

ATTACHMENT 1

DRAFT MANAGEMENT AGREEMENT BETWEEN THE CITY AND AEG FOR THE MANAGEMENT AND OPERATIONS OF THE LOS ANGELES CONVENTION CENTER

October 3, 2013 DRAFT

**MANAGEMENT AND OPERATION AGREEMENT
BETWEEN THE
THE CITY OF LOS ANGELES
AND AEG MANAGEMENT LACC, LLC**

Dated as of _____, 2013

MANAGEMENT AND OPERATION AGREEMENT

THIS MANAGEMENT AND OPERATION AGREEMENT ("Agreement") is made and entered into as of _____, 2013, by and between the City of Los Angeles, a California municipal corporation and charter city ("City") acting by and through its Los Angeles Convention and Exhibition Center Department ("LACC Department") and AEG MANAGEMENT LACC, LLC, a Delaware limited liability company ("AEG") and a wholly-owned subsidiary of AEG FACILITIES, LLC, a Delaware limited liability company. (AEG and the City are collectively referred to herein as the "Parties.")

RECITALS

- A. This Agreement sets forth the terms and conditions under which AEG shall provide management services to the City for the management and operation of that certain convention and exhibition center and related facilities located in downtown Los Angeles, California and known as the "Los Angeles Convention and Exhibition Center," (the "LACC") located on that real property owned by the City, as depicted and more particularly described in the site plan attached hereto as Exhibit "B";
- B. The City currently owns and operates the LACC;
- C. On April 25, 2013, the City issued a Request for Proposals ("RFP") regarding the management and operation of the LACC;
- D. AEG has experience and expertise in the management, operation, and marketing of various types of venues, including public assembly facilities;
- E. The City has selected AEG based on AEG's qualifications to staff, manage, operate, and maintain the LACC in order to achieve the stated goals and objectives outlined in the RFP;
- F. The City desires a first class, top tier, state-of-the-art convention center that facilitates the City's goals of Los Angeles being a leading and primary destination of top tier national and international conventions, trade shows and events. The City's first priority is to meet the needs of citywide events including conventions and trade shows, and the second priority is to meet the needs of local events and activities including other trade shows, consumer shows, meetings, filming, entertainment, and community events. In pursuing private management of the LACC, the City has identified the following operational goals for the LACC: manage day-to-day operations of the LACC in a cost efficient, high quality and effective manner; maximize the generation of hotel room occupancy and transient occupancy taxes to decrease General Fund costs; manage operational expenses within an annual operating budget approved by the LACC Department; provide superior services to patrons and visitors utilizing and attending events at the LACC, thereby maximizing customer satisfaction as exhibited by an industry-wide positive image and maximizing LACC re-bookings; collaborate with the LACC Department, other City

departments and the Los Angeles Tourism and Convention Bureau ("LATCB") and other convention and tourism stakeholders to develop and implement innovative initiatives to penetrate new markets, attract new events and promote the LACC to enhance usage and occupancy within the LACC Department's operating policies; work cooperatively with the LATCB in attracting citywide events including national and international conventions, tradeshow, and meetings to the LACC; identify and implement initiatives to enhance LACC revenues, while ensuring that the LACC remains economically competitive with other convention centers; properly maintain and safeguard the City's capital investment in the LACC through the exercise of the highest standards of maintenance and preservation, and, as the need arises, recommend capital improvements; respond to the ever-changing needs of the community and users of the facility with recommendations for expansion, renovations and upgrades of services; and achieve all objectives in a professional manner, consistent with industry best practices and all applicable laws and ordinances;

- G. The City desires and expects the LACC to be operated, promoted, maintained and managed in a manner that is designed and intended to accomplish the goals and desires listed in Recital F, and in a manner that is designed and intended to cause a positive impact on the City's General Fund;
- H. The City and AEG intend to work in mutual accord in order to ensure provision of first class management services, thereby enhancing the use and enjoyment of the LACC; and
- I. The City desires to engage AEG, and AEG desires to accept the engagement to manage, operate and market the LACC on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements set forth in this Agreement, the recitals set forth above, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

"A&I" means any alterations or improvements to the LACC.

"ADA" means the Americans with Disabilities Act as defined in Exhibit A, Section PSC-33.

"AEG" means AEG MANAGEMENT LACC, LLC, a Delaware limited liability company.

"AEG Employees" means all persons employed by AEG that perform services in connection with this Agreement at the LACC during the Term.

“AEG Parent” means Anschutz Entertainment Group, Inc.

“AEG Procurement Policies” is as defined in Section 2.2 (l) of this Agreement.

“Affiliate” or **“Affiliates”** means a Person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified Person. For purposes of this definition, “control” means ownership representing no less than 51% of the voting power in the controlled Person.

“Agreement” is defined in the introductory paragraph of this Agreement.

“Agreement Year” means, during the Term, each one year period beginning July 1st and ending June 30th or, if this Agreement is terminated earlier, the period from the July 1 of the year in which the Agreement is terminated to the effective date of termination; provided however the First Agreement Year and Final Agreement Year shall be as defined herein.

“Annual Audit” is as defined in Section 7.3(a)(i) of this Agreement.

“Annual Plan” is as defined in Section 6.2(b) of this Agreement.

“Approved Amended Annual Operating Budget” is as defined in Section 6.5 of this Agreement.

“Approved Annual Operating Budget” means the Operating Budget submitted by AEG and approved in writing by the City pursuant to Section 6.3(a) of this Agreement.

“Aramark Agreement” means that certain agreement between the City and Aramark Sports and Entertainment Services, Inc, for the Management of the Food and Beverage Services at the Los Angeles Convention Center, dated January 1, 2000, as amended.

“Arena Ground Lease” means that certain Arena Ground Lease by and between the City of Los Angeles and the L.A. Arena Land Company, LLC (f/k/a L.A. Arena Land Company Inc.), dated March 26, 1998.

“Base Management Fee” is as defined in Section 5.1 of this Agreement.

“Booking Guidelines” means the guidelines to be reasonably developed by the LACC Management Review Staff to insure that potential conflicts of interests are avoided.

“Booking Policy” means the LACC Department’s policy for booking events at the LACC attached hereto as Exhibit [C]

“Building Emergency Coordinator” or **“BEC”** is as defined in Section 2.2(t) of this Agreement.

"Campus Operation and Cooperation Policy" means that certain policy which, subject to the Closing as defined in the Implementation Agreement, would require LACC and the City tenants on the LACC Campus to establish a written Macro-Booking policy, a written safety and security policy, an Operational Oversight Committee and a conflict resolution Coordinating Committee.

"Capital Advances" means, collectively, the First Capital Advance and Second Capital Advance.

"Capital Equipment" means any and all furniture, fixtures, machinery and equipment to be utilized for the operation of the LACC, either additional or replacement, having a per item original cost of \$5,000.00 or more, or an expected useful life of more than one year (provided any series of repairs, replacements or purchases that would ordinarily be considered a single project or would ordinarily be effected by entering into a single contract shall be considered a single cost item for purposes of determining whether it is Capital Equipment). Capital Equipment items may or may not be capitalized as capital assets on the City's balance sheet depending upon the City's asset capitalization policy in effect at the time of acquisition.

"Capital Improvements" means any and all building additions, alterations, renovations, repairs and improvements to the LACC with an initial dollar cost of not less than \$25,000.00 per project. Capital Improvements will not include routine maintenance and repair projects which in the aggregate do not exceed \$25,000.00 per project. Capital Improvement items may or may not be capitalized as capital assets on the City's balance sheets depending upon the City's asset capitalization policy in effect at the time of acquisition.

"Cash Flow Management Fund" is as defined in Section 2.4 of this Agreement.

"Cash Flow Projection" is as defined in Section 6.2(c) of this Agreement.

"Cash Flow Shortfall" is as defined in Section 6.11 of this Agreement.

"City" means the City of Los Angeles, California, a California municipal corporation and charter city.

"City Council" means the Council of the City of Los Angeles, the legislative body of the City pursuant to Section 20 of the Charter of the City of Los Angeles.

"City Employee" means all persons employed by the City performing services at or in connection with the LACC during the Term.

"Conflict Code Amendment" is as defined in Section 4.7 of the Agreement

"CPI-U" is as defined in Section 5.2 of this Agreement.

"Discretionary Incentive Fee" is as defined in Section 5.4 of this Agreement.

"Earned Incentive Fee" is as defined in Section 5.3 of this Agreement.

“Effective Date” is the date on which this Agreement becomes effective as specified in Section 3.1 of this Agreement.

“Emergency Expenditure” is as defined in Section 6.10(a).

“Event Center” and **“Event Center Project”** means the stadium and event center project as contemplated in the Implementation Agreement.

“Event Expenses” mean any and all direct, shared, reimbursed and non-reimbursed expenses incurred or payments made by AEG in connection with the hosting of events at the LACC, including but not limited to the costs for event staffing such as ushers, ticket takers, security personnel and other event staff, and costs relating to set-up and clean-up. For financial reporting purposes, Event Expenses may be referred to as cost of events and classified under headings similar to those in Exhibit [D]

“Event of Force Majeure” is as defined in Exhibit A, Section PCS-7, Excusable Delay.

“Executive Director” means the chief administrative officer of the LACC Department or the Executive Director’s designee.

“F&B Plan” is as defined in Section 2.2(m).

“FF&E” means such furniture, fixtures and equipment purchased for and utilized at the LACC but excluding any equipment or furniture which remains within the possession and control of the City.

“Final Agreement Year” means period between July 1, 2018 and the 5th anniversary of the Effective Date or, if this Agreement is terminated earlier, the period from the start of the Agreement Year in which this Agreement is terminated to the effective date of termination.

“First Agreement Year” means the period between the Effective Date and June 30, 2014 or, if this Agreement is terminated earlier, the period from the Effective Date to the effective date of termination.

“First Agreement Reserve Fund” is as defined in Section 6.4(a) of this Agreement.

“First Capital Advance” is defined in Section 2.3(e)(i) of the Agreement.

“Fiscal Year” means a one year period beginning July 1st and ending June 30th.

“General Manager” means the AEG Employee acting, from time to time, as the full-time, on-site manager of the LACC.

“Gilbert Lindsay Plaza” means the approximately 3.2 acre plaza as depicted in Exhibit B.

"Implementation Agreement" means that certain Implementation Agreement by and among the City of Los Angeles, L.A. Event Center, LLC, L.A. Convention Hall, LLC, L.A. Parking Structures, LLC and L.A. Arena Land Company, LLC dated as of October 18, 2012.

"Internal Control Memorandum" is as defined in Section 7.3(a)(ii) of this Agreement.

"LACC" is as defined in the Recital A of this Agreement.

"LACC Board" means the board of Los Angeles Convention Center Commissioners which is composed of five (5) members appointed in accordance with Los Angeles City Charter Section 502, and who control and manage the Los Angeles Convention Center Department.

"LACC Campus" means the properties on which the LACC, including the LACC parking structures and lot depicted on Exhibit B, Staples Center and potentially the Event Center and Event Center-related parking are located.

"LACC Department" is as defined in the introductory paragraph of this Agreement.

"LACC Management Review Staff" is as defined in Section 2.5.2 of this Agreement.

"LACC Operating Account" is as described in Section 6.7 of this Agreement.

"LACC Reserve Fund" is as defined in Section 6.4(b) of this Agreement.

"LA Live" means, for the purposes of this Agreement, that area as more particularly defined in the Implementation Agreement.

"LATCB" means the Los Angeles Tourism and Convention Bureau, or its successor entity.

"Law" or "Laws" means all applicable federal, state, local and municipal laws, ordinances, orders, judgments, rules, regulations, requirements, mandatory guidelines or directives of any applicable governmental agency affecting the management and operation of the LACC.

"LEED" means the U.S. Green Building Council's Leadership on Energy and Environmental Design green building rating system.

"Losses" means any and all losses, liabilities, claims, damages and expenses (including reasonable attorneys' fees).

"Management Period" means that period commencing on the Transition Date and ending on the 5th anniversary of the Effective Date, or, if this Agreement is terminated earlier, the period from the Transition Date to the effective date of termination.

"Management Period Services" is defined in Section 2.2 of the Agreement.

"Marketing and Business Development Fund" is as defined in Section 2.3(a) of the

Agreement.

"Mayor's Good Food Purchasing Policy" means that certain policy, as it may be amended from time to time, attached hereto as Exhibit [E].

"Mayor's Proposed Budget" means the budget message and exhibits on revenue, appropriations, federal grants, and costs of operation of departments, bureaus, and other offices required by the City Charter to be proposed by the Mayor and delivered to the City Council by April 20th of each year.

"Monthly Budget and Service Report" is as defined in Section 7.4 of the Agreement.

"Net Operating Surplus/Deficit" means, with respect to an Agreement Year (including the First Agreement Year and Final Agreement Year), the excess, if any, of Operating Revenues for such Agreement Year over Operating Expenses for such Agreement Year, in the case of a surplus, and the excess, if any, of Operating Expenses for such Agreement Year over Operating Revenues for such Agreement Year, in the case of a deficit.

"New Hall Project" means that certain project to develop and construct a new exhibit hall, meeting rooms and ancillary and supporting spaces as contemplated in the Implementation Agreement.

"Non-Standard License Agreements" means a Standard Event License Agreement which has been changed or modified in a manner which materially and adversely impacts the financial interests of the LACC or the City or is inconsistent with this Agreement.

"Operating Budget" shall mean the projected operating budget submitted by AEG with respect to its management and operation of the LACC, which operating budget meets the budgeting and fiscal requirements of the City and contains appropriate line items for Operating Revenues, Operating Expenses and the projected Net Operating Deficit/Surplus.

"Operating Deficit" means, with respect to an Agreement Year, the excess, if any, of Operating Expenses over Operating Revenues.

"Operating Expenses" mean expenses and expenditures incurred by, or at the direction of, AEG in promoting, operating, maintaining and managing the LACC which shall be accounted for in the LACC Operating Account, all as determined in accordance with generally accepted accounting principles, including, but not limited to: AEG Employee compensation including bonuses, benefits, relocation costs, severance costs and related costs for AEG's employees; certain City Employee compensation and expenses as agreed by the Parties and set forth in the Approved Annual Operating Budget; operating supplies, materials and parts costs; costs of any independent contractors; advertising, marketing, group sales and public relations costs; commissions, janitorial and cleaning expenses; data processing costs; dues, subscriptions and membership costs for AEG Employees; AEG's costs of procuring, administering and maintaining the insurance policies required pursuant to this Agreement (except the cost of the professional liability insurance policy); costs incurred by AEG to procure and maintain permits

and licenses; professional fees; printing and stationery costs; Event Expenses; postage and freight costs; banking services fees; equipment rental costs; computer equipment purchase and lease costs, internet, cable and telephone charges, copier/printer/facsimile equipment lease charges, software costs, and website construction, maintenance and hosting costs; repairs and maintenance costs for equipment and the LACC when not consisting of Capital Equipment and Capital Improvements; security expenses; utilities; safety and medical expenses; exterminator and waste disposal costs; costs relating to the maintenance of signage; all fees payable to AEG as compensation pursuant to Article 5 of this Agreement; defense and litigation costs and expenses; and the Annual Audit. *Operating Expenses do not include:* (i) expenses or expenditures in connection with Capital Improvements and Capital Equipment purchases; (ii) any expenses relating to AEG Parent personnel ; (iii) the cost of property taxes for the LACC; (iv) the cost of insurance premiums incurred by the City to purchase property and hazard insurance for the LACC, the City's personal property located in the LACC, and the City's gross revenues from the operation of the LACC due to a casualty occurrence; (v) debt service on the LACC; (vi) depreciation, amortization expenses of the LACC; (vi) the cost, if any, of a corporate guarantee from AEG Parent (vii) the deductible amount under AEG's professional liability policy required under Exhibit A, Section PSC-24, and (viii) any gains or losses from disposal of FF&E or other equipment.

“Operating Revenues” mean the revenues of every kind or nature derived from operating, managing and promoting the LACC, which shall be accounted for in the LACC Operating Account, all as determined in accordance with generally accepted accounting principles, including but not limited to: license and lease fees and rentals; revenues from merchandise sales; advertising and sponsorship sales and renewals; event sponsorship revenues; equipment rentals; box office revenues, ticket surcharges, public facility maintenance charges and ticket service fees; parking revenues received for parking at the LACC; title sponsorship revenues; revenues generated from the sale of food and beverage service commissions or other revenues from decorating the LACC and set-up and tear down of equipment for events; security services revenues; revenues from subcontractors (however, if the revenues are collected in the first instance by and retained by the subcontractors, the amount of the revenues owed by subcontractors to the LACC will be included as Operating Revenues), if any, all as determined in accordance with generally accepted accounting principles. Unless otherwise agreed by event licensees, revenues from the sale of tickets and similar event revenues for events at the LACC are not Operating Revenues, but are instead revenues of the promoter, performer and/or licensee of each event. To the extent AEG collects ticket and similar event revenues on behalf of promoters, performers, and/or licensees the ticket sale and similar event revenues will be the source of funds from which AEG collects the rental charges and other event reimbursements due by the promoter, performer and/or licensee for use of the LACC, which charges and reimbursements are Operating Revenues.

“Operating Plan” is as defined in Section 2.2(a) of this Agreement.

“Person” means any individual, general partnership, limited partnership, limited liability partnership, corporation, joint venture, trust, business trust, limited liability company, cooperative, or association, and the successors and assigns of any of the foregoing and, unless

the context otherwise requires, the singular will include the plural, and the masculine gender will include the feminine and the neuter, and vice versa.

“Pool Rate” means the yield the City Treasurer earns from investments made from available cash for the City, including that of the proprietary departments, as part of a pooled investment program that combines general receipts with special funds for investment purposes and allocates interest earnings on a pro-rata basis when the interest is earned and distributes interest receipts based on the previously established allocations.

“Pre-Existing Agreement” means each contract, license, agreement, option, lease and commitment existing as of the date of this Agreement that grants any Person any right (i) to license, use, occupy or rent all or any portion of the LACC, or (ii) to provide services to be used in the management, operation, use, possession, occupation, maintenance, promotion or marketing of all or any portion of the LACC, and that are listed on Exhibit F, and which AEG has agreed to assume subject to the terms and conditions of mutually agreeable assignment and assumption agreements.

“Proposal” means the proposal submitted by the Proposers in response to the City’s Request for Proposals.

“Proposed Amended Operating Budget” is as defined in Section 6.5 of the Agreement.

“Proposers” means AEG Facilities, LLC and LA Live Development Company, LLC the companies responding to the City’s Request for Proposals for Management and Operation of the Los Angeles Convention Center.

“Revenue” or “Revenues” shall mean the City’s gross revenue or gross revenues.

“Second Capital Advance” is as defined in Section 2.3(e)(ii) of the Agreement.

“Services” means, collectively, the Transition Period Services and Management Period Services.

“Service Agreements” is as defined in Section 2.2(q)(ii)(2).

“Signage Agreement” means that certain Signage Agreement as contemplated in the Implementation Agreement and attached thereto as Exhibit H which may become applicable upon the Closing as contemplated by the Implementation Agreement.

“Standard Event Agreement” is as defined in Section 2.2(q)(iv) of the Agreement.

“Standard Operating Procedures Manual” is as defined in Section 7.6 of the Agreement.

“Staples Center” means that certain multi-use sports and entertainment arena located in downtown Los Angeles, California on such real property as more specifically described in the Arena Ground Lease.

“Term” means that period commencing upon the Effective Date and ending on the 5th anniversary of the Effective Date, unless earlier terminated as provided in this Agreement.

“Transition Date” means the date which is the later to occur of: (i) December 8, 2013, or (ii) the date which is ninety (90) days after the Effective Date.

“Transition Period” means that period between the Effective Date and the Transition Date, or, if this Agreement is terminated earlier, the period from the Effective Date to the effective date of termination.

“Transition Period Services” is as defined in Section 4.3 of the Agreement.

“Yearly Marketing Fund Contribution” is as defined in Section 2.3(a) of the Agreement.

ARTICLE 2 ENGAGEMENT OF AEG; SCOPE OF SERVICES; RESPONSIBILITIES OF PARTIES

Section 2.1 General Scope; Engagement of AEG.

The City hereby engages AEG to promote, operate and manage the LACC during the Management Period of the Term and to provide the Transition Period Services during the Transition Period of the Term, upon and subject to the terms and conditions of this Agreement and AEG hereby accepts such engagement. AEG shall make commercially reasonable efforts to improve the management and operation of the LACC in a manner that is designed to provide the most efficient and highest quality service to customers and minimize operating costs, while increasing the quality of maintenance and security, and maximizing gross receipts without negatively impacting client costs or satisfaction.

Section 2.2 Specific AEG Management and Operation Responsibilities.

Without limiting the generality of Section 2.1 above, and subject to all other provisions of this Agreement, AEG, itself or through its designated contractors or vendors, will perform the following services (the "Management Period Services") during the Management Period, which AEG has the sole, exclusive right and authority to perform without (except as otherwise expressly noted in this Agreement) any prior approval by the City:

(a) *Management Execution.* AEG shall be responsible for executing an operations and management plan which is generally consistent with the applicable provisions of the Proposal, attached hereto as Exhibit "C", subject to modification by mutual agreement of the Parties, (the "Operating Plan") and, in connection therewith, shall undertake the following:

- (i) Managing all aspects of the LACC in accordance with the terms and conditions of this Agreement;
- (ii) maintaining the LACC and its FF&E as provided in this Agreement;
- (iii) conducting local and regional sales and marketing of the LACC consistent with the Booking Policy and the Booking Guidelines;
- (iv) management of various product and service providers;
- (v) coordination of LACC utilization including, without limitation, coordinating with the LATCB and the tenants of the LACC Campus and scheduling, negotiating and licensing of events consistent with the Booking Policy and Booking Guidelines;
- (vi) management of the following on a day-to-day basis at the LACC:
 - Food and beverage services
 - Parking within LACC-controlled parking facilities;
 - Grounds keeping and landscaping;

- Corrective and preventive custodial and building maintenance services;
- Equipment maintenance;
- Security services;
- Utility and technical services such as electrical, plumbing, audio/visual, telecom, data (Internet) and HVAC;
- Booking and scheduling events and maintaining the booking calendar in accordance with the Booking Policy;
- Sales, marketing and promotion of LACC and LACC services;
- Advertising and sponsorship associated with the LACC;
- Box office operations and ticketing (to the extent not controlled by a promoter, performer or licensee of an event);
- Event setup and take down;
- Event coordination and supervision;
- AEG Employee recruitment, training and supervision;
- Information technology services for AEG Employees and in connection with the performance of the Management Period Services;
- Web site and social media;
- Public relations;
- Financial and administrative services such as accounting, budgeting, purchasing, payroll, personnel, and contracting of outside services;
- Lobby reception functions for both AEG and LACC; and
- Such other aspects of the operations of the LACC as agreed by the Parties.

(b) *Personnel.* AEG shall employ, supervise and direct all of the AEG Employees as well as additional subcontractors or agents retained by AEG to assist with the provision of the Management Period Services. AEG shall administer payroll systems for all the AEG Employees at the LACC.

(c) *Marketing, Sales and Promotion.*

(i) AEG acknowledges that the City has entered into that certain Sales and Marketing Agreement, dated as of July 1, 2011, (the "Sales and Marketing Agreement") and agrees to cooperate with the LATCB as needed under the Sales and Marketing Agreement.

(ii) AEG shall establish an effective system of communication and positive relationships with the LACC Department, LACC Campus tenants, LATCB, LA Live, area associations, hotels, and other appropriate agencies to encourage collaboration in order to seek to maximize sales of citywide conventions and to develop and engage in advertising, solicitation and promotional activities, as required to develop the full potential of the LACC and the procurement of citywide events.

(iii) AEG shall work cooperatively with the LATCB in attracting citywide events including national/international conventions, tradeshow, and meetings to LACC.

(iv) AEG's marketing responsibilities for public shows, meetings, special events, banquets, entertainment events, consumer shows etc. booked up to one year in advance shall consist primarily of those activities performed to attract events in accordance with the Booking Policy and Booking Guidelines in existence or which may be reasonably adopted by the LACC Department to ensure that any potential conflicts of interests are avoided.

(v) AEG will develop printed, electronic and other promotional material to market the LACC and enhance and maintain the LACC website as a marketing and client service tool only in connection with its responsibilities under this Agreement. AEG will provide initiatives that have been used in other privately-managed centers to coordinate the convention sales and marketing process between the LACC and the LATCB and which represent industry best practices.

(d) *Signage.* AEG shall not place signs or advertising identifying itself or its subcontractors on the LACC unless permitted by written approval by the Executive Director. AEG shall further comply with all existing signage agreements related to Staples Center and LA Live and, if the Event Center project proceeds, AEG shall comply with the Signage Agreement, as set forth in the Implementation Agreement.

(e) *Operating and Financial Systems.* AEG will implement operating and financial systems and controls for the LACC.

(f) *Information Technology.* AEG shall undertake all information technology functions for the LACC and shall take reasonable measures designed to keep secure and intact all such technology systems from hacking, cyber-attacks and unintended intrusions and software of all kinds per prevailing security standards and protocols, and maintain such technology systems in a manner consistent with first-class convention center standards and consistent with City policies for websites and social media, where applicable; *provided, however,* that the LACC Department shall continue to provide all information technology functions for its own administrative functions unless AEG is requested to provide such services by the Executive Director and agrees to provide such services; provided however any expenses associated with performing such functions shall be treated as Operating Expenses.

(g) *Maintenance; General Cleaning and Upkeep.* AEG is responsible for cleaning, upkeep and maintenance, of the LACC, including its grounds and its FF&E. AEG shall endeavor to improve and increase the quality of maintenance and shall maintain the LACC in a clean, orderly, attractive, and sanitary condition and in strict accordance with applicable Laws and consistent with a top-tier, convention center. AEG shall provide regular reports on the condition of the LACC to the Executive Director, and the City shall have the right in its discretion to make periodic inspections of the LACC, subject to Section 2.6, and any FF&E, to determine that they are being maintained as required by this Agreement. AEG shall also be responsible for informing the LACC Management Review Staff of degraded conditions of the interior, exterior and infrastructure of the LACC.

(h) *Maintenance; Building Systems and Infrastructure.* AEG is responsible for the preventative, corrective, and general maintenance of the LACC and its FF&E. AEG shall

perform a thorough review and inspection of all building systems and FF&E to determine current condition, and shall create a preventative and corrective maintenance program based on the existing condition of the LACC and its FF&E. AEG shall plan and perform preventative and corrective maintenance to the LACC and its FF&E in a manner commensurate with a top-tier, convention center, and according to accepted manufacture and industry standards. AEG shall be responsible for performing, obtaining, documenting, permitting, and reporting all required inspections, tests, maintenance, replacement, and upgrades. AEG shall track and record all maintenance planned and performed using a professional computer based maintenance management program. AEG shall submit periodic reports as reasonably requested by the Executive Director, and furnish copies of all required permits, reports, and related documentation to the LACC Department. To the extent AEG is made aware of, and provided with all information with respect to, any warranties associated with the LACC and its FF&E, AEG agrees not take any actions which would invalidate the validity of any such warranties and, subject to the terms and conditions of this Agreement, including without limitation, Sections 2.4 and 6.8, shall ensure that repairs to any part of the LACC or its FF&E that are under warranty are accomplished under the terms of such warranty.

(i) *Surrender of FF&E.* At the expiration or earlier termination of this Agreement, AEG shall be responsible for returning the LACC and FF&E to the City in the same or substantially similar condition to which they were provided as of the Transition Date, or as the LACC or FF&E had been improved during the Term, except for normal wear-and-tear. Any damage to the FF&E caused by AEG's, or its employees', contractors' or subcontractors' negligent or willful acts or omissions, shall be repaired or replaced at AEG's sole cost and expense prior to the expiration or earlier termination of this Agreement.

(j) *Building Alterations and Improvements.* Except as provided in Section 2.2(h) above, no A&I shall be made to the LACC, or any part thereof, without first having obtained the written consent of the LACC Department. All A&I shall be the property of the City. Within a reasonable time following the Transition Date, AEG shall perform an initial inspection of the LACC, and, periodic inspections each Agreement Year of the Term thereafter and identify potential A&I projects, if any, at the LACC. AEG will provide annual input to the LACC Management Review Staff based on the initial and periodic inspections. AEG shall also solicit customer feedback to assist in the formulation of its input on possible A&I projects. The A&I input shall include a list of all required retrofits, upgrades, modifications, and/or replacements that are mandated by Law, or which AEG considers prudent for the operation of the LACC as a top-tier facility, with a respective budget outlining the cost of each item or project as set forth in Section 6.2.

(k) *Building Capital Improvement Projects.* Within reasonable time following the Transition Date, AEG shall perform an inspection of the LACC and provide input to the LACC Management Review Staff of any potential Capital Improvement projects. AEG's input of Capital Improvement projects shall include a list of all required retrofits, upgrades, modifications, and/or replacements that are mandated by Law with a respective budget outlining the cost of each project. City shall remain responsible for the performance of all Capital Improvement projects, unless otherwise agreed by the Parties. At the sole discretion of the

Executive Director, Capital Improvement projects may be supervised and managed by City staff and management, or by third parties.

(l) *Procurement Policies.* AEG shall develop procurement policies for the rental, lease or purchase of equipment and maintenance supplies consistent with the terms of this Agreement and necessary or appropriate for the operation and maintenance of the LACC ("AEG Procurement Policies"). Prior to the decommissioning of any FF&E, AEG shall notify the Executive Director of its conclusion that the piece of FF&E is beyond its useful life or that AEG does not need that piece of FF&E to operate the LACC and, if the Executive Director concurs, the Executive Director will utilize the City's processes for salvaging City personal property or for storing property, as appropriate.

(m) *Food and Beverage Services.* AEG, by and through its designated third party vendor, shall provide food and beverage services on an exclusive basis at the LACC generally consistent with the food and beverage plan provisions in the Proposal, attached hereto as Exhibit "E", and subject to modification by mutual agreement of the Parties, shall provide as follows (the "F&B Plan"):

(i) AEG, by and through its designated third party vendor, shall provide food and beverage service at the LACC, on an exclusive basis after termination of the Aramark Agreement, at the highest level of service and product selection and be able to support high-end demand catering functions. In addition, the food and beverage program must reflect the stature of Los Angeles as a leading international city that is committed to environmental stewardship. AEG will upgrade the food services at the LACC to encourage conventioners and other attendees to remain in the LACC for meal functions and use the center's culinary sales locations. AEG may use affiliated companies, joint ventures, or subcontractors to provide consolidated services including food and beverage service.

(ii) City agrees to terminate the Aramark Agreement, by delivering written notice of City's intent to terminate as provided under such Aramark Agreement as soon as reasonably practicable after the Transition Date. Upon the termination of the Aramark Agreement, AEG will commence providing the food and beverage service operation, through its designated third-party provider, for the remaining Term of this Agreement. AEG will bring new and innovative food and beverage concepts and offerings to the LACC through the "Taste of LA" program described in the F&B Plan. AEG will draw on its expertise from around the world and leverage certain economies of scale with its third party food and beverage provider, Levy Restaurants.

(iii) Without limiting the generality of the preceding subsection, AEG itself, or through its third party provider, shall be responsible for the following:

- The operation of all mobile/fixed concession stands at LACC; all catering and banquet services; all meeting rooms with supporting areas; and all other services associated with food and beverage sales.

- The purchase, storage, preparation, sales, marketing and service of food, alcoholic and non-alcoholic beverages as well as other related food items for LACC catered and non-catered events, and
- The operation of all food and beverage facilities that provide a level of service, product selection, customer satisfaction and revenue generation consistent with industry standards at top tier facilities.
- Use its good faith commercially reasonable efforts to comply with the Mayor's Good Food Purchasing Policy (acknowledgement of receipt of such policy is attached hereto as Exhibit "E").

(iv) Notwithstanding the exclusive grant of rights with respect to food and beverage services as set forth in Section 2.2(m)(i) above, AEG shall permit licensees of the LACC from the film and motion picture industry to utilize other third party providers to provide limited food and beverage services and products at LAAC for events as, and in areas of LACC, reasonably designated by AEG.

(n) *Payment of Operating Expenses.* AEG shall pay, when due, all Operating Expenses from funds available in accounts established pursuant to Article 6 of this Agreement, or with funds otherwise made available by the City as provided herein.

(o) *Sustainability Programs.* AEG shall comply with all of the City's sustainability plans and programs in effect as of the Effective Date which have been provided by the City to AEG, including such plans or programs related to any LEED certifications or renewals for the LACC. AEG shall comply with the City's recycling program provided by the City to AEG. AEG shall review such recycling program to determine if it meets industry standards for comparable markets and provide input to the LACC Management Review Staff on appropriate amendments or revisions to such programs.

(p) *Financial and Administrative Services.* AEG shall provide day-to-day financial and administrative services in support of its management activities pursuant to Approved Annual Operating Budgets and Annual Plans described herein, including internal budgeting and accounting, purchasing, property management, personnel management, contracting outside services, record-keeping, collections, billing, and similar services, and provide input to the LACC Management Review Staff regarding potential revisions to City policies, guidelines, manuals and directives for operations of the LACC, (acknowledgement of receipt of such policies etc. is attached hereto as Exhibit "F").

(q) *Agreements.*

(i) AEG shall administer, assure compliance with, negotiate, execute (in AEG's name), and deliver any and all agreements that are required in the ordinary course of business of operating the LACC as a top-tier, convention center or as otherwise necessary for AEG to perform the Management Period Services hereunder. Such agreements may include

licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, supplier agreements, service contracts, ticket sales contracts and all other contracts and agreements in connection with the maintenance, improvements, management, promotion and operation of the LACC. Upon the expiration or earlier termination of this Agreement, the City will either (i) ensure that all such agreements are assigned and assumed to the successor manager of the LACC; or (ii) assume all such agreements itself. The terms of all such licenses and agreements shall comply with this Agreement and IRS Requirements as described in Section 10.9 hereof.

(ii) Without the express written approval of the Executive Director or the City, AEG may not enter into any of the following agreements:

(1) agreements involving gun shows or the sale of guns or ammunition;

(2) agreements which the City or AEG believes may have a private business use impact under Section 141(b) or 141(c) of the Internal Revenue Code, including, without limitation, any event license agreement which permits the use of the LACC for more than fifty (50) days over the term of the event license agreement (whether or not over one year or multiple years), which agreements, following written notice from the City to AEG, shall be provided to the LACC Department to be reviewed by the City's bond counsel. Event license agreements do not include professional service agreements, operating agreements and management agreements (collectively referred to as "Service Agreements");

(3) agreements which the Booking Policy or the Booking Guidelines require that LATCB or the Executive Director negotiate and execute;

(4) agreements which would cause actual Operating Expenses for a particular Agreement Year to exceed the overall budgeted Operating Expenses for such Agreement Year, unless AEG receives authorization by the LACC to enter into such agreements; or

(5) agreements which, in the City's reasonable opinion or AEG's reasonable opinion creates a conflict of interest, in which case such agreements shall be submitted to the LACC Management Review Staff for recommendation to the Executive Director and that, if such agreements are approved by the Executive Director or the LACC Board, the approved agreements will be negotiated and executed by the Executive Director.

(iii) *Service Agreements.* Without limiting the generality of, and subject to, subsection (i) and (ii) above, AEG shall administer, assure compliance with, negotiate and execute, in its name, all service agreements that are required in the ordinary course of business of maintaining the LACC. Such agreements include, without limitations contracts for cleaning, graffiti removal, general maintenance, maintenance and inspection of HVAC systems, utilities, elevators, escalators, stage equipment, fire control panel and other safety equipment. AEG shall use vendors and subcontractors that represent the City and LACC in a professional manner. AEG shall not enter into any Service Agreement that extends beyond the Term of this Agreement

(iv) *Event Agreements.* AEG shall work with the City and the City's bond counsel in developing a standard event license agreement ("Standard Event Agreement") which Standard Event Agreement must provide that the licensee shall comply with all Laws. Non-Standard License Agreements shall require submission to the LACC Management Review Staff for their independent review and submission of their recommendation to the Executive Director. AEG shall notify the LACC Management Review Staff of all event agreements that in their opinion may create potential conflicts or which are outside the parameters of the Booking Policy or Booking Guidelines. The City shall then administer the procurement for agreements that in the City's reasonable opinion create potential conflicts of interests for AEG as provided in Section 2.2(q)(ii)(5).

(r) *Rates and Charges.* The City shall establish all rental rates and charges relating to the LACC. AEG shall provide input into the City's establishment or adjustment of prices, rental fees, rates and rate schedules for any licenses, agreements and other commitments relating to the LACC.

(s) *LACC Campus Coordination.* AEG shall provide coordination of events, parking, security, signage and utilization of the LACC Campus, including interior and exterior signage, use of the parking facilities, use of Gilbert Lindsay Plaza and use of other portions of LACC Campus pursuant to the Arena Ground Lease for the Staples Center and related agreements, as those agreements may be superseded by the requirements of the Implementation Agreement.

(t) *Emergency Operations.* AEG shall be well versed in the best practices for crowd control and emergency operations. AEG shall appoint among its senior leadership a Building Emergency Coordinator ("BEC") who shall be responsible for maintaining and managing a building emergency action plan that addresses the various type of emergencies that may occur in or around the LACC facility. AEG's responsibilities include, but are not limited to: prudent and required levels of planning, preparedness, staff training, emergency resources and equipment, crowd control and emergency evacuation planning, communications, and staffing. AEG shall comply with any additional requirements and/or direction as reasonably determined by the Executive Director, the City's Emergency Management Department, or other appropriate City leadership when required. AEG must also be well versed and prepared to run a "mega shelter" if local, federal or state leadership determine that LACC is to become shelter or other venue of last resort during a local or regional emergency or disaster. AEG shall submit to the Executive Director reports relating to emergency operations as reasonably determined by the Executive Director.

(u) *Security Operations.* AEG shall be responsible for security operations at the LACC. Security operations shall be planned, monitored, managed, and staffed to adequately and professionally secure the LACC along with LACC patrons, employees, and other personnel. AEG shall guide clients in the necessary and minimum deployment requirements of client selected security contractors, along with any required LACC or Los Angeles Police Department security services to provide adequate and professional event related security. AEG security staff and management shall be well versed and trained in professional security operations, crowd

control, emergency evacuation procedures for a top-tier convention center. AEG shall submit to the Executive Director monthly summaries of security and incident reports.

(v) *Existing and New Client Services.* AEG shall continue to provide client services at least commensurate with the level and quality of the client services previously provided by the City. AEG shall provide input to the LACC Management Review Staff on the creation of new client services when such new services result in an enhancement of client experience and potentially result in additional revenue for the LACC.

(w) *Use of Existing Event Related Equipment:* LACC currently owns and maintains significant quantities of various equipment used in the current provision of event related services such as electrical services, plumbing services, audio visual services, parking services, and event set-up services. To assist in the LACC Department's evaluation of what it should do with such equipment, AEG shall submit to the LACC Management Review Staff a proposed plan for the use of the respective equipment. AEG shall submit its input as soon as practicable following the Transition Date.

(x) *Management and Oversight of Building Use and Loads:* AEG shall hire qualified manager(s) to manage and oversee various technical plans and activities that pertain to the physical use of the LACC. Areas of responsibility include, but are not limited to the monitoring, oversight, and management of; overhead rigging, floor loading, dynamic activity, non-traditional use of the building structure(s), systems, and client/contractor compliance with LACC rules and regulations of a technical or engineering nature. AEG is responsible for managing the related use of the building and the related activity in such a manner that is designed to ensure no portions of the building structures, infrastructure, systems, and components are used in a manner that may result in potential damage or injury.

(z) *Parking for Events.* AEG shall operate the parking operations at LACC in a manner designed to maximize Operating Revenues associated with such operations for the LACC, provided in no event shall the foregoing be construed to limit or otherwise restrict any of AEG's Affiliates or related parties in connection with their operation of any parking facilities associated with LA Live and/or Staples Center consistent with past practice. In the event that new parking facilities are constructed for the Event Center as set forth in the Implementation Agreement, AEG shall comply with the provisions of any such Campus Operation and Cooperation Policy created in accordance with the Implementation Agreement.

Section 2.3 AEG Additional Commitments.

(a) *Capital Advance.* Subject to the terms and conditions herein, AEG will make the following capital advances (the "Capital Advances"):

(i) Upon written request of the City after the Transition Date, AEG shall advance to the City the amount of up to One Million Dollars (\$1,000,000.00) (the "First Capital Advance"). The First Capital Advance may be used by the City to fund Capital Improvement Projects. The First Capital Advance shall be amortized on a straight-line basis over a period of five (5) years from the date of payment and repaid to AEG in equal monthly installments, at the

Pool Rate, with such payments to AEG to be made from the LACC Operating Account and made on or before the 25th day of each month, beginning with the month after which such First Capital Advance is made by AEG to the City. The First Capital Advance shall be repaid over five (5) years and payment shall not be accelerated due to early termination of this Agreement. The City's obligation to repay the First Capital Advance shall survive the expiration or earlier termination of the Agreement.

(ii) Provided that City is not in default of its obligations with respect to the repayment of any sums from the First Capital Advance or the Second Capital Advance, upon written request of the City after the Transition Date, AEG shall advance to the City the amount of up to One Million Dollars (\$1,000,000.00) (the "Second Capital Advance"). The Second Capital Advance may be used to fund certain revenue-generating projects and is not contingent on the City having requested or accepted any of the First Capital Advance. AEG's contribution of the Second Capital Advance shall be contingent on the LACTB and/or the City providing equal matching funds to the amount advanced by AEG with respect to the Second Capital Advance. If the City accepts all or any portion of the Second Capital Advance, the amount advanced with respect to the Second Capital Advance shall be amortized on a straight-line basis over a period of five (5) years from the date of payment and repaid to AEG in equal monthly installments, at the Pool Rate, with such payments to AEG to be made from the LACC Operating Account and made on or before the 25th day of each month, beginning with the month after which such Second Capital Advance is made by AEG to the City. The Second Capital Advance shall be repaid over five (5) years and payment shall not be accelerated due to early termination of this Agreement. The City's obligation to repay the Second Capital Advance shall survive the expiration or earlier termination of the Agreement.

(b) *Corporate Guarantee.* During the Term of this Agreement, AEG shall provide to the City a corporate guarantee from AEG Parent, in a form and on terms and conditions to be mutually agreed by the parties, to protect the City against loss due to the inability or refusal of AEG to perform under this Agreement. The cost of the corporate guarantee, if any, shall not be reimbursable as an Operating Expense.

Section 2.4 Specific City Responsibilities.

The City will undertake the obligations set forth in this Section 2.4 below with respect to the LACC during the Term of the Agreement. The Executive Director will oversee the performance of the City's responsibilities and obligations, as well as the exercise of its rights and obligations under this Agreement. Subject to the terms and conditions of this Agreement, the City shall:

- Monitor AEG's performance on a regular basis through reports and periodic audits by the City to review the performance and finances;
- Review and forward annual reports from AEG to the Mayor and City Council;
- Approve and/or execute approved agreements as set forth in Section 2.2(q);
- Oversee Capital Improvement projects and replacement efforts;

- Approve pricing, budgets, and all other policies requiring City approval as outlined in this Agreement;
- Manage and administer the Sales and Marketing Agreement;
- Cause the assignment and assumption or assume for itself all agreements pursuant to Section 2.2(q)(i), upon the expiration or earlier termination of this Agreement;
- Cause the assignment to AEG of the Pre-Existing Agreements on or before the Transition Date;
- Maintain the City's rolling stock (fleet and fuel services) for the First Agreement Year after which AEG shall maintain the rolling stock as part of its maintenance obligations during the Term of this Agreement;
- The LACC Department shall develop Booking Guidelines to avoid potential conflict of interests subject to Section 2.2(q)(ii)(5).
- The LACC Board shall annually request an appropriation from the City Council in an amount of ten percent (10%) of the Approved Annual Operating Budget to be used by used at the discretion of the Executive Director (the "LACC Reserve Fund").
- The LACC Board shall annually request an appropriation from the City Council in an amount of Five Million Dollars (\$5,000,000.00), which amount shall be part of the Approved Annual Operating Budget, to be used by AEG subject to Executive Director approval to fund Cash Flow Shortfalls (the "Cash Flow Management Fund").
- In the event available funds in the LACC Operating Account, and the Cash Flow Management Fund and the LACC Reserve Fund are insufficient (or with respect to the Cash Flow Management Fund and/or the LACC Reserve Fund, were not made available), or reasonably anticipated by AEG to be insufficient, to fund Operating Expenses in accordance with the Approved Annual Operating Budget (as such Approved Annual Operating Budget may be amended in accordance with and subject to Sections 6.5 and 6.6), the LACC Department shall promptly request an appropriation from the City Council in an amount necessary to fund the operation of the LACC as more fully set forth in Section 6.

Section 2.5 Joint Management Review and the LACC Management Review Staff.

2.5.1 Joint Management Review. AEG and the LACC Department shall work together to review management issues and other matters related to the smooth, orderly and efficient management, operation and maintenance of the LACC. AEG and the LACC Department shall also advise each other of any management or operation problems or AEG employee or contractor performance issues which are not to the reasonable satisfaction of the LACC Department; provided, however, that any issues with the performance of the General Manager shall be directed to the attention of the President of AEG. AEG and the LACC Department shall develop a proposed plan for remediation of any such issues. Instances in which AEG and the LACC Department fail to either (i) agree upon a course of action or (ii) agree that a problem exists, shall be referred to the LACC Management Review Staff. The LACC Management Review Staff may make recommendation to the Executive Director which recommendation may include

issuance of a notice of default with an appropriate period to cure such default. AEG reserves all of its rights and defenses with respect to any such issues or disputes.

2.5.2 *LACC Management Review Staff.* No later than the Effective Date, the LACC Department shall appoint LACC personnel ("LACC Management Review Staff") which shall be authorized to (i) receive input from AEG on all management and operation matters, (ii) make recommendations to the Executive Director on all input received from AEG and on all booking and contract issues which are beyond the Booking Policy or the Booking Guidelines or which the City reasonably believes would otherwise create a potential conflict for AEG; and (iii) either try to resolve or make recommendations to the Executive Director for resolution of all disputes brought to it from the LACC Department. The LACC Management Review Staff shall review all input provided by AEG and make an independent decision on appropriate recommendations to make to the Executive Director who shall have the authority to accept, reject or modify the LACC Management Review Staff's recommendations or make his or her own recommendations to the LACC Board, as appropriate. Notwithstanding any other provision of this Agreement, the Parties acknowledge that all input or recommendations made by AEG to City will be made to the LACC Management Review Staff who shall conduct a significant and substantive review of such input and shall make its own independent recommendations to the Executive Director.

Section 2.6 Right of Entry Reserved.

(a) *City Entry.* The City and its authorized representatives and agents shall have the right to enter all portions of the LACC to inspect same, to observe the performance by AEG of its obligations under this Agreement, to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on or about the premises, or to do any act or thing that the City may be obligated or have the right to do under this Agreement or otherwise; provided, however, that such entry is coordinated with AEG and does not unreasonably interfere or disrupt any licensed event activity or AEG's performance of its obligations under this Agreement. The City shall not interfere with the activities of AEG hereunder, and the City's actions shall be conducted in a manner designed to avoid disruption of AEG's work. Nothing in this Section shall impose or be construed to impose upon the City any independent obligation to construct or maintain or make repairs, replacements, alterations, additions or improvements or create any independent liability for any failure to do so. Nothing contained in this Section is intended or shall be construed to limit any other rights of the City under this Agreement or of the City acting in its Governmental Capacity.

(b) *City Entry for Emergency or Public Safety.* The City and its authorized representative and agents shall have access to the LACC at any and all times, with or without notice, for fire, police and/or homeland security emergency or public safety purposes, to investigate any incidents involving personal injury or property damage, or for any other purpose incidental to the rights and/or duties of the City acting in its Governmental Capacity.

(c) *City Office Space.* The City shall maintain its existing administrative space at the LACC for the LACC Department, its staff and its commissioners. City agrees to defend, indemnify and hold harmless AEG, AEG Parent, and their respective Affiliates, employees, agents, successors and assigns against any claim, causes of action, costs, expenses (including

reasonable attorneys' fees) liabilities or damages (collectively "Losses") to the extent arising out of LACC Department's use of such space or any negligent acts or willful misconduct of such LACC Department, except to the extent any such Losses arise out of the negligence or willful misconduct of AEG, AEG Parent, and their respective Affiliates, employees, agents, successors and assigns.

Section 2.7 Negative Covenants of AEG.

AEG shall not do any of the following:

- (a) manage, operate, maintain, use or occupy the LACC in any manner or for any purpose other than as set forth in this Agreement;
- (b) engage in or omit any act which would, to an ordinarily prudent person in the position of AEG, be reasonably foreseeable to cause or result in substantial or significant damage to the LACC;
- (c) abandon the LACC during the Term of this Agreement, including the Transition Period (except in connection with the exercise of any rights of AEG under the Agreement);
- (d) knowingly use or occupy or knowingly permit the LACC or any part thereof to be used or occupied for any unlawful, or any ultra-hazardous use or operate or conduct the business of the LACC in any manner known to constitute a nuisance of any kind; or
- (e) manage, operate or maintain the LACC in violation of any applicable Law.
- (f) knowingly do or cause others to (i) challenge or dispute the validity of, ownership of and rights to, (ii) attempt to register and/or (iii) create and use any marks confusingly similar to any trademarks (and goodwill associated therewith) owned by the LACC and/or the City of Los Angeles, including its departments, agencies and commissions.

Section 2.8 Trademarks, Service Marks and Other Intellectual Property Rights.

(a) *City Marks.* "City Marks," as used in this Agreement, shall mean any name or mark that (i) contains, in whole or partly, name(s) and/or mark(s) (including service marks, trademarks, names, titles, descriptions, slogans, insignias, emblems or logos) of the City of Los Angeles, any department, agency or commission thereof or the LACC; or (ii) imparts the color of authority of the City of Los Angeles.

(b) *Use of City Marks.* During the Term of this Agreement, and subject to the terms and conditions of this Agreement, the City grants to AEG a limited, non-exclusive, non-transferable, worldwide, royalty-free and fully paid-up license to use the City Marks in

connection with the operation and promotion of the LACC and for the purposes of fulfilling AEG's obligations under this Agreement (each a "Licensed Use" or collectively, the "Licensed Uses"). No other or different rights are granted hereunder to AEG and AEG shall have no right to use any of the City Marks apart from the Licensed Uses. Other than the express licenses granted herein with respect to the City Marks, nothing herein will grant AEG any other right, title or interest in the City Marks, which are reserved by the City. All goodwill resulting from AEG's use of the City Marks shall inure solely to City. AEG will not, at any time during or after the Term of this Agreement, do or cause others to register, attempt to register, claim any interest in, contest the use or ownership of, or otherwise adversely affect the validity of the City Marks.

(c) *Conditions of Use.* AEG agrees that that City Marks will always be reproduced as shown on Exhibit "G" in their entirety with no alterations, obstructions or modifications. AEG agrees that it will comply with any additional trademark usage and guidelines that City may communicate to AEG from time to time ("Trademark Guidelines"). AEG shall not be required to obtain written approval of City prior to each use of the City Marks on any products, materials, or premiums designed, manufactured, marketed or sold under or pursuant to this Agreement or in connection with any marketing or promotional materials under this Agreement **provided** such use: (i) is a Licensed Use; (ii) the appearance (e.g. form, color, type, style, orientation, etc.) of the City Marks is in accordance with the Trademark Guidelines; (iii) the use of such City Marks does not impart notions or contain elements that put the City in a false light or that are racist, sexist, derogatory to any legally protected groups/class or unfitting for public facilities; (iv) the general use of such City Marks has been approved by the City; and (v) all incomes, proceeds and licensing royalties, if any, paid to AEG in connection with the use or commercial exploitation of any City Marks shall be deemed Operating Revenues, accounted for and deposited into the LACC Operating Account AEG shall have the limited right to allow third parties to use the City Marks solely for a Licensed Use; provided however, AEG shall ensure that any such use of the City Marks by such third parties shall be in accordance with the terms and conditions of this Agreement.

(d) *No Assignment or Transfer of the City Marks.* Nothing in this Agreement shall be construed to transfer or assign to any party, signatory herein or not, any of the intellectual property rights of the City, including but not limited to trademark rights, in connection with the City Marks. Rights not expressly granted by the City herein are reserved.

(e) *Other Forms of Intellectual Property.* Should other forms of intellectual property rights or intellectual property assets be prepared or created by AEG, its employees, agents, consultants or contractors of all tiers as a product or result of the Services performed by AEG during the Term of this Agreement, such intellectual property rights and assets shall be deemed "Work Products" and owned exclusively by the LACC and the City pursuant to the PSC-23; provided however, nothing herein is intended to convey any ownership or other rights in the pre-existing trademarks, service marks, copyrights or other intellectual property of AEG, its employees, or agents and ownership of all such marks and intellectual property shall remain the property of AEG.

Section 2.9 CONFIDENTIALITY

(a) *Generally.* All documents containing proprietary or confidential information furnished by a Party to the other, during the Term of the Agreement, shall be treated as proprietary or confidential to the extent permitted by Law and shall not be disclosed, either orally or in writing, to any third party, without the consent of the owner of such proprietary or confidential information or pursuant to Law or order of a court and will be used only in the performance of this Agreement. Notwithstanding the foregoing, proprietary or confidential information may be disclosed to the Party's attorney(s) or consultant(s). Proprietary or confidential information must be expressly designated or conspicuously marked as proprietary or confidential.

(b) *Public Records Act Request.* If a Public Records Act request is made for information designated by AEG as proprietary or confidential, the City will provide AEG with written notice of such request so that AEG may seek a court order protecting the information. If AEG does not proceed with due diligence to seek a court order protecting the proprietary or confidential information, the City may release the information to the requesting party.

(c) *Publicly Available Information.* The restrictions on the use of proprietary information do not apply to information which the other Party can demonstrate was publicly available or lawfully in its possession at the time of its disclosure to it by the other Party.

(d) *Survival.* The obligation to maintain proprietary or confidential information in confidence shall survive for a period of five (5) years after termination or expiration of this Agreement.

ARTICLE 3 TERM

Section 3.1 Effective Date.

The effective date of this Agreement shall be the date executed by the City after approval as to form and legality by the City Attorney of the City of Los Angeles (the "Effective Date").

Section 3.2 Term.

The term of this Agreement, and AEG's Services under this Agreement, shall commence on the Effective Date and end at Midnight on the 5th anniversary of such Effective Date, unless earlier terminated pursuant to the provisions of this Agreement ("Term"). In addition to all other rights of the City to terminate this Agreement as set forth herein, the City may, in its discretion, on or after the 3rd anniversary of the Effective Date, terminate without cause this Agreement. If the City determines it will terminate the Agreement pursuant to its right to terminate on or after the 3rd anniversary of the Effective Date, the City will give AEG ninety (90) days advance written notice of such termination.

Section 3.3 Termination; City's Breach of Contract.

(a) This Agreement may be terminated:

(i) by City, upon 90 days written notice to AEG, pursuant to Section 3.2 above;

(ii) by either party, upon written notice to the other, in accordance with Sections 5.5;

(iii) by AEG, upon thirty (30) days written notice to City, in accordance with Section 6.11(d);

(iv) by AEG, upon sixty (60) days written notice to City, if (A) City has not secured the Conflict Code Amendment by the Transition Date; (B) City has not secured an amendment to the Administrative Code as contemplated in Section 6.13(b) by the Transition Date; or (C) the LACC Department does not secure an appropriation from the City Council as necessary to fund Operating Expenses, including without limitation, AEG's compensation due under Article 5, included in the proposed Approve Annual Operating Budget for an Agreement Year.;

(v) by City, as provided in Exhibit "A", PSC-10.

(b) In the event this Agreement is terminated for any of the reasons set forth in Section 3.3(a), AEG shall be paid: (i) the Base Management Fee computed on a pro-rata basis to the effective date of termination (if applicable); and (ii) any actual, ordinary and necessary Operating Expenses consistent with the Approved Annual Operating Budget, if any, incurred by

AEG prior to such termination. The City's payment of such expenses will occur only after AEG has provided reasonable evidence of the incurrence of such expenses.

(c) Upon termination of this Agreement for any reason as provided in Section 3(a) or following the expiration of the Term, (i) AEG shall promptly discontinue the performance of all Services hereunder and surrender and vacate the LACC, (ii) AEG shall return all property, equipment and furnishings; (iii) City shall promptly pay AEG all fees due to AEG as provided in 3.3(b); (iv) AEG shall deliver or otherwise make available to City all data, electronic files, documents (including, without limitation, contracts and forms), reports, estimates, summaries, and other such information and materials with respect to the LACC as may have been accumulated by AEG in performing its obligations hereunder, whether completed or in process, and, if necessary, shall execute all documents necessary to effectuate ownership rights in the same to City; and (v) without any further action on the part of AEG or City, City shall, or shall cause the successor LACC manager to, assume all obligations arising after the date of such termination or expiration, under any, booking commitments and any other LACC agreements entered into by AEG in furtherance of its duties hereunder. AEG's obligation to provide any transition services requested by the City in connection with its withdrawal from management is contingent upon City making available funds for payment of any actual, ordinary and necessary expenses incurred by AEG in providing such services.

(d) Subject to and without limiting any of the foregoing rights of AEG under Section 3(a) above, in the event that the City fails to perform or comply with any of its material terms, covenants, agreements or conditions hereof, and (other than an obligation to pay the Fees, for which there shall be a three (3) day period to cure after receipt of written notice) such failure is not cured during such thirty (30) day notification period, provided, however, if such failure cannot reasonably be cured within such thirty (30) day period, then a longer period of time shall be afforded to cure such breach, up to a total of sixty (60) days, provided that the party in default is diligently seeking a cure, AEG shall be permitted to pursue any and all remedies available to it at Law or in equity in connection with such breach, provided that AEG agrees that any such breach by the City shall not give rise to a right of AEG under this Agreement to terminate the Agreement providing that AEG shall be entitled to actual out of pocket damages.

ARTICLE 4 TRANSITION PERIOD

Section 4.1 Transition Period.

During the Transition Period, the City and AEG shall work cooperatively to transition the management and operation of the LACC from the City to AEG subject to the terms and conditions set forth herein.

Section 4.2 Authority.

LACC shall manage and operate the LACC during the Transition Period. AEG shall provide the Transition Period Services listed below during the Transition Period including management of any AEG Employees and any Pre-Existing Agreement assigned to AEG by the City. Except as otherwise agreed by the Parties in writing, other than the Transition Period Services, AEG shall not be responsible for providing any other services in connection with the LACC during the Transition Period.

Section 4.3 Transition Period Services.

During the Transition Period, AEG shall provide the following services (the "Transition Period Services"):

(a) *Marketing Plan and Assistance with Event Booking.* Develop a marketing plan for the LACC and assist the City with the booking of specific events, including review of and comment on proposed contracts and other agreements. As part of this marketing plan development, AEG shall at a minimum:

(i) conduct a marketing analysis, including a study of the pricing, rent and services of any competitive facilities;

(ii) review the events calendar;

(iii) establish relationships with relevant hotel and restaurant associations and LATCB;

(iv) study new advertising and sponsorship sales opportunities; and

(v) develop a communications/public relations plan.

(b) *Fiscal Assessment.* Conduct an in-depth fiscal assessment of the LACC, including a thorough examination of all existing financial reports, budgets and event recaps. Such assessment shall include the following tasks:

(i) creating the form for financial reports in accordance with Article VII

(ii) opening appropriate bank accounts in accordance with Section 6.7;

(iii) establishing procedures for event settlement in accordance with Section 7.5;

(iv) providing input into rental fees for the LACC ; and

(v) conducting financial audits of event settlements, when appropriate, in accordance with this Agreement.

(c) *Communication with Primary Users.* Establish working relationships with the primary users of the LACC to ensure that starting as of the end of the Transition Period AEG is responsive to the needs of these users while still adhering to the goals of the LACC established by the City.

(d) *Communication with Existing Contractors.* Establish working relationships with contractors under any Pre-Existing Agreement. The Parties agree that AEG will agree to assume those Pre-Existing Agreements set forth in Exhibit "F", subject to the terms and conditions of mutually agreeable assignment and assumption agreements, to be executed by the City, AEG and the vendor or licensee involved.

(e) *Studies and Reports.* Complete work on all investigations, reports, plans, manuals, studies, proposals and inventories as reasonably requested by the LACC Department to provide input to the LACC Management Review Staff.;

(f) *Management Team.* Install a core management team at the LACC, including the General Manager, to ensure that training, systems and procedures are in place prior to the date specified by the City.

(g) *Joint Management Review Work* with the LACC Department as set forth in Section 2.5.1.

(h) *Employee Transition.* Work in consultation with the City to ensure a smooth, orderly and harmonious employee transition in accordance with Article 8.

(i) *Preparation of Annual Plan.* Work with the City to prepare the Annual Plan required by Article 6 of this Agreement.

(j) *Parking Analysis.* Provide input to the LACC Management Review Staff on the current parking rates and proposals regarding changes to the parking rates, pre-sale of parking spaces and a new parking revenue control system.

(k) *Security and Emergency Plan.* Develop a security plan and an emergency operations plan.

(l) *Other Services.* Such other services as mutually agreed by the Parties.

Section 4.4 Reimbursement of Expenses

To the extent that AEG incurs expenses in connection with performing the Transition Period Services during the Transition Period, City shall reimburse AEG for those expenses only to the extent such expenses were (i) incurred in connection with performing the Transition Period Services; and (ii) included in the Approved Annual Operating Budget for the First Agreement Year (or have otherwise been approved by the LACC Department), including without limitation any and all expenses incurred with respect to retaining the AEG Employees during the Transition Period.

Section 4.5 Provision of Space.

During the Transition Period, the LACC Department shall provide the AEG transition team with office space at no cost to AEG which may or may not be at the same location as the space AEG will occupy at the end of the Transition Period.

Section 4.6 City Responsibilities During Transition Period.

During the Transition Period, the LACC Department shall provide all management services (including payment of all Operating Expenses during such Transition Period) and supervision of City Employees and contractors and shall work with AEG to phase those responsibilities to AEG so that AEG can assume full management and operation of the LACC at the end of the Transition Period.

Section 4.7 Status of AEG Employees Prior to Amendment of LACC Conflicts Code.

The LACC is in the process of amending its Conflict of Interest Code ("Conflict Code Amendment") to reflect the new responsibilities of City Employees at the LACC Department.

ARTICLE 5 AEG'S COMPENSATION

Section 5.1 Annual Base Management Fee.

For all Services provided by AEG pursuant to this Agreement, including but not limited to, LACC operations and management and food and beverage services, AEG shall be paid an annual management fee (the "Base Management Fee"), subject to the City's budget appropriation process, in the amount of One Hundred and Seventy Five Thousand Dollars (\$175,000.00) subject to the annual CPI-U adjustment as set forth in Section 5.2, and as prorated for any Agreement Year which is less than 365 days. The Base Management Fee shall be payable from the LACC Operating Account, or from funds otherwise made available by City, in equal monthly installments in arrears, upon written authorization by the Executive Director, not to be unreasonably withheld, conditioned or delayed. The amount of any Base Management Fee for the First Agreement Year, the Final Agreement Year, or any other partial year shall be prorated to reflect the actual number of days for such Agreement Year.

Section 5.2 CPI Adjustment.

The Base Management Fee described in Section 5.1 shall be adjusted upward on the first day of each Agreement Year by the percentage change in the Consumer Price Index for All Items, All Urban Consumers ("CPI-U") for the Los Angeles-Riverside-Orange-County, California area, 1982-84=100 as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor index, provided that such adjustment shall not exceed two percent (2%).

Section 5.3 Earned Incentive Fee.

In the event AEG achieves an actual total Operating Revenue that exceeds the Operating Revenue projection in the Approved Annual Operating Budget for an Agreement Year, AEG will be eligible to be paid an incentive fee as described herein ("Earned Incentive Fee"), in addition to the Base Management Fee and the Discretionary Incentive Fee (set forth in Section 5.4 below), if any. AEG will be paid the Earned Incentive Fee in addition to the Base Management Fee as determined below:

(a) Calculation of Earned Incentive Fee.

(i) **Maximum Amount.** The Earned Incentive Fee for any given Agreement Year will not exceed fifty percent (50%) of the Base Management Fee for such Agreement Year.

(ii) **Calculation.** The Earned Incentive Fee shall be calculated as 75% of the amount by which the actual total Operating Revenue for an Agreement Year exceeds the budgeted total Operating Revenue as determined using the Approved Annual Operating Budget for that Agreement Year, subject to Section 5.3(a)(i) above.

(b) **Payment.** The Earned Incentive Fee determined pursuant to Section 5.3(a) above will be payable to AEG after the LACC Department's acceptance of the Annual Audit in

accordance with Section 7.3(a)(iii). AEG's invoice for the Earned Incentive Fee for the Agreement Year will be sent to the LACC Department in connection with the submission of the annual audit report, and will be paid from the LACC Operating Account as an Operating Expense, or from funds made available by the City.

Section 5.4 Discretionary Incentive Fee.

In the event AEG achieves an actual total Operating Revenue that exceeds the Operating Revenue projection in the Approved Annual Operating Budget for an Agreement Year, AEG shall be eligible for a discretionary incentive fee ("Discretionary Incentive Fee"), in addition to the Base Management Fee and the Earned Incentive Fee, if any. AEG will be paid the Discretionary Incentive Fee in addition to the Base Management Fee as determined below:

(a) Calculation of Discretionary Incentive Fee.

(i) **Maximum Amount.** The Discretionary Incentive Fee will not exceed fifty percent (50%) of the Base Management Fee for any Agreement Year.

(ii) **Calculation.** In the event AEG achieves an actual total Operating Revenue greater than the budgeted total Operating Revenue as determined using the Approved Annual Operating Budget for an Agreement Year, AEG will qualify for the Discretionary Incentive Fee for the Agreement Year. If AEG qualifies and if the LACC Department favorably evaluates AEG's performance during that Agreement Year in the categories described below, AEG will be paid a Discretionary Incentive Fee determined by the LACC Board, in its sole discretion. Categories (1) and (2) below shall be permanent categories to be evaluated each Agreement Year. Category (3) below shall be evaluated for the First Agreement Year and thereafter modified or replaced by mutual agreement to reflect the current circumstances and needs at the LACC. Additionally, the Parties shall annually agree upon the allocation of weight of the three or more categories to determine the amount to be paid for the satisfactory performance in one or more of the categories. For the First Agreement Year the weight shall be forty percent (40%) each for categories (1) and (2) and twenty percent (20%) for category (3). The categories are:

- (1) Implementation of enhanced customer satisfaction;
- (2) Implementation of enhanced facility maintenance; and
- (3) Implementation of enhanced public safety.

(b) **Payment.** The Parties will work together to establish mutually-agreeable standards for the LACC Department's evaluation of the categories described above. The Discretionary Incentive Fee is payable in the sole discretion of the LACC Department, based upon the LACC Department's evaluation of AEG in the above areas and as measured against the specific goals in those areas as determined collectively and cooperatively by the LACC Department and AEG. The Parties intend to the extent reasonably attainable to establish goals, which are more quantitative than qualitative goals.

Within one month after each Agreement Year, AEG will provide to the Executive Director information required to evaluate AEG's performance for the prior Agreement Year as against the goals previously established, and to provide input to LACC Management Review Staff for its recommendation to the Executive Director the goals for the then current Agreement Year. The Executive Director will, prior to completion of the audit required pursuant to Section 7.3 complete its work as set forth herein and report to the LACC Department the Executive Director's recommendations. The LACC Department Board will in its sole discretion determine the amount of the Discretionary Incentive Fee earned for the prior Agreement Year and set the goals for the upcoming Agreement Year. The Executive Director will report this information to AEG in a format to be mutually agreed to by the Parties.. The Discretionary Incentive Fee, if any, shall be paid from the LACC Operating Account as an Operating Expense upon approval by the LACC Board and written authorization by the Executive Director or from funds otherwise made available by City.

Section 5.5 Limitation on Earned Incentive Fee and Discretionary Incentive Fee.

Irrespective of the provisions of Sections 5.1, 5.2, 5.3, and 5.4 above, in no Agreement Year will the compensation paid to AEG under this Agreement be based, in whole or in part, on a share of the net profits from the operation of the LACC. Irrespective of the provisions of Section 5.1, 5.2, 5.3 and 5.4 above, in no Agreement Year may the aggregate amount of the Earned Incentive Fee and the Discretionary Incentive Fee, if any, exceed the Base Management Fee. City represents and warrants that the compensation to be paid to AEG complies with applicable statutes, regulations and procedures of the United States Internal Revenue Service, and the Base Management Fee will serve as a cap on the aggregate amount of the Earned Incentive Fee and the Discretionary Incentive Fee, if any, paid for any given Agreement Year. Specifically, the City intends that this Agreement comply with the safe harbor provisions of IRS Rev. Proc. 97-13 meaning this Agreement is not intended to result in private business use of the LACC under Section 141(b) or Section 141(c) of the Internal Revenue Code of 1986, as amended ("Code"). In the event the statutes, regulations or procedures of the United States Internal Revenue Service are modified in a way this Agreement would result in private business use under Section 141(b) or Section 141(c) of the Code or otherwise, then the Parties will revise this Agreement so this Agreement does not result in private business use of the LACC and the City's bonds for the LACC do not become taxable as private activity bonds. If the Parties are not able to agree upon acceptable and required revisions to this Agreement to avoid this Agreement from resulting in private business use and avoid the City's bonds becoming taxable, then either party may terminate this Agreement upon 60 days' advance written notice.

ARTICLE 6 BUDGETS, BANK ACCOUNTS AND FUNDING

Section 6.1 Generally; Agreement Financial Allocation.

AEG agrees to prepare those certain plans, budgets and invoices as more specifically set forth in this Article 6, all for the purposes of authorizing and remitting funds relating to the LACC. The City reserves the right to review and approve any and all budgets and funding plans relating to the LACC as more specifically provided below. Additionally, in accordance with the provisions of this Article 6, AEG shall be authorized to expend the funds in the LACC Operating Account in an amount not to exceed the Approved Annual Operating Budget plus ten percent (10%), as further explained below. For the First Agreement Year, the Approved Annual Operating Budget is as set forth in Exhibit [H]-1. For the future Agreement Years, the Approved Annual Operating Budget shall be as approved by the City. The Parties agree that the Executive Director shall replace Exhibit [H]-1 with Exhibit [H]-2 for the second Agreement Year and Exhibit [H]-3 for the third Agreement Year, and so forth, until the expiration or earlier termination of this Agreement, without need of an amendment of the Agreement.

Section 6.2 Operating Budget; Annual Plan.

(a) *First Agreement Year Operating Budget; Mandatory Operating Budget Line Items.* On or before the Effective Date, AEG shall deliver or cause to be delivered to City for its review and approval an updated proposed Operating Budget for the First Agreement Year. Each Agreement Year, AEG's proposed Operating Budget must account for the costs of the LACC Department and must include a line item for a marketing and business development fund to be maintained within the LACC Operating Account (the "Marketing and Business Development Fund") in the amount of Three Hundred Thousand Dollars (\$300,000.00), as prorated for any Agreement Year with less than 365 days. Each Agreement Year, the Yearly Marketing Fund shall be used to market and solicit events for the LACC.

(b) *Annual Plan and Operating Budget.* For the second Agreement Year, within sixty (60) days from the Effective Date, and for each Agreement Year thereafter, on or before October 1st, AEG shall prepare and submit to the LACC Management Review Staff for the LACC Board's and the City's review, approval, modification or disapproval the following:

(i) *Annual Plan:* a written business plan for the proposed management and operation of the LACC, which shall include an overview of: AEG's anticipated operations for the next Agreement Year, including planned operating maintenance activities by AEG; input into Capital Improvements and Capital Equipment purchases with an anticipated budget; anticipated events at the LACC; and anticipated advertising and promotional activities; and planned FF&E purchases ("Annual Plan");

(ii) *Operating Budget:* a proposed Operating Budget for such Agreement Year; and

(iii) *Three Year Plan:* a proposed three-year Operating Budget for the LACC

and a proposed three-year forecast of Capital Improvement and Capital Equipment (for planning purposes only and not to be included in the Approved Annual Operating Budget).

(c) *Cash Flow Projections.* AEG shall prepare and submit to the LACC Management Review Staff, on or before May 1st of each Agreement Year during the Term, an annual cash flow projection for the immediately succeeding Agreement Year based upon the Approved Annual Operating Budget for such Agreement Year ("Cash Flow Projection").

(d) *Process for LACC Board Approval of Annual Plan and Annual Operating Budget.* AEG's proposed Annual Plan and Operating Budget shall be submitted to the LACC Management Review Staff for recommendation to the Executive Director, who will accept, modify or reject the LACC Management Review Staff's recommendation. The Executive Director shall then forward his or her recommendation for the proposed Annual Plan to the Board for consideration and approval. The LACC Board shall have the right to review, approve, modify or disapprove the proposed Annual Plan and shall advise AEG of any objections to the proposed Annual Plan. Following such review and revision by the LACC Department, AEG shall have thirty (30) days to incorporate any of LACC Department's revisions into its proposed Annual Plan. Upon approval by the LACC Department, the Annual Plan shall constitute the approved Annual Plan for AEG for the following Agreement Year. The LACC Board shall also have the right to review, approve, modify or disapprove the proposed Operating Budget. After approval of an Operating Budget, the LACC Board shall submit its approved Operating Budget to the Mayor for inclusion in the Mayor's Proposed Budget.

(e) *Adjustments to Submission of the Proposed Operating Budget.* Notwithstanding the above, the Executive Director has the discretion to reasonably adjust the budget schedule each Agreement Year in accordance with the City's budget schedule.

(f) *AEG's Liability for Approved Annual Operating Budget.* AEG agrees to use its best efforts to achieve the financial projections contained in the Approved Annual Operating Budget. Nonetheless, the City understands that AEG is not guarantying the results it has predicted in any budgets or financial projections contained in any Approved Annual Operating Budget. So long as AEG acts in accordance with the terms and provisions of this Agreement, AEG shall not have any liability whatsoever to City or any person solely by virtue of any divergence between the Approved Annual Operating Budget and the projections contained therein and the actual operating results achieved by the LACC for any Agreement Year, and such divergence shall not constitute, in and of itself, a default by AEG under this Agreement; however, AEG's accuracy in its projections shall be considered by the LACC Board in determining AEG's Discretionary Incentive Fee.

Section 6.3 City Approval of Operating Budget.

The annual Operating Budget referred to in Section 6.2 above is subject to review, modification and approval the City Council. By June 15th of each Agreement Year, beginning with the second Agreement Year during the Term, the Executive Director shall notify AEG of any changes to the above-referenced proposed Operating Budget for the succeeding Agreement Year. With the incorporation of such changes, if any, made by the LACC Department or the

City Council such proposed Operating Budget shall be the approved Operating Budget for the following Agreement Year (the "Approved Annual Operating Budget").

Section 6.4 Operation in Accordance with Approved Annual Operating Budget

(a) *First Agreement Year Reserve Fund.* Notwithstanding anything else herein to the contrary, the Parties agree that with respect to the First Agreement Year, subject to the City approval, the Executive Director may use such funds for LACC related expenses not contemplated in the Approved Annual Operating Budget for the First Agreement Year or to fund shortfalls caused by lower than anticipated revenues or higher than anticipated expenses (the "First Year Agreement LACC Reserve Fund"). Subject to the City's budget appropriation process, any funds drawn in accordance with this Section 6.4(a) shall be repaid to AEG in accordance with Section 2.3(a)(i) as if such funds had been used for Capital Improvement projects as contemplated therein.

(b) *Funds.*

(i) *LACC Reserve Fund.* Beginning in the second Agreement Year, and every Agreement Year thereafter, in addition to requesting approval of the Operating Budget, the LACC Board shall request that the City Council appropriate as part of the LACC Department budget, a sum equal to ten percent (10%) of the Approved Annual Operating Budget as a reserve fund to be used for LACC related expenses not contemplated in the Approved Budget or to fund shortfalls caused by lower than anticipated revenues or higher than expected expenses or other LACC Department needs as determined by the Executive Director (the "LACC Reserve Fund"). Any sums drawn from the LACC Reserve Fund for use by AEG shall be reimbursed to the Reserve Fund, to the extent that Operating Revenues are available, no later than thirty (30) days prior to the end of the Fiscal Year in which the sums are drawn. In the event that there are insufficient revenues in the LACC Operating Account to repay the LACC Reserve Fund within the Fiscal Year in which the money was drawn, AEG shall include repayment as an expense item for the following Agreement Year's proposed budget and thereafter reimburse the LACC Department from Operating Revenues received during the following Fiscal Year.

(ii) *Cash Flow Management Fund.* Beginning in the second Agreement Year, and every Agreement Year thereafter, the LACC Department shall request as part of the Approved Annual Operating Budget an appropriation of Five Million Dollars (\$5,000,000.00), prorated for any Agreement Year which is less than 365 days, to be used as set forth in Section 6.11. Any sums drawn from the Cash Flow Management Fund for use by AEG shall be reimbursed to the LACC Department to the extent Operating Revenues are available, no later than thirty (30) days prior to the end of the Fiscal Year in which the sums are drawn. In the event that there are insufficient revenues in the Operating Account to repay the LACC Cash Flow Management Fund within the Fiscal Year in which the money was drawn, AEG shall include repayment as an expense item in the following Agreement Year's proposed budget and thereafter reimburse the LACC Department from Operating Revenues received during the following Fiscal Year.

(c) *Authorized Expenditures.* Expenditures under this Agreement by AEG shall only be authorized if such expenditures (i) are included in the Approved Annual Operating Budget, or in an Approved Amended Annual Operating Budget, (ii) are Emergency Expenditures, all as defined below; (iii) are approved by Executive Director to be expended from any revenues received in excess of the projected revenues in the Approved Annual Operating Budget which are not needed for payment of projected or actual expenses for the Agreement Year; (iv) are approved by the Executive Director to be expended from the First Agreement Year Reserve Fund or the Reserve Fund; or (v) have been otherwise approved by the City. For clarity, and without limiting the foregoing, AEG is only authorized to withdraw funds or make payments from the LACC Operating Account to pay Operating Expenses or to transfer to the City any sums remaining at the end of the Term or earlier expiration of this Agreement.

(d) *Budget Monitoring.* The LACC Department shall monitor AEG's operation in accordance with the Approved Annual Operating Budget. In furtherance of such monitoring, by the 25th day of each month, AEG will provide to the LACC Department a written monthly report in a form approved by the LACC Department detailing anticipated activities for the upcoming month and reporting on the prior month's activities and finances as provided in Section 7.4. With each such report, AEG must include a statement of net assets (balance sheet), a statement of revenues, expenses and changes in net assets, a statement of cash flows, a summary of bookings, and an aged accounts receivable report and other financial reports requested by the City in its sole discretion. The financial statements will include Operating Revenues and Operating Expenses for the month compared to the same month the previous Agreement Year, for year to date compared to the year to date the previous Agreement Year, and for the month and year to date compared to the Approved Annual Operating Budget, as defined below. In addition, the report will provide explanations for any material variances between the Approved Annual Operating Budget and actual financial results achieved and otherwise comply with the reporting requirements of Section 7.4.

Section 6.5 Budget Modifications Initiated by AEG.

AEG may submit to the LACC Management Review Staff, at any time prior to the close of the then current Agreement Year, but not more than quarterly, a supplemental or revised proposed Operating Budget for the remainder of the then current Agreement Year ("Proposed Amended Operating Budget"). Upon the City's written approval, and in the City's sole discretion, the Approved Annual Operating Budget will be amended or revised, as further determined by the City for the then current Agreement Year ("Approved Amended Annual Operating Budget"). If the City does not approve the Proposed Amended Operating Budget, the Approved Annual Operating Budget without amendment or revision will remain in full force and effect.

Section 6.6 Budget Modifications Initiated by the City.

In the event it appears reasonably likely in any Agreement Year that the actual Operating Revenues for the Agreement Year will be less than projected in the Approved Annual Operating Budget, AEG must notify the Executive Director, in writing, of that likelihood as soon as it becomes evident and, thereafter, submit to the LACC Management Review Staff a plan for

reduction of Operating Expenses to a level consistent with the Net Operating Surplus/Deficit contained in the Approved Annual Operating Budget. The LACC Department may approve a reduction of Operating Expenses, approve an Amended Approved Annual Operating Budget, or both, provided that any increase in the Operating Budget above the Reserve Fund amount shall require approval of the City Council. AEG will forthwith comply with any adjustments approved by the City, in the City's sole discretion, and the Approved Annual Operating Budget for the Agreement Year will be modified, accordingly.

Section 6.7 Receipts and Disbursements; Accounts.

(a) *LACC Operating Account.* AEG shall establish and maintain in one or more depositories designated by the City, one or more operating, payroll and other bank accounts for the promotion, operation and management of the LACC with signature authority in such employees of AEG as AEG shall designate and with the City as a co-signatory (collectively the "LACC Operating Account"). Subject to Section 6.13, all revenues collected by AEG from the operation of the LACC shall be deposited into the LACC Operating Account and Operating Expenses shall be paid by AEG from the LACC Operating Account, or from funds made available by City as provided herein. All revenues collected by AEG arising from operation of the LACC, including revenues from box office sales, facility or equipment rentals, utility rental agreements, food and beverage concessions, or any other source, are the sole property of the City, held in trust by AEG for the benefit of the City for application as provided in this Agreement. Any amounts remaining in the LACC Operating Account upon the expiration or earlier termination of this Agreement for any reason, after payment of all LACC Department approved outstanding Operating Expenses and additional amounts as provided under Section 3.3, if any, shall be promptly remitted by AEG to the City. No additional bank accounts will be opened and utilized by AEG with respect to the Services to be provided by AEG pursuant to this Agreement without the City's prior written consent.

(b) *Disbursement.* All disbursements (checks or wires) from the LACC Operating Account shall require the signature of both the General Manager and AEG's Director of Finance of the LACC or such other employee of AEG as approved by the LACC Department (or, in their absence, other designated individuals on AEG's staff as approved by the LACC Department). Disbursements to be made from the LACC Operating Account may not cause actual Operating Expenses incurred for such Agreement Year, to exceed the overall budgeted amount for such Operating Expenses in the Approved Annual Operating Budget as set forth in Section 6.1 above without the written approval of the City.

(c) *Interest Bearing Accounts.* Unless otherwise approved by the LACC Department, monies in the LACC Operating Account shall be (i) held in interest bearing accounts and to the extent the same is not insured, shall be continuously secured by a pledge of direct obligations of the United States of America or agencies thereof, or direct obligations of the State, having an aggregate market value, exclusive of accrued interest, at all times, at least equal to the balance on deposit in such account, or (ii) invested in money market accounts that invest in direct obligation of the United States of America, or agencies thereof, or direct obligations of the State; *provided* that it meets the City's investment policy.

(d) *Treatment of Interest.* Interest that accrues on amounts deposited in the LACC Operating Account, if any, shall be considered Operating Revenues. Bank service charges, if

any, on such account shall be considered Operating Expenses.

(e) *Remittances of Revenues Collected.* Subject to the provisions of Section 6.13 regarding deposits into the City's Convention Center Account, AEG shall collect, hold in trust for the benefit of the City, and deposit as reasonably needed, but in no event less than weekly, ("Deposit") in the LACC Operating Account, all Operating Revenue and other sums derived from the operation of the LACC by AEG. AEG shall use an armored service approved by the LACC Department to transport all Operating Revenues and other such sums for deposit in the LACC Operating Account.

Section 6.8 Capital Improvements; Capital Equipment.

The obligation to pay for, and authority to perform, direct and supervise Capital Improvements and Capital Equipment purchases shall remain with the LACC Department, and will not be considered Operating Expenses. The Annual Plan submitted pursuant to Section 6.2 shall include AEG's recommendation for Capital Improvements and Capital Equipment purchases to be accomplished during the year, and shall be accompanied by an estimate of the cost of all such items and projects and a request that the LACC Department budget funds therefore. The LACC Department shall retain the sole and absolute discretion to determine whether, and to what level, to fund Capital Improvements and Capital Equipment purchases to the LACC. If requested by the LACC Department, AEG or others engaged on its behalf, will perform, direct and supervise Capital Improvements and Capital Equipment purchases authorized in writing by the LACC Department. Without limiting the foregoing, the Parties acknowledge and agree that AEG will not be required or allowed to perform, direct, or supervise the construction of the New Hall project; provided that the Parties agree that this prohibition does not apply to restrict or otherwise limit in any way the activities of AEG's Affiliates or AEG Parent and its Affiliates from performing any services or activities in connection with the New Hall or LACC.

Section 6.9 Funds for Emergency Repairs.

AEG shall have the right to make Emergency Expenditures, but only in strict conformity with the procedures set forth in this Section 6.9.

(a) *Emergency Expenditure.* An "Emergency Expenditure" is defined as an expenditure necessary to correct or repair a condition, which in the reasonable judgment of AEG, if not corrected or repaired immediately, would create an imminent danger to the safety, welfare and protection of persons or property and/or an unsafe condition threatening persons or property, even if the those expenses are not budgeted for the Agreement Year. If such emergency conditions exist, AEG shall obtain prior approval from the Executive Director before making any Emergency Expenditure whenever possible; *provided* that if prior approval of an Emergency Expenditure is not reasonably obtainable from the Executive Director, AEG shall immediately notify, or attempt to notify, the Executive Director's designee of the situation and is thereafter authorized to incur an Emergency Expenditure to correct the situation on a temporary basis. An Emergency Expenditure to correct the situation on anything other than a temporary basis shall require prior approval from the LACC Department.

(b) *Notice; Cash Flow Shortfall Due to Emergency Expenditure.* Immediately following such action taken by AEG pursuant to this Section 6.9, AEG shall inform the Executive Director of the situation and action(s) taken, and, if the City is unable to make the necessary adjustments to the Approved Annual Operating Budget to avoid the Cash Flow Shortfall, the LACC Department shall either (i) pay into the Operating Account the amount of funds, if any, spent or committed by AEG pursuant to this Section 6.9 in excess of budgeted amounts to the extent that the LACC Department has an appropriation to pay such sums; (ii) allow AEG to utilize any Reserve Funds or First Agreement Year Reserve Funds available to fund such shortfall or (iii) promptly seek an appropriation from the City Council to enable the LACC Department to pay such amounts into the Operating Account. City shall be solely responsible for the payment of any such shortfall subject to the City's budget appropriation process. Under no circumstances, shall AEG be required to fund any such shortfall with any of its own funds; provided in the AEG elects, in its sole and absolute discretion to fund any such shortfall, City shall reimburse AEG for such amounts within sixty (60) days after AEG provides the LACC Department with written notice with an invoice detailing such amounts.

(c) *Meet and Confer on Action After Emergency Expenditure.* Notwithstanding subsection (b) above, prior to requesting any funds to be deposited into the LACC Operating Account, AEG and the Executive Director shall discuss the need to make a deposit to avoid a Cash Flow Shortfall or the need to make adjustments to the Approved Annual Operating Budget or the Operating Plan, if any are necessitated by the Emergency Expenditure.

Section 6.10 Limitation of AEG's Liability.

Notwithstanding any provision herein to the contrary and except for AEG's express indemnification undertakings in Exhibit "A", Section PSC-20 and PSC-21, and AEG's financial commitment with respect to Capital Advances as set forth in Section 2.3, AEG shall have no financial obligation to fund any cost, expense or liability with respect to the operation, maintenance, management or promotion of the LACC incurred in accordance with this Agreement. Notwithstanding the generality of the foregoing, to the extent AEG pays from the LACC Operating Account any expenses which are not Operating Expenses and are not otherwise authorized under this Agreement, AEG shall be responsible for replacing any funds expended from the LACC Operating Account. AEG's obligation to perform the Management Period Services during the Management Period is contingent and subject to City's making available, in a timely fashion, the funds budgeted for and/or otherwise reasonably required for AEG to carry out its obligations hereunder. If the City is unable to provide funds needed to perform the Management Period Services, AEG shall continue management of the LACC but at a reduced level consistent with anticipated Operating Revenues and available funding and in such case AEG shall not be considered to be in breach or default hereunder and shall have no liability to the City or any other party in connection with the performance of the Management Period Services.

Section 6.11 Operating Funding.

Subject to Section 6.12, below, to the extent Operating Revenues for the LACC during a calendar quarter are insufficient, or expected to be insufficient, to cover Operating Expenses set forth in the Approved Annual Operating Budget ("Cash Flow Shortfall") for the period, the

LACC Department will advance funds to AEG for deposit into the LACC Operating Account, as follows.

(a) Thirty (30) days prior to the beginning of each calendar quarter during the Term, AEG will submit to the LACC Department an invoice for the projected Cash Flow Shortfall for the upcoming quarter (which is to be offset by any cash flow surplus estimated by AEG for the then-current calendar quarter).

(b) To the extent that there is money in the Cash Flow Management Fund, the Executive Director will disburse to AEG necessary funds within five (5) business days after the start of each calendar quarter to cover the projected Cash Flow Shortfall. Those funds will be deposited by AEG in the LACC Operating Account established pursuant to Section 6.4, and used to pay Operating Expenses.

(c) If the City has not appropriated funds for the Cash Flow Management Fund, if the Executive Director does not disburse funds from the Cash Flow Management Fund, or if such funds that have already been disbursed to AEG to cover previous Cash Flow Shortfall have not been reimbursed to the Fund, the LACC Department shall either (A) have the Executive Director disburse funds to AEG from the First Agreement Year Reserve Fund or the LACC Reserve Fund, as applicable and as necessary to fund such Cash Flow Shortfall; or (B) if the sums in the LACC Reserve Fund and the Cash Flow Management Fund are insufficient to cover the Cash Flow Shortfall, the LACC Department shall promptly request an appropriation from the City Council in an amount necessary to cover the projected Cash Flow Shortfall.

(d) If any sums are advanced to AEG to cover a Cash Flow Shortfall, to the extent there are Operating Revenues in the LACC Operating Account sufficient to cover the Cash Flow Shortfall advanced from the Cash Flow Management Fund or the LACC Reserve Fund or from a new appropriation, no later than thirty (30) days prior to the end of the Fiscal Year in which such sums were advanced, AEG shall reimburse, from funds available in such Operating Revenues which are not otherwise needed for payment of projected or actual expenses in the Approved Annual Operating Budget, to the extent such funds are available, the amounts advanced. If such funds are not available in the LACC Operating Account, then AEG shall include repayment of the amounts advanced in the next Agreement Year's proposed Operating Budget and thereafter reimburse the amounts advanced during the following Fiscal Year.

(e) Under no circumstances shall AEG be required to advance the cost of Cash Flow Shortfall; provided however in the event that AEG elects to fund any such Cash Flow Shortfall and such funds are not repaid to AEG within sixty (60) days after AEG delivers to the LACC Department written notice with an invoice detailing such amounts, AEG may terminate the Agreement in accordance with Section 3.

Section 6.12 Inadequate Funding of Operations.

Any failure by AEG to perform its obligations under this Agreement will not be a breach or default under this Agreement if the breach or default results from the City's failure to

appropriate sufficient funds for the management and operation of the LACC (i) in connection with (A) the City's Approved Annual Operating Budget pursuant to Section 6.4, (B) any request to fund a Cash Flow Shortfall pursuant to Section 6.11; or (C) the LACC Department's request for a plan for reduction of Operating Expenses pursuant to Section 6.6, or (ii) after the request for, and in accordance with, the plan for reduction of the Operating Expenses under Section 6.5.

If, in connection with Section 6.11, the City appropriates funds at (or reduces appropriated funds to) a level that, in AEG's judgment, renders the operation of the LACC as set forth in Section 6.2 is not feasible, AEG will by written notice to the LACC Department within thirty (30) days of a funding appropriation or reduction, notify the LACC Department such reduced funding level renders the operation of the LACC as set forth in Section 6.2 not feasible. In this event, the LACC Department will have sixty (60) days within which to request that the City appropriate funds to a level that, in AEG's judgment, renders the operation of the LACC feasible. If the City does not appropriate funds to the level indicated, then AEG shall continue management of the LACC at a reduced level consistent with anticipated Operating Revenues and available funding.

Section 6.13 Operating Expenses.

(a) *Current Ordinances.* The Parties acknowledge that current City ordinance requires all money derived from the LACC to be deposited into the Convention Center Account (Los Angeles Administrative Code ("Admin Code") Section 8.148). The Parties further acknowledge that current City ordinances prohibit a City department from paying any contract amounts in advance of the expense being incurred unless they contract falls within one of the listed exemptions and that this Agreement does not currently qualify for an exemption (Admin Code Section 5.47). Therefore, subject to Section 3.3, unless and until the Administrative Code is amended to permit deposits into the LACC Operating Account described in Section 6.7 and to allow payment to in advance of AEG incurring the expense, AEG shall deposit all revenues into the City's Convention Center Account, pay all AEG Employees from AEG's funds and submit all other Operating Expenses for payment by the LACC Department from the City's Convention Center Account. Any funds expended by AEG for AEG Employees, or otherwise not submitted to the LACC for payment, shall be submitted in writing with support documentation, to the LACC Department for reimbursement to AEG.

(b) *Future Ordinances.* The Parties acknowledge that it is the intent of the LACC Department to request, on or before the Effective Date or immediately thereafter, that the City Council, amend the applicable provisions of the Administrative Code to provide that the entire appropriation for this Agreement may be paid to AEG for placement into the LACC Operating Account upon request and not in arrears so that the intent of the Parties to have AEG manage and operate the LACC pursuant to this Agreement may be fully realized. Nothing in this Agreement shall obligate the Council to amend the Administrative Code which is an exercise of the City's Governmental Capacity discretion.

(c) *Obligation to Pay AEG Expenses.* The City shall pay, to the extent funds are appropriated, expenses of AEG, as submitted within thirty (30) days after receipt of an invoice detailing such expense, only to the extent they are Operating Expenses and only to the extent they are included in the current Approved Annual Operating Budget, or Approved Amended

Operating Budget, as applicable, or are Emergency Expenditures or have otherwise been incurred pursuant to the terms of this Agreement and not paid through the LACC Operating Account.

Section 6.15 Operating Deficit.

The City will be responsible for any Operating Deficit subject to the City's budget appropriation process. The funds remaining in the LACC Operating Account at the end of each Agreement Year shall remain in the LACC Operating Account until the expiration or earlier termination of this Agreement; provided, however, that to the extent that funds remaining in the Operating Account at the end of an Agreement Year are not required to pay current and projected Operating Expenses plus ten percent (10%) or otherwise fund Cash Flow Shortfalls or unpaid compensation, the LACC Department may include in the Approved Annual Operating Budget a line item for payment or reimbursement to the LACC Department for the LACC Department's costs.

Section 6.16 Bank Statements.

AEG will grant the City electronic view access to the Operating Account and Event Account. In addition, upon the City's request, AEG will submit to the City, or will cause the depository institutions holding the LACC Operating Account to submit to the City, monthly bank statements for the LACC Operating Account.

ARTICLE 7 RECORDS, AUDITS AND REPORTS

Section 7.1 Accounting.

AEG shall maintain full, accurate and complete financial and accounting books, records and reports ("Records") of the management, operation and maintenance of the LACC, including all revenues and expenditures in accordance with generally accepted accounting principles under this Agreement. AEG shall use accounting and record systems in accordance with generally accepted accounting principles ("GAAP") in the maintenance of such Records.

Section 7.2 Records

(a) *Maintenance of Records.* All Records shall be maintained by AEG in accordance with City record retention policies. AEG shall keep and preserve all Records for at least five (5) years following the expiration or earlier termination of this Agreement, including all service orders, work orders, sales slips, rental agreements, purchase orders, sales books, cash register tapes, credit card invoices, duplicate deposit tapes and invoices, bank accounts, cash receipts and cash disbursements, bank books, and other evidence of Operating Revenues and Operating Expenses for such period. AEG's contracts with its vendors, subcontractors and Affiliates will contain a provision requiring the vendors, subcontractors and Affiliates to keep and maintain all such Records in their possession in accordance with this Section 7.2.

(b) *Bookkeeping System.* AEG shall maintain a system of bookkeeping adequate for its operations hereunder and shall submit such system to the LACC Department at least thirty (30) days before the end of the Transition Period for review and approval. Any changes to such system shall be subject to the approval of the LACC Department. The systems and procedures used to maintain these Records shall also include a system of internal controls that is in accordance with sound business procedures.

(c) *Access to Records.* The City shall have the right to inspect and/or audit such books and records at reasonable times during normal business hours and upon reasonable prior notice to AEG. AEG must agree to allow the City Controller to audit and permit access to all financial and other records. AEG shall give the City and the City's authorized representatives access to AEG's Records during reasonable business hours and upon reasonable advance notice. Should any of the Records be maintained on a computerized system, AEG shall provide the City with access, during normal business hours upon reasonable notice, to such Records generated by the computerized system. AEG shall maintain their Records in the City of Los Angeles. Additionally, AEG shall give any auditors retained to conduct the Audit (including the Final Audit) the right to review and test any proprietary software and its documentation used by AEG for bookkeeping and the production of the Reports.

Section 7.3 Audits.

(a) *AEG Requirements.*

(i) *Annual Financial Statement.* AEG shall deliver to the LACC Department an annual unaudited financial statement of operations of the LACC within sixty (60) days after

the end of the Agreement Year and an annual independent auditor's report within one hundred twenty (120) days after the end of the Agreement Year; which financial statement must include a statement of net assets (balance sheet), a statement of profit or loss and a statement of Cash Flows for the LACC for the preceding Agreement Year, all prepared in accordance with generally accepted accounting principles. The independent auditor's report ("Annual Audit") shall be prepared by an independent certified public accountant licensed by the State, selected by the City and paid for as an Operating Expense.

(ii) *Independent Auditor's Report.* The Annual Audit shall contain an opinion expressed by the independent auditor of the accuracy of Records kept by AEG. Each Annual Audit shall also provide a certification of Operating Revenues, Operating Expenses and the Net Operating Deficit/Surplus for such Agreement Year. The City also shall require of the independent auditor and AEG shall deliver to the LACC Department a memorandum and report ("Internal Control Memorandum") on accounting controls and procedures of AEG related to this Agreement at the end of each Agreement Year.

(iii) *Final Audit.* On or before the 120th day following the day on which this Agreement expires or is otherwise terminated, the City shall cause an audit comparable to that described above (covering that portion of the Agreement Year from July 1st up to and including, the date of expiration or termination to be prepared and submitted to the LACC Department ("Final Audit"). The Final Audit shall be reviewed and accepted by LACC Department before any Incentive Fees shall be payable to AEG pursuant to this Agreement. This Section 7.3(A) shall survive the expiration or earlier termination of this Agreement.

(b) *City Audit Rights.*

The City shall have the right at any time, and from time to time, to cause nationally recognized independent auditors to audit all of the books of AEG relating to Operating Revenues and Operating Expenses, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. No costs incurred by the City in conducting such audit shall be considered an Operating Expense. Beginning in the second Agreement Year, if any such audit demonstrates that the Operating Revenues or Operating Expenses reflected in any financial statements prepared by AEG and audited as specified in Section 6.1(a) are understated (in the case of Operating Expenses) or overstated (in the case of Operating Revenues), by more than five percent (5%), AEG shall pay to the City the reasonable cost of such audit and shall promptly refund to the City any portion of the Incentive Fee paid for the Agreement Year which is attributable to the overstatement or understatement, as the case may be. The City's right to have such an audit made with respect to any Agreement Year and AEG's obligation to retain the above records shall expire five (5) years after the expiration or earlier termination of this Agreement.

(c) *Remedy of Control Weaknesses.* AEG agrees to remedy in a timely manner any control weaknesses identified by the City or outside auditors that contribute or could potentially contribute to reporting variances.

Section 7.4 Monthly Reports.

By the 25th day of each month, AEG shall provide to the Executive Director a written monthly report as set forth in Section 6.4(c) and this Section 7.4 ("Monthly Budget and Service Report"). The Monthly Budget and Service Report shall include the information required in Section 6.4(d) and (i) for the immediately succeeding month, AEG's activities in the management, operation and maintenance of the LACC, including bookings revenues from all sources, expenditures and such other related information as Executive Director or the LACC Department may request; (ii) for the immediately succeeding month, the anticipated activities and financial condition of the LACC; (iii) separately identified food, beverage and concessions activity and variances, if any, and (iv) any further information as Executive Director or the LACC Department may reasonably require or request, or as may be required by the terms of this Agreement. To the extent that actual results are not fully available when the Monthly Budget and Service Report is due, AEG may include reasonable estimated amounts in the Monthly Budget and Service Report; *provided* that the Monthly Budget and Service Report shall clearly indicate any use of estimated amounts and that, upon the request of the LACC Department, AEG shall provide the LACC Department with all reasonably requested documentary evidence to support such estimated amounts. Any estimated amounts used in a Monthly Budget and Service Report shall be confirmed in the immediately following Monthly Budget and Service Report with any necessary adjustments being accounted for in such immediately following Monthly Budget and Service Report.

Section 7.5 Event Settlement Reports.

Within sixty (60) days after the conclusion of the move out of each event at the LACC, AEG shall transmit to the Executive Director a settlement report in a form approved by the City (the "Event Settlement Report"). The Event Settlement Report shall include, at a minimum event attendance, Operating Revenues and Operating Expenses attributable to the event.

Section 7.6 Standard Operating Procedures Manual.

AEG will prepare by January 1, 2014, for the LACC Department's approval, a manual containing AEG's operating procedures with respect to the LACC ("Standard Operating Procedures Manual"). AEG will retain possession of the Standard Operating Procedures Manual, but will grant the City access to the Standard Operating Procedure Manual upon reasonable notice. AEG will keep the Standard Operating Procedures Manual up to date, and will deliver a copy of the Standard Operating Procedures Manual, including any updates as they may occur, to the Executive Director. The City acknowledges to the extent the Standard Operating Procedures Manual contains AEG's proprietary information (i.e., AEG-wide, not specific to the LACC, operating policies and procedures), then the proprietary information will remain the property of AEG and will be removed from the Standard Operating Procedures Manual upon the expiration or earlier termination of this Agreement and AEG shall deliver a copy of the redacted Standard Operating Procedures Manual to the Executive Director. The LACC Department shall conduct an annual review of the Standard Operating Procedures Manual which will occur no later than March 31st of each Agreement Year.

Section 7.7 Inventory Report.

In addition to the reports otherwise required to be provided pursuant to this Agreement, AEG will conduct and submit to the Executive Director, beginning on or before June 30, 2014 and on or prior to June 30th of each year thereafter during the Term hereof an inventory of capitalized FF&E of the LACC.

ARTICLE 8 EMPLOYEES

Section 8.1 AEG Employees.

(a) *Generally.* AEG shall select, employ, train, and supervise at the LACC the number of AEG Employees necessary or appropriate to satisfy AEG's responsibilities under this Agreement, all of which shall be reasonable, subject to all limitation, requirements and restriction in the Approved Annual Operating Budget and in compliance with applicable Laws. AEG will use its commercially reasonable efforts to recruit and retain highly qualified and capable employees who will be proficient, productive and committed to excellence in customer service. AEG will have authority to hire, terminate and discipline any and all personnel working for it in the LACC.

(b) *Background Checks; Professional Standards.* AEG shall subject employees to criminal background checks as required by the City and in accordance with applicable Laws and shall thoroughly train and closely supervise all Employees so that they maintain a professional appearance and are aware of and habitually practice high standards of cleanliness, courtesy and service. AEG shall not employ any person who does not conduct him or herself in a business-like and professional manner and, shall promptly take appropriate action against Employees who do not meet this standard.

(c) *AEG Office Space.* The LACC Department will provide office space, furniture, equipment and satisfactory communications system for AEG for its activities hereunder, the ongoing costs of which are to be Operating Expenses of the LACC and included in the Approved Annual Operating Budget. If AEG wishes to acquire at its sole cost and expense upgraded furniture or equipment beyond what has been provided by the City, AEG shall purchase such furniture and equipment and be solely responsible for its maintenance and repair. Such upgraded furniture and equipment shall become the property of the City upon the expiration or earlier termination of this Agreement if the City elects to take ownership, at its sole discretion, and subject to the City paying AEG for the unamortized portion of the amounts expended by AEG for the furniture and equipment that the City retains.

Section 8.2 AEG General Manager.

(a) *Selection of General Manager.* AEG shall assign to the LACC a highly-qualified, competent, full-time general Manager capable of operating and empowered to operate the LACC as a first-class convention center (the "General Manager"). AEG agrees that the General Manager of the LACC shall be located on-site at the LACC.

(b) *Consultation with Executive Director.* Prior to AEG's appointment of such General Manager and whenever a vacancy exists throughout the Term of this Agreement, AEG shall consult with the Executive Director with respect to the qualifications of the General Manager proposed by AEG. The General Manager for the LACC shall be subject to an interview with the Executive Director.

(c) *Sole Duty of General Manager.* The General Manager shall have no other duties other than the day-to-day operation and management of the LACC, unless previously approved in writing by the Executive Director.

Section 8.3 City Review of General Manager's Performance.

At any time during the Term, the Executive Director can notify the President of AEG if the Executive Director believes there is a performance problem with the General Manager. Within 15 days of receipt of notice, the President of AEG, or the President's designee, shall meet with the Executive Director to discuss the performance problem regarding the General Manager and to propose steps to address the problem within a specified period of time. If the Executive Director is not satisfied with AEG's proposed steps to address the problem, or if the performance problem is not adequately addressed within the specified period of time, AEG will remove the General Manager from performing services for the LACC.

Section 8.4 AEG Employees Not Employees of the City.

AEG Employees will not, for any purpose, be considered employees of the City.

Section 8.5 Payment of Employee Compensation, Benefits, Withholdings.

AEG will be solely responsible for all AEG Employee personnel-related matters including, without limitation, setting and paying as Operating Expenses their compensation, employment taxes, federal and state income tax withholding, and all employee benefits. All AEG Employee costs will be Operating Expenses.

Section 8.6 Employee Transition.

(a) *Transition Period.* During the Transition Period:

(i) City Employees shall be supervised by the City and shall retain their status and benefits as City employees unless terminated by the City.

(ii) On the Effective Date, or as soon thereafter as possible, AEG shall provide the City with a list of those City Employees to be hired by AEG.

(iii) The employee transition period shall conclude on the Transition Date.

(b) *Transfer to AEG Employment.* Should AEG choose to offer a City Employee a position during the Transition Period, and the City Employee accepts the position, then the City Employee will become an AEG Employee on or before the Transition Date as mutually agreed to by the Parties.

(c) *City Rights.* If the LACC Department is dissatisfied with the performance of any AEG Employee such that the LACC Department believes such employee's continued service at the LACC is detrimental to the best interests of the City and/or the LACC, the LACC Department shall inform AEG of such concerns and the Working Committee shall attempt to

resolve any reasonable concerns to the extent permitted by applicable Law, including, if lawful, reassignment of any such employees if AEG determines such reassignment is necessary to resolve the LACC's concerns.

ARTICLE 9 SPECIAL USES OF LACC

Section 9.1 Use of LACC at Direction of City.

(a) *Use by Film, Civic and Nonprofit Organizations.* In accordance with policies of the LACC Department or the City, AEG shall provide use of the LACC or any part thereof to film, civic and nonprofit organizations. The City shall not schedule use of the LACC pursuant to this subparagraph if such use will conflict with events already booked or held at the LACC.

(b) *Use by City.* The LACC Department shall have the right to schedule and use the LACC or any part thereof, upon reasonable advance notice and subject to availability at the time of the scheduling, for such purposes as meetings, seminars, training classes or any other uses of the LACC Department without the payment of any license or use fee; *provided* that the LACC Department shall pay to AEG the amount of the actual costs of such use, including the costs of labor and other expenses incurred by AEG in connection with such use of the LACC.

(c) *Use for Emergencies.* The City shall have the right to use the LACC for emergency purposes as determined by the Mayor of the City of Los Angeles and all licenses or other agreements entered into by AEG shall provide for such use with no liability to the City or AEG. However, provided that AEG's agreements contain the required provisions for emergency use, should a licensee institute litigation for cancellation or postponement of its licensed event, the City agrees to defend, indemnify and hold harmless AEG, its employees, agents, successors and assigns against any claim, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities or damages (collectively "Losses") to the extent arising out of (i) use of the LACC by the City as contemplated herein; (ii) any negligence or willful misconduct of the City or City Employees except to the extent any such Losses arise out of the negligence or willful misconduct of AEG;

ARTICLE 10 General Provisions

Section 10.1 AEG's Transactions with Affiliates.

(a) *AEG Doing Business with Affiliates.* In connection with its management responsibilities under this Agreement relating to the purchase or procurement of equipment, materials, supplies, inventories and services for the LACC, AEG will have the right, but not the obligation, to purchase or procure from, or otherwise transact business with, an Affiliate of AEG. In the event AEG purchases or procures from, or otherwise transacts business with, an Affiliate of AEG, the prices charged and services rendered will be competitive with those obtainable from others rendering comparable goods or services of like kind. To ensure compliance in this respect, AEG agrees to obtain at least two other competitive bids from Persons other than AEG's Affiliates whenever AEG proposes to transact business with an Affiliate. In addition, AEG may license the use of the LACC or any part thereof to itself or its Affiliates in connection with any event in the promotion of which AEG is involved, so long as the license fee charged is on prevailing rates and terms or other rates and terms approved in writing by the LACC Department, subject to the terms and conditions of the Implementation Agreement, as well as any exhibit attached thereto.

(b) *Conflict with Other AEG Managed Facilities.* The City acknowledges AEG manages other public assembly facilities which may, from time to time, be in competition with the LACC. The management of competing facilities will not, in and of itself, be deemed a conflict of interest or breach of AEG's duties under this Agreement; provided, however, in all instances in which the LACC is in competition with other public assembly facilities managed by AEG for the solicitation of certain events, AEG will not involve its principal office on behalf of any other competing facility in an attempt to influence the decision-making process to the disadvantage of the LACC regarding the selection of an event site.

Section 10.2 Informal Dispute Resolution Procedures.

The Parties desire to cooperate with each other in the management and operation of the LACC pursuant to the terms hereof. In keeping with this cooperative spirit and intent, the Executive Director and AEG shall attempt in good faith to resolve any dispute with respect to the LACC within fifteen (15) days following receipt by the other Party of notice of such dispute. If the Parties are unable to resolve the dispute within such 15-day period, and upon notice by a Party to the other Party, the dispute shall be referred to the LACC Department who shall attempt to resolve any such dispute prior to either Party initiating a legal suit.

Section 10.3 [INTENTIONALLY OMITTED]

Section 10.4 Labor Peace Agreement.

Prior to the Effective Date, AEG has submitted proof of having entered into a Labor Peace Agreement ("LPA") with unions as agreed by the Parties. Prior to the beginning of each Agreement Year, AEG must submit proof that it still has the required LPA in place.

Section 10.5 Assignment; Binding Upon Successors and Assigns; No Third-Party Beneficiaries.

(a) Neither party shall cause, permit or suffer any assignment, conveyance or other transfer, in whole or in part, of this Agreement, without the prior consent of the other party.

(b) *Binding Effect.* This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the Parties hereto and each of their respective successors and permitted assigns.

(b) *No Third-Party Beneficiaries.* This Agreement shall not be construed as giving any person, other than the Parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such Parties and their successors and permitted assigns and for the benefit of no other person or entity.

Section 10.6 Notices.

Any notice, consent or other communication given pursuant to this Agreement shall be in writing and shall be delivered, sent by personal delivery, overnight mail or certified or registered mail (return receipt requested and postage prepaid), addressed as follows:

To Owner:

Los Angeles Convention Center
1201 South Figueroa St.
Los Angeles, CA 90015
Attention: Executive Director

With a copy to:

City of Los Angeles
Office of the City Administrative Officer
200 No. Main Street, Suite 1500
Los Angeles, CA 90012
Attention: Debt Management Group

And a copy to:

Los Angeles City Attorney
200 No. Main Street, 8th floor
Los Angeles, CA 90012
Attention: Noreen Vincent

To AEG:

AEG Facilities, LLC
800 W. Olympic Blvd., Suite 305
Los Angeles, CA 90015
Attn: Bob Newman

With a Copy to:

AEG
800 W. Olympic Blvd., Suite 305
Los Angeles, CA 90015
Attn: John Keenan

or such other persons or addresses as either Party may from time to time designate by notice to the other. A notice, other communication or approval shall be deemed to have been sent and received (i) on the day it is delivered, or if such day is not a business day or if the notice is received after ordinary office hours (time of place of receipt), the notice, other communication or approval shall be deemed to have been sent and received on the next business day, or (ii) on the fourth business day after mailing if sent by U.S. registered mail.

Section 10.7 Entire Agreement; Document Precedence. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the Parties hereto with respect to the subject matter hereof.

Section 10.8 Preserving Tax Exempt Status.

(a) *Generally.* AEG acknowledges that the LACC has been financed in whole or in part with obligations the interest on which is excludable from gross income from federal income tax purposes and that the City may choose to issue additional tax-exempt obligations related to the LACC in the future.

(b) *Amendment of Agreement to Comply with IRS Requirements.* Notwithstanding any other provision of this Agreement, if, in the opinion of nationally recognized bond counsel selected by the City any provision of this Agreement conflicts with or fails to comply with any IRS regulation, ruling, notice or procedure issued prior to or subsequent to the date of this Agreement so as to jeopardize the tax exempt nature of the obligations ("IRS Requirements"), then the Parties shall amend this Agreement to the extent necessary to achieve compliance, upon notice from the City.

(c) *Preservation of Tax Exempt Status.* In order to preserve the tax exemption of the financing and unless otherwise agreed to by the City in writing, AEG agrees that all service and operating agreements as described in Sections 2.3 shall be negotiated and entered into so as to

comply with Section 1.141-3 (b) (4) of the IRS regulations and IRS Revenue Procedure 97-13, as the same may be amended, revised, or replaced from time to time.

Section 10.9 Government Code Section 1090 et seq.

AEG represents that it has read and is aware of the provisions of California Government Code Section 1090 *et seq.* and Section 87100 *et seq.* of the California Government Code and Section 49.5.1 *et seq.* of the Los Angeles Government Ethics Ordinance relating to conflict of interest of public officers and employees, and consultants as well as the Conflict of Interest Code of the LACC Department. The Parties hereto state that they are unaware of any financial or economic interest of its officers or employees creating a conflict of interest relating to this Agreement. No AEG Employee, unless that employee acts as a "public official" or "consultant" as that term is defined by the state's Political Reform Act, would be required to file statement of Economic Interest (Form 700), unless otherwise required by law. Furthermore, AEG covenants that it will bring to the LACC Management Review Staff's attention any agreement which in AEG's or the City's opinion has the potential to create a conflict for AEG and further covenants not to take any action on such matter other than to submit it to the LACC Management Review Staff for its consideration and action.

Section 10.10 Proprietary and Governmental Roles; Actions by Parties.

Except where clearly and expressly provided otherwise in this Agreement, the capacity of City in this Agreement shall be as the owner of the LACC only ("Proprietary Capacity"), and any obligations or restrictions imposed by this Agreement on City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the governmental capacities of the City, including, without limitation, enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions of each pursuant to federal, state or local law ("Governmental Capacity"). Whenever not expressly otherwise stated, (i) the City, when acting in its Proprietary Capacity, shall not unreasonably withhold its approval with respect to matters requiring its approval hereunder, and (ii) the City when acting in its Governmental Capacity, shall be permitted to utilize its sole discretion with respect to matters requiring its approval and nothing in this Agreement shall be construed to limit that discretion.

Section 10.11 Economic and Workforce Development Department.

The Parties acknowledge and agree that any and all actions taken in furtherance of this Agreement must be in conformance with the policies of the City's Economic Development and Workforce Development Department.

ARTICLE 11 CITY STANDARD PROVISIONS

Section 11.1 Standard Provisions

The standard provisions for City contracts are attached hereto as Exhibit "A" and shall be incorporated into this Agreement as though fully stated therein. In the case of a conflict between provisions of Articles 1 through 10, inclusive, and the provisions in Exhibit "A", the provisions of Article 1 through 10 shall be controlling.

[signature page follows]

IN WITNESS WHEREOF, the Parties executed this Agreement on the dates indicated.

CITY OF LOS ANGELES ("CITY")

ROBERT OVROM
EXECUTIVE DIRECTOR
LOS ANGELES CONVENTION
AND EXHIBITION CENTER

Date:

Approved as to Form
Michael N. Feuer
City Attorney

By: _____
Name:
Title:

Date:

ATTEST:
City Clerk

By _____
Deputy

AEG CONVENTION CENTER LA, LLC ("AEG")

By: _____
Name:
Title:

Date

EXHIBIT A

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR
CITY CONTRACTS – (Rev. 6/12)
REVISED FOR AEG/LACC AGREEMENT (8/13)

STANDARD PROVISIONS FOR CITY PERSONAL SERVICE CONTRACTS

(For the purposes of this Agreement, all references below to "Contract" shall refer to this Agreement and all references to "Contractor" shall refer to AEG)

PSC – 1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

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

PSC – 2. NUMBER OF ORIGINALS

The number of original texts of this contract shall be equal to the number of the parties hereto, one text being retained by each party. At the City's option, one or more additional original texts of this Contract may also be retained by the City.

PSC – 3. APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable Laws of the United States of America, the State of California, and the City including, but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Agreement shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. Contractor shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this contract.

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

If any part, term or provision of this contract is held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this contract the validity of the remaining parts, terms or provisions of the contract shall not be affected thereby.

PSC – 4. TIME OF EFFECTIVENESS

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

A. This contract has been signed on behalf of Contractor by the person or persons authorized to bind Contractor hereto;

B. This contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;

C. The Office of the City Attorney has indicated in writing its approval of this Agreement as to form; and

D. This contract has been signed on behalf of the City by the person designated by the City Council, or by the board, officer or employee authorized to enter into this contract and has been attested to by the City Clerk.

PSC – 5. INTEGRATED CONTRACT

This contract contains the full and complete agreement between the Parties, sets forth all of the rights and duties of the Parties with respect to the subject matter hereof, and replaces any and all previous agreements or understandings, whether written or oral, relating thereto. No verbal agreement nor conversation with any representative of either party shall affect or modify any of the terms and conditions of the contract.

PSC – 6. AMENDMENT

Any change to the terms of the contract, including changes in the scope of work to be performed and any increase or decrease in the amount of compensation, which are agreed to by the Parties shall be incorporated into the contract by a written amendment properly executed by the authorized representatives of the Parties and effective pursuant to the provisions of PSC-4. No verbal agreement with any officer or employee shall affect or modify any of the terms or conditions of the contract.

PSC – 7. EXCUSABLE DELAYS

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

PSC – 8. BREACH

Except for excusable delays as described in PSC-7, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

PSC – 9. WAIVER

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

PSC – 10. TERMINATION

A. TERMINATION FOR CONVENIENCE

The City may terminate this contract for the City's convenience at any time after the third year of the Term by giving AEG ninety (90) days written notice thereof. Upon receipt of said notice, Contractor shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The City shall pay Contractor its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by Contractor to affect such termination. Thereafter, Contractor shall have no further claims against the City under this contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become City property upon the date of such termination. Contractor agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.

B. TERMINATION FOR BREACH OF CONTRACT

1. Except for excusable delays as provided in PSC-7, if Contractor fails to perform any of the provisions of this contract or so fails to make progress as to endanger timely performance of this contract, the City may give Contractor written notice of such default. If Contractor does not cure such default or provide a plan to cure such default which is acceptable to the City within the time permitted by the City, then the City may terminate this contract due to Contractor's breach of this contract

2. If a federal or state proceeding for relief of debtors is undertaken by or against Contractor, or if Contractor makes an assignment for the benefit of creditors, then the City may immediately terminate this contract.

3. If Contractor engages in any dishonest conduct related to the performance or administration of this contract or violates the City's lobbying policies, then the City may immediately terminate this contract.

4. In the event the City terminates this contract as provided in this section, the City may procure, upon such terms and in such manner as the City may deem appropriate, services similar in scope and level of effort to those so terminated, and Contractor shall be liable to the City for all of its costs and damages, including, but not limited to, any excess costs for such services.

5. All finished or unfinished documents and materials produced or procured under this contract, including all intellectual property rights thereto, shall become City property upon date of

such termination. Contractor agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.

6. If, after notice of termination of this contract under the provisions of this section, it is determined for any reason that Contractor was not in default under the provisions of this section, or that the default was excusable under the terms of this contract, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued pursuant to PSC-10(A) Termination for Convenience.

7. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

PSC – 11. INDEPENDENT CONTRACTOR

Contractor is acting hereunder as an independent contractor and not as an agent or employee of the City. No employee of Contractor has been, is, or shall be an employee of the City by virtue of the contract, and Contractor shall so inform each employee organization and each employee who is hired or retained under the contract. Contractor shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the City.

PSC – 12. CONTRACTOR'S PERSONNEL

Unless otherwise provided or approved by the City, Contractor shall use its own employees to perform the services described in this contract. The City shall have the right to review and approve any personnel who are assigned to work under this contract. Contractor agrees to remove personnel from performing work under this contract if requested to do so by the City.

Unless otherwise permitted by this Agreement, Contractor shall not use subcontractors to assist in performance of this contract without the prior written approval of the City. If the City permits the use of subcontractors, Contractor shall remain responsible for performing all aspects of this contract. The City has the right to approve Contractor's subcontractors, and the City reserves the right to request replacement of subcontractors. The City does not have any obligation to pay Contractor's subcontractors, and nothing herein creates any privity between the City and the subcontractors.

PSC – 13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

Contractor shall not, unless it has first obtained the prior written consent of the City (a) Assign or otherwise alienate any of its rights under this contract, including the right to payment; or (b) Delegate, subcontract, or otherwise transfer any of its duties under this contract.

PSC – 14. PERMITS

Contractor and its directors, officers, partners, agents, employees, and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications and other documents necessary for Contractor's performance hereunder and shall pay any fees required therefore. Contractor certifies to immediately notify the City of any suspension, termination, lapses, non-renewals,

or restrictions of licenses, permits, certificates, or other documents.

PSC – 15. CLAIMS FOR LABOR AND MATERIALS

Contractor shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this contract so as to prevent any lien or other claim under any provision of law from arising against any City property (including reports, documents, and other tangible or intangible matter produced by Contractor hereunder), against Contractor's rights to payments hereunder, or against the City, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

PSC – 16. LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE

If applicable, Contractor represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this contract, Contractor shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

PSC – 17. RETENTION OF RECORDS, AUDIT AND REPORTS

Intentionally Omitted.

PSC – 18. FALSE CLAIMS ACT

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

PSC – 19. BONDS

All bonds which may be required for performance of services shall conform to City requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

PSC – 20. INDEMNIFICATION

Except for the active negligence or willful misconduct of the City, or any of its boards, officers, agents, employees, assigns and successors in interest, Contractor undertakes and agrees to defend (with counsel subject to approval by City), indemnify and hold harmless the City and 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 Contractor's employees and agents, or damage or destruction of any property of either party hereto or of third parties, and/or for any other damages or losses of any kind

or nature arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by Contractor or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City. The provisions of PSC-20 shall survive expiration or termination of this Contract.

PSC – 21. INTELLECTUAL PROPERTY INDEMNIFICATION

Contractor, at its own expense, undertakes and agrees to defend (with counsel subject to City approval), indemnify, and hold harmless the City, and 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, cost of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by Contractor, or its subcontractors of any tier, in performing the work under this contract; or (2) as a result of the City's actual or intended use of any work product furnished by Contractor, or its subcontractors of any tier, under the Agreement. Work Products are all works, tangible or not, created under this contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual records, and sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this contract and those allowed under the laws of the United States, the State of California, and the City. The provisions of PSC-21 shall survive expiration or termination of this contract.

PSC – 22. INTELLECTUAL PROPERTY WARRANTY

Contractor represents and warrants that its performance of all obligations under this contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, right of publicity and proprietary information.

PSC – 23. OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all Work Products originated and prepared by Contractor or its subcontractors of any tier under this contract shall be and remain the exclusive property of the City for its use in any manner it deems appropriate. Contractor hereby assigns, and agrees to assign, all goodwill, copyright, trademarks, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by Contractor under this contract. Contractor further agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein. For all Work Products delivered to the City that are not originated

or prepared by Contractor or its subcontractors of any tier under this contract, Contractor hereby grants a non-exclusive perpetual license to use such Work Products for any City purposes.

Contractor shall not provide or disclose any Work Product to any third party without prior written consent of the City.

Any subcontract entered into by Contractor relating to this contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this contract to contractually bind or otherwise oblige its subcontractors performing work under this contract such that the City's ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of Contractor to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject Contractor to the imposition of any and all sanctions allowed by law including, but not limited to termination of the contract.

PSC – 24. INSURANCE

During the term of this contract and without limiting Contractor's indemnification of the City, Contractor shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by Contractor, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146), covering its operations hereunder. Such insurance shall conform to City requirements established by Charter, ordinance or policy, and the Instructions and Information on Complying with City Insurance Requirements and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management.

PSC – 25. DISCOUNT TERMS

Contractor agrees to offer the City any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discount to payments made under this contract which meet the discount terms.

PSC – 26. WARRANTY AND RESPONSIBILITY OF CONTRACTOR

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

PSC – 27. NON-DISCRIMINATION

Unless otherwise exempt, this contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code as amended from time to time. The Contractor shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the City. In performing this contract, Contractor shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital state or medical condition. Any subcontract entered into

by Contractor to the extent allowed hereunder, shall include a like provision for work to be performed under this contract.

Failure of Contractor to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject Contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of Contractor's contract with the City.

PSC – 28. EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this Contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

A. During the performance of this contract, Contractor agrees and represents that it will provide equal employment practices and Contractor and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. Contractor agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the City's supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, Contractor shall certify in the specified format that he or she has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

D. Contractor shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment practices provisions of City contracts. Contractor shall, upon request, provide evidence that it has or will comply therewith.

E. The failure of any Contractor to comply with the Equal Employment Practices provisions of this contract may be deemed to be a material breach of City contracts. Such failure shall

only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice, and an opportunity to be heard has been given to Contractor.

F. Upon a finding duly made that Contractor has failed to comply with the Equal Employment Practices provisions of a City contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City. In addition such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the Contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, Contractor shall be disqualified from being awarded a contract with the City for a period of two years, or until Contractor shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this contract, the City shall have any and all other remedies at law or in equity for any breach hereof.

H. Intentionally blank.

I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

J. At the time a supplier registers to do business with the City, or when an individual bid or proposal is submitted, Contractor shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of City Contracts.

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

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

L. Any subcontract entered into by Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of Contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject Contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the Contractor's Contract with the City.

PSC – 29. AFFIRMATIVE ACTION PROGRAM

Unless otherwise exempt, this contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code as amended from time to time.

A. During the performance of a City contract, Contractor certifies and represents that Contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. Contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

B. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract compliance, Contractor shall certify on an electronic or hard copy form to be supplied, that Contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

D. Contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts. Contractor shall, upon request, provide evidence that it has or will comply therewith.

E. The failure of any Contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to Contractor.

F. Upon a finding duly made that Contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be

forwarded to and retained by the City. In addition such breach may be the basis for a determination by the awarding authority or the Board of Public Works that said Contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such Contractor shall be disqualified from being awarded a contract with the City for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that Contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to Contractor by the City under the contract, a penalty of ten dollars(\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.

H. Notwithstanding any other provisions of a City contract, the City shall have any and all remedies at law or in equity for any breach hereof.

I. Intentionally blank.

J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. Contractor shall submit an Affirmative Action Plan which shall meet the requirements of the Los Angeles Administrative Code at the time it submits its bid or proposal or at the time it registers to do business with the City. The Plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a Plan, Contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, Contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

2. Contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs.

For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and Contractor.

M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
6. The entry of qualified women, minority and all other journeymen into the industry; and
7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimizes the impact of any disability.

N. Any adjustments which may be made in the Contractor's or supplier's work force to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its contract compliance Affirmative Action Program.

P. Intentionally blank.

Q. All contractors subject to the provisions of this section shall include a like

provision in all subcontracts awarded for work to be performed under the Contract and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the Contract.

PSC – 30. CHILD SUPPORT ASSIGNMENT ORDERS

This Contract is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, Contractor will fully comply with all applicable State and Federal employment reporting requirements for Contractor's employees. Contractor shall also certify (1) that Contractor will fully comply with all State and Federal employment reporting requirements applicable to Child Support Assignment Orders; (2) that the Principal Owner(s) of Contractor are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) that Contractor will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, *et seq.*, of the California Family Code; and (4) that Contractor will maintain such compliance throughout the term of this Contract.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of Contractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of Contractor to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the Contractor under this Contract, subjecting this contract to termination if such default shall continue for more than ninety (90) days after notice of such default to Contractor by the City.

Any subcontract entered into by Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of Contractor to obtain compliance of its subcontractors shall constitute a default by Contractor under this Contract, subjecting this Contract to termination where such default shall continue for more than ninety (90) days after notice of such default to Contractor by the City.

Contractor certifies 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 Section 7110(b) of the California Public Contract Code.

PSC – 31. LIVING WAGE ORDINANCE

A. Unless otherwise exempt, the Contract is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 *et seq.* of the Los Angeles Administrative Code, as amended from time to time. This Ordinance requires the following:

1. Contractor assures payment of a minimum initial wage rate to employees as

defined in the LWO and as may be adjusted each July 1 and provision of compensated and uncompensated days off and health benefits, as defined in the LWO.

2. Contractor further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. Contractor shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. Contractor shall deliver the executed pledges from each such subcontractor to the City within ninety (90) days of the execution of the subcontract. Contractor's delivery of executed pledges from each such subcontractor shall fully discharge the obligation of Contractor with respect to such pledges and fully discharge the obligation of Contractor to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.

3. Contractor, whether an employer, as defined in the LWO, or any other person employing individuals, shall not 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 the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. Contractor shall post the Notice of Prohibition Against Retaliation provided by the City.

4. Any subcontract entered into by Contractor relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of PSC-31 and shall incorporate the provisions of the LWO.

5. Contractor shall comply with all rules, regulations and policies promulgated by the City's Designated Administrative Agency which may be amended from time to time.

6. Contractor shall post a copy of the Notice to Employees Working on City Contracts Re: Living Wage Ordinance and Prohibition Against Retaliation, which is attached hereto as Attachment 1, in a prominent place in an area frequented by employees.

B. Under the provisions of Section 10.37.6(c) of the Los Angeles Administrative Code, the City shall have the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if the City determines that the subject Contractor has violated the LWO provision.

C. Where under the LWO Section 10.37.6(d), the City's Designated Administrative Agency has determined (a) that Contractor is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the City in such circumstances may impound monies otherwise due Contractor in accordance with the following procedures. Impoundment shall mean that from monies due Contractor, City may deduct the amount determined to be due and owing by Contractor to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d)(3) and disposed of under procedures described therein through final and binding arbitration. Whether Contractor is to continue work following an impoundment shall remain in the sole discretion of the City. Contractor may not elect to discontinue work either because there has been an

impoundment or because of the ultimate disposition of the impoundment by the arbitrator.

D. Contractor shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). Contractor shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from Contractor.

PSC – 32. SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time.

PSC – 33. AMERICANS WITH DISABILITIES ACT

Contractor hereby certifies that it will comply with the Americans with Disabilities Act, 42 USC §12101 *et seq.*, and its implementing regulations (ADA), the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), Pub. L. 110-325 and all subsequent amendments, Section 504 of the Rehabilitation Act of 1973 (Rehab. Act), as amended, 29 USC 794 and 24 CFR Parts 8 and 9, the Uniform Federal Accessibility Standards (UFAS), 24 CFR, Part 40, and the Fair Housing Act, 42 U.S.C. 3601, *et seq.*; 24 CFR Parts 100, 103, and 104 (FHA) and all implementing regulations. The Contractor 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 ADA, the ADAAA, the Rehab Act, the UFAS and the FHA and all subsequent amendments. Contractor will not discriminate against persons with disabilities or against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by the Contractor, relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

PSC – 34. CONTRACTOR RESPONSIBILITY ORDINANCE

Unless otherwise exempt, this contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time, which requires Contractor to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect Contractor's fitness and ability to continue performing this contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this contract, Contractor pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. Contractor further agrees to: (1) notify the City within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that Contractor is not in compliance with all applicable federal, state and local laws in performance of this contract; (2) notify the City within thirty calendar days of all findings by a government agency or court of competent jurisdiction that Contractor has violated the provisions of Section 10.40.3(a) of the Contractor

Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the City; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the City within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

PSC – 35. MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

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

PSC – 36. EQUAL BENEFITS ORDINANCE

Unless otherwise exempt, this contract is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative code as amended from time to time.

A. During the performance of the contract, Contractor certifies and represents that Contractor will comply with the EBO.

B. The failure of Contractor to comply with the EBO will be deemed to be a material breach of this contract by the City.

C. If Contractor fails to comply with the EBO the City may cancel, terminate or suspend this contract, in whole or in part, and all monies due or to become due under this 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.

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

E. If the City's Designated Administrative Agency determines that a Contractor has set up or used its contracting entity for the purpose of evading the intent of the EBO, the City may terminate the contract. Violation of this provision may be used as evidence against Contractor in actions taken pursuant to the provisions of Los Angeles Administrative code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

Contractor shall post 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. Additional information about the City of Los Angeles’ Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at 213-847-1922.”

PSC – 37. SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt, this contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code as amended from time to time. Contractor certifies that it has complied with the applicable provisions of the Slavery Disclosure ordinance. Failure to fully and accurately complete the affidavit may result in termination of this contract.

PSC – 38. FIRST SOURCE HIRING ORDINANCE

Unless otherwise exempt, this contract is subject to the applicable provisions of the First Source Hiring Ordinance (FSHO), Section 10.44 *et seq.* of the Los Angeles Administrative Code as amended from time to time.

A. Contractor shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that Contractor estimates it will need to fill in order to perform the services under the contract.

B. Contractor further pledges that it will, during the term of the contract: (1) at least seven (7) business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; (2) interview qualified individuals referred by CDD; and (3) prior to filing any employment opportunity, the Contractor shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the Contractor interviewed and the reasons why referred individuals were not hired.

C. Any subcontract entered into by the Contractor relating to this contract, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.

D. Contractor shall comply with all rules, regulations and policies promulgated by the DAA, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the DAA has determined that the Contractor intentionally violated or used hiring practices for the purpose of avoiding the FSHO, that determination will be documented in the Awarding Authority’s Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 *et seq.*, and must be documented in each of the Contractor’s subsequent Contractor Responsibility Questionnaires submitted under the Los Angeles Administrative Code Section 10.40 *et seq.* This measure does not limit the City’s authority to act under the FSHO.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this contract and otherwise pursue legal remedies that may be available if the DAA determines that the Contractor has violated provisions of the FSHO.

PSC – 39. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12)

The Contractor, Subcontractors, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the contract is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Contractor is required to provide and update certain information to the City as specified by law. Any Contractor subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this contract:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subcontractor on City of Los Angeles Contract # _____. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the City contract is signed. Subcontractor is required to provide to contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to Contractor within ten (10) business days. Failure to comply may result in termination of contract or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213/978-1960.

Contractor, Subcontractors, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

Rev. 10/09

ATTACHMENT 2

ORGANIZATIONAL CHART FOR THE LACC DEPARTMENT

