submissions were due in March 2011, and the CRA/LA received six proposals. Upon review and consideration of the proposals, the panel selected Forest City Residential West (Developer) based on their experience and their proposed approach to the development of the site.

Negotiations were initiated with the drafting and approval of an Exclusive Negotiating Agreement (ENA) that outlined the requirements for the project and formed a framework for the development of definitive documents. Council approved the ENA and authorized the LADOT, CRA/LA, and CLA to negotiate a Disposition and Development Agreement (DDA) to prepare final terms for the project. With the dissolution of redevelopment agencies by the State of California, the housing responsibilities of the CRA/LA were transferred to the Los Angeles Housing Department (LAHD). As such, the LAHD subsequently joined negotiations for this project.

Disposition and Development Agreement
The attached DDA provides the terms for a ground lease of the project site at 990 North Broadway for the construction of a mixed-use development, including residential, retail, open space, and public parking:

Project Elements
-- Development of up to 262 housing units, with 53 set-aside as affordable
-- 175 public parking spaces and 197 private parking spaces, for 372 spaces total

-- A 16,000 square foot public plaza and 9,500 square foot passage at grade with Broadway and connecting to the Gold Line station

Project Terms

-- 55-year term with provisions to allow for up to four extensions
-- City to provide $4.5 million to fund public parking elements (federal grant)
-- City to provide $1.6 million Transit Oriented Development funds (State grant)
-- City, at its sole discretion, to consider additional funding if needed
-- Developer to comply with existing entitlements approved for the project
-- Project to seek LEED Gold certification
-- Developer to comply with City contracting requirements

The City previously received three grants from the federal Department of Transportation (DOT) to fund elements of the public parking and other intermodal transportation elements. Due to delays resulting from the previous developer's foreclosure, the grant for intermodal transportation elements was rescinded. Two grants, totaling $4.5 million, remain to fund acquisition and construction of the public parking.

The project also received a $1.6 million grant from the State of California's Proposition 1C Transit Oriented Development program. The City will use these funds to assist with construction of the public parking facility.

Additional funding may be necessary to complete the project. The CRA/LA previously indicated that tax increment funding might be available to support this project. With the dissolution of the CRA/LA, the City has commissioned a study to determine whether tax increment funding is needed for the project. Staff will report at a later date on whether it is feasible and necessary to provide this additional funding.

The Blossom Plaza project is fully entitled by the Planning Department and the Developer will complete the Project within the framework of those entitlements.

One constraint on the project site is the potential for groundwater contamination. The City and Developer have agreed that the City, as property owner, would be responsible for the first $100,000 in costs associated with remediation of any contamination, with the Developer taking responsibility for any additional costs. The City also agrees to use its best efforts through the existing Brownfields program to identify funds to offset remediation and testing costs.

Analyst

Attachment: Disposition and Development Agreement

DISPOSITION AND DEVELOPMENT AGREEMENT

BLOSSOM PLAZA MIXED USE DEVELOPMENT

By and Between

**THE CITY OF LOS ANGELES,
ACTING THROUGH ITS DEPARTMENT OF TRANSPORTATION ("LADOT"), AND
ITS DEPARTMENT OF HOUSING ("LAHD")**

(COLLECTIVELY, "CITY")

and

FOREST CITY BLOSSOM, LLC

("DEVELOPER")

City Contract Number: _____

DISPOSITION AND DEVELOPMENT AGREEMENT

BLOSSOM PLAZA MIXED USE DEVELOPMENT

This DISPOSITION AND DEVELOPMENT AGREEMENT (this "DDA") is dated as of **March 1, 2013**, for identification purposes only and is entered into by and between The City of Los Angeles, a Municipal Corporation acting through its Department of Transportation ("LADOT"), and its Department of Housing ("LAHD") (collectively, the "City"), and FOREST CITY BLOSSOM, LLC, a Delaware limited liability company ("Developer"; each of which is sometimes individually referred to as a "Party" and collectively referred to as the "Parties.")

a. WHEREAS, In June 2007, the City Council of the City of Los Angeles approved that certain Blossom Plaza Funding Agreement (the "2007 Funding Agreement") among the City, the former Community Redevelopment Agency of the City of Los Angeles ("CRA/LA") and Chinatown Blossom, LLC ("CTB"), whereby CTB received Community Development Block Grant Funds ("CDBG Funds") through the CRA/LA for the acquisition of an approximately 1.9 acre site located between College and Spring Streets at 900 North Broadway Street, Los Angeles, California 90016, and legally described on **Exhibit A "Legal Description of Site"** attached hereto (the "Site") for the purpose of redeveloping the Site from its former restaurant use into a mixed use transit oriented project ("2007 Project").

b. WHEREAS, as a result of the use of the CDBG Funds, the development of the Site is subject to certain requirements, including the creation of one hundred and nine (109) full time equivalent permanent jobs at the Site, not less than fifty one percent (51%) of which (i.e., 55 jobs) would have to be made available to or held by low and moderate income people ("Job Creation Commitment").

c. WHEREAS, CTB was unable to develop the 2007 Project and defaulted on a senior secured loan which resulted in the transfer of the Site title to Prime Property Fund ("Prime").

d. WHEREAS, Prime was unable to develop the 2007 Project (or any other qualifying project on the Site) and agreed to sell the Site to the City, which is now the fee owner of the Site.

e. WHEREAS, the City has invested a total principal amount of Nine Million Five Hundred Thousand Dollars ($9,500,000) for the acquisition of the Site (including the CDBG Funds)

f. WHEREAS, around December 2010, the City issued a request for proposals for the acquisition and development of the Site (the "RFP").

g. WHEREAS, in response to such RFP, Developer presented a proposal to the City ("Developer's Proposal") to develop the Site, by demolishing the existing improvements and completing site preparation, followed by construction of a mixed use transit oriented development project substantially similar to the 2007 Project, as follows (collectively, the "Project"): (i) not more than two hundred sixty two (262) residential units, of which not less than fifty-three (53) will be Affordable Units (as defined below), (ii) not less than twenty thousand (20,000) but not more than forty three thousand two hundred thirty one (43,231) gross square feet of retail space, (iii) an approximately sixteen thousand (16,000) square foot Cultural Plaza, (iv) an approximately nine thousand five hundred (9,500) square foot Transit Walkway connecting the Metro Gold Line Station to Broadway Street; (v) certain intermodal transit improvements (vi) a minimum of 372 parking spaces, comprised of at least 197 residential spaces ("Residential Parking") and 175 public parking spaces ("Public Parking" and together with the Residential Parking, collectively, the "Parking Facility"), all of which will be constructed and operated in a manner sufficient to qualify for Gold certification as a sustainable project under the U.S. Green Building Council's LEED certification program, and in which the Job Creation Commitment can be met.

h. WHEREAS, the City contemplates providing additional financial assistance for the development of the Project at the Site (collectively, the "City Financial Assistance"), as follows: (i) a loan in the maximum principal amount of approximately Five Million Three Hundred Thousand Dollars ($5,300,000) in Affordable Housing Trust Fund funds from the Los Angeles Housing Department ("City Housing Loan) for the development of the 53 Affordable Units within the Project; (ii) One Million Five Hundred Thousand Dollars ($1,500,000) in Proposition 1C Transit Oriented Development grants to partially fund eligible Project costs for other aspects of the Project and (iii) Four Million Six Hundred Thousand Dollars ($4,600,000) in Federal Transit Administration grants ("FTA Funds") to partially fund eligible Project costs for other aspects of the Project:

i. WHEREAS, the City has approved discretionary land use entitlements for the 2007 Project in City Planning Commission Case No. CPC- 2004-4139-CUB-ZV-ZAD and Vesting Tentative Tract Map VTT-61837 (the "Existing Tract Map Approval"), and certain other entitlements, all subject to the conditions of approval set forth therein (collectively, the "Entitlements"), and in connection therewith the City adopted Mitigated Negative Declaration, ENV-2004-4140-MND and an Addendum thereto ("Existing CEQA Document"). In connection with this DDA and in accordance with the requirements of the California Environmental Quality Act (Cal. Public Resources Code Sections 21000 et seq.) and the State CEQA Guidelines (Cal. Code of Regs., Title 14, Sections 15000 et seq.) (collectively, "CEQA"), the City considered the Project in light of its similarity to the 2007 Project and the existing environmental review under the Existing Environmental Document and related administrative record and has determined that environmental review is adequate for the Project as described in this DDA.

j. WHEREAS, the Site has remained vacant for a period in excess of 14 years and constitutes both a physical and an economic blight upon the Chinatown community and the development of the Project will help to alleviate that blight and to promote the economic revitalization of the Chinatown community.

k. WHEREAS, the City is desirous of having the Site developed so as to serve a public purpose by helping to remedy and prevent the recurrence of the physical and economic conditions of blight that currently exist at the Site, increasing the community's supply of housing that is affordable to persons and families of low and moderate income, and generating construction jobs in the development of the Project and permanent jobs in its operation, and encouraging further private investment that will benefit the entire Chinatown community.

l. WHEREAS, on March 1, 2013, the Los Angeles City Council made a determination that the disposition of one or more leasehold interest(s) to Developer pursuant to ground lease(s) (collectively, the "Ground Lease") for the sole purpose of developing and operating the Project, including development and disposition to the City upon completion of the Public Parking Facility (as defined below) at the Site in accordance with the terms of this DDA, would serve a vital public purpose and is in the vital and best interests of the City and the health, safety, morals and welfare of the residents of the City in that it would: (i) eliminate physical blight by removing a vacant abandoned building at the Site and replacing it with the Improvements; (ii) help alleviate economic blight in the Chinatown community by creating badly needed temporary construction jobs and permanent jobs once the Project is completed (including satisfaction of the Job Creation Requirement); (iii) encourage further private and public economic development in and around the Chinatown community; (iv) develop additional housing, including Affordable Units, within the Chinatown community; (v) provide additional public and private parking in the Chinatown community; (vi) create a new eastern gateway to Chinatown by connecting the Gold Line station to Broadway Street; and (vii) generate new revenue for businesses within the Chinatown community as well as the State, City and other taxing authorities.

NOW, THEREFORE, in consideration of the above Recitals and the agreements, representations, warranties, covenants, and conditions set forth in this DDA and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Developer and City, intending to be legally bound by this DDA, hereby agree as follows:

AGREEMENT

ARTICLE 1.
SUBJECT OF THE AGREEMENT

1.1 Incorporation of Recitals: Agreement Supersedes Exclusive Negotiation Agreement.

The terms of the Recitals above are hereby incorporated by this reference as if set forth in full in the body of this DDA. This DDA supersedes any prior agreements regarding the subject matter of this DDA, including without limitation the Exclusive Negotiating Agreement, by and between Developer, and the City, and each of the terms, covenants, conditions, representations and warranties set forth therein.

1.2 Term of Agreement.

The term of this DDA shall commence on the Effective Date and terminate on the fifth anniversary date of the Effective Date, unless (a) extended in accordance with Section 11.4 or by the City in accordance with Section 4.5 or (b) earlier terminated in accordance with this DDA or (c) in the event Developer has commenced construction of the Site by the fourth anniversary date of the Effective Date, the term of this DDA shall be extended for a period of time determined by City and Developer that is reasonable to allow for completion of the construction. Upon expiration of this DDA under this Section 1.2, the following provisions of this DDA shall survive: the indemnification obligations in Sections 6.10, 7.7.2 and 11.6. The foregoing survival provision exists for reference purposes only, and does not alter the scope or nature of the surviving provisions

ARTICLE 2.
DEVELOPMENT OF PROJECT

2.1 Scope of Development.

As set forth in further detail within the Scope of Development attached hereto as **Exhibit B "Scope of Development"**, situated within the Project Site, and consistent with other Exhibits hereto, the Project will consist of the construction of the following:

2.1.1 Private Development Program. The "Private Improvements" (herein so called) means all of the Improvements included within the Project other than the Transit Parking (as defined below), and shall consist of the following (the "Private Improvements"), generally in the locations shown on the Site Plan attached hereto as **Exhibit C "Site Plan"**: (a) up to 262 residential apartment units (collectively, the "Residential Units"), of which not less than fifty three (53) (the "Affordable Units") will be income restricted (to tenants with incomes equal to or less than sixty percent (60%) of

Area Median Income, consistent with the requirements of Section 42 of the Internal Revenue Code and Treasury Regulations promulgated pursuant thereto) residential units incorporated throughout the Residential Units (which Affordable Units are projected to include: sixteen (16) three-bedroom units; eight (8) two bedroom units; twelve (12) one-bedroom units; and seventeen (17) studio units); (b) between one hundred and ninety seven (197) and two hundred and seventy five (275) parking spaces (the number of which will be determined by Developer in its discretion) within a partially subterranean garage located directly beneath the Project (the "Parking Structure"); (c) between twenty thousand (20,000) and forty-three thousand (43,000) square feet of retail and restaurant space (collectively, the "Retail Space") to be located on the first floor of the buildings (the "Mixed Use Buildings") containing the Residential; (d) a cultural plaza of approximately 16,000 square feet (the "Cultural Plaza") in the area shown on the Site Plan (e) an approximately 9,500 square feet walkway (the "Transit Walkway") between the Mixed Use Buildings which, together with the Cultural Plaza, will create a connection between Broadway Street and the Chinatown Metro Gold Line Station. Developer will also make a reasonable attempt to include within the Project a facility designed to encourage and support bicycle use including but not limited to a bike rental facility for transit users. The air space portion of the Site on which the Private Improvements are located is referred to herein as the "Private Parcel".

2.1.2 Public Development Program. The Project will also include 175 public parking spaces to be owned by the City and operated for transit use (the "Transit Parking") located within the Parking Structure generally in the locations shown on the Site Plan attached hereto as Exhibit C. The air space portion of the Site on which the Transit Parking is located is referred to herein as the "Transit Parking Parcel". Developer

2.2 Costs and Revenues.

Except as otherwise explicitly set forth in this DDA, in the Ground Lease, and/or in any documents evidencing the City Financial Assistance, the design, development, construction, and operation of the Project shall be at the sole cost and expense of Developer. Any and all revenue generated from the use of the Project (excluding parking revenue generated by the Transit Parking and the Rent) shall inure to Developer or its permitted successors and assigns.

2.2.1 Ownership of the Improvements. During the term of the Ground Lease, Developer shall own a fee interest in all of the Improvements within the premises leased thereunder. Upon expiration of the term of the Ground Lease, ownership of Improvements shall transfer to the City. Following Partial Termination (as defined below), City shall own a fee interest in the Transit Parking Improvements comprising the Transit Parking.

2.3 Subdivision; Ownership Structure.

2.3.1 Ground Lease. Subject to certain conditions, as set forth in further detail below in Section 4.1, City will lease the Site to Developer (or its permitted assignees under one or more ground leases, as determined by Developer in connection with its financing plan (collectively, the "Ground Lease"). Developer shall be responsible for adhering to the Entitlements and all conditions of approval thereof.

2.3.2 Partial Ground Lease Termination. Pursuant to the Ground Lease, the City will lease the entirety of the Site to Developer. Upon completion of the Transit Parking and delivery thereof to the City, payment to Developer by City of the City Transit Parking Contribution, if any, and satisfaction of the other conditions as contemplated by Section 4.5.5 below, and recordation of the REA (as defined below), the Ground Lease shall partially terminate with respect to the Transit Parking Parcel ("Partial Termination"). The parties acknowledge that, pursuant to the Subdivision Map Act, California Government Code Sections 66412.1 and 66426.5, the Partial Termination will not require any separate subdivision approval.

2.3.2 Legal Descriptions. A legal description for each of the Private Parcel and the Transit Parking Parcel Existing Subdivision Map Approval will be attached to the Ground Lease.

2.3.3 Subleasing or other Subdivision for Affordable Unit Financing. City further acknowledges that, in order to finance the construction of the Affordable Units under State and federal tax law, it will be necessary for the portions of the Site to be so developed to be owned by a separate legal entity from Developer. Accordingly, the Ground Lease will provide that Developer will have the right to sublease the portions of the Site to be developed as Affordable Units to a separate entity, provided such entity controls, is controlled by, or is under common control with Developer. If the development of the Project requires any further subdivision beyond that provided for under the Existing Subdivision Map Approval (as determined by Developer), then Developer will cause to be prepared, and filed, any application for a modification to the Existing Subdivision Map Approval or new tract map(s) (either, a "New Map"). City agrees to reasonably cooperate with Developer in connection with any such application.

2.3.4 Additional Entitlements. Any additional discretionary approvals needed in connection with the development, construction, financing and/or ownership of the Project in accordance with this DDA and/or the Ground Lease, if any, including if applicable any New Map (collectively, Additional Entitlements"), shall be obtained prior to the Close of Escrow. The cost of obtaining any such Additional Entitlements shall be development costs of the Project. The City agrees to cooperate fully with Developer's efforts to obtain such Additional Entitlements.

2.4 Conveyance of Site Parcel.

Upon the Close of Escrow for the Site, City shall lease the Site to Developer through the Ground Lease, which shall have been negotiated and executed by the parties and deposited into Escrow pursuant to Section 4.5.

ARTICLE 3.
GROUND LEASE PROVISIONS

3.1 Ground Lease Term.

The Term of the Site Ground Lease shall be for a term of fifty five (55) years (the "Initial Term"). To the extent permitted by California Civil Code Section 719 and California Government Code Section 37380 (as determined prior to entry into the Ground Lease), the Ground Lease will provide four (4) options to renew, each with an eleven (11) year term (each an "Extension Period").

3.2 Ground Lease Payment for Initial Term – Base Rent.

Developer shall pay to the City, at Close of Escrow, an amount equal to lesser of: (A) the appraised market value of the Site based on the appraised value received from a qualified real estate appraisal report dated not more than six (6) months prior to the execution of the Ground Lease; of (B) the fair reuse value of the Site as provided by the City's consultant and approved by the City not more than six (6) months prior to the execution of the Ground Lease, minus an amount equal to the costs associated with the Environmental Remediation to the extent that such costs are documented by Developer and approved by City; as a capitalized long-term ground lease payment for the Initial Term of the Ground Lease (the "Initial Ground Lease Payment").

3.3 Participation Rent.

In addition to the Initial Ground Lease Payment, Developer shall make an annual payment to the City during the Initial Term, in arrears, in an amount equal to twenty percent (20%) of the amount by which cumulative net cash flow provides a cumulative compounded annual return of 12% on equity invested by Developer, as of the last day of the preceding year (excluding equity invested in connection with applicable tax credits). Such calculation shall be made each year based on Developer's audited report of total development costs of the Project (including amount funded by equity) to be delivered by Developer to City following completion of the Project, and an annual accounting of net cash flow.

3.4 Ground Lease Payments during the Extension Period – Base Rent.

The rent for each Extension Period will be reset to "Fair Market Rent" (herein so called) prior to the expiration of the Initial Term (with respect to the initial Extension Period) and the immediately prior Extension Period (with respect to the each subsequent Extension Period). The Fair Market Rent of the unimproved leasehold estate in the Site, subject to all applicable covenants, use and other restrictions, calculated as of the commencement of the Extension Period, will be established through a three appraisal arbitration process to be set forth in the Ground Lease. . A capitalized long-term ground lease payment

equal to the Fair Market Rent for each Extension Period (each an "Extension Period Ground Lease Payment") shall be paid on or before the commencement of such Extension Period.

ARTICLE 4.
Disposition of the Site

4.1 Conditions Precedent to City Disposition.

As conditions precedent to the Close of Escrow of the Site, the conditions set forth in this Section 4.1 must first be met by Developer by the times specified for such conditions in the applicable Schedule of Performance, attached hereto as **Exhibit D "Schedule of Performance"**. The conditions set forth in Sections 4.1.1, 4.1.2,4.1.3, 4.1.6, 4.1.7, and 4.1.11 below shall be solely for the benefit of, and therefore may only be waived in writing by, the City. The conditions set forth in Sections 4.1.12 shall be solely for the benefit of, and therefore may only be waived in writing by, Developer. The conditions set forth in Sections 4.1.4, 4.1.5, 4.1.8, 4.1.9, and 4.1.10 below shall be for the benefit of, and therefore may only be waived in writing by, both parties. .

4.1.1 Financing Plan. Developer has provided the City with a pro forma, setting forth Developer's current estimate of costs and revenue sources for development of the Project (the "Pro Forma"). The Pro Forma is intended to serve as a guide for the preparation of the "Financing Plan" (as defined below), although the Parties acknowledge that the actual Financing Plan will be based on more refined cost estimates and upon further discussions with proposed lenders and other financing sources.

No later than the date specified in the applicable Schedule of Performance, Developer shall submit to the City a proposed Financing Plan. The Financing Plan shall include: (1) a cash flow projection for operation of the Private Development Program, as applicable; (2) a cost breakdown for development of the Site based upon government permits and approvals and any design documents; (3) a true copy of each firm binding commitment for loans (subject to customary lender conditions) for construction and permanent financing and for other financing from external sources in the amounts necessary to fully finance the development of the Site; (4) a sources and uses table identifying the proposed use of each source of funding for construction of the Improvements on the Site; (5) evidence reasonably satisfactory to the City that Developer has sufficient additional funds available and is committing such funds to cover the difference, if any, between costs of development of the Site and the amount available to Developer from external sources. The City shall review the proposed Financing Plan and shall approve or disapprove the Financing Plan within thirty (30) days of receipt. Failure of the City to approve or disapprove the Financing Plan within thirty (30) days of receipt shall be deemed to be approval by the City.

The City's review of the Financing Plan shall be for the purposes of determining if the contemplated financing will be reasonably available, will provide

sufficient funds for construction of the Project and for its operation consistent with the terms of this DDA and will otherwise be provided on terms consistent with the terms and conditions of this DDA.

Any disapproval of a proposed Financing Plan shall state in writing the reasons for disapproval and the changes which the City requests. Developer shall thereafter submit a revised Financing Plan to the City for its approval within thirty (30) days of the City's notification of disapproval. The City shall either approve or disapprove the revised Financing Plan within thirty (30) days of receipt. Failure of the City to approve or disapprove the Financing Plan within thirty (30) days of receipt shall be deemed to be approval by the City. If the revised Financing Plan is disapproved, then Developer shall have thirty (30) days to submit a further revised Financing Plan. The periods for submission of a revised Financing Plan, review, and approval or disapproval shall continue to apply until a Financing Plan has been approved or deemed approved by the City; however, Developer must submit a preliminary Financing Plan to the City for review (approval of the preliminary Financing Plan shall not be required) no later than one hundred eighty (180) days following execution of this DDA, or this DDA may be terminated by either Party pursuant to Section 10.2.

4.1.2 Marketing Plan/Market Study. No later than the date specified in the applicable Schedule of Performance, Developer shall submit to the City for approval of a Marketing Plan (herein so called) for the Project. The Marketing Plan shall illustrate how the Affordable Units will be advertised and leased. The Marketing Plan shall also set forth the outreach and selection process used to select tenants meeting the income restrictions assigned to the Affordable Units (the **"Eligible Participants"**). Developer shall also submit a Market Study analyzing absorption and lease rates for the Residential Units other than the Affordable Units.

4.1.3 Insurance. No later than the date specified in the applicable Schedule of Performance, Developer shall furnish to the City the type and amounts of insurance required pursuant to Section 7.5 of this DDA. The City shall be named as loss payee or additional insured on the policies, as required by Section 7.5.

4.1.4 City Design Requirements. No later than the dates specified in the applicable Schedule of Performance, Developer shall submit to the City, and the City shall have approved, the proposed drawings and plans for the Project in accordance with Article 5, below.

4.1.5 Additional Entitlements. No later than the date specified on the applicable Schedule of Performance, Developer shall apply for any Additional Entitlements determined by Developer to be necessary for construction of the Project (including any New Map), and shall have obtained such Additional Entitlements, if any, by the times provided in the Schedule of Performance. Developer's application for the Additional Entitlements shall be consistent with the Scope of Development and the terms and conditions of this DDA. If, despite Developer's good faith efforts, the City approvals and any other necessary government permits and approvals have not been

obtained prior to the time provided for the Close of Escrow in the Schedule of Performance, then this DDA may be terminated by either party pursuant to Section 10.2.

4.1.6 Construction Contract. No later than the date specified in the applicable Schedule of Performance, Developer shall submit to the City for review and approval a copy of the construction contract that Developer proposes to enter into with its general contractor for construction of the Project. City's review and approval of a proposed construction contract shall be limited to a determination of the following in the exercise of its reasonable judgment: that the scope and cost of work have been clearly fixed and are consistent with the scope and cost set forth in the Project Documents and the Financing Plan; and that the provisions of the construction contract are consistent with the provisions of this DDA. Within fourteen (14) days after receiving a proposed construction contract, City shall approve or disapprove the proposed construction contract based on its reasonable review. Failure of the City to approve or disapprove the construction contract within fourteen (14) days of receipt shall be deemed to be approval by City. Any disapproval of a proposed construction contract shall state in writing the reasons for disapproval and the changes which City requests. Developer shall thereafter submit a revised construction contract to City for its approval within ten (10) days of City's notification of disapproval. If the revised construction contract is disapproved, then Developer shall have ten (10) days to submit a further revised construction contract. In all events, the Construction Contract must be approved by the City no later than thirty (30) days prior to the Close of Escrow for the Site.

4.1.7 Construction Guaranty. No later than the date specified in the applicable Schedule of Performance, Developer shall deliver to the City a copy of all completion guaranties and/or other surety provided by Developer for any party providing financing for the Project. The City shall consider (but have no obligation to approve) alternate forms of reasonable assurance that the Project will be completed in the manner contemplated by this DDA, including securing a letter of credit, and, if reasonably required by City delivery thereof shall be a condition to City's obligation to proceed to Close of Escrow.

4.1.8 Ground Lease. Prior to the date set forth in the Schedule of Performance, the parties shall have agreed upon the form of the Ground Lease . As a condition to the Close of Escrow, the parties shall have executed and delivered into escrow for delivery upon Close of Escrow, such agreed form of Ground Lease and a memorandum thereof for recordation upon Close of Escrow.

4.1.9 REA. Prior to the date set forth in the Schedule of Performance, the parties shall have agreed upon the form of a reciprocal easement and operating agreement or similar agreement (the "REA") providing for (a) reciprocal easements between the Private Parcel and the Transit Parking Parcel necessary for the use, operation, maintenance and repair of the respective Improvements on each such Parcel; and (b) covenants regarding the use, operation, maintenance, repair, insurance

and replacement of the respective Improvements on each such Parcel, including City's obligation to operate the Transit Parking each day commencing one hour prior to the first Metro train arrival at the Gold Line Station and ending one hour after the last Metro train departure.. As a condition to the Close of Escrow, the parties shall have executed and delivered into escrow for delivery and recordation upon Partial Termination, such REA.

4.1.10 City Financial Assistance. Prior to the date set forth in the Schedule of Performance, the parties shall have agreed upon the form of all agreements and documents evidencing and/or securing the City Financial Assistance. Prior to and as a condition of Closing, such agreements and documents (the "City Financial Assistance Documents") shall have been executed and delivered by the parties into escrow for delivery upon Close of Escrow and all conditions of approval issued by City Council in connection with the City Financial Assistance required to be satisfied by Closing of Escrow shall have been satisfied.

4.1.11 No Litigation. There is no existing, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting Developer that would, if adversely determined, would adversely affect Developer's, or the City's ability to perform their obligations under this DDA or Developer's ability to develop and operate the Project.

4.1.12 Title Policy. The Escrow Holder shall, upon payment of Escrow Holder's regularly scheduled premium, be ready to issue the Title Policy upon Close of Escrow.

4.2 Delivery of Project Site.

Provided the conditions precedent in Section 4.1 have been complied with, upon the terms, covenants and conditions set forth in this DDA, the City agrees to lease the Site to Developer under the Ground Lease.

4.3 Condition of the Site.

4.3.1 Due Diligence. Developer acknowledges that it has availed itself of the opportunity granted by the City prior to execution of this DDA to conduct all studies and investigations of the Project Site, including any Phase 1 or Phase 2 environmental investigations, that it has deemed necessary to assure itself of the physical condition of the Project Site, including its environmental suitability, and the suitability of the Project Site for the development contemplated by this DDA.

4.3.2 "As Is" Conveyance.

4.3.2.1 EXCEPT AS SET FORTH IN SECTION 4.3.3 BELOW, DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS CONVEYING THE SITE TO DEVELOPER AND DEVELOPER IS ACCEPTING FROM

THE CITY THE SITE ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS DDA) OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE AFOREMENTIONED RESIDENTIAL PARCELS, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE RESIDENTIAL PARCELS (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE SITE, (D) THE DEVELOPMENT POTENTIAL OF THE SITE AND THE SITE'S USES, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE SITE FOR ANY PARTICULAR PURPOSE, (E) THE ZONING OR OTHER LEGAL STATUS OF THE SITE OR ANY OTHER PRIVATE OR GOVERNMENTAL RESTRICTIONS ON THE USE OF THE SITE (F) THE COMPLIANCE OF THE SITE OR THE OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, AND (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE SITE OR EMANATING FROM THE ADJOINING OR NEIGHBORING PROPERTY. DEVELOPER AFFIRMS THAT DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES, CONSULTANTS OR CONTRACTORS TO SELECT OR FURNISH THE SITE FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE SITE IS FIT FOR ANY PARTICULAR PURPOSE. DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE SITE AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE SITE (INCLUDING, WITHOUT LIMITATION, WHETHER THE SITE IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL CITY). DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE SITE'S LOCATIONS IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL CITY.

4.3.3 Remediation.

4.3.3.1 Pre-Existing Condition. Developer and City acknowledge that certain Hazardous Substances, including, but not limited to, lead, asbestos, VOCs and petroleum hydrocarbons are present on the Site Two (the **"Known Pre-Existing Condition")** as set forth in that Phase I Report by MACTEC Consulting and Engineering, Inc. dated August 6, 2008 (the **"Phase I Report")** and that certain Phase II Report by MACTEC Consulting and Engineering, Inc. dated April 26, 2005 (the **"Phase II Report"**). The Parties further acknowledge that those certain Hazardous Substances referenced in the Phase I Report and Phase II Report may need to be Remediated from the Site to accommodate the construction and development of the improvements. Subject to the terms of this Article 4, Developer shall cause the Remediation of the Known Pre-Existing Condition, and the City shall pay all costs and expenses of such Remediation by reimbursing Developer for Developer's costs and expenses incurred in an amount not to exceed $100,000, to be paid by City to Developer within 90 days after written demand therefor, which shall be accompanied by reasonable supporting documentation. In the event that during the Remediation of the Known Pre-Existing Condition any Hazardous Substances other than the Known Pre-Existing Condition are discovered on Site Two (each a **"Discovered Pre-Existing Condition"),** Developer shall have the option to Remediate all such Discovered Pre-Existing Conditions that require Remediation in order to comply with all applicable Environmental Laws. If requested by Developer, the City agrees to reasonably cooperate with Developer's efforts to obtain funding from State and/or federal sources to cover the costs associated with any such Remediation, including acting as co-applicant for such funds. In the event Developer is unwilling or unable to cause the Remediation of the Discovered Pre-Existing Condition for any reason, subject to the rights of any holder of a Security Financing Interest of Developer's leasehold rights or rights under this DDA, Developer shall have the right to terminate this DDA without penalty, and terminate the Ground Lease without penalty, in which event (a) the Initial Term Ground Lease Payment shall be repaid by the City to Developer, (b) both parties shall execute and cause to be recorded a Lease Termination Agreement and grant deed for the Improvements; (c) Developer shall assign and the City shall accept an assignment of Developer's work product prepared in connection with the development of the Project (without warranty of any kind by Developer and subject to the rights of the architects, engineers and other consultants that produced such work product, and subject to the rights of the holders of any Financing Security Interests in such work product) as repayment in full for any portion of the City Financial Assistance theretofore disbursed to Developer; (d) this DDA, the Ground Lease and the City Financial Assistance Documents will terminate and be of no further force other than provisions thereof which expressly survive termination.

4.3.3.2 Remediation Election. The Parties acknowledge that City will be the owner of any dirt, waste or Hazardous Materials removed from the Site as part of the Remediation of the Known Pre-Existing Condition or any Discovered Pre-Existing Conditions and City will sign any manifest reasonably arising therefrom.

4.3.3.3 Assignment of Soils and Phase 1 Report.

Developer shall, in accordance with the applicable Schedule of Performance, execute and deliver to the City an assignment of the soils report and Phase 1 Report conducted on the Project Site. Such assignment will grant City, in the event of termination of this DDA by the City, Developer's rights to: (a) data obtained and findings rendered with regard to the environmental condition of the Project Site; and (b) contracts between Developer and its consultants.

4.3.3.4 Other Funding Sources. If requested by Developer, the City agrees to reasonably cooperate with Developer's efforts to obtain funding from State and/or federal sources to cover the costs associated with any such Remediation, including acting as co-applicant for such funds.

4.3.3.5 **Termination; Plans.** If this DDA is terminated as provided herein, Developer's rights to all work product prepared pursuant hereto, including, but not limited to, the Soils and Phase 1 Report shall belong to City (without warranty of any kind by Developer and subject to the rights of the architects, engineers and other consultants that produced such work product, and subject to the rights of the holders of any Financing Security Interests in such work product). Developer shall, within ten (10) days of such termination transmit all such work product to City.

4.4 Discovery of Hazardous Materials.

4.4.1 Disclosure Regarding Condition of Property. The City hereby represents and warrants to Developer that the City has no actual knowledge, and has not received any notice or communication from any governmental agency having jurisdiction over the Project Sites notifying the City of the presence of surface or subsurface zone Hazardous Materials in, on or under the Sites or any portion thereof, other than the Known Pre-Existing Condition. **"Actual knowledge,"** as used herein, shall not impose a duty of investigation, and shall be limited to the actual knowledge of the City's employees and agents who have participated in the preparation of this DDA.

4.4.2 Developer Precautions After Closing. Upon the Close of Escrow, Developer shall use commercially reasonable efforts to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all governmental requirements with respect to Hazardous Materials.

4.4.3 Required Disclosures After Closing. After Close of Escrow for the Site, Developer shall notify the City, and provide to the City a copy or copies, of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Site, including notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any governmental requirement relating to Hazardous Materials and underground tanks of which Developer has possession. Upon request, Developer shall furnish to the City a

copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site, including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential of which Developer has possession.

4.5 Escrow.

4.5.1 Opening of Escrow. To accomplish the conveyance of the Site from the City to Developer, at least ninety (90) days before the expected Close of Escrow for the Site, the Parties shall establish an escrow with the Escrow Holder for the conveyance contemplated under this DDA (each an **"Escrow").** This DDA shall be deposited in each Escrow and the provisions hereof shall constitute joint primary escrow instructions to the Escrow Holder, however, the Parties shall execute such additional instructions as are reasonably necessary by the Escrow Holder. In the event any such additional instructions are inconsistent with the provisions of this DDA, the provisions of this DDA shall govern. Upon the opening of an Escrow, Escrow Holder shall deliver written confirmation of such opening to the Parties. Escrow Holder may open sub-escrows to accommodate multiple closings and each sub-escrow shall be an **"Escrow"** for the purposes of this DDA. The Parties shall execute written escrow instructions consistent with this DDA designating the portion of the Project Site, the Ground Leases, deeds, encumbrances, tract maps, subdivision maps and the other agreements and transactions to be included as part of such Escrow.

4.5.2 Title Review. Within the time provided in the applicable Schedule of Performance, Developer shall cause the Escrow Holder to deliver to the Developer, the City the Title Report(s) with respect to the title of the Site, together with legible copies of the documents underlying the exceptions (the **"Exceptions")** set forth in the Title Report(s). Within the time specified in the applicable Schedule of Performance, Developer shall have approved or disapproved the Exceptions. If Developer disapproves the Exceptions, then Developer may terminate this DDA pursuant to Section 10.2 (no fault) or Developer may provide written disapproval of such Exceptions to the City, and the City shall have until the date selected for each Close of Escrow to cure or remove each disapproved Exception. In the event the City is unable to cure to Developer's reasonable satisfaction, or remove, the disapproved Exceptions prior to Close of Escrow, Developer shall have the right to terminate this DDA pursuant to Section 10.2. Developer's failure to disapprove title to the site within ninety (90) days prior to the Close of Escrow shall be deemed approval of such condition of title. In the event any new Exceptions appear on a Title Report after delivery of the initial Title Report and prior to the Close of Escrow, and (a) Developer disapproves of such Exception and (b) the City is unable to remove or cure such Exception to Borrower's reasonable satisfaction prior to the Close of Escrow, then Developer shall have the right to terminate this DDA pursuant to Section 10.2. Upon Developer's approval of title to the Site, Developer shall have no right to terminate this DDA on account of the condition of title to the Site, except as provided herein.

4.5.3 Deposit of Documents. Within ten (10) business days of the satisfaction or waiver of all of the conditions set forth in Section 4.1 above, the Parties shall deposit into Escrow any and all documents necessary to effectuate the Close of Escrow for the Site, including originals of the Ground Lease, , the REA, the City Financial Assistance Documents, , affidavits required by the Escrow Holder in connection with the Escrow and/or the Title Policy, the Affordability Covenants as required under Section 7.2.1.1, if applicable, and such other documents as are required to complete the obligations of the Parties under this DDA.

4.5.4 Reserved

4.5.5 Close of Escrow. Upon satisfaction, or waiver by the benefited Party, of the conditions set forth in Section 4.1 for an Escrow pertaining to the Site, the Escrow Holder shall complete all of the following acts, at which time the **"Close of Escrow"** for the Site will be deemed to have occurred:

4.5.5.1 Complete all blank spaces in each of the documents listed in Section 4.5.3 above (and all other documents required to be submitted prior to Close of Escrow), including effective dates thereof;

4.5.5.2 Attach thereto accurate legal descriptions consistent with the Title Policy required under this DDA;

4.5.5.3 Deliver copies of fully executed originals of the Ground Lease, the City Financial Assistance Documents, the REA and the Affordability Covenants to the appropriate Parties;

4.5.5.4 Cause to be recorded in the Official Records, as applicable: a) a memorandum of the Ground Lease; (b) the Affordability Covenants, if applicable; and (c) such other documents or instruments as may specified in the Parties' escrow instructions.

4.5.5.5 Release to an escrow account to be held by the Escrow Holder, the applicable Initial Term Ground Lease Payment deposited by Developer. Such Initial Term Ground Lease Payment shall be held by an escrow agent, and disbursed to pay for the costs of constructing the Transit Parking Improvements or shall be otherwise granted or contributed by the City to Developer as a condition to delivery of the Transit Parking to the City and Partial Termination (the "City Transit Parking Contribution").

4.5.6 Attorneys' Fees; Closing Costs. For Close of Escrow for the Site, Developer shall pay for all recording fees, all documentary transfer taxes, all costs incurred in connection with financing procured by Developer, one-half (1/2) of all escrow costs and fees, and all premiums for the Title Policy (and any endorsements) issued insuring Developer's leasehold in the Site. For Close of Escrow, the City shall pay one-half (1/2) of all escrow costs and fees. All other closing costs shall be apportioned in the manner customary in Los Angeles County.

ARTICLE 5.
DESIGN REQUIREMENTS

5.1 Design in Conformance with Scope of Development and Schematic Design Drawings.

In designing and constructing the Project, Developer shall cause all subsequent design documents to be substantially consistent with the Scope of Development unless otherwise approved by the City. The Scope of Development shall establish the baseline design standards from which Developer shall prepare all subsequent Project Documents.

5.2 Project Documents.

Developer shall cause its architect, in collaboration with its public artist or artists, to proceed diligently to prepare Project Documents for the proposed Project, consistent with the Scope of Development, including, without limitation, such drawings as may reasonably be required to show the location, bulk, height and other principal external features of the proposed Project. In connection with its submittal to the City for its approval, Developer shall provide to the City such elevations, sections, plot plans, specifications, diagrams and other design documents at each of the stages described in Section 5.3, as may reasonably be required by the City for its review.

5.3 Submittal and Review of Design and Construction Documents.

Within the times set forth in the applicable Schedule of Performance, the Developer shall submit to the City the Project Documents in the following stages for review and approval in accordance with Section 5.4 below:

5.3.1 Schematic Design Drawings. The Schematic Design Drawings shall include floor plans, elevations, features in public areas, landscape features, locations for signs, parking facilities with all spaces indicated, building sections indicating general construction techniques and major building materials under consideration, potential exterior materials, the colors and textures to be used, and the off-site public improvements to be implemented by Developer. Key interior, exterior, and structural bay dimensions shall be established and a detailed tabulation of floor area by use provided.

5.3.2 Design Development Drawings. The Design Development Drawings shall evolve from the approved Schematic Design Drawings. The exact wall thickness, structural dimensions, and precise delineation of Site features and elevations, the building core, materials and colors, signs, landscaping, and other features shall be indicated on the Design Development Drawings. The drawings shall fix and describe architectural and landscape portions of Design Development Drawings including all design features, as well as the size, character, and quality of the entire Site and Improvements as to architectural, structural, and mechanical systems. Key details

shall be provided in preliminary form. Samples of key materials to be used in publicly visible areas shall accompany these drawings. The Design Development Drawings shall detail the off-site designs for public improvements, if any, to be implemented by Developer.

5.3.3 Final Construction Drawings. The Final Construction Drawings shall be submitted to the City for review and approval and shall logically evolve from the approved Design Development Drawings be submitted to the City for review and approval. The Final Construction Drawings shall provide all the information necessary to obtain a Building Permit including specifications to build the Improvements, including off-site public improvements, if any, and including the landscape and signs, requirements, standards, and specifications. Additionally, Developer shall provide material samples upon the City's request. The format for the Final Construction Drawings shall be a set of fifty percent (50%) reduction-sized plans. Approximately seventy five percent (75%) complete Final Construction Drawings (or such lesser percentage as may be required by the Los Angeles Department of Building and Safety) may also be prepared and submitted for building permit approval in order to obtain an **"Excavation and Foundation Only Permit"** to facilitate "fast track" construction.

5.4 Project Approvals.

Within the times set forth in the applicable Schedule of Performance and Section 5.6 of this DDA, the City shall have the right to review and approve the Project Documents. The purpose of the City's review of the Project Documents is to ensure consistency with the Scope of Development and the provisions of this DDA. Provided that the architectural submittals meet the requirements set forth in Section 5.3, the City shall be required to approve those Project Documents which are logical progressions from concepts set forth in previously approved Project Documents.

5.5 New Material Concerns.

If the City determines that there are material changes which are not logical progressions from previously approved Project Documents or which raise material concerns that were not reviewable in previously approved Project Documents, in approving or disapproving such Project Documents, the City shall act in its reasonable discretion and in conformance with the times set forth in the applicable Schedule of Performance and Section 5.6.

5.6 Approval Process.

The City shall approve or disapprove submittals under this Article 5 within thirty (30) days following receipt of the submittal from Developer. In the event the City fails to approve or disapprove a submittal of Project Documents within thirty (30) days of receipt of such submittal, such Project Documents shall be deemed approved. In the event the City disapproves a submittal of the Project Documents pursuant to Section 5.4, the City shall submit a list of reasons for such disapproval to Developer, together

with its notice of disapproval. Upon receipt of such a list, Developer shall have thirty (30) days to resubmit a revised submission. Again, upon the City's receipt of a revised submission, the City shall have fifteen (15) days (or in the event City Board action is required as soon as reasonably possible) to approve or disapprove of the revised design. If in the City's reasonable judgment, City Council action is not required to consider the revised submittal, failure to approve or disapprove within fifteen (15) days shall be deemed to be approval of such change. Notwithstanding the foregoing, no matter shall be deemed approved unless the request for approval contains the following provision, in bold print:

NOTICE IS HEREBY GIVEN THAT FAILURE TO APPROVE THE MATTER REQUESTED WITHIN 30 DAYS SHALL BE DEEMED AN APPROVAL PURSUANT TO SECTION 5.6 OF THE DISPOSITION AND DEVELOPMENT AGREEMENT.

5.7 No Change in Project Documents.

Once the City has approved Final Construction Drawings, Developer shall not make any changes in those documents which would materially change the Project Documents with respect to the matters set forth in Section 5.3 without the prior written approval of the City, subject to the provisions of Section 5.6.

5.8 Additional Permits and Approvals.

Within the time specified in the applicable Schedule of Performance, Developer shall obtain all permits and approvals necessary to construct the Project including demolition and Building Permits. All applications for such permits and approvals shall be consistent with the approved Project Documents. Developer shall not obtain a Building Permit until the City has approved the Final Construction Drawings. Developer acknowledges that execution of this DDA by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit, allocation and approval process.

5.9 City Review.

Developer shall be solely responsible for all aspects of Developer's conduct in connection with the Project, including, but not limited to, the quality and suitability of the Project Documents, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Project is solely for the purpose of determining whether Developer is properly discharging its obligations to the City, and should not be relied upon by Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Project.

5.10 Architect's Assignment.

Developer shall, in accordance with the applicable Schedule of Performance, execute and deliver to the City the Architect's in a form to be agreed upon prior to Close of Escrow. The Architect's Assignment will grant the City, in the event of termination of this DDA by the City, subject to the rights of any holder of a Security Financing Interest of Developer's rights herein or in the Project, Developer's rights to: (a) the plans prepared pursuant to this DDA; (b) the contract between Developer and its architect; and (c) all permits relating to the Project. If this DDA is terminated by the City as provided herein, Developer's rights to all work product prepared pursuant hereto, including, but not limited to, all plans and construction documents, shall belong to the City, provided, however, Developer's obligation to deliver the Soils and Phase I Reports to the City in the event of a termination hereunder shall be conditioned upon the City's reimbursement of Developer's predevelopment expenses incurred to the date of termination in connection with development of the Site. In the event of any such termination, Developer shall, within ten (10) days of such termination and receipt of payment from the City for reimbursement of Developer's predevelopment expenses, transmit all such work product to the City.

ARTICLE 6.
CONSTRUCTION AND OPERATION OF THE IMPROVEMENTS.

6.1 Commencement of Construction.

Developer shall commence construction of the Improvements on the Site within the time set forth in the applicable Schedule of Performance.

6.2 Completion of Construction.

Developer shall diligently prosecute to completion the construction of the Improvements, and shall complete construction of the Improvements within the time set forth in the applicable Schedule of Performance. As between the City and Developer, Developer shall be solely responsible for the construction of the Improvements.

6.3 Construction Pursuant to Scope and Plans.

6.3.1 Developer shall construct the Improvements in accordance with the Scope of Development, the approved Final Construction Drawings, and the terms and conditions of all City and other governmental approvals.

6.3.2 Any proposed material change in the approved Final Construction Drawings shall be submitted by Developer for the City approval. The City shall approve or disapprove a proposed material change within fifteen (15) days after receipt by the City. Failure to approve or disapprove within fifteen (15) days shall be deemed to be approval of such change. If the City rejects the proposed material change, then the City

shall provide Developer with the specific reasons therefore, and the approved Final Construction Drawings shall continue to control. For purposes of this Section 6.3.2, a material change in the Final Construction Drawings shall consist of (1) any change (increase or decrease) that exceeds Two Hundred and Fifty Thousand Dollars ($250,000); or (2) any set of changes that cumulatively exceeds One Million Dollars ($1,000,000) or (3) any change in building materials or equipment, specifications, or the architectural or structural design of the Improvements that is of materially lesser quality, durability or appearance.

6.3.3 No change which is required for compliance with building codes or other government health and safety regulation shall be deemed material. However, Developer must submit to the City any change that is required for such compliance within fifteen (15) days after making such change in the Project Documents (but prior to such work being performed), and such change shall become a part of the approved Final Construction Drawings, binding on Developer.

6.4 Certificate of Completion.

When the obligations of Developer under Section 6.1 through Section 6.3 have been met and Developer has obtained a Certificate of Occupancy from the Los Angeles Department of Building and Safety, Developer may request that the City issue a certificate to such effect (a **"Certificate of Completion")** in a form recordable in the Official Records of the County of Los Angeles, which the City shall issue within fifteen (15) days of such a request if Developer has met the foregoing requirements for such issuance. Such certification shall constitute evidence of compliance with the requirements of Section 6.1 through 6.3. Such certification shall not be deemed a notice of completion under the California Civil Code, nor shall it constitute satisfaction of any obligation of Developer to any holder of deed of trust securing money loaned to finance the Project or any portion thereof. If Developer requests issuance of a Certificate of Completion, but the City refuses, then the City shall provide Developer with a written explanation of its refusal within ten (10) business days following Developer's request.

6.5 Compliance with Applicable Law.

Developer shall cause all work performed in connection with construction of the Improvements to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Developer shall be responsible for the procurement and maintenance thereof, as may be required of Developer and all entities engaged in work on the Site.

6.6 Construction Signs.

Developer shall incorporate into the Project signage construction site signs in accordance with the City's standards for such signs. The construction signs shall be erected on the Site prior to the commencement of construction. Such signage shall include the City logo, LADOT logo and the City of Los Angeles Seal on signage placed on the Sites promoting the Project during predevelopment and construction and through lease-up of the residential units.

6.7 Marketing Material.

Developer shall include the LAHD logo, LADOT logo and the City of Los Angeles Seal on media advertising of the Project including print and internet. In the event Developer has the opportunity to conduct radio spots, Developer shall make mention of LAHD and LADOT involvement.

6.8 Progress Reports.

Until a Certificate of Completion has been issued by the City, Developer shall provide the City with periodic progress reports, as reasonably requested by the City, regarding the status of the construction of the Project.

6.9 Entry by The City.

Until a Certificate of Completion has been issued by the City, Developer shall permit the City, through its officers, agents, or employees, to enter the Site at all reasonable times and after no less than 48 hours prior notice to inspect the work of construction to determine that such work is in conformity with the Scope of Development and the approved Final Construction Drawings or to inspect the Site for compliance with this DDA. The City is under no obligation to (a) supervise construction, (b) inspect the Site, or (c) inform Developer of information obtained by the City during any inspection. Developer shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this section are in addition to any rights of entry and inspection they may have in exercising its municipal regulatory authority.

6.10 Mechanics' Liens.

Developer shall indemnify the City, and hold the City, harmless against and defend the City, in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the construction of the Project by Developer. This indemnity obligation shall survive the issuance of a Certificate of Completion by the City and the termination of this DDA.

6.11 Zoning of the Site.

It shall be the responsibility of Developer at Developer's sole cost and expense, to ensure that the zoning of the Project Site shall be such as to permit the development and use of the Project Site in accordance with the provisions of this DDA. The City shall cooperate with Developer in seeking any Additional Entitlements, if any, necessary for the construction of the Improvements from the City.

6.12 Prevailing Wages.

6.12.1 To the extent applicable, Developer shall pay or cause to be paid to all workers employed in connection with the development of the Improvements, not less than the prevailing rates of wages, as provided in the statutes applicable to City public work contracts, including without limitation Sections 33423-33426 of the California Health and Safety Code and Sections 1770-1780 of the California Labor Code.

6.12.2 Developer shall comply with or cause its general contractor and all subcontractors to comply with the requirements of the Davis-Bacon Act (40 U.S.C. 276 et. seq.). The Davis-Bacon Act requires the payment of wages to all laborers and mechanics at a rate not less than the minimum wage specified by the Secretary of Labor in periodic wage rate determinations as described in the Federal Labor Standards Provisions (HUD-4010). In the event both State Prevailing wages and Davis-Bacon Act wages will be required, all works shall be paid at the higher of the two wage rates.

6.12.3 Prior to the commencement of construction, and as soon as practicable in accordance with the applicable Schedule of Performance, Developer shall contact the City to schedule a preconstruction orientation meeting with Developer and with the general contractor to explain such matters as the specific rates of wages to be paid to workers in connection with the development of the housing portion of the Improvements, preconstruction conference requirements, record keeping and reporting requirements necessary for the evaluation of Developer's compliance with this Section 6.12.

6.12.4 Developer shall monitor and enforce any applicable prevailing wage requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that Developer fails to monitor or enforce these requirements against any contractor or subcontractor, Developer shall be liable for the full amount of any underpayment of wages, plus costs and attorneys' fees, as if Developer was the actual employer, and the City or the State Department of Industrial Relations may withhold monies owed to Developer, may impose penalties on Developer in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare Developer in default of this DDA (subject to the notice and cure rights provided in this DDA) and thereafter pursue any of the remedies available under this DDA.

6.12.5 Any contractor or subcontractor who is at the time of bidding debarred by the Labor Commissioner pursuant to Section 1777.1 of the California Labor Code is ineligible to bid on the construction of the Improvements or to receive any contract or subcontract for work covered under this DDA. Developer agrees to include, or cause to be included, this Section 6.12 in all bid specifications for work covered under this DDA.

Any contractor or subcontractor who, at the time of the date of this DDA, is listed in the Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs issued by the U.S. General Services Administration pursuant to Section 3(a) of the Davis-Bacon Act is ineligible to receive a contract for work covered under this DDA, if the covered work is Federally funded in whole or in part.

Any contractor or subcontractor that is at the time of bidding debarred or declared non-responsible under the City's Contractor Responsibility Policy or the City's Contractor Responsibility Ordinance is ineligible to bid on the construction of the Improvements or to receive any contract or subcontract for work covered under this DDA. Participant agrees to include, or cause to be included, this Section 6.12.5 in all bid specifications for work covered under this DDA.

6.12.6 Developer agrees to include, or cause to be included, the above provisions in all bid specifications for work covered under this DDA.

6.12.7 Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq. and implementing regulation or comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations in connection with construction of the improvements or any other work undertaken or in connection with the Site.

6.12.8 Nothing contained in this DDA is intended to obligate Developer to pay State Prevailing wages and Davis-Bacon Act wages, provided, however, Developer shall comply with the Davis-Bacon Act and Labor Code Sections 1720 et seq.

6.13 Cost of Development.

Developer shall bear all costs and expenses incurred in connection with the construction of all Improvements, including, without limitation, all costs incurred in connection with the investigation, acquisition and preparation of the Project Site for development, all off-site improvements, if any, building and developer fees, and all costs of investigation, acquisition and/or preparation of any Project Documents or other submissions made by Developer pursuant to this DDA.

6.14 Los Angeles City Business Tax Registration Certificate.

Developer represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance (Article 1, Chapter 2, sections 21.00 and following, of the Los Angeles Municipal Code). For the term covered by this DDA, Developer shall maintain, or obtain as necessary, all such Certificates required of it under said ordinance and shall not allow any such Certificate to be revoked or suspended.

6.15 Nondiscrimination/Equal Employment Practices.

During the construction of the Project, Developer, for itself and its successors and assigns, and transferees of its obligations under this DDA, shall comply with City of Los Angeles Nondiscrimination/Equal Employment Practices. The ordinance and those referred to in paragraphs 5.16 through 5.20 may be viewed and downloaded at www.lacity.org/conad. All references to **"Contractor"** in this section shall apply to Developer and its contractors and subcontractors.

6.16 Child Support Assignment Orders Ordinance.

During the construction of the Project, Developer shall comply with the Child Support Compliance Act of 1998 of the State of California Employment Development Department and the City of Los Angeles Child Support Assignment Orders Ordinance. Developer assures that to the best of its knowledge it is fully complying with the earnings assignment orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in subdivision (1) of the Public Contract Code 7110.

6.17 Contractor Responsibility Ordinance.

During the construction of the Project, Developer, for itself and its successors and assigns, and transferees of its obligations under this DDA, shall comply with the provisions of the Contractor Responsibility Ordinance, Section 9.40 et seq., of the Los Angeles Administrative Code.

6.18 Compliance with Applicable Law; Barrier to the Disabled.

Developer shall cause all work performed in connection with construction of the Improvements to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, (including, without limitation, the prevailing wage provisions of Sections 1770 et seq. of the California Labor Code), and (b) all directions, rules and regulations of any fire marshal, health officer, building

inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Site. In addition, the Improvements shall be developed, and the Site shall be maintained, for the term of the Ground Lease to comply with all applicable federal, state, and local requirements for access for disabled persons. Developer shall be in full compliance with all federal and state laws applicable to the Improvements, including, but not limited to, those of the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12101 et seq., and it's implementing regulations. Under the ADA, Developer shall provide for reasonable accommodations to allow qualified individuals access to and participation in their programs, services and activities. In addition, Developer shall not discriminate against individuals with disabilities nor against persons due to their relationship or association with a person with a disability. Firms granted sub awards (i.e. subcontractors, sub grants, contracts under loans, etc.) shall comply with the ADA and certify and disclose accordingly.

6.19 Living Wage Ordinance.

During the construction of the Project, Developer, for itself and its successors and assigns, and transferees of its obligations under this DDA, shall comply with City of Los Angeles Living Wage Ordinance, and shall post a copy of the **"Notice Against Retaliation."**

6.20 Slavery Disclosure Ordinance.

During the construction of the Project, Developer shall comply with the applicable provisions of the Slavery Disclosure Ordinance, Section 9.41 of the Los Angeles Administrative Code. The requirements set forth in Sections 6.4 through this Section 6.20 are summarized in more detail on **Exhibit F "Mandatory City Ordinance Provisions"** attached hereto.

6.21 Job Creation Commitment and Reporting and Other HUD Requirements. Developer agrees to fully comply with Title 24 Part 570 of the Code of Federal Regulations ("CFR") and all other applicable provisions of the CFR that govern projects utlizing CDBG Funds, including the provisions attached hereto as **Exhibit G "Federal Regulations"**, and for five (5) years from the date of the issuance of a Certificate of Occupancy, the following:

(a) Developer agrees to provide evidence acceptable to City (through its Community Development Department) and the United States Department of Housing and Urban Development ("HUD") which is within the sole discretion of HUD (if requested) that the Job Creation Commitment is met by creating not less than the aggregate of one hundred nine (109) new permanent full-time equivalent jobs at the Project;

and must document that at least fifty-one percent (51%) (55) of the jobs will be held by, or will be available to, low- and moderate-income persons. Developer must list all job openings at the Project at a CDD-administered WorkSource Centers.

(b) Developer shall include the following language in its tenant leases and shall require tenants to report job creation, on forms to be provided, which shall be supported by appropriate documentation as set forth in the Employment Action Plan. Developer shall require the following clause, or a reasonably similar clause approved by the City, to be included in any master lease and to be included in any and all subleases:
"Tenant acknowledges that the Landlord has entered into a Disposition and Development Agreement ("DDA") with the City of Los Angeles and that the leased premises have been funded in whole or in part with federal funds derived from the Community Development Block Grant program. Under this DDA, the Landlord is required to obtain certain information from Project commercial tenants regarding the job commitments to include for each employee: name, job title, hours, hourly rate, living wage, health benefits if any, skill level, hire date, residence zip code, and ethnicity. For so long as the Landlord is subject to any requirements under the DDA or otherwise imposed by the City, the tenant agrees to provide the Landlord with such documentation."
(c)The Job Creation Commitment shall not be deemed satisfied unless and when CDD issues its written determination to Developer of meeting this commitment, in about sixty (60) days from the date Developer submits written job creation certification(s) to CDD in details to be determined in the reasonable discretion of CDD. CDD's written determination as to whether Developer has satisfied the Job Creation Commitment. Developer acknowledges that the satisfaction of this requirement may also be subject to additional review and approval by HUD.

6.22 FTA Requirements. Developer agrees to fully comply with all requirements of the Federal Transportation Authority ("FTA") imposed as a condition to the prior use of FTA funding by the City in connection with the Site, and/or the City's provision of any portion of the City Financial Assistance, the source of which funding is the FTA, including, without ,.imitation, the requirements set forth on **Exhibit H "FTA Requirements"** attached hereto.

6.23 **City Art Fee**. The City hereby agrees that Developer shall have the right to apply the cost of design, fabrication and installation of art elements in the Cultural Plaza and Transit Walkway to the 1% art fee that would otherwise be payable under the City's applicable rules.

ARTICLE 7.
USE OF THE SITE/OBLIGATIONS DURING AND AFTER CONSTRUCTION

7.1 Use and Operation of the Improvements and Site.

Developer agrees for itself, its successors, its assigns and every successor in interest to the Project Site or any part thereof, to devote, use, develop, operate and maintain the Project Site in accordance with this DDA, the City Municipal Code, the City Financial Assistance Documents, the REA, and all other recorded documents binding the Site.

7.2 Affordable Housing Component.

7.2.1 Affordability Covenants. Within the times set forth in the applicable Schedule of Performance, Developer shall record "Affordability Covenants" (herein so called) upon the Site. The Affordability Covenants shall run for a term of fifty-five (55) years and be in substantially the same form used by the City in other City-sponsored affordable housing projects.

7.2.2 Tenant Selection. Within the times set forth in the applicable Schedule of Performance, Developer shall submit to LAHD for review and approval the Tenant Selection Criteria to be utilized by Developer to select Eligible Participants to reside in the Income Restricted Units. Developer shall be responsible for the initial lease of the Income Restricted Units, including responsibility for establishing income eligibility, conducting background and credit checks, and completing the lease of a unit. All initial leases shall be subject to the approval of LAHD for the purpose of verifying compliance with the Affordability Covenants, applicable affordable housing requirements and the LAHD approved Tenant Selection Criteria.

7.2.1.3 Property Management. Within the times set forth in the applicable Schedule of Performance, Developer shall submit to LAHD for review and approval a Property Management Plan. The Parties understand and acknowledge that Forest City Residential Management Services shall be designated as the initial property management firm for the Site (the **"Property Manager"**).

7.2.1.4 Allowable Rent. The monthly rent charged to tenants of the Income Restricted Units shall be in conformance with the Affordability Covenants and shall not exceed sixty percent (60%) of AMI, adjusted for assumed household size.

7.2.1.5 Income Certification. The Property Manager will obtain, complete and maintain on file, prior to initial occupancy and annually thereafter, income certifications from each tenant renting an Income Restricted Unit in conformance with the Affordability Covenants. Copies of household income certifications shall be available to LAHD upon request.

7.3 Public Parking Component.

7.3.1 Ownership of the Transit Parking Spaces.
The Transit Parking Improvements will be delivered to the City upon completion thereof in accordance with the Final Construction Drawings approved pursuant to Section 6.3 above. Upon delivery thereof, and the satisfaction of the conditions to the Partial Termination pursuant to Section 2.3 above, the Transit Parking Improvements will be owned and operated by the City.

7.3.2 Design Approvals. The Transit Parking Improvements will be constructed by Developer. Project Documents for the Transit Parking Improvements including exterior public parking signage will be subject to review and approval by LADOT pursuant to Section 5.3.

7.3.3 Parking Rates; Revenue; Maintenance. The City shall, by and through the Board of Transportation Commissioners ("**BOTC**") from time to time, determine and fix the maximum hourly, daily and monthly parking rates chargeable for the Replacement Public Parking Spaces. All revenue generated by the Transit Parking shall belong to LADOT. The maintenance, repair, costs to insure and upkeep of the Transit Parking Improvements, shall be at the sole cost and expense of the City, except to the extent provided in the REA.

7.3.4 Timing of Construction. Within the times set forth in the applicable Schedule of Performance, Developer agrees to construct the Transit Parking Improvements.

7.3.5 Reciprocal Easement Agreement. Effective upon the Partial termination, the City and Developer (or the applicable assignee) shall enter into the Reciprocal Easement Agreement to govern ingress and egress from the Transit Parking Parcel and the Private Parcel, document the rights of Developer, its assignees and tenants to access and use the Transit Parking, establish the City's obligation to maintain and repair the Transit Parking, and establish the City's obligation to operate the Transit Parking, including the hours the Transit Parking will be available to the public, on terms agreeable to LADOT and Developer, and such other matters as require by Developer.

7.3.6 **Maintenance**. Developer hereby agrees that, after the Close of Escrow and prior to commencement of the construction, the Site will be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards, and that, once the Project is completed, the Project shall be well maintained as to both external and internal appearance of the buildings, the common areas, and the parking areas. Developer shall maintain or cause to be maintained the Project in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, parking areas and landscaping, and from time to time make all necessary and proper repairs, renewals, and replacements. In the event that there arises a condition in contravention of the above maintenance standard, then the City shall notify Developer in writing of such condition,

giving Developer thirty (30) days from receipt of such notice to commence and thereafter diligently to proceed to cure said condition unless such condition cannot reasonably be cured within such thirty (30) days period, in which event Developer shall commence such cure within thirty (30) days and thereafter diligently prosecute such cure to completion. In the event Developer fails to cure or commence to cure the condition within the time allowed, the City shall have the right to perform all acts necessary to cure such a condition, or to take other recourse at law or equity the City may then have. The City shall receive from Developer the City's cost in taking such action and shall provide reasonable evidence of such costs to Developer. The Parties hereto further mutually understand and agree that the rights conferred upon the City expressly include the right to enforce or establish a lien or other encumbrance against any of the parcels comprising the Site not complying with this DDA by recordation of a notice of lien against the Site. The foregoing provisions shall be a covenant running with the land until expiration of the term of this DDA, enforceable by the City, its successors and assigns. Notwithstanding the foregoing, following the Partial Termination, the respective rights and obligations of the City and Developer with respect to maintenance, repair, replacement and operation of the Project, including the Transit Parking, will be governed by the REA.

7.4 Insurance Requirements.

During the construction of the Project, Developer, for itself and its successors and assigns, and transferees of its obligations under this DDA, shall comply with City of Los Angeles Insurance requirements, to be agreed upon by the Parties prior to Close of Escrow. Notwithstanding the foregoing, following the Partial Termination, the respective rights and obligations of the City and Developer with respect to insurance of the Project, including the Transit Parking, will be governed by the REA.

7.5 Hazardous Materials.

7.5.1 Certain Covenants and Agreements. Following possession the Site by Developer, Developer hereby covenants and agrees as to such Site that:

(1) Developer shall not knowingly permit the Site or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Site in violation of any applicable law, other than the Existing Environmental Condition prior to completion of Remediation thereof;

(2) Developer shall keep and maintain the Improvements located on the Site in compliance with, and shall not cause or permit the Improvements located on such Site or any portion thereof to be in violation of any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the same Developer shall within ten (10) days advise the City in writing of: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted or threatened against Developer or the Site pursuant to any applicable Hazardous Materials Laws; (B) any

and all claims made or threatened by any third party against Developer or the Site relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as (**"Hazardous Materials Claims"**); (C) the presence of any Hazardous Materials in, on or under the Site in such quantities which require reporting to a government City; or (D) Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Site classified as "borderzone property" under the provisions of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Project under any Hazardous Materials Laws. If the City reasonably determines that Developer is not adequately responding to a written directive or order from a regulatory body or court regarding a Hazardous Material Claim, the City shall have the right, upon ten (10) days written notice to Developer, to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any such Hazardous Materials Claims and, if such claim could result in any liability or damage to the City, to have its reasonable attorney's fees in connection therewith paid by Developer.

7.5.2 Indemnity. Except for the gross negligence or willful misconduct of the Indemnified Parties, and without limiting the generality of the indemnification set forth in Section 11.6, , but subject to the City's reimbursement obligation under Section 4.3.3.1 above, Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel acceptable to the City in its reasonable discretion) the City, LAHD, LADOT, their Board or Council Members, officers, employees and agents (collectively, the **"Indemnified Parties")** from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of Developer, its agents, employees, or contractors to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Private Parcel; (2) the presence in, on or under the Site of any Hazardous Materials not otherwise present before the Close of Escrow on the Site or any releases or discharges of any Hazardous Materials into, on, under or from the Private Parcel occurring after the Close of Escrow on such Residential Parcel; or (3) any activity carried on or undertaken on or off the Private Parcel, subsequent to the conveyance of such Residential Parcel to Developer, by Developer or any employees, agents, contractors or subcontractors of Developer at any time occupying or present on the Project, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Private Parcel (collectively **"Indemnification Claims"**). The foregoing indemnity shall further apply to any residual contamination on or under the Private Parcel, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the

generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials by Developer, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws.

7.5.3 No Limitation. Developer hereby acknowledges and agrees that Developer's duties, obligations and liabilities under this DDA, including, without limitation, under Section 7.6.2 above, are in no way limited or otherwise affected by any information the City may have concerning the Project Site and/or the presence within the Project Site of any Hazardous Materials, whether the City obtained such information from Developer or from its own investigations. Notwithstanding the foregoing, the City hereby represents and warrants to Developer:

(i) To City's actual knowledge, the Project Sites and all current uses and conditions of the Project Sites are in compliance with all Environmental Laws, other than the Known Pre-Existing Condition. Neither City nor, to the best of City's knowledge, any predecessor in interest to City, has received any written notice of violation issued pursuant to any Environmental Law with respect to the Project Sites, other than the Known Pre-Existing Condition.

(ii) To City's actual knowledge, other than the Known Pre-Existing Condition, there are no Hazardous Materials present on, in or under the Project Sites and no Hazardous Materials are stored on the Project Sites.

(iii) To City's actual knowledge, neither City nor any other present or former owner, tenant, occupant or user of the Project Sites has used, handled, generated, produced, manufactured, treated, stored, transported, released, discharged or disposed of any Material on, under or from the Project Sites in violation of any Environmental Law, other than the Known Pre-Existing Condition.

(iv) City has no knowledge of and has received no written notice of any Release or threatened Release of any Hazardous Material existing on, beneath or from or in the surface or ground water associated with the Project Sites, and no Release or threatened Release of Hazardous Materials on, beneath or from the Project Sites at any time, including, to the best of City's knowledge, during any period prior to City's ownership of the Project Site, other than the Known Pre-Existing Condition.

(v) To City's actual knowledge, without investigation or inquiry, no above-ground or underground storage tanks have been installed upon the Project Sites during City's ownership of the Project Site, other than the Known Pre-Existing Condition.

(vi) To City's actual knowledge, without investigation or inquiry, no asbestos abatement or remediation work has been performed on the Project Sites during City's ownership of the Project Sites.

(vii) To City's actual knowledge, without investigation or inquiry, no PCB-containing equipment or PCB-containing material has been installed upon Project Sites during City's ownership of the Project Sites.

(viii) There are no reports, data, surveys, maps, assessments or other documents in the possession or control of City or its contractors or consultants concerning the environmental condition of the Project Sites or the presence of Hazardous Materials on or under the Project Sites or in the ambient air at the Project Sites which have not been delivered to Developer (collectively, the **"Environmental Reports").**

7.6 Obligation to Refrain from Discrimination.

Developer covenants and agrees for itself, its successors and its assigns in interest to the Site or any part thereof, that there shall be no discrimination against or segregation of any person or persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All deeds, leases, or contracts for the sale, lease, sublease, or other transfer of the Site shall contain or be subject to the nondiscrimination or non-segregation clauses hereafter prescribed.

Notwithstanding the foregoing, with respect to familial status, the foregoing shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

7.6.1 Form of Nondiscrimination and Nonsegregation Clauses.

Developer shall refrain from restricting the rental, sale or lease of the Site as provided in Section 7.5, above. All deeds, leases or contracts for the sale, lease, sublease, or other transfer of the Site entered into after the date on which this Master Agreement is executed by City shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

(a) In Deeds:

In deeds the following language shall appear--"The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

Notwithstanding the foregoing, with respect to familial status, the foregoing shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing.

(b) In Leases:

--"The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, subtenants, or vendees in the premises herein leased."

Notwithstanding the foregoing, with respect to familial status, the foregoing shall not be construed to apply to housing for older persons, as defined in

Section 12955.9 of the Government Code. With respect to familial status, nothing in the foregoing shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the foregoing.

(c) In Contracts:

In contracts entered into by City relating to the sale, transfer, or leasing of land or any interest therein acquired by City within any survey area or redevelopment project the foregoing provisions in substantially the forms set forth shall be included and the contracts shall further provide that the foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

7.7 Taxes, Assessments, Encumbrances and Liens.

Developer shall pay, prior to delinquency, any and all real estate taxes and assessments (including any possessory interest tax) assessed and levied on Developer's leasehold interest in the Site or any portion thereof and Developer hereby agrees to indemnify, defend and hold City, all City Representatives, LAHD, and LADOT free and harmless against any and all Losses and Liabilities arising from such taxes and assessments.

Prior to issuance of a Certificate of Completion, Developer shall not place or allow to be placed on the Site, or any portion thereof, any Encumbrance, unless it first obtains the written consent of City (not to be unreasonably withheld). Developer shall promptly notify the City of any Encumbrance that has been created or attached to the Site, or a portion thereof, prior to issuance of a Certificate of Completion for the construction of the Improvements on the Site and shall promptly remove, or shall have removed, any such unauthorized Encumbrance and any levy or attachment made on the Site, or any portion thereof, or shall assure the satisfaction thereof, within a reasonable time. Nothing contained herein shall be deemed to prohibit Developer from contesting the validity or amounts of any tax assessment or any other Encumbrance, or limit the remedies available to Developer with respect thereto.

7.9 Effect of Violation of the Terms and Provisions of this DDA After Completion of Construction.

The covenants established in this DDA, the Affordability Covenants shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns, as to those covenants which are for its benefit. The covenants contained in this DDA shall remain in effect for the periods of time specified therein. The covenants against discrimination shall remain in effect in perpetuity. The City is deemed the beneficiary of the terms and provisions of this DDA

and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this DDA and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest adjacent to the Property. The City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this DDA and covenants may be entitled. Notwithstanding then foregoing, to the extent that, following Partial Termination, any provision of this Agreement conflicts with any provision of the REA, or any provision of the REA addresses any subject matter in a manner that differs from its treatment herein, the REA shall be deemed to control.

ARTICLE 8.
ASSIGNMENT AND TRANSFERS

8.1 Definitions.

As used in this Article 8, the term **"Transfer"** means:

(a) Any total or partial sale, assignment or conveyance, of any trust or power, or any transfer in any other mode or form, of or with respect to this DDA, or of a Residential Parcel or any part thereof or any interest therein or of the Improvements constructed thereon, or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, of any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer, or any contract or agreement to do any of the same.

8.2 Purpose of Restrictions on Transfer.

This DDA is entered into solely for the purpose of development and operation of the Project on the Project Site and its subsequent use in accordance with the terms of this DDA. It is the intent of the City and Developer that the Site is not be the subject of real estate speculation. The qualifications and identity of Developer are of particular concern to the City, in view of:

(a) The importance of the development of the Project to the general welfare of the community; and

(b) The fact that a Transfer as defined in Section 8.1 above is for practical purposes a transfer or disposition of the Site. It is because of the qualifications and identity of Developer that the City is entering into this DDA with Developer and that Transfers are permitted only as provided in this DDA.

8.3 Prohibited Transfers.

The limitations on Transfers set forth in this Section 8.3 shall apply from the date of this DDA until the later of (i) issuance of a Certificate of Completion by the City to Developer; and (ii) the date the Affordability Covenants expire, if applicable; Except as expressly permitted in this DDA, Developer represents and agrees that Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City. Any Transfer made in contravention of this Section 8.3 shall be void and shall be deemed to be a default under this DDA, whether or not Developer knew of or participated in such Transfer.

8.4 Permitted Transfers.

Notwithstanding the provisions of Section 8.3, the following Transfers shall be permitted (subject to satisfaction of the conditions of Section 8.5) without the prior consent of the City:

(a) Any Transfer creating a Security Financing Interest.

(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest.

(c) The removal of a general partner pursuant to Developer's limited partnership agreement (if applicable) and its replacement by an entity approved by the City in its reasonable discretion, provided, however, if replaced by an Affiliate of the limited partners, then such approval would not be required.

(d) Any Transfer of an ownership interest in Developer resulting directly from the death of an individual.

(e) A Transfer of a limited partnership interest in Developer to an investor limited partner and any subsequent Transfer of such interest to an Affiliate of the initial investment limited partner.

(f) The assignment of a partnership interest in Developer as security for the repayment of the Projects' construction loan or such partner's obligations to the partnership.

(g) A Transfer otherwise approved by the City.

(h) A Transfer of this DDA, in whole or in part, to a limited partnership in which Developer, or an affiliate thereof, is a general partner and/or a limited liability company in which Developer, or an affiliate thereof, is a member.

(i) Any sublease of portions of the Project to be constructed as Affordable Units to a limited partnership that is an Affiliate of Developer.

8.5 Effectuation of Permitted Transfers.

8.5.1 No Transfer otherwise authorized or approved pursuant to Section 8.4, shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City and in form recordable among the land records, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of this DDA; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation. Any proposed transferee for which the City's approval is required shall have the qualifications, development experience and financial capability necessary and adequate to fulfill the obligations undertaken in this DDA by Developer. The City shall grant or deny approval of a proposed Transfer within thirty (30) days of receipt by the City of Developer's request for approval of a Transfer, which request shall include evidence of the proposed transferee's business expertise and financial capacity. Failure by the City to approve or disapprove the proposed Transfer within thirty (30) days after receipt of Developer's written request shall be deemed to be approval of the proposed Transfer by the City if the request for a Transfer includes the fee/deposit required by Section 8.5.3 and the following warning printed in bold type not smaller than 12 point:

NOTICE IS HEREBY GIVEN THAT FAILURE TO APPROVE THE REQUESTED MATTER WITHIN THIRTY (30) DAYS SHALL BE DEEMED AN APPROVAL PURSUANT TO SECTION 8.5 OF THE JOINT DEVELOPMENT AGREEMENT

8.5.2 Any assignment of rights and/or delegation of obligations under this DDA in connection with a Transfer (whether or not City approval is required) shall be in writing executed by Developer and the assignee or transferee, which written agreement shall name the City as an express third party beneficiary with respect to such agreement (the **"Assumption Agreement")** with a copy thereof delivered to the City within ten (10) days after the effective date thereof. Upon assignment or transfer of this DDA pursuant to an Assumption Agreement, the assignor shall be relieved of liability with respect to any such obligations relating to the Project assumed by the assignee. Notwithstanding the foregoing, unless such assignee specifically assumes pursuant to the Assumption Agreement the obligations under this DDA to indemnify City with respect to the Project, the assignor will retain such obligations and remain jointly and severally liable for such indemnity obligations with such assignee.

8.5.3 Developer shall reimburse the City for all actual staff time and consultant (legal and financial) costs associated with the City's review and consideration of any request for approval of a Transfer. Developer shall deposit the sum of not less than Three Thousand Dollars ($3,000.00) with its request for approval of any Transfer. If the costs of City review are less than the amount deposited, the excess deposit shall be returned to Developer. If the costs of City review exceed the deposit amount, the City shall send Developer a bill for the costs and Developer shall promptly pay the City the additional costs.

Notwithstanding then foregoing, to the extent that, following Partial Termination, any provision of this Section 8 conflicts with any provision of the Ground Lease, or any provision of the Ground Lease addresses any subject matter in a manner that differs from its treatment herein, the Ground Lease shall be deemed to control.

ARTICLE 9.
SECURITY FINANCING AND RIGHTS OF HOLDERS

9.1 No Encumbrances Except for Development Purposes.

Until a Certificate of Completion has been issued by the City, mortgages, deeds of trust, and other real property security instruments are permitted to be placed upon Developer's property interest only as permitted pursuant to this Section 9.1. Such permitted security instruments and related interests shall be referred to as **"Security Financing Interests."** Developer shall promptly notify the City of any Security Financing Interest that has been or will be created or attached to any of the Project's Sites in accordance with the Financing Plan. The documents evidencing the Security Financing Interests shall provide that in the event of a Developer default, the holder of the Security Financing Interest shall send notice of the default to the City concurrently with its notice to Developer. Developer may place mortgages, deeds of trust, or other reasonable methods of security on Developer's property interests only for the purpose of securing construction loans and permanent financing approved by the City as part of the approved Financing Plan pursuant to Section 3.1.1, and any refinance of any such approved financing subject to the City's consent.

9.2 Holder Not Obligated to Construct.

The holder of any Security Financing Interest authorized by this DDA is not obligated to construct or complete any improvements or to guarantee such construction or completion, nor shall any covenant or any other provision of this DDA be construed so to obligate such holder. However, nothing in this DDA shall be deemed to permit or authorize any such holder to devote the Project Site or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this DDA.

9.3 Notice of Default and Right to Cure.

Whenever the City pursuant to its rights set forth in Article 10 delivers any notice or demand to Developer with respect to the commencement, completion, or cessation of any Phase of the Project, the City shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the applicable Phase of the Project or any portion thereof a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach which is subject to the lien of the Security Financing Interest held by such holder and to add the cost

thereof to the security interest debt and the lien on its security interest. Nothing contained in this DDA shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing Developer's obligations to the City under this DDA. The holder in that event must agree to complete, in the manner provided in this DDA, the development of the Project. Any such holder properly completing the development of the Project pursuant to this section shall assume all rights and obligations of Developer under this DDA and shall be entitled, upon written request made to the City, to a Certificate of Completion from the City.

9.4 Failure of Holder to Complete Project.

In any case where six (6) months after default by Developer in completion of construction of the Project under this DDA, within the time period provided in the applicable Schedule of Performance, the holder of record of any Security Financing Interest, having first exercised its option to construct, has not proceeded diligently with construction, the City shall be afforded those rights against such holder it would otherwise have against Developer under this DDA.

9.5 Right of City to Cure.

In the event of a default or breach by Developer of a Security Financing Interest prior to the completion of construction the Project, within the time period provided in the documents relating to such Security Financing Interest, and if the holder has not exercised its option to complete the construction of the Project, the City may, upon prior written notice to Developer, cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from Developer of all costs and expenses actually incurred by the City in curing the default. The City shall also be entitled to a lien upon such Site to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any Security Financing Interest, and the City shall execute from time to time any and all documentation reasonably requested by Developer to effect such subordination.

9.6 Right of City to Satisfy Other Liens.

After the Close of Escrow of the Site and after Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Project (which are not Permitted Encumbrances or otherwise permitted by the terms of this DDA) or any portion thereof, and has failed to do so, in whole or in part, the City shall, upon prior written notice to Developer, have the right to satisfy any such lien or encumbrances; provided, however that nothing in this DDA shall require Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Project Site or any portion thereof to forfeiture or sale. Notwithstanding the foregoing, the City shall not satisfy a lien of a Security

Financing Interest until the Security Financing Interest has issued a notice of default to Developer or, if no notice of default is required to be issued, if the City has a good faith reason to believe that Developer is in default under the Security Financing Interest loan.

9.7 Holder to be Notified.

Developer shall procure acknowledgement of each term contained in this Article 9 by each holder of a Security Financing Interest prior to its coming into any security right or interest in the Project Site or portion thereof.

9.8 Modifications.

If a holder of a Security Financing Interest should, as a condition of providing financing for development of all or a portion of the Project, request any modification of this DDA in order to protect its interests in the Project or this DDA, the City shall consider such request in good faith consistent with the purpose and intent of this DDA and the rights and obligations of the Parties under this DDA. Any such modification of this DDA requested by a holder of a Security Financing shall require the prior approval of the City.

9.9 **New Agreement**. Notwithstanding any provision to the contrary set forth herein, if for any reason this DDA is terminated for any reason, including rejection in Developer's bankruptcy proceeding, and if at such time any holder a mortgage, deed of trust or other conveyance for financing purposes secured by all or a portion of the Site for which City has received written notice (as contemplated above) holds a Security Financing Interest in this DDA, then such holder shall be entitled to receive a new agreement ("New DDA"), wherein such holder or its designee reasonably approved by City will be "Developer" upon the same terms and conditions set forth herein (with deadlines in the Schedule of Performance extended only by (a) the amount of time required for the holder or its desgine to acquire the Site, and (b) the amount of time provided herein and in the Ground Lease for the holder or its desginee to cure defaults) and the holder (or such designee, as applicable) shall have the same rights and obligations under such New DDA as if such holder (or such designee, as applicable) had acquired the Developer's interest in this DDA through foreclosure of its Security Financing Instruments (with deadlines in the Schedule of Performance extended only by (a) the amount of time required for the holder or its desgine to acquire the Site, and (b) the amount of time provided herein and in the Ground Lease for the holder or its desginee to cure defaults); provided that, as a condition to such New DDA, such holder (or such designee, as applicable) agrees to be bound by the obligations on Developer hereunder arising out of the date of its acquisition of the Site. Such New DDA shall have the same relative priority as this DDA. No such termination of this DDA shall in any manner affect the rights of any holder until all of the following events have occurred: (i) City shall have notified such holder in writing of the termination of this DDA and shall have offered such New DDA to such holder, and (ii) such holder shall have failed to accept in writing such offer of City for a New Agreement and to communicate such acceptance to City within ninety (90) days after receipt of such written offer for a New

Agreement; or (iii) the events described in clauses (i) and (ii) above have occurred, but such holder has failed within such ninety (90) day period to cure any and all delinquent rent payments and other monetary defaults of Developer under this DDA and to commence to cure any other defaults.

9.10 **No Lien on the Fee**. No permitted Security Financing Interest will encumber any interest in the Site other than the leasehold interest of Developer in the leased premises under the ground Lease and Developer's fee ownership of the Improvements located on such leased premises.

ARTICLE 10.
DEFAULT AND REMEDIES

10.1 Application of Remedies.

This Article 10 shall govern the Parties' remedies for breach or failure of condition under this DDA.

10.2 No Fault of Parties.

10.2.1 The failure of any condition to the Close of Escrow within the time period provided in this DDA for satisfaction of such condition, which does not constitute a breach under this DDA following good faith efforts to meet or satisfy such condition by the Party obligated thereto shall constitute a basis for either Party, not then in default of its obligations hereunder, to terminate this DDA prior to the Close of Escrow without any remedy arising.

10.2.2 Upon the occurrence of any of the events described in Section 10.2.1, and at the election of either Party, this DDA may be terminated by ten (10) days written notice to the other Party with respect to the applicable Phase. Upon the effective date of the notice of termination neither Party shall have any rights against or liability to the other with respect to the provisions of this DDA applicable to such Phase, and except further that the provisions of this DDA applicable to such Phase that are specified to survive in this DDA shall remain in full force and effect.

10.3 Fault of the City.

10.3.1 Each of the following events, if uncured after expiration of the applicable cure period, shall constitute an **"Event of Default"** on the part of the City.

(1) The City without good cause fails to convey any portion of the Project Site within the time and in the manner specified in this DDA, and Developer is otherwise entitled to such conveyance.

(2) The City breaches any other material provision of this DDA.

10.3.2 Upon the occurrence of any of the above-described events, Developer shall first notify the City, in writing of its purported breach or failure, giving the City thirty (30) days from receipt of such notice to cure such breach or failure. In the event that the City does not then cure the default within such thirty-day period (or, if the default is not susceptible of cure within such thirty-day period, the City fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then Developer shall be entitled any rights afforded it in law or in equity by taking any or all of the following remedies: (1) terminating this DDA by written notice to the City; (2) seeking specific performance of this DDA; or (3) seeking any other remedy available at law or in equity.

10.4 Fault of Developer.

10.4.1 Each of the following events, if uncured after expiration of the applicable cure period, shall constitute a **"Developer Event of Default":**

(1) Developer does not attempt diligently and in good faith to cause satisfaction of all conditions in Article 4 within the time periods provided in this DDA and the applicable Schedule of Performance.

(2) Reserved.

(3) Developer fails to construct the Project in the manner and by the deadline set forth in Article 5, unless such deadlines are extended in accordance with this DDA.

(4) Developer completes a Transfer except as permitted under Article 8.

(5) Developer breaches any other material provision of this DDA.

10.4.2 Upon the happening of an event described in Section 10.4.1, the City shall first notify Developer in writing of its purported breach or failure. Developer shall have thirty (30) days from receipt of such notice to cure such breach or failure. If Developer does not cure the non-monetary default within such thirty-day period (or if the non-monetary default is not susceptible of being cured within such thirty-day period, Developer fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the City shall be afforded all of the following rights and remedies:

(1) **Prior to Closing.** With respect to a Developer Event of Default occurring prior to the Close of Escrow, the City may terminate in writing this DDA, and exercise any rights and remedies afforded it in law or equity.

(2) **Between Closing and Certificate of Completion.** With respect to a Developer Event of Default occurring after the Close of Escrow but prior to the date Developer is entitled to issuance of a Certificate of Completion, the City may: (A) terminate in writing this DDA; (B) seek specific performance of this DDA against Developer; (C) exercise the rights and remedies described in Sections 10.5 and 10.6, and (D) exercise any other remedy against Developer permitted at law or equity.

(3) **After Certificate of Completion.** With respect to a Developer Event of Default occurring in the operation of the Project after Developer is entitled to a Certificate of Completion, the City may: (A) seek specific performance of this DDA against Developer; (B) prosecute an action for damages against Developer; and (C) exercise any other remedy against Developer permitted at law or equity.

10.5 Cross-Defaults.

Both Developer and City may exercise remedies under this DDA. The Agreement may be terminated in accordance with this Article 10. No default shall occur hereunder if Developer does not elect to enter into the Ground Lease.

10.6 Survival.

Upon termination of this DDA under this Article 10 or any other provisions hereof, the following provisions of this DDA shall survive: the indemnification obligations in Sections 6.10, 7.7.2 and 11.6. This Section 10.6 exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

10.7 Rights and Remedies Cumulative.

Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

10.8 Inaction Not a Waiver of Default.

Any failures or delays by any Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

10.9 No Attorneys' Fees.

In the event that any Party hereto brings any action or files any proceeding to declare the rights granted herein or to enforce any of the terms of this DDA or as a consequence of any breach by another Party of its obligations hereunder, the prevailing

Party or Parties in such action or proceeding shall not be entitled to have its attorneys' fees and out-of-pocket expenditures paid by the losing Party. Each Party shall bear its own attorney's fees and costs.

ARTICLE 11.
GENERAL PROVISIONS

11.1 Developer Representations and Warranties.

Developer represents and warrants to the City as follows:

(a) **Organization.** Developer is Forest City Blossom, LLC, a Delaware limited liability company. duly organized, validly existing and in good standing under the laws of the State of Delaware, with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this DDA.

(b) **Authorization.** Developer has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this DDA, performance of the Agreement. Upon the date of this DDA, this DDA shall constitute a legal, valid and binding obligation of Developer, enforceable against it in accordance with its terms.

(c) **No Conflict.** The execution, delivery and performance of this DDA by Developer does not and will not materially conflict with, or constitute a material violation or material breach of, or constitute a default under (i) the charter or incorporation documents of Developer, (ii) any applicable law, rule or regulation binding upon or applicable to Developer, or (iii) any material agreements to which Developer is a party.

(d) **No Litigation.** Unless otherwise disclosed in writing to the City prior to the date of this DDA, there is no existing or, to Developer's actual knowledge, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting Developer or, to the best knowledge of Developer, the Project Site that would, if adversely determined, materially and adversely affect Developer or the Project Site or Developer's ability to perform its obligations under this DDA or to develop and operate the Project.

(e) **Licenses, Permits, Consents and Approvals.** Developer and/or any person or entity owning or operating the Project Site has duly obtained and maintained, or will duly obtain and maintain, and will continue to obtain and maintain, all licenses, permits, consents and approvals required by all applicable governmental authorities to construct and develop the Project.

11.2 Notices, Demands and Communications.

Formal notices, demands, and communications between the City and Developer shall be sufficiently given if, and shall not be deemed given unless, delivered personally, or dispatched by certified mail, return receipt requested, or by facsimile transmission with the original to follow by reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the City and Developer as follows:

LAHD:	City of Los Angeles Housing Department 1200 West Seventh Street, 8th floor Los Angeles, CA 90017 Attn: Housing Development Central
with copies to:	Los Angeles Department Of Transportation 100 S. Main Street, 10th Floor Los Angeles, CA 90012 Attn: Parking Facilities Division
with copies to:	Office of the City Attorney 200 North Main Street, Suite 700 Los Angeles, CA 90012 Attn: Real Property Division
Developer:	Forest City West 949 S Hope Street Los Angeles, CA 90015 Attn: Frank Frallicciardi
with copies to:	Forest City Enterprises, Inc. Terminal Tower 50 Public Square, Suite 1360 Attn: Legal Department

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 11.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

11.3 Non-Liability of Officials, Employees and Agents.

No member, official, employee or agent of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or on any obligation under the terms of this DDA.

11.4 Enforced Delay.

In addition to specific provisions of this DDA, the applicable Schedule of Performance shall be extended and performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; acts of god; severe or unusual shortages of materials or labor; uncommon inclement weather of an extreme or exceptional nature, unavoidable casualty; or court order; or any other similar causes (other than lack of funds of Developer or Developer's inability to finance the construction of the Project) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within fifteen (15) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice.

11.5 Inspection of Books and Records.

Until the issuance of a Certificate of Completion by the City to Developer, the City has the right at all reasonable times and upon reasonable notice of no less than 48 hours to inspect on a confidential basis the books, records and all other documentation of Developer pertaining to its obligations under this DDA. In addition, for the term of the Affordability Covenants, the City shall have and retain the right at all reasonable times and upon reasonable notice of no less than 48 hours to inspect the books, records and all other documentation of Developer pertaining to its obligations under the Afford ability Covenants.

11.6 Indemnification.

Except for the gross negligence or willful misconduct of the City, Developer undertakes and agrees to defend, indemnify, and hold harmless the City from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this DDA on the part of Developer or any contractor or subcontractor of Developer, excluding any liability relating to Hazardous Materials or violations of Environmental Laws. Except for the gross negligence or willful misconduct of the City, Developer shall further indemnify, defend, and hold the City, its directors, officers, employees, agents, and successors and assigns harmless against all suits and causes of action, claims, costs, and liability, including, but not limited to, reasonable attorney's fees and costs of any litigation, or arbitration or mediation, if any, brought by a third party (1) challenging the validity, legality or enforceability of this DDA or (2) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this DDA, or which are incident to the performance of the activities contemplated in this DDA, excluding suits, causes of action, claims, costs and liability relating to Hazardous Materials of violations of Environmental Laws. Developer shall pay immediately upon the City's demand any amounts owing under this indemnity. The duty of Developer to indemnify includes the duty to defend the City or, at the City's choosing, to pay the City's costs of its defense in

any court action, administrative action, or other proceeding brought by any third party arising from the development of the Site. The City shall have the right to approve any attorneys retained by Developer to defend the City pursuant to this Section 11.6 and shall have the right to approve any settlement or compromise. Developer's duty to indemnify the City shall survive the termination of this DDA.

Except for the active negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Developer undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Developer's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this DDA by Developer or its subcontractors of any tier, excluding any suits, causes of action, claims, losses, demands, expenses, damages or liability relating to Hazardous Materials or violations of Environmental Laws. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this DDA and those allowed under the laws of the United States, the State of California, and the City. The provisions of this Section 11.6 shall survive expiration or termination of this DDA.

11.7 Use of Project Images.

Developer hereby consents to and approves the use by City of images of the Project, its models, plans and other graphical representations of the Project and its various elements **("Project Images")** in connection with marketing, public relations, and special events, websites, presentations, and other uses required by the City in connection with the Project. Such right to use the Project Images shall not be assignable by the City to any other party (including, without limitation, any private party) without the prior written consent of Developer. Developer shall obtain any rights and/or consents from any third parties necessary to provide these Project Image use rights to City.

11.8 INTETIONALLY OMITTED.

11.9 Title of Parts and Sections.

Any titles of the sections or subsections of this DDA are inserted for convenience of reference only and shall be disregarded in interpreting any part of its provision.

11.10 Applicable Law.

This DDA shall be interpreted under and pursuant to the laws of the State of California.

11.11 Severability.

If any term, provision, covenant or condition of this DDA is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

11.12 Binding Upon Successors; Covenants to Run With Land.

This DDA shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties; provided, however, that there shall be no Transfer except as permitted in Article 7. Any reference in this DDA to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this DDA or under law. The terms of this DDA shall run with the land, and shall bind all successors in title to the Site until the termination of this DDA, except that the provisions of this DDA that are specified to survive termination of this DDA shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Site or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases the Site or the applicable portion of the Site from the requirements of this DDA.

11.13 City As Third-Party Beneficiary.

The City shall be a third-party beneficiary retaining enforcement rights with respect to this DDA.

11.14 Entire Understanding of the Parties.

This DDA constitutes the entire understanding and agreement of the Parties with respect to the conveyance of the Project Site and the development of the Project.

11.15 City Approval.

Whenever this DDA calls for City approval, consent or waiver, the written approval, consent or waiver of either the General Manager of L:ADOT or the General Manager of LAHD shall constitute approval, consent or waiver of the City, without

further authorization from the governing Commission of either Department or the City Council. The City hereby authorizes the General Manager of LADOT or the General Manager of LAHD, or either of them, to deliver such approvals consents or waivers under this DDA. However, (a) any material and substantial modification to this DDA relating to a material change to the Scope of Development or the Term of this Agreement, (b) the forms of the Ground Lease and the REA, and (c) the terms of the City Financial Assistance and the City Financial Assistance Documents may require the prior approval of the City Council.

11.16 Incorporation of Exhibits.

All Exhibits referred to in this DDA are incorporated herein by such reference and made a part hereof. The following is a list of such Exhibits:

A. Legal Description of Site Map
B. Scope of Development
C. Site Plan
D. Schedule of Performance
E. Project Budget
F. Mandatory City Ordinance Provisions
G. Federal Requirements
H. FTA Requirements

11.17 Time of Essence; Context and Construction.

Time is of the essence of this DDA. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. The term person as used in this DDA, includes a natural person, corporation, association, partnership, organization, business, trust, individual, or a governmental authority, City. "Day" or "days" is used herein, such shall refer to calendar day or days, unless otherwise specifically provided herein. Whenever a reference is made herein to a particular Article of this DDA, it shall mean and include all sections, subsections and subparts thereof, and, whenever a reference is made herein to a particular section or subsection, it shall include all subsections and subparts thereof.

11.18 Effectiveness of Agreement.

This DDA is dated for convenience only and shall only become effective on the Effective Date.

11.19 Counterparts.

This DDA may be executed in counterparts and multiple originals.

11.20 Amendments.

The Parties can amend this DDA only by means of a writing signed by both Parties.

11.21 Police Power.

Nothing contained herein shall be deemed to limit, restrict, amend or modify, nor to constitute a waiver or release of, any ordinances, notices, orders, rules, regulations or requirements (now or hereafter enacted or adopted and/or as amended from time to time) of the City, its departments, commissions, agencies and boards and the officers thereof and/or the City, including, without limitation, any redevelopment or general plan or any zoning ordinances, or any of City's duties, obligations, rights or remedies thereunder or pursuant thereto or the general police powers, rights, privileges and discretion of City in the furtherance of the public health, welfare and safety of the inhabitants thereof, including, without limitation, the right under law to make and implement independent judgments, decisions and/or acts with respect to planning, development and/or redevelopment matters (including, without limitation, approval or disapproval of plans and/or issuance or withholding of building permits) whether or not consistent with the provisions of this DDA, any Exhibits attached hereto or any other documents contemplated hereby (collectively, **"City Rules and Powers").** In the event of any conflict, inconsistency or contradiction between any terms, conditions or provisions of this DDA, Exhibits or such other documents, on the one hand, and any such City Rules and Powers, on the other hand, the latter shall prevail and govern in each case. This Section shall be interpreted for the benefit of City.

11.22 No Obligation To Third Parties.

This DDA shall not be deemed to confer any rights upon, nor obligate either of the Parties to this DDA to, any person or entity not a Party to this DDA other than the City and the Parties explicitly disclaim any intent to create a third party beneficiary relationship with any person or entity as a result of this DDA.

11.23 Brokers.

City and Developer each represents that it has not engaged any broker, agent or finder in connection with this transaction. Developer agrees to defend, indemnify and hold City and all City Representatives harmless from and against any Losses and Liabilities with respect to such commissions based upon the alleged acts of Developer. City agrees to defend, indemnify and hold Developer harmless from and against Losses and Liabilities with respect to such commissions based upon the alleged acts of City.

11.24 Standard of Approval.

Any consents or approvals required or permitted under this DDA shall not be unreasonably or untimely withheld or made, except where it is specifically provided that a sole discretion standard applies.

11.25 Submittals and Approvals.

Various submittals are required by Developer pursuant to this DDA. As expressly provided by this DDA, the City shall approve or disapprove certain submittals from Developer within specified timeframes or else such submittal shall be deemed approved by the City. Notwithstanding the provisions for deemed approval, no submittal or matter shall be deemed approved unless the request for approval contains the following provision, in bold print with the appropriate time period stated:

NOTICE IS HEREBY GIVEN THAT PURSUANT TO SECTION __ OF THE DISPOSITION AND DEVELOPMENT AGREEMENT THAT FAILURE TO APPROVE THE REQUESTED MATTER WITHIN ___ DAYS SHALL BE DEEMED AN APPROVAL.

ARTICLE 12.
DEFINITIONS

"Affordability Covenants" shall mean those covenants to be recorded on the Site in accordance with Section 7.2.1.1 of this DDA, in the form attached hereto as Exhibit F.

"Affordable Units" is defined in Section 2.1,1 of this DDA.

"Area Median Income" shall mean the median gross yearly income, adjusted for actual household size as specified herein, in the County of Los Angeles, California as determined by the U.S. Department of Housing and Urban Development ("HUD") and as published from time to time by the State of California Department of Housing and Community Development ("HCD").

"Building Permit" shall mean an excavation, foundation, or other building permit issued by the City in connection with the construction of the Improvements.

"City Transit Parking Contribution" is defined in Section 4.5.5 of this DDA.

"Close of Escrow" shall mean the close of escrow for the ground lease, and transfer of a leasehold interest in the Site by the City, as lessor to Developer, or its successors and assigns, as lessee, as provided in Section 4.5.5 of this DDA.

"Design Development Drawings" shall mean the construction drawings described in Section 5.3.2 of this DDA.

"Eligible Participants" shall mean those tenants and buyers meeting the income restrictions assigned to the affordable units constructed in accordance with this DDA and the Eligible Participant Selection Criteria.

"ENA" shall mean the Exclusive Negotiation Agreement, executed by Developer and the City on October 15, 2012.

"Encumbrance" shall mean any mortgages, deeds of trust, assignment of rents and security agreements, and other real property security instruments recorded against title to a Site.

"Environmental Agency" means (a) the United States Environmental Protection Agency; (b) the California Environmental Protection Agency and all of its sub-entities having jurisdiction over the Premises, including any Regional Water Quality Control Board, the State Water Resources Control Board, the Department of Toxic Substances Control, the South Coast Air Quality Management District, and the California Air Resources Board; (c) the City; (d) any Fire Department or Health Department with jurisdiction over the Premises; (e) and/or any other federal, state or local Governmental Authority that has or asserts jurisdiction over Releases or the presence, use, storage, transfer, manufacture, licensing, reporting, permitting, analysis, disposal or treatment of Hazardous Substances.

"Environmental law(s)" mean any applicable federal, state or local statute, law, rule, regulation, ordinance, code, guideline, policy or rule of law, now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including, without limitation any judicial or administrative order, consent decree or judgment, relating to the environment, employee health and safety or Hazardous Materials, including without limitation the Comprehensive Environmental Response, Compensation and liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Solid Waste Disposal Act, 42 U.S.C. Section 6901, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, the Occupational Safety and Health Act, 29 U.S.C. Section 651, et seq., and any similar state and local counterparts or equivalents now or hereafter in effect and in each case as amended.

"Escrow Holder" shall mean the escrow agent selected by Developer, and approved by the City, to administer the Escrow required by this DDA.

"Final Construction Drawings" shall mean the construction drawings described in Section 5.3.3 of this DDA.

"Financing Plan" shall mean Developer's plan for financing the Project submitted to the City pursuant to 4.1.1 of this DDA.

"Improvements" shall mean all buildings, structures, fixtures, fences, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems, and other improvements to be constructed by Developer pursuant to the terms of this DDA, and existing or located on the Site from time-to- time (other than those improvements and equipment constituting a portion of the Transit Parking Improvements).

"Phase I Report" shall mean the Phase 1 environmental report to be conducted on the Project Site by Developer.

"Proforma" shall mean the preliminary development proforma described in Section 4.1.1, a copy of which is attached as Exhibit E.

"Project Documents" shall mean those documents described in Sections 5.2 and 5.3 of this DDA.

"Transit Parking Improvements" shall mean, The Public Parking Parcel consisting of the applicable Parking Spaces, and buildings, structures, fixtures, fences, walls, paving, parking areas, driveways, walkways, plazas, elevators, landscaping, permanently affixed utility systems, and other improvements to be constructed on the applicable Public Parking Parcel by Developer subject to the terms and conditions of this DDA, all as depicted on the Site Plan,

"Private Parcel" is defined in Section 2.1.1 of this DDA.

"Private Improvements" is defined in Section 2.1.1 and more particularly described in the Scope of Development,

"Public Parking Spaces" shall mean the public parking spaces to be constructed by Developer subject to the terms and conditions of this DDA, in an amount not to exceed one hundred seventy five (175) public parking spaces.

"Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing, or dumping of Hazardous Substances onto or from the Sites.

"Remediate" or "Remediation" shall mean any response or remedial action as defined under Section 101(25) of CERCLA, and similar actions with respect to Hazardous Substances as defined under comparable state and local laws, and any other clean-up, removal, containment, abatement, monitoring, treatment, disposal, closure, restoration or other mitigation or remediation of Hazardous Substances or Releases required by any Environmental Agency or within the purview of any Environmental Law.

"Schematic Design Drawings" shall mean the initial drawings for the Project more fully described in Section 5.3.1 of this DDA.

"Title Policy" shall mean an ALTA Leasehold Owner's policy insuring Developer, or its successors and assigns, leasehold interest in the Project Site, as applicable, with coverage in an amount requested by Developer and containing only those Exceptions approved by Developer in accordance with Section 4.5 of this DDA. Within ten (10) days after Escrow Holder's request and in any event prior to Close of Escrow, the City or Developer (as applicable) shall deliver all affidavits and information reasonably required by the title insurer issuing such Title Policy to Developer.

"Title Reports" shall mean a preliminary title report for each Site, for a standard form ALTA leasehold owner's policy of title insurance underwritten by the Title Company showing the condition of the City's title to such Site, together with legible copies of all documents referred to therein.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have executed this Disposition and Development Agreement as of the date first above written.

"CITY"

Attest:

_____
, City Clerk

CITY OF LOS ANGELES, a California municipal corporation, acting through its Department of Housing

By:_____
Name: Merceds M. Marquez
Its: General Manager
Date:_____

Approved as to Form:
CARMEN A. TRUTANICH,
CITY ATTORNEY

_____
By:
Title: Deputy City Attorney

CITY OF LOS ANGELES, a California municipal corporation, acting through its Department of Transportation

Attest:

_____
, City Clerk

By:_____
Name: Jaime de la Vega
Its: General Manager
Date:_____

Approved as to Form:
CARMEN A. TRUTANICH,
CITY ATTORNEY

_____
By:
Title: Deputy City Attorney

"DEVELOPER"

FOREST CITY BLOSSOM, LLC
a Delaware limited liability company

By: _____

EXHIBIT A

LEGAL DESCRIPTION OF SITE

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

THE LAND REFERRED TO IN THIS POLICY IS SITUATED N THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

ALL OF LOTS 1, 2, 3, 4 AND S AND PART OF LOT 6 OF THE BROADWAY TRACT, IN THE CITY OF-LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 16 PAGE(S; 8 OF MAPS, AND A PART OF MULLALY'S SUBDIVISION RECORDED_.IN_BOOK 5, PAGE 28 OF MISCELLANEOUS RECORDS, AND A PART OF THE CAPITOL MILLS TRACT, AS PER MAP RECORDED IN BOOK 3, PAGE 68 OF SAID MAP RECORDS, AND A PORTION OF THE LAND LABELLED "JOSEPH MULZALY'- ON SAID MAP OF MULLALYS" SUBDIVISION, ALL IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS A WHOLE AS
FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EASTERLY LINE OF NORTH BROADWAY.,
80 FEET WIDE, FORMERLY BUENA VISTA STREET, WITH NORTHERLY LINE OF COLLEGE STREET, 60 FEET WIDE, AS SHOWNT ON SAID MAP OF THE BROADWAY TRACT; THENCE ALONG SAID EASTERLY LINE NORTH 22° 51' 30" EAST 297.64 FEET TO THE MOST WESTERLY NORTHWEST CORNER OF SAID LOT 6 OF THE BROADWAY TRACT; THENCE ALONG, THE MOST SOUTHERLY COURSE OF THE NORTHEAST LINE OF SAID LOT 6 AND ITS PROLONGATION SOUTH 67° 23' 20" EAST 189.74 FEET TO THE AGREEMENT LINE AS DESCRIBED IN BOOK 6225, PAGE 162 OF DEEDS OF SAID COUNTY; THENCE ALONG SAID AGREEMENT LINE, SOUTH 0° 45' 30" WEST 105.75 FEET, NORTH 78° 13' 30" WEST 20.61 FEET, SOUTH 21° 21' WEST

35.73 FEET AND SOUTH 73° 53' 20" EAST 164.06 FEET TO A POINT IN THE WESTERLY LINE OF NORTH SPRING STREET, DISTANT THEREON NORTH 22° 0-0' 30" EAST 150.00 FEET FROM THE SOUTHEAST CORNER OF SAID CAPITAL MILLS TRACT, AND ALSO FROM THE NORTHWEST CORNER OF NORTH SPRING STREET AND COLLEGE STREET; THENCE ALONG SAID WESTERLY LIEN OF NORTH SPRING STREET SOUTH 229 00.' 30" WEST 150.00 FEET TO SAID SOUTHEAST CORNER OF CAPITOL MILLS TRACT; THENCE ALONG THE NORTHERLY LINE OF COLLEGE STREET, NORTH 74° 04' 30" WEST 375.84 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION OF SAID LAND, INCLUDED WITHIN THE FOLLOWING DESCRIBED LINES:

COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF NORTH BROADWAY, 80 FEET WIDE, FORMERLY BUENA VISTA STREET, WITH THE NORTHEASTERLY LINE OF COLLEGE STREET, 60 FEET WIDE, AS SHOWN ON SAID MAP OF THE BROADWAY TRACT; THENCE NORTH 22° 51' 30" EAST, ALONG SAID EASTERLY LINE 54.37' FEET, MORE OR LESS, TO A POINT IN THE NORTHERLY FACE OF THE NORTHERLY WALL OF ITS WESTERLY PROLONGATION, O= .N EXISTING THREE-STORY BRICK OR CONCRETE BUILDING, SAID POINT TO BE THE TRUE POINT OF BEGINNING FOR PURPOSES OF THIS DESCRIPTION; THENCE CONTINUING ALONG SAID EASTERLY LINE NORTH 22° 51' 30" EAST, TO THE MOST NORTHERLY CORNER OF SAID LOT 2; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LOT 2, SOUTH 67° 23' 30" EAST, TO A LINE PARALLEL WITH AND DISTANT 10 FEET SOUTHEASTERLY MEASURED AT RIGHT ANGLES FROM SAID EASTERLY LINE; THENCE SOUTH 22° 51' 30" WEST TO SAID NORTHERLY FACE OF THE NORTHERLY WALL; THENCE WESTERLY ALONG-SAID NORTHERLY FACE TO THE TRUE POINT OF BEGINNING

EXCEPT THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL MINERALS, MINERAL DEPOSITS, OIL, GAS AND OTHER HYDROCARBONS OF EVERY KIND AND NATURE CONTAINED IN, UNDER, OR UPON SAID LAND, AS RESERVED BY CONSOLIDATED STEEL CORPORATION,'LTD., A CORPORATION, IN DEED FILED FOR RECORD NOVEMBER 12, 1943, AS DOCUMENT NO. 4, AS TO A PORTION OF SAID LAND.

Continued on next page

PARCEL 2:

THOSE PORTIONS OF LOT 2 OF THE BROADWAY TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 16, PAGE (S) 8 OF MAPS, A PART OF MULLALY'S SUBDIVISION, RECORDED IN BOOK 5, PAGE 28, OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EASTERLY LINE OF NORTH BROADWAY, 80 FEET WIDE, FORMERLY BUENA VISTA STREET, WITH THE NORTHEASTERLY LINE OF COLLEGE STREET, 60 FEET WIDE, AS SHOWN ON SAID MAP OF THE BROADWAY TRACT; THENCE NORTH 22° 51' 30" EAST, ALONG SAID EASTERLY LINE 54.37' FEET, MORE OR LESS, TO A POINT IN THE NORTHERLY FACE OF THE NORTHERLY WALL OF ITS WESTERLY PROLONGATION, O= .N EXISTING THREE-STORY BRICK OR CONCRETE BUILDING, SAID POINT TO BE THE TRUE POINT OF BEGINNING FOR PURPOSES OF THIS DESCRIPTION; THENCE CONTINUING ALONG SAID EASTERLY LINE NORTH 22° 51' 30" EAST, TO THE MOST NORTHERLY CORNER OF SAID LOT 2; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LOT 2, SOUTH 67° 23' 30" EAST, TO A LINE PARALLEL WITH AND DISTANT 10 FEET SOUTHEASTERLY MEASURED AT RIGHT ANGLES FROM SAID EASTERLY LINE; THENCE SOUTH 22° 51' 30" WEST TO SAID NORTHERLY FACE OF THE NORTHERLY WALL; THENCE WESTERLY ALONG-SAID NORTHERLY FACE TO THE TRUE POINT OF BEGINNING

EXCEPT THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL MINERALS, MINERAL DEPOSITS, OIL, GAS AND OTHER HYDROCARBONS OF EVERY KIND AND NATURE CONTAINED IN, UNDER, OR UPON SAID LAND, AS RESERVED BY CONSOLIDATED STEEL CORPORATION,'LTD., A CORPORATION, IN DEED FILED FOR RECORD NOVEMBER 12, 1943, AS DOCUMENT NO. 4, AS TO A PORTION OF SAID LAND.

END OF LEGAL DESCRIPTION

EXHIBIT B

SCOPE OF DEVELOPMENT

EXHIBIT C

SITE PLAN

EXHIBIT D

SCHEDULE OF PERFORMANCE

Schedule of Performance

Unless otherwise expressly provided in this schedule, all capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

Action	Required Date
Developer Financing Plan in accordance with Section 4.1.1.	60 days after execution of the DDA
City to approve or disapprove Financing Plan in accordance with Article 4.	Within 30 days from Developer submission.
Developer to submit Marketing Plan in accordance with Section 4.1.2.	No later than 120 days before the opening of the first rental unit.
Developer to submit proof of insurance in accordance with Section 4.1.3.	No later than 60 days before start of construction.
Developer to apply for any Additional Entitlements in accordance with Section 4.1.5.	Within 60 days from execution of the DDA.
Developer to submit construction contract to City in accordance with Section 4.1.6.	Within 180 days from execution of the DDA.
City to approve or disapprove construction contract in accordance with Section 4.1.6.	Within 15 days from Developer submission.
Developer to submit Construction Guaranty in Esctrow accordance with Section 4.17.	At least 30 days prior to Close of Escrow.
Developer to submit the initial draft of Ground Lease in accordance with Section 4.1.8.	Within 45 days from execution of DDA.
City to approve and/or comment on the initial draft of the Ground Lease.	Within 15 days from Developer submittal.
Developer to submit the initial draft of the REA in accordance with Section 4.1.9.	Within 45 days from execution of DDA.
City to approve and/or comment on the initial draft of the REA.	Within 15 days from Developer submittal.

City to submit the form of all agreements and documents evidencing and/or securing the City Financial Assistance in accordance with Section 4.1.10	Within 90 days from execution of DDA.
Developer to approve and/or comment on the City Financial Assistance documents .	Within 15 days from City submittal.
Developer to deliver to City an assignment of soils report and Phase I environmental report in accordance with Section 4.3.3.3.	Within 180 days from execution of DDA.
City shall deliver to Developer the Title Report(s) with respect to the Site including copies of all the underlying exceptions in accordance with Section 4.5.2.	Within 30 days from execution of DDA.
Developer shall review and either approve or disapprove the title documents.	Within 30 days of receiving the Title Report and all copies of all underlying documents.
Developer to submit Schematic Design Drawings to the City in accordance with Section 5.3.1.	Within 45 days from execution of DDA.
City to approve and/or comment on the Schematic Design Drawings in accordance with Section 5.6.	Within 30 days of Developer submittal.
Developer to submit the Design Development Drawings to the City in accordance with Section 5.3.2.	Within 45 days from City approval of Schematic Design Drawings.
City to approve and/or comment on the Design Development Drawings in accordance with Section 5.6.	Within 30 days of Developer submittal.
Developer to submit the Final Construction Drawings to the City in accordance with Section 5.3.3.	Within 60 days from City approval of Final Construction Drawings.
City to approve and/or comment on the Final Construction Drawings in accordance with Section 5.6.	Within 30 days of Developer submittal.
Developer shall commence demolition, grading, and shoring.	With 21 days of later of Closing or receiving the appropriate approvals and permits.
Developer shall commence vertical obtaining all permits	Within 21 days of later of Closing or

construction.	and approvals.
Developer to record Affordability Covenants in accordance with Section 7.2.1.	Close of Escrow.
Developer to submit Property Management Plan to LAHD in accordance with Section 7.2.1.3.	At least 90 days prior to the anticipated opening of the first residential building.
Developer shall complete construction in accordance with Section 6.4.	Within 30 months of commencing construction.

EXHIBIT E

PROJECT BUDGET

EXHIBIT E

MANDATORY CITY ORDINANCE PROVISIONS

EXHIBIT E

City Ordinances
(Living Wage, Contractor Responsibility, Service Worker Retention and Equal Benefits)

ORDINANCE NO. 172336

An ordinance amending Article 11 to Chapter 1 of Division 10 of the Los Angeles Administrative Code concerning the requirement that nothing less than a prescribed minimum level of compensation (a "living wage") be paid to employees of the City's service contractors, of certain of its lessees and licensees, and of its financial assistance recipients.

THE PEOPLE OF THE CITY OF LOS ANGELES

DO ORDAIN AS FOLLOWS:

Section 1. The Los Angeles Administrative Code is hereby amended by revising Article 11 to Chapter 1 of Division 10 to read as follows:

ARTICLE 11
LIVING WAGE

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.

Sec. 10.37.1 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 proprietary lease or license, or, where there is no such subordinate or component entity or person, 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 ("CRA"). The CRA is urged, however, to adopt a policy similar to that set forth in this article.

(c) "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. §§ 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 which shall forward such application and its recommended action on it to the City Council. Waivers shall be effected by Council resolution.

(d) "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 (f).

(e) "Designated administrative agency (DAA)" means that City department or office designated by Council resolution to bear administrative responsibilities under section 10.37.7. The City Clerk shall maintain a record of such designations.

(f) "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 proprietary lessee or licensee, of a sublessee or sublicensee, or of a service contractor or subcontractor of a proprietary 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.

(g) "Employer" means any person who is a City financial assistance recipient, contractor, subcontractor, proprietary lessee, proprietary sublessee, proprietary licensee, or proprietary 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.

(h) "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.

(i) "Proprietary lease or license" means a lease or license of City property on which services are rendered by employees of the proprietary lessee or licensee or sublessee or sublicensee, or of a contractor or subcontractor, but only where any of the following applies: (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), (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; provided, however, that a proprietary lessee or licensee having annual gross revenues of less than two-hundred thousand dollars ($200,000) from business conducted on the premises and employing no more than seven (7) employees will be exempt from this article, except that for proprietary leases or licenses having a term of more than two (2) years, the exemption 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. To qualify for this exemption, the proprietary lessee or licensee must provide proof of its gross revenues and number of employees to the awarding authority of the proprietary lease or license as required by regulation. The determination of whether annual gross revenues are less than two-hundred thousand dollars ($200,000) shall be based on the gross revenues for the last tax year prior to application or such other period as may be established by regulation. Such annual gross revenue ceiling of two-hundred thousand dollars ($200,000) 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). A proprietary lessee or licensee shall be deemed to be employing no more than seven (7) employees if its workforce worked an average of no more than one-thousand, two-hundred, and fourteen (12 14) hours per month for at least three-fourths of the time period upon which the revenue limitation is measured. Proprietary "leases" and "licenses" shall be deemed to include subleases and sublicenses. Proprietary "lessees" and "licensees" shall be deemed to include their sublessees and sublicensees.

(j) "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.

(k) "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 (f).

(l) "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.

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. With the annual adjustment effective July 1, 1998, such rates were adjusted to seven dollars and thirty-nine cents ($7.39) per hour with health benefits and eight dollars and sixty-four cents ($8.64) without. Such rates shall continue to be adjusted annually to correspond with adjustments, if any, to retirement benefits paid to members of the City Employees Retirement System ("CERS"), made by the CERS Board of Administration under $4.1040. The City Administrative Office 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.

Sec. 10.37.3 Health Benefits

Health benefits required by this article shall consist of the payment of at least one dollar and twenty-five cents ($1.25) per hour 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 10.37.2(a) for employees with health benefits.

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 § 32 of the Internal Revenue Code of 1954, 26 U.S.C. $32, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments from the employer.

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.

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, proprietary 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, proprietary 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 shah 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.

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 "proprietary leases" or "proprietary 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 § 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 Chief Administrative Officer 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.

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 § 387 shall not be applicable to service contracts.

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.

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.

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, proprietary 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, proprietary leases or licenses, and financial assistance agreements that provide additional monies or which extend term.

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.

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 "proprietary 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.

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.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoingg ordinance was passed by the Council of the City of Los Angeles, at its meeting of NOV 25 1998.

J. Michael Carey, City Clerk

By Maria Kostenko
Deputy

Approved _____

_____
Mayor

Approved as to Form and Legality

_____
JAMES K. HAHN, City Attorney

BY _____
FREDERICK N. MERKIN
Senior Assistant City Attorney

Said ordinance was presented to the Mayor on NOV 30 1998; the Mayor returned said ordinance to the City Clerk on DEC 11 1998 without his approval or his objections in writing, being more than ten days after the same was presented to the Mayor.

Said ordinance shall become effective and be as valid as if the Mayor had approved and signed it. (Sec. 30, City Charter)

C.F. 96-1111-S1

ORDINANCE NO. 173747

An ordinance amending various sections under Division 10, Article 11, of the Los Angeles Administrative Code to increase the annual gross revenue threshold of the small business exemption from the City's Living Wage Ordinance and clarify ambiguities in the defined terms:

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:

Section 1. Los Angeles Administrative Code Section 10.37.1 (a) is amended and revised to read as follows:

(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 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.

Sec. 2. Los Angeles Administrative Code Section 10.37.1 (d) is amended and revised to read as follows:

(d) "Contractor" means any person that enters into (1) a service contract with the City, (2) a service contract with a public lessee or sublessee or licensee 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 (f).

Sec. 3 Los Angeles Administrative Code Section 10.37.1 (f) is amended by deleting the word "proprietary" and replacing it with "public".

Sec. 4. Los Angeles Administrative Code Section 10.37.1 (g) is amended and revised to read as follows:

(g) "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.

Sec. 5. Los Angeles Administrative Code Section 10.37.1 (i) is amended and revised to read as follows:

(i) "Public lease or license."

(a) Except as provided in (i)(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:

(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 (314) 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.

Sec. 6. Los Angeles Administrative Code Section 10.37.1 (k) is amended and revised to read as follows:

(k) "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 public 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 (f).

Sec. 7. Los Angeles Administrative Code Section 10.37.2(a) is amended and revised to read as follows:

(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. With the annual adjustment effective July 1, 1998, such rates were adjusted to seven dollars and thirty-nine cents ($7.39) per hour with health benefits and eight dollars and sixty-four cents ($8.64) without. Such rates shall continue to 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.

Sec. 8. Los Angeles Administrative Code Section 10.37.6(d)1 is amended by deleting the phrase "proprietary lease or license" and replacing it with "public lease or license".

Sec. 9. Los Angeles Administrative Code Section 10.37.7 is amended by deleting the word "proprietary" and replacing it with "public".

Sec. 10. Los Angeles Administrative Code Section 10.37.1 l(b) is amended by deleting the word "proprietary" and replacing it with "public".

Sec. 11. Los Angeles Administrative Code Section 10.37.11 is hereby amended and revised to add a new (c) which reads as follows:

(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.

Sec. 12. Los Angeles Administrative Code Section 10.37.13 is amended by deleting the word "proprietary" and replacing it with "public".

Sec. 13. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of JAN 03 2001.

J. MICHAEL CAREY, City Clerk

By Maria Vostenick
Deputy

Approved January 18, 2001

Acting
Mayor

Approved as to Form and Legality

JAMES K. HAHN, City Attorney

By
LAUREL L. LIGHTNER
Deputy City Attorney

File No. 96-1111- S1

58826

ORDINANCE NO. 175115

An ordinance amending Section 10.8.2.1 of the Los Angeles Administrative Code in its entirety to clarify the requirement that City contractors shall not discriminate in the provision of employee benefits between employees with spouses and employees with domestic partners.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. Section 10.8.2.1 of the Los Angeles Administrative Code is amended to read:

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 Office of the City Administrative Officer.

(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).

Sec. 2. The definition of "Domestic Partners" contained in Section 10.8.1 of the Los Angeles Administrative Code is amended by to read:

"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.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located in the Main Street lobby to the City Hall; one copy on the bulletin board located at the ground level at the Los Angeles Street entrance to the Los Angeles Police Department; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of FEB 12 2003.

J. MICHAEL CAREY, City Clerk

By _____
Deputy

Approved FEB 28 2003

_____
Mayor

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By _____
LAUREL L. LIGHTNER
Deputy City Attorney

File No. 99-0908-S3
83745

ORDINANCE NO. 173677

An ordinance amending Chapter 1 of Division 10 of the Los Angeles Administrative Code to add Article 14 in order to implement a contractor responsibility program.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. A new Article 14 is hereby added to Chapter 1 of Division 10 of the Los Angeles Administrative Code to read:

ARTICLE 14

CONTRACTOR RESPONSIBILITY PROGRAM

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.

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 which are less than three months and less than Twenty-Five Thousand Dollars ($25,000.00) are not covered by this Article. Contracts for purchasing goods and products which are less than One Hundred Thousand Dollars ($100,00.00) are not covered by this Article, unless they are contracts for the purchase of garments such as uniforms or other apparel, in which case they are only exempt from this Article if they are less than Twenty-Five Thousand Dollars ($25,000.00). Construction contracts are covered by this Article without regard to threshold amount.

(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), 7672(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 I of Division 10 of the Los Angeles Administrative Code.

(j) **"Designated Administrative Agency (DAA)"** means the City department(s), board(s), or office(s) designated by City Council to bear administrative responsibilities under this Article. The City Clerk shall maintain a record of such designation.

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 contractors 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) There shall be a period of no fewer than fourteen calendar days between the date for receipt of bids and the award of the contract in order to allow full review of questionnaires submitted by bidders. If no bid is required, the prospective contractor must submit a questionnaire no fewer than fourteen calendar days prior to execution of the contract in order to allow full review of the questionnaire. 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).

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).

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 03 (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.

Sec.10.40.5 Administration

(a) The DAA shall promulgate rules and regulations for implementation of this Article. Said rules shall be submitted to City Council for consideration within sixty days after the effective date of this Ordinance.

(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.

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.

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.

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.

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.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of NOV 21 2000

J. MICHAEL CAREY, City Clerk

By _____
Deputy

Approved _____

Approved as to Form and Legality

JAMES K. HAHN, City Attorney

By _____
NOREEN VINCENT
Assistant City Attorney

Said ordinance was presented to the Mayor on November 27, 2000; the Mayor returned said ordinance to the City Clerk on December 8, 2000 without his approval or his objections in writing, being more than ten days after the same was presented to the Mayor.

Said ordinance shall become effective and be as valid as if the Mayor had approved and signed it. (Section 250(b), City Charter)

C.F. 00-0202

ORDINANCE NO. 171004

An ordinance amending Article 10 of Chapter 1 of Division 10 of the Los Angeles Administrative Code, the Service Contractor Worker Retention Ordinance, to make certain modifications and clarifications:

THE PEOPLE OF THE CITY OF LOS ANGELES

DO ORDAIN AS FOLLOWS:

Section 1. The Los Angeles Administrative Code is hereby amended by amending Article 1.0 to Chapter 1 of Division 10 to read as follows:

ARTICLE 10
SERVICE CONTRACTOR WORKER RETENTION

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 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.

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 discrete financial assistance expressly articulated and identified by the City in excess of one hundred thousand dollars ($100,000), such as, through bond financing, planning assistance, tax increment financing, tax credits, or any other form of financial assistance if the purpose of such other form of assistance is economic development or job growth; 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.

(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.

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.(d) 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.

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.

Sec. 10.36.4. Exemption for Sucessor 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.

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.

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. As to any grant or similar program, this article shall become applicable to the funds authorized by such program if and only if the City Attorney's Office has obtained from the tiding government either an opinion or other determination indicating such consonance or a judgment of compliance from a court of law or other tribunal, which procurement has been reported in writing by such Office to the City Council by a letter to the City Clerk.

Sec. 10.36.7. Article Applicable to New Contracts and City Financial Assistance; Cooperative Retroactivity as to Con tracts and Financial Assistance Occurring After the Original Ordinance and Prior to the Revision.

The provisions of this article shall apply to contracts consummated and financial assistance provided after the effective date of the ordinance amending this article. 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 prior to the effective date of this ordinance, the City directs its appointing authorities and urges others affected to use their best efforts to work cooperatively so as to allow application of this ordinance, rather than its predecessor, to service contracts let during such period. No abrogation of contract or other rights created by the original ordinance, absent consent to do so, shall be effected by the retroactive application of this revision.

Sec. 10.36.8. Promulgation of Implementing Rules.

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.

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.

Sec 2. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of MAR 27 1996

ELIAS MARTINEZ, City Clerk,

By ..... ,
Deputy.

Approved APR 08 1996

Mayor.

Approved as to Form and Legality

JAMES K. HAHN, City Attorney,

By .....
Deputy.

File No. 95-0654-S2

City Clerk Form 23

ORDINANCE NO. 172843

An ordinance amending sections 10.36.1(c) and 10.36.6 of the Los Angeles Administrative Code to modify the treatment of City financial assistance recipients in the City's Service Contractor Worker Retention Ordinance:

THE PEOPLE OF THE CITY OF LOS ANGELES

DO ORDAIN AS FOLLOWS:

Section 1. Los Angeles Administrative Code section 10.36.1(c) is hereby amended to read as follows:

> 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.

Section 2. Los Angeles Administrative Code § 10.36.6 is hereby amended to read as follows:

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 3. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles SEP 15 1999 and was passed at its meeting of SEP 22 1999.

J. MICHAEL CAREY, CITY CLERK

BY _____
Deputy

Approved SEP 28 1999

_____
Mayor

ACTING

Approved as to Form and Legality

_____
James K. Hahn, City Attorney

By _____
FREDERICK N. MERKIN
Special Assistant City Attorney

46533

ORDINANCE NO. 172337

An ordinance amending Section 10.36.6 of Article 10 to Chapter 1 of Division 10 of the Los Angeles Administrative Code to delete the requirement that application of the Service Contractor Worker Retention Ordinance to grant funded programs be delayed until receipt of determination that such application is consonant with the laws authorizing the City to expend such funds..

THE PEOPLE OF THE CITY OF LOS ANGELES

DO ORDAIN AS FOLLOWS:

Section 1. The Los Angeles Administrative Code is hereby amended by revising Section 10.36.6 of Article 10 to Chapter 1 of Division 10 to read as follows:

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.

Section 2. The Los Angeles Administrative Code is hereby amended by revising Section 10.36.7 of Article 10 to Chapter 1 of Division 10 to read as follows:

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.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of NOV 2 3 1998

J. Michael Carey, City Clerk

By Maria Vostenicki
Deputy

Approved _____

_____
Mayor

Approved as to Form and Legality

_____
JAMES K. HAHN, City Attorney

By _____
FREDERICK N. MERKIN
Senior Assistant City Attorney

Said ordinance was presented to the Mayor on NOV 3 0 1998; the Mayor returned said ordinance to the City Clerk on DEC 1 1 1998 without his approval or his objections in writing, being more than ten days after the same was presented to the Mayor.

Said ordinance shall become effective and be as valid as if the Mayor had approved and signed it. (Sec. 30, City Charter)

C.F. 96-1111-52

ORDINANCE NO. 172349

An ordinance adding subsection (g) to Section 10.36.2 of Article 10 of Chapter 1 of Division 10 of the Los Angeles Administrative Code to extend protections of the Service Contractor Worker Retention Ordinance to workers adversely affected by first-time contracting out:

THE PEOPLE OF THE CITY OF LOS ANGELES

DO ORDAIN AS FOLLOWS:

Section 1. The Los Angeles Administrative Code is hereby amended by adding a new subsection (g) to Section 10.36.2 to read as follows:

(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.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of DEC 15 1998.

J. MICHAEL CAREY, CITY CLERK

By _____
Deputy

Approved DEC 22 1998

_____
Mayor

Approved as to Form and Legality

_____
JAMES K. HAHN, City Attorney

By _____
FREDERICK N. MERKIN
Senior Assistant City Attorney

File No. 95-0654-S2

RTICLE 15
EGULATIONS REGARDING PARTICIPATION IN OR PROFITS ERIVED FROM SLAVERY BY ANY COMPANY DOING BUSINESS ITH THE CITY

tion

11 Definitions.

11.1 Purpose of Slavery Era Business Corporate/ Insurance Disclosure.

11.2 [Affidavit Required.]

11.3 Exceptions.

11.4 Administration.

11.5 Application of This Article.

10.41. **Definitions.**

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

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

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

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

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

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

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

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

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

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

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

L. "**Slaveholder**" means holders of Enslaved Persons, owners of business enterprises using Enslaved Persons, ners of vessels carrying Enslaved Persons or other means of transporting Enslaved Persons, merchants or financiers ıling 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 ınst the death of, or injury to, Enslaved Persons.

CTION HISTORY

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

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

. 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 ping, realized enormous Profits by utilizing the uncompensated labor of Enslaved Persons. Many individuals and ıiness enterprises were directly enriched by the labor of Enslaved Persons or benefitted from insurance policies insuring ılaved Persons.

The City of Los Angeles, whose citizenry includes descendants of Enslaved Persons, is entitled to full disclosure of 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 vide information to the California Department of Insurance regarding Slaveholder Insurance Policies sold during the very 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 se seeking to do business with the City to fully and accurately disclose any and all Participation in or Profits derived n Slavery.

CTION HISTORY

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

. 10.41.2. [Affidavit Required.]

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

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

B. Disclosed any and all records of Participation in or Profits derived by the Company, or any Predecessor npany, from Slavery, including issuance of Slaveholder Insurance Policies, during the Slavery Era, and identified the es 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.

CTION HISTORY

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

. 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 '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 ncur a financial loss or forego a financial benefit, and which in the opinion of the Treasurer or the City ninistrative 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 ditions of a grant or Contract with an agency of the United States, the State of California or the instruction of an orized 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 ublic agency of one of these entities, or a public or quasi-public corporation located in the United States and declared aw to have a public status.

D. Contracts awarded on the basis of exigent circumstances whenever any Awarding Authority finds that the City ld suffer a financial loss or that City operations would be adversely impacted unless exempted from the provisions of 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 nal 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 re 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).

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

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

TION HISTORY

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

. 10.41.4. Administration.

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

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

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

TION HISTORY

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

. 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 DAA.

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

CTION HISTORY

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

EXHIBIT G

FEDERAL REQUIREMENTS

Notwithstanding anything to the contrary contained in the DDA, for so long as the Project is subject to the CDBG Regulations the following shall apply:

1. Federal Statutes and Regulations.

   a. Office of Management and Budget (OMB) Circulars

      Developer shall comply with OMB Circulars, as applicable: OMB Circular A-21 (Cost Principles for Educational Instructions); OMB Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments); OMB Circular A-102 (Grants and Cooperative Agreements with State and Local Governments); Common Rule, Subpart C for Public Agencies or 2 CFR 215 (Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations); OMB Circular A-122 (Cost Principles for Non-Profit Organizations); OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations).

   b. Single Audit Act

      If federal funds are used in the performance of this Agreement, Developer shall adhere to the rules and regulations of the Single Audit Act, 31 USC §7501 *et seq.*; City Council action dated February 4, 1987 (C.F. No. 84-2259-S1); and any administrative regulation or field memos implementing the Act. The provisions of this paragraph survive expiration or termination of this Master Agreement.

   c. Americans with Disabilities Act

      Developer hereby certifies that it will comply with the Americans with Disabilities Act 42, USC §12101 *et seq.*, and its implementing regulations and the Americans with Disabilities Act Amendments Act (ADAAA) Pub. L. 110-325 and all subsequent amendments. Developer will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act and the Americans with Disabilities Act Amendments Act (ADAAA) Pub. L. 110-325 and all subsequent amendments, Developer will not discriminate against persons with disabilities or against persons due to their relationship to or association with a person with disability. Any subcontract entered into by the Developer, relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

d. Political and Sectarian Activity Prohibited

None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office. Neither shall any funds provided under this Agreement be used for any purpose designed to support or defeat any pending legislation or administrative regulation. None of the funds provided pursuant to this Agreement shall be used for any sectarian purpose or to support or benefit any sectarian activity.

If this Master Agreement provides for more than One Hundred Thousand Dollars ($100,000) in grant funds or more than One Hundred Fifty Thousand Dollars ($150,000) in loan funds, Developer shall submit to the City a Certification Regarding Lobbying and a Disclosure Form, if required, in accordance with 31 USC 1352. A copy of the Certificate is attached hereto as Attachment III. No funds will be released to Developer until the Certification is filed.
Developer shall file a Disclosure Form at the end of each calendar quarter in which there occurs any event requiring disclosure or which materially affects the accuracy of any of the information contained in any Disclosure Form previously filed by Developer. Developer shall require that the language of this Certification be included in the award documents for all sub-awards at all tiers and that all subcontractors shall certify and disclose accordingly.

e. Records Inspection

At any time during normal business hours and as often as the City, the U.S. Comptroller General of the State of California, through any authorized representative, may deem necessary, Developer shall make available for examination all of its records, paper or electronic, with respect to all matters covered by this Agreement. The City, the U.S. Comptroller General, and the Auditor General of the State of California, through any authorized representative, shall have the authority to audit, examine, and make excerpts or transcripts from records, including all Developer's invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Master Agreement.
Developer agrees to provide any reports requested by the City regarding performance of the Master Agreement.

f. Records Maintenance

Records, in their original form, shall be maintained in accordance with requirements prescribed by the City with respect to all matters covered on file for all documents specified in this Master Agreement. Original forms are to be maintained on file for all documents specified in this Master Agreement. Such records shall be retained for a period of five (5) years after termination of this Master Agreement and after final disposition of all pending matters. "Pending matters" include, but are not limited to an audit, litigation or other actions

involving records. The City may, at its discretion, take possession of, retain, and audit said records. Records, in their original form pertaining to matters covered by this Master Agreement, shall at all times be retained within the County of Los Angeles unless authorization to remove them is granted in writing by the City.

g. Subcontracts and Procurement

Developer shall comply with the federal and City standards in the award of any subcontracts. For purposes of this Master Agreement, subcontracts shall include, but not be limited to: purchase agreements, rental or lease agreements, third-party agreements, consultant service contracts and construction subcontracts.

Developer shall ensure that the terms of this Master Agreement with the City are incorporated into all sub-contract agreements. The Developer shall submit all sub-contract agreements to the City for review prior to the release of any funds to the subcontractors. The Developer shall withhold funds to any sub-contractors agency that fails to comply with the terms and conditions of this Agreement and their respective subcontractors agreement.

h. Labor

Developer shall comply with the Intergovernmental Personnel Act of 1970 (42 USC §4728-§4763) relating to prescribed requirements for merit systems for programs funded by one (1) of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System Personnel Administration (5 CFR 900, Subpart F).

Developer shall comply, as applicable, with the provisions of the Davis-Bacon Act (40 USC §276a to 276a-7), the Copeland Act (40 USC §276c and 18 USC §874), and the Contract Work Hours and Safety Standards Act (40 USC §327-§333), regarding labor standards for federally assisted construction subcontracts.

Developer shall comply with the federal Fair Labor Standards Act (29 USC §201) regarding wages and hours of employment. None of the funds shall be used to promote or deter union/labor-organizing activities. California Government Code §16645 *et seq.*

Developer shall comply with the Hatch Act (5 USC §1501-§1508 and §7324-§7328).

Developer shall comply with provisions of Article 3, Chapter 1, Part 7, Division 2 of the Labor Code of California, the California Child Labor Laws and all other applicable statues, ordinances, and regulations relative to employment, wages, hours of labor and industrial safety.

i. Civil Rights

Developer shall comply with all federal statutes relating to nondiscrimination, including, but not limited to:

Title VI of the Civil Rights Act of 1964 (P.L. 88-352, 42 U.S.C. §2000d, and implementing regulations) which prohibits discrimination on the basis of race, color, or national origin and its implementing regulations and as applied through Executive Order No. 13166, entitled "Improving Access to Services for Persons with Limited English Proficiency" ("LEP"), which requires recipients of federal funds, including Developer, to take reasonable steps to insure meaningful access to its programs and activities by person with LEP as more fully described in HUD's final guidance contained in Federal Register, Volume 72, No. 13."

Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex.

§§503 and 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794, 45 CFR, Part 84), which prohibits discrimination on the basis of handicap.

The Age Discrimination act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age.

The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse.

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation act of 1970 (P.L. 91-616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism.

§§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records.

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 *et seq.*), as amended, relating to non-discrimination in the sale, rental or financing of housing.

Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made.

The requirements of any other nondiscrimination statute(s) which may apply to the application.

P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. §2000e).

The ADA, 42 USC §12101 *et seq.*, and the ADAA, Pub. L. 110-325; and

The Genetic Information Nondiscrimination Act of 2008 (GINA) P.L. 110-233.

j. Relocation Requirements (if applicable)

Developer shall comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.

Developer shall comply with §104(d) of the Housing and Community Development Act of 1974 (HCD Act). When applicable, §104(d)(2)(A)(iii) of the HCD Act provides relocation assistance to lower-income persons who are displaced as a direct result of the demolition of any dwelling unit or the conversation of a lower-income dwelling unit to a use other than a lower-income dwelling in connection with an assisted project. Section 104(d)(2)(A)(i) provides that certain lower-income dwelling units that are demolished or converted to a use other than as lower-income housing be replaced "one-for-one".

k. Environmental

1) Developer shall comply, or has already complied, with the requirements of Titles II and III of the Uniform relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.

2) Developer shall comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §1451 et seq.); (f) conformity of federal actions to State (Clean Air) Implementation Plans under § 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523) and the California Safe Drinking Water and Toxic Enforcement Act of 1986; (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205); (i) Flood Disaster Protection Act of 1973 §102(a) (P.L. 93-234); and (j) §508 of the Clean Water Act (38 U.S.C. §1360).

3) Developer shall comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

4) Developer shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §4822 et seq.) that prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

5) Developer shall comply with the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.) that restores and maintains the chemical, physical and biological integrity of the nation's waters.

6) Developer shall ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of this project are not listed in the Environmental Protection Agency's (EPA) list of violating facilities and that it will notify the Federal Grantor agency of the receipt of any communication from the director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

7) By signing this Agreement, Developer ensures that it is in compliance with the California Environmental Quality Act, Public Resources Code §21000 et seq. and is not impacting the environment negatively.

8) Developer shall comply with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).

l. Preservation

Developer shall comply with §106 of the National Historic Preservation Act of 1966, as amended (16 USC §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 USC §469a-1 *et seq.*).

m. Suspension and Debarment

Developer shall comply with Federal Register, Volume 68, Number 228, regarding Suspension and Debarment, and Developer shall submit a Certification Regarding Debarment required by Executive Order 12549 and any amendment thereto. Said Certification shall be submitted to the City concurrent with the execution of this Agreement and shall certify that neither Developer nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department head or agency. Developer shall require that the language of this Certification be included in the award documents for all sub-award at all tiers and that all subcontractors shall certify accordingly.

n. Drug-Free Workplace

Developer shall comply with the federal Drug-Free Workplace Act of 1988, 41 USC §701, 28 CFR Part 67; the California Drug-Free Workplace Act of 1990, California Governmental Code §8350-§8357.

o. Animal Welfare

Developer shall comply with the Laboratory Animal Welfare Act of 1966, as amended (P.L. 89-544, 7 USC §2131 *et seq.*).

p. Pro -Children Act

Developer must comply with Public Law 103-227, Part C-Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act). This Act requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted by entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by federal programs either directly or through state and local governments. Federal programs include grants, cooperative agreements, loans or loan guarantees, and contracts. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug and alcohol treatment. Developer further agrees that the above language will be included in any subcontracts that contain provisions for children's services and that all subcontractors shall certify compliance accordingly.

q. American Made

Developer shall assure, pursuant to Public Law 103-333, §507, to the extent practicable, that all equipment and products purchased with funds made available under this Agreement shall be American made.

r. Developer shall administer this Agreement in accordance with OMB requirements contained in the following Circulars: Common Rule, Subpart C, for public agencies, or 2 CFR 215 for nonprofit organizations.

s. False Claims Act

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

2. Statutes and Regulations Applicable To this Grant Agreement:

a. Community Development Block Grant Program:

Developer shall comply with all federal statutes and regulations pertaining to the Community Development Block Grant program, including, but not limited to 42 USC §5301 *et seq.*, and 24 CFR Parts 84, 85, and 570.

b. Asbestos and Lead-Based Paint:

Laws and regulations pertaining to abatement of asbestos containing materials (ACM) and lead-based paint (LBP) including insuring that all personnel involved in the abatement of removal process of all ACM and LBP will wear the necessary, legally required protective clothing and respiratory gear.

c. Archaeological Sites:

If archaeological sites are determined to be located in the vicinity of the Project which is the subject of this agreement, a halt work condition is required to allow a state certified archaeologist to assess findings and all work to continue in non-archaeological areas.

d. Federal Acquisition Regulation, 48 CFR, Part 31:

3. Employment Opportunities For Low Income Persons And Small Businesses.

Any project/program funded in part or in whole with Housing and Community Development funds, shall comply with the following provisions (referred to as a Section 3 clause): Developer shall comply with this Section.

The work to be performed under this Master Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 USC 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities by HUD assistance or HUD-assisted projects, covered by Section 3, shall, to the greatest extent feasible, be directed to low and very-low income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this Agreement agree to comply with HUD's regulations in 24 CFR Part 135, which implements Section 3. As evidenced by their execution of this Master Agreement, the parties to this Master Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

Developer agrees to send to each labor organization or representative of workers with which Developer has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Developer' commitments under Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number of job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

The Developer agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractors is in violation of the regulations in 24 CFR Part 135. The Developer will not subcontract where the Developer has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

Developer will certify that any vacant employment positions, including training positions, that are filled (1) after Developer is selected, but before the agreement is executed; and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent Developer's obligations under 24 CFR Part 135.

Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Master Agreement for default, and debarment or suspension from future HUD-assisted agreements.

With respect to work performed in connection with Section 3 covering Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (24 USC 450e), also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preferences in the award of contacts and subcontracts shall be given to Indian Organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

4. Conflict of Interest.

No City-funded Employees as Board Members

The City will not execute any agreements and/or Amendments with Contractors or Developers where an employee (as individual who is paid or receives any financial benefit from funds from the Agreement with the City), is a member of the Board of Directors. The Board minutes must reflect this requirement.

5. Code of Conduct

The City requires that all Contractors/Subcontractors/Developers adopt a Code of Conduct, which at minimum, reflects the constraints discussed in CDD Directive Number FY 07-0001. No Agreements and/or Amendments will be executed without City approval of this Code of Conduct.

Further, the City requires compliance with the following conflict of interest requirements for all City-funded contractors.

6. Conflict of Interest

a. Prior to obtaining the City's approval of any subcontract, Developer/Contractor shall disclose to the City any relationship, financial or otherwise, direct or indirect, of Developer/Contractor, or any of its officers, directors or employees or their immediate family with proposed subcontractors and its officers, directors or employees.

b. Developer/Contractor covenants that none of its directors, officers, employees, or agents shall participate in selecting, or administrating any subcontract supported (in whole or in part) by City funds (regardless of source) where such person is a director, officer, employee or agent of the subcontractors; or where the selection of subcontractors is or has the appearance of being motivated by a desire for personal gain for themselves or others such as such as family business, etc.; or where such person knows or should have known that:

1) A member of such person's immediate family, or domestic partner or organization has a financial interest in the subcontract;

2) The subcontractors is someone with whom such person has or is negotiating any prospective employment; or

3) The participation of such person would be prohibited by the California Political Reform Act California Government Code §87100 *et seq.* if such person were a public officer, because such person would have a "financial or other interest" in the subcontract.

c. Definitions:

1) The term "immediate family" includes, but not limited to domestic partner and/or those persons related by blood or marriage, such as husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law:

2) The term "financial or other interest" includes, but is not limited to:

a) Any direct or indirect financial interest in the specific contract, including a commission or fee, share of the proceeds, prospect of a promotion or of future employment, a profit, or any other form of financial reward.

b) Any of the following interests in the subcontractors ownership: partnership interest or other beneficial interest of five (5) percent or more; ownership of five (5) percent or more of the stock; employment in a managerial capacity; or membership on the board of directors or governing body.

3) A subcontract is any agreement entered into by Developer/Contractor for the purchase of goods or services with any funds provided by this Agreement.

d. Minutes of board meetings must reflect disclosure of transactions where Board Members may have had a direct or indirect/benefit in the action.

e. Developer/Contractor further covenants that no officer, director, employee, or agent shall solicit or accept gratuities, favors, anything of monetary value from any actual or potential subcontractors, supplier, a party to a subcontract (or persons who are otherwise in a position to benefit from the actions of any officer, employee, or agent).

f. Developer/Contractor shall not subcontract with a former director, officer, or employee within a one-year period following the termination of the relationship between said person and the Developer/Contractor.

g. For further clarification of the meaning of any of the terms used herein, the parties agree that references shall be made to the guidelines, rules, and laws of the City of Los Angeles, State of California, and federal regulations regarding conflict of interest.

h. Developer covenants that no member, officer or employee of Developer/Contractor shall have interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work to be performed in connection with this project during his/her tenure as such employee, member or officer or for one (1) year thereafter.

i. Developer shall incorporate the foregoing subsections of this Section into every agreement that it enters into in connection with this project and shall substitute the term "subcontractors" for the term "Contractor" and "sub-contractors" for "Subcontractors".

j. Developer warrants that it has adopted and shall comply with the Code of Conduct, as approved by the City that meets the foregoing requirements.

EXHIBIT G

FTA REQUIREMENTS