

Attachment A

AECOM Hotel Development  
Incentive Agreement

**HOTEL DEVELOPMENT INCENTIVE AGREEMENT**

**SOUTH PARK HOTEL  
1155 South Olive Street, Los Angeles, CA 90015**

**by and between**

**City of Los Angeles,  
("City")**

**and**

**AECOM CAPITAL  
("Developer")**

## HOTEL DEVELOPMENT INCENTIVE AGREEMENT

This Hotel Development Incentive Agreement ("Agreement"), dated, for identification purposes only, as of July \_\_\_\_, 2019 is entered into by and between AECOM Capital (the "Developer"), and the City of Los Angeles a municipal corporation (the "City"). The City and the Developer are sometimes individually referred to in this Agreement as a "Party" and collectively as the "Parties." This Agreement is entered into with respect to the following facts and circumstances:

### RECITALS

A. Developer is the fee owner of an approximately 15,186 square foot site located at 1155 South Olive Street, Los Angeles CA 90015, as more particularly described in Exhibit A attached hereto and shown on the Site Map attached hereto as Exhibit B, each of which is incorporated herein by this reference (the "Hotel Project Site").

B. Developer has proposed the development of a 16-story, 258-room 3-star hotel (the "Hotel"), together with approximately 2,722 square feet of ground-level restaurant space; 1,896 square feet of ground-level retail space; 400 square feet of meeting space; a rooftop deck with a pool and fitness center and a 36-space subterranean parking garage totaling 16,422 square feet (collectively, with the Hotel, the "Hotel Project") on the Hotel Project Site.

C. The Hotel Project Site is within walking distance to the Los Angeles Sports and Entertainment District ("LASED") and the Los Angeles Convention Center (the "LACC").

D. The Hotel Project Site is currently developed with a surface parking lot.

E. The Hotel Project is desirable to the City as part of its ongoing effort to expand the LACC and the City has determined that new hotel rooms serving a variety of visitor needs are necessary to more fully utilize an expanded LACC. The Hotel will provide additional visitor-serving uses that are beneficial to support the City's hosting of the 2028 Olympic and Paralympic Games, and further the City's goal of attracting 50 million visitors annually. The Hotel will also support further economic development within the City by creating good paying jobs and stimulating economic development and activity benefiting the downtown community and the City as a whole. Furthermore, the City has identified the Hotel Site as an optimal site for the development of high-density hotel uses. The development of the Hotel Project would substantially contribute to the City's achievement of these goals.

F. The City's Chief Legislative Analyst retained, at the Developer's expense, an independent and experienced financial analyst (the "City Analyst") to evaluate the Hotel Project and advise the City with regard to the financial feasibility of the Hotel Project.

G. The City Analyst has determined, based on its financial analysis, that the Hotel Project development costs would total One Hundred Twelve Million One Hundred Eighty Six Thousand Four Hundred and Sixty Two Dollars (\$112,186,462) and the value of the Hotel Project upon completion would total Sixty One Million Six Hundred Twenty Three Thousand

Dollars (\$61,623,000), indicating a feasibility gap in the amount of Fifty Million Five Hundred and Sixty Thousand Dollars (\$50,563,000) (the "Funding Gap").

H. The City Analyst has further determined that the Hotel Project is anticipated to generate Thirty Four Million Six Hundred and Two Thousand Dollars (\$34,602,000) in net new tax revenues ("Net New Tax Revenues") to the City over the 25 period commencing upon the Hotel Completion Date (as defined below).

I. The City has reviewed the City Analysts' findings and determined that the Hotel Project is not financially feasible without the City Financial Assistance (as defined below) and accordingly, the City Council, subject to the terms set forth herein, has approved such City Financial Assistance.

J. Therefore, the maximum amount of the financial assistance to be provided by the City with respect to the Hotel Project shall be Seventeen Million Three Hundred One Thousand Dollars (\$17,301,000) in net present value back to the Hotel Completion Date, discounted at the rate of ten percent (10%) (the "Maximum Hotel Incentive Amount").

K. The City Council has determined that providing the City Financial Assistance to fund a portion of the Hotel Project is consistent with City policy, is in the vital and best interests of the people of the City of Los Angeles, and serves one or more public purposes by promoting economic development and alleviating physical and economic blight within the City by creating well-paying construction and permanent jobs through the development of the Hotel Project on underutilized parcels, thereby expanding the number of high-quality hotel rooms available to visitors to the City and increasing tourism and conventions within the City by providing additional hotel rooms to accommodate large conventions, which the LACC cannot currently host, especially in light of the anticipated expansion of the LACC.

NOW, THEREFORE, in consideration of the foregoing and the covenants, promises and agreements set forth in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the City hereby agree as follows:

**ARTICLE 1  
PURPOSE OF AGREEMENT AND DEFINITIONS**

Purpose of Agreement

This Agreement is entered into for the public purposes and benefits derived from the construction of high-quality hotels serving the LACC and the LASED and the economic stimulus such hotels will provide to the City. This Agreement is not intended for land speculation or to provide an undue benefit to the Developer. As such, the continuing provision of the City Financial Assistance is subject to the Developer's continued substantial compliance with the terms of this Agreement, as well as all applicable laws for the entire term of this Agreement.

## Definitions

As used in this Agreement, the following terms shall have the following meanings:

**"Affiliate"** shall mean any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common Control with the Developer, which, in the case of a partnership, shall include each of the constituent general partners thereof and, in the case of a limited liability company, shall include each of the constituent members thereof. **"Agreement"** shall mean this Hotel Development Incentive Agreement.

**"Bureau of Contract Administration"** or **"BCA"** shall mean the Department of Public Works (DPW) department of Office of Contract Compliance (OCC) which administers the City of Los Angeles' Labor Compliance Program (LCP). The City's LCP is certified under California Code of Regulations Chapter 8, Section 16425 and adheres to the statutory requirements as stated in California's Labor Code Section 1771.5.

**"Business Day"** shall mean a calendar day which is not a weekend day or a federal or State holiday in which the City is open for business.

**"California Sales and Use Tax Law"** shall mean the Bradley-Burns Uniform Local Sales and Use Tax Law.

**"Certified Access Specialist"** or **"CASp"** shall mean any person who has been certified as such pursuant to Section 4459.5 of the California Government Code.

**"CASp Report"** shall mean all reports, including preliminary or interim reports, prepared by the CASp in accordance with the requirements of Section 55.53 of the California Civil Code.

**"City"** shall mean the City of Los Angeles, California, a municipal corporation and charter city, operating through its governing body, the City Council, and its various departments.

**"City Analyst"** shall have the meaning set forth in Recital F, above.

**"City Council"** shall mean the Los Angeles City Council.

**"City Deposits"** shall mean deposits by the City into the Special Fund from its general revenues on not less than an annual basis in an amount calculated in accordance with Article 2, below, the amounts of which, as of the Effective Date, are projected in the Schedule of Projected Hotel Incentive Payments attached hereto as Exhibit I.

**"City Event of Default"** shall have the meaning set forth in Section 6.3(a), below.

"**City Financial Assistance**" shall mean the Hotel Incentive Payments to be made by the City to the Developer to fund the Hotel Project over the City Financial Assistance Term.

"**City Financial Assistance Term**" shall mean the period commencing on the Hotel Completion Date and ending on the earlier of (a) the twenty-fifth (25th) anniversary of the Hotel Completion Date, (b) the date on which the Developer has received the Maximum Hotel Incentive Amount and (c) the date on which this Agreement terminates pursuant to the terms of this Agreement.

"**City Reconciliation Consultant**" shall have the meaning set forth in Section 2.3(e)(1), below.

"**City Representatives**" shall mean and include all of the respective predecessors, successors, assigns, agents, officials, employees, independent contractors, affiliates, principals, officers, directors, attorneys, accountants, representatives, staff and board members of the City, and of each of them.

"**Claim**" shall have the meaning set forth in Section 7.18, below.

"**Community Benefits Program**" shall mean the community benefits described in Exhibit C attached hereto and incorporated herein by this reference, which the Developer shall provide during the City Financial Assistance Term.

"**Contract Provisions for Contracts**" shall mean those contract provisions set forth in Exhibit D-1 and Exhibit D-2 attached hereto and incorporated herein by this reference which provisions the Developer shall insert into every "major contract" (**Exhibit D-1**) and "other contract" (**Exhibit D-2**), as applicable, with each contractor, subcontractor or good and/or service provider into which the Developer enters into a contract for the development of any portion of the Hotel Project.

"**Control**" shall mean with respect to a corporation, the right to exercise, directly or indirectly, fifty percent (50%) or more of the voting rights attributable to the shares of the controlled corporation and, with respect to a person that is not a corporation, the possession directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person, whether through the ability to exercise voting power, by contract or otherwise, which power may be subject to approval of customary major decisions by one or more other parties.

"**Developer**" shall mean AECOM Capital and the Developer's Permitted Transferee or successors in interest.

"**Developer Event of Default**" shall mean any default by the Developer set forth in Section 6.4, below, subject to any applicable notice and cure rights set forth therein.

"**Developer Reconciliation Consultant**" shall have the meaning set forth in Section 2.3(e)(1), below.

"**Effective Date**" shall mean the date on which the City Clerk date stamps this Agreement subsequent to its approval by the City Council and its execution by the Developer and the City.

"**Funding Gap**" shall have the meaning set forth in Recital G, above.

"**Governmental Approvals**" shall mean all governmental approvals necessary for Developer to develop the Hotel Project, including, without limitation, all building permits and environmental clearances.

"**Government Code Disclosure Requirements**" shall mean the public hearing and disclosure requirements applicable to economic development subsidy payments set forth in Section 53083 of the California Government Code, as may be amended from time to time and which are applicable to the City Financial Assistance.

"**Hotel**" or "**Hotel Project**" shall have the same meaning as Hotel Project set forth in Recital B, above, as further refined in this Agreement, the Hotel Operating Covenant, the specifications and plans and any other matter approved by the City for the Hotel Project and all other documents required to be executed by the Developer in favor or in conjunction with the City or any other documents imposing governmental conditions upon the Developer in connection with the transactions contemplated by this Agreement.

"**Hotel Completion Date**" shall mean the later of (a) the date upon which the Hotel Brand issues its letter to the Developer that all conditions to the opening of the Hotel under the franchise agreement between Developer and the Hotel Brand have occurred in order to allow guests to occupy the Hotel and (b) the date upon which the City issues a temporary certificate of occupancy or certificate of occupancy (if no temporary certificate of occupancy is issued) for the Hotel.

"**Hotel Project Cost Reconciliation**" shall have the meaning set forth in Section 2.3(a), below.

"**Hotel Brands**" shall mean those operators listed on Exhibit F attached hereto.

"**Hotel Incentive Payment**" shall mean each annual payment to the Developer in an amount equal to the TOT revenues received by the City with respect to the Hotel Project during the preceding twelve (12)-month period; provided, however, that the first Hotel Incentive Payment shall be an amount equal to the TOT revenues received by the City during first Hotel Incentive Payment Period, which may be a period less than twelve (12) months.

"**Hotel Incentive Payment Period**" shall mean a period of twelve (12) consecutive calendar months commencing on the first day of the calendar month following the calendar month in which the Hotel Completion Date occurs.

"**Hotel Operator**" shall mean any of the Hotel Brands or otherwise approved by the Hotel Brands.

"**Hotel Operating Covenant**" shall mean a hotel operating covenant substantially in the form attached hereto as Exhibit E, which shall be recorded against the applicable portion of the Hotel Site.

"**Hotel Project Cost Reconciliations**" shall have the meaning set forth in Section 2.3(b), below.

"**Hotel Project Site**" shall have the meaning set forth in Recital A, above.

"**Improvements**" shall mean all improvements to be constructed by the Developer on the Hotel Site as part of the Hotel Project.

"**Losses and Liabilities**" shall mean and include all claims, writs, demands, causes of action, liabilities, losses, damages, judgments, injuries, expenses (including, without limitation, reasonable attorneys' fees and actual costs incurred by the indemnified party with respect to legal counsel) charges, penalties, or costs of whatsoever character, nature and kind, whether to property or to person and whether by direct or derivative action, known or unknown, suspected or unsuspected, latent or patent, existing or contingent.

"**Major Contractors and Subcontractors**" shall have the meaning set forth in Section 2.4, below.

"**Maximum Hotel Incentive Amount**" shall have the meaning set forth in Recital J, above, provided that in connection with the reconciliation processes set forth in Section 2.3, below, a final Maximum Hotel Incentive Amount shall be established with respect to the Hotel.

"**Mortgage**" shall mean any mortgage, deed of trust, pledge (including a pledge of equity interests in the Developer), hypothecation, charge, encumbrance or other security interest granted to a lender, made in good faith and for fair value, encumbering all or any part of the Developer's interest in (a) this Agreement, (b) all or a portion of the Hotel Site, (c) all or a portion of the Improvements, or (d) any equity interest in the Developer.

"**Mortgagee**" shall mean any mortgagee, beneficiary under any deed of trust, trustee of any bonds, holder of a pledge of an equity interest in the Developer or, if all or a portion of the Hotel Site is the subject of sale-leaseback transaction, the Person acquiring fee title to such portion of the Hotel Site.

"**Net New Tax Revenues**" shall have the meaning set forth in Recital H, above.

"**Parties**" shall have the meaning set forth in the introductory paragraph of this Agreement.

"**Person**" means an individual, corporation, partnership, limited liability company, joint venture, association, firm, joint stock company, trust, unincorporated association, or other entity.

"**Permitted Transfer**" shall have the meaning set forth in Section 4.4, below.



**"Preapproved Hotel Brands and Operators"** shall mean the preapproved Hotel Brands listed in Exhibit F, for which no further City approval is required in the event of a transfer, assignment, or other changes in brand operator.

**"Projected Hotel Project Costs"** shall have the meaning set forth in Section 2.3(c), below.

**"Reconciliation Commencement Date"** shall have the meaning set forth in the introductory paragraph of Section 2.3(e), below.

**"Replacement Operator"** shall have the meaning set forth in Section 4.8, below.

**"Room Block Agreement"** shall mean the agreement between the Developer and the City in substantially the form attached hereto as Exhibit G to be entered into by the Developer.

**"Schedule of Performance"** shall mean the Schedule of Performance attached hereto as Exhibit H and incorporated herein by this reference. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Developer and the General Manager of the City's Economic and Workforce Development Department.

**"Schedule of Projected Hotel Incentive Payments"** shall mean the schedule of projected payments attached hereto as Exhibit I and incorporated herein by this reference, which sets forth the amounts of projected payments from the City to the Developer during the City Financial Assistance Term. The Schedule of Projected Hotel Incentive Payments is a projection provided for informational purposes, with actual payments subject to calculation and reconciliation in accordance with the procedure set forth in Section 2.2, below.

**"Special Fund"** shall mean a special fund to be established by the City into which the City will make the City Deposits and from which the City will make the Hotel Incentive Payments to the Developer for the duration of the City Financial Assistance Term.

**"Standard Contract Provisions"** shall mean the Standard Terms for City Contracts attached hereto as Exhibit J and incorporated herein by this reference.

**"Tax Confidentiality Waiver"** shall mean a limited confidentiality waiver, in substantially the form attached hereto as Exhibit K, to be executed by each business located at the Hotel Site and authorizing the City to review and report tax data for purposes of compliance with the Government Code Disclosure Requirements or as otherwise may be required by the City for compliance with the terms of this Agreement

**"Three (3) Diamond Rating"** shall mean a three (3) diamond rating establishing that the Hotel meets the overall standards of three diamond lodging establishment, as defined in the AAA Tour Book Guide for Southern California, or an equivalent level used by an alternative nationally recognized hotel rating service, or such other required quality and performance standards that allow Developer to meet all of the Hotel Brand's requirements pursuant to its franchise agreement with such Brand, as described in the annual confirmation material provided to Developer.

"**Total Hotel Project Costs**" shall mean all costs incurred by the Developer in connection with the planning, design, financing, development, entitlement, and construction of the Hotel Project, including, without limitation, land costs, hard costs, and soft costs, direct and indirect costs, construction financing costs (including, without limitation, fees, costs, and interest), and equity procurement costs (including without limitation fees and costs), which Total Hotel Project Costs have been projected to be approximately One Hundred and Twelve Million One Hundred Eighty Six Thousand Four Hundred and Sixty Two Dollars (\$112,186,462).

"**Transient Occupancy Tax**" or "**TOT**" shall mean the transient occupancy taxes imposed pursuant to Article 1.7 of Chapter 2 of the Los Angeles Municipal Code.

"**Transfer**" shall have the meaning set forth in Section 4.1, below.

Parties to the Agreement

The address of the City for purposes of receiving notices is:

City of Los Angeles  
Office of the City Administrative Officer  
City Hall East  
200 North Main Street, Suite 1500  
Los Angeles, CA 90012  
Attention: City Administrative Officer

City of Los Angeles  
Economic and Workforce Development Department  
1200 West Seventh Street, 6<sup>th</sup> Floor  
Los Angeles, CA 90017  
Attention: General Manager

With a copy to:

City of Los Angeles  
Office of the Chief Legislative Analyst  
Los Angeles City Hall  
200 North Spring Street, Suite 255  
Los Angeles, CA 90012  
Attention: Chief Legislative Analyst

With a copy to:

Office of the Los Angeles City Attorney  
City Hall East  
200 North Los Angeles Street, Suite 800  
Los Angeles, CA 90012  
Attention: General Counsel/Economic Development

The term "City" includes any assignee or successor to the City's rights, powers and responsibilities under this Agreement.

Developer

The address of the Developer for purposes of receiving notice pursuant to this Agreement is:

AECOM South Park, LLC  
c/o AECOM Capital  
1999 Avenue of the Stars, Suite 2600  
Los Angeles, CA 90067  
Attention: Warren Wachsberger

With a copy to:

Holland & Knight LLP  
400 S. Hope Street, 8<sup>th</sup>  
Los Angeles, CA 90071  
Attention: Douglas Praw, Esq.

The term "Developer" as used herein includes any authorized and approved transferee of the Developer as permitted in accordance with Article 4, below. All of the terms, covenants and conditions of this Agreement shall be binding on such transferees, successors and assigns of the Developer.

Exhibits

Exhibit A	Legal Description of Hotel Site
Exhibit B	Hotel Site Map
Exhibit C	Community Benefits Program
Exhibit D-1	Contract Provisions for Major Contracts
Exhibit D-2	Contract Provisions for Other Contracts
Exhibit E	Form of Hotel Operating Covenant
Exhibit F	Preapproved Brands and Operators
Exhibit G	Form of Room Block Agreement
Exhibit H	Schedule of Performance
Exhibit I	Schedule of Projected Hotel Incentive Payments
Exhibit J	Standard Contract Provisions
Exhibit K	Form of Tax Confidentiality Waiver
Exhibit L	Bureau of Contract Administration Regulations

**ARTICLE 2  
CITY FINANCIAL ASSISTANCE**

City Financial Assistance

(a) Subject to the terms and conditions of this Agreement, including Section 2.2, below, the City shall establish the Special Fund and, on not less than an annual basis, shall make City Deposits from the City's General Fund into the Special Fund in an amount not less than the amount allocated to the Special Fund as set forth in the Schedule of Projected Hotel Incentive Payments attached hereto as Exhibit I as may be adjusted pursuant to this Section 2.1. If the amount of the City Deposit for any Hotel Incentive Payment Period exceeds the aggregate amount of the Hotel Incentive Payments paid by the City to the Developer with respect to such Hotel Incentive Payment Period, the excess amount shall remain in the Special Fund and shall be carried over and used to make Hotel Incentive Payments for the next Hotel Incentive Payments Period. The City shall make additional City Deposits if and to the extent needed to ensure full and timely payment of the Hotel Incentive Payments pursuant to Section 2.2, below.

(b) The Developer acknowledges that the City will utilize Transient Occupancy Tax revenues from the Hotel Project solely to determine the amount of each Hotel Incentive Payment and that no provision of this Agreement is intended to or shall be deemed to be, a designation of any Transient Occupancy Tax revenues for any purpose other than the deposit of such tax revenues into the City's General Fund.

(c) The City shall use its best efforts to disburse the required Hotel Incentive Payments to the Developer on the dates set forth in Section 2.2(a), below. The Developer acknowledges, however, that the Special Fund may only be funded through the annual City budgetary process and other periodic budgetary actions, which could, despite the City's best efforts, potentially result in delays in funding the Special Fund and/or the payment of the Hotel Incentive Payments to the Developer, provided that in such event the City shall use its further best efforts to minimize any such delay. All other required actions of the City under this Agreement must be performed in a timely fashion, as time is of the essence with respect to the City's obligations hereunder.

(d) The City's obligation to make any additional City Deposits pursuant to this Agreement expires at the expiration of the City Financial Assistance Term.

#### Hotel Incentive Payments

(a) Subject to the terms and conditions of this Agreement, commencing on the Hotel Completion Date, and thereafter for the duration of the City Financial Assistance Term, the City shall disburse the Hotel Incentive Payments from the Special Fund to the Developer, in arrears on a not less than an annual basis (i.e., on each successive anniversary of the Hotel Completion Date) and in the form of a confirmed wire transfer of funds. The disbursement of Hotel Incentive Payments shall not be conditioned on completion of any Hotel Project Cost Reconciliation.

(b) Notwithstanding anything to the contrary in Subsection (a), above, the aggregate amount of Hotel Incentive Payments paid to the Developer shall not exceed the

amount of Seventeen Million Three Hundred and One Thousand Dollars (\$17,301,000) in net present value back to the Hotel Completion Date, discounted at the rate of ten percent (10%).

(c) The City shall disburse to the Developer an amount equal to one hundred percent (100%) of the Transient Occupancy Tax from the Hotel as received by the City during the applicable annual payment period. The City reserves the right to retain the services of a trustee (which may be a trust department of a national bank with a branch in the City of Los Angeles) to make the disbursements from the Special Fund. If the City retains a trustee to make the disbursements, all references in this Agreement to the City making the payment or disbursement of the Annual Hotel Incentive Payment shall be deemed to refer to the trustee making the payment or disbursement.

(d) The aggregate amount of Hotel Incentive Payments paid to the Developer during the City Financial Assistance Term shall not exceed the Maximum Hotel Incentive Amount.

#### Construction Cost Reconciliation and Maximum Hotel Incentive Amount Adjustment

(a) The Developer shall commence and diligently pursue construction of the Hotel in accordance with the Schedule of Performance, subject to the provisions of Section 7.4, below. No later than one hundred eighty (180) days after the Hotel Completion Date, the Developer and the City will commence to establish the final Maximum Hotel Incentive Amount with respect to the Hotel, which will be established by conducting a final review and audit of the Total Hotel Project Costs with respect to the Hotel (the "Hotel Project Cost Reconciliation").

(b) The City will employ the City Analyst to perform the Hotel Project Cost Reconciliation. The Developer shall be responsible for the costs and payment of the City Analyst's services, but the City shall be the City Analyst's client for purposes of the City Analyst's services. The final Maximum Hotel Incentive Amount with respect to the Hotel shall be established based on the results of the Hotel Project Cost Reconciliation. As part of the Hotel Project Cost Reconciliation, the Developer shall submit to the City its determination of the Total Hotel Project Costs, together with supporting plans and documentation. The City Analyst shall review such submission and the Developer shall promptly respond to any comments or questions provided by the City Analyst. The Hotel Project Cost Reconciliation shall be based on a comparison of (i) the Total Hotel Project Costs for the Hotel with (ii) an amount equal to the projected Total Hotel Project Costs of One Hundred Twelve Million Two Hundred Thousand Dollars (\$112,200,000) (the "Projected Hotel Project Costs"). The Cost Reconciliation for the Hotel shall be performed independently and no costs associated with the Cost Reconciliation shall constitute Hotel Project Costs.

(c) Upon completion of the Hotel Project Cost Reconciliation, the final Maximum Hotel Incentive Amount with respect to the Hotel shall be established, which amount shall in no event exceed Seventeen Million Three Hundred and One Thousand Dollars (\$17,301,000) in net present value back to the Hotel Completion Date, discounted at the rate of ten percent (10%). Upon completion of a Hotel Project Cost Reconciliation, the Developer and

the City shall execute a certificate memorializing the applicable Total Hotel Project Costs and the final applicable Maximum Hotel Incentive Amount.

(d) If, despite each Party's good-faith efforts, the Parties cannot reasonably agree on the applicable Total Hotel Project Costs, or a component thereof, and/or the applicable, final Maximum Hotel Incentive Amount within sixty (60) days after the commencement of the applicable Hotel Project Cost Reconciliation (the "Reconciliation Commencement Date"), the Total Hotel Project Costs and the final Maximum Hotel Incentive Amount shall be determined as follows:

(1) On or before the seventy-fifth (75th) day following the Reconciliation Commencement Date, each Party shall select a financial consultant meeting the qualifications set forth below (the "City Reconciliation Consultant" and the "Developer Reconciliation Consultant") to prepare a forensic analysis and audit of the applicable Total Hotel Project Costs and submit to the Parties their respective written determinations of such Total Hotel Project Costs and the related final Maximum Hotel Incentive Amount. The Developer shall be responsible for the cost of the Developer Reconciliation Consultant **and** the cost of the City Reconciliation Consultant. The City will be the client of the City Reconciliation Consultant. Each Party shall use commercially reasonable efforts to cause its respective consultant to complete its analysis within one hundred days (120) days following the Reconciliation Commencement Date.

(2) If the Total Hotel Project Costs as determined by the City Reconciliation Consultant and the Developer Reconciliation Consultant differ by no more than One Million Dollars (\$1,000,000), then such Total Hotel Project Costs shall be the average of such Total Hotel Project Costs as determined by the City Reconciliation Consultant and the Developer Reconciliation Consultant. If, however, either difference exceeds One Million Dollars (\$1,000,000), the City Reconciliation Consultant and the Developer Reconciliation Consultant shall promptly meet and attempt to agree upon such Total Hotel Project Costs within fifteen (15) days following the submission of the last of their written determinations. If they are unable to reach agreement within such fifteen (15) day period, then such Total Hotel Project Costs shall be the average of such Total Hotel Project Costs as determined by the City Reconciliation Consultant and the Developer Reconciliation Consultant.

(3) Notwithstanding the foregoing, if at any time the Parties come to an agreement with respect to the determination of the actual Total Hotel Project Costs prior to the determination of the applicable Total Hotel Project Costs, such agreement shall be binding and conclusive between the Parties and terminate the consultant procedure hereunder, and the agreed-upon Total Hotel Project Costs shall be the basis for determining the corresponding Maximum Hotel Incentive Amount. If the applicable Total Hotel Project Costs are otherwise determined based on the consultant process set forth in this Subsection (e), then such Total Hotel Project Costs shall be binding and conclusive and shall be the basis for determining the corresponding Maximum Hotel Incentive Amount.

(e) In the event that the Hotel Project Cost Reconciliation discloses that the Total Hotel Project Costs for the Hotel are less than the Projected Hotel Project Costs by more than the lesser of (a) Two Hundred Two Thousand Dollars (\$202,000) or (b) the amount actually

paid to BCA pursuant to Section 3.4, the Maximum Hotel Incentive Amount with respect to the Hotel shall be automatically reduced on a dollar-for-dollar basis. Developer shall be fully responsible for any increases in the Funding Gap that may occur during or after construction. The Developer shall, within ninety (90) days following the completion of the Hotel Project Cost Reconciliation in accordance with this Section 2.3, have a one-time right to terminate this Agreement upon written notice to the City. The OCC's Labor Compliance Section (LSC) is responsible for educating, assisting and directing contractors on the prevailing wage and apprenticeship requirements of our projects as well as monitoring and enforcing the applicable labor laws to ensure that all contractors working on City projects are in compliance with State (California Labor Code Chapter 1 of Part 7 of Division 2) and Federal (Code of Federal Regulations 29) prevailing wage statutes and regulations."

### Sales Tax Origin

. For purposes of the State sales and use tax, the Developer shall insert a contract provision in its contract with the general contractor(s) requiring the general contractor(s) and its major subcontractors to designate the City of Los Angeles as the place of use of any materials purchased for the development of the Hotel Project. The Developer shall further comply with the provisions of this Section 2.4 to provide, to the greatest extent possible under applicable laws and regulations, that local sales and use taxes generated in connection with all eligible purchases of materials, fixtures, machinery, equipment, and supplies for the Hotel Project during the construction thereof are allocated directly to the City, subject to all applicable California regulations, including without limitation, Regulation 1521 titled "Construction Contractors" and resolution titled "Contractors No. 260.20" under the Compliance Policy and Procedures Manual of the California State Board of Equalization. In order to accomplish this allocation, the Developer shall comply with the following:

(a) Meeting with the Office of Finance. Prior to issuance of the first building permit for the Hotel Project, the Developer and its contractors and subcontractors then providing services or materials to the Hotel Project in excess of Ten Million Dollars (\$10,000,000) ("Major Contractors and Subcontractors") (to the extent such contractors and subcontractors have been identified and contracted with at such time) shall require such its contractors and subcontractors to meet with the City's Office of Finance to review the process that the Developer's contractors and subcontractors should follow with respect to sales and use taxes. The Developer agrees to advise any Major Contractors and Subcontractors that do not attend this initial meeting of the requirements of this Section, and, upon reasonable request, the City agrees to meet and review with such Major Contractors and Subcontractors the process that they should follow. The City agrees to assist the Developer in connection with obtaining a seller's permit from the California State Board of Equalization in connection with the construction of the Hotel Project and shall facilitate any meetings, discussions, and paperwork that would assist the Developer and its Major Contractors and Subcontractors in obtaining such a seller's permit.

(b) Contract Provisions for Major Contracts. The Developer shall include, and shall cause its general contractor to include, the relevant Contract Provisions for "major



contracts" set forth in Exhibit D-1 in all construction contracts entered into with Major Contractors and Subcontractors.

(c) Contract Provisions for Other Contracts. The Developer shall include, and shall cause its general contractor to include, the relevant Contract Provisions for "other contracts" set forth in Exhibit D-2 in all construction contracts entered into with all contractors that are not Major Contractors and Subcontractors.

(d) Major Contractor Information. The Developer shall, when reasonably requested by the City, provide the City's Office of Finance with (unless such information requires the disclosure of confidential information, trade secrets, or information that impairs the Developer's ability to gain pricing advantages relative to materials and services):

(1) A list of the Developer's Major Contractors and Subcontractors who will or have performed construction services or who will or have furnished materials for the construction of the Hotel Project, which list shall include the following items:

- (i) Name of contractor
- (ii) Address and telephone number of headquarters or office
- (iii) Name and telephone number of contact person
- (iv) Estimated value of the contract
- (v) Scope of work.

(2) A complete copy of each contract with each such contractor (which may have confidential information redacted).

(e) City's Remedies/Offset. Subject to Developer's rights to notice and cure as set forth in this Section and Section 6.5, the City determines that Developer has failed to insert the required contract provision of any Major Contractor or Subcontractor has not complied with the provisions set forth in its agreement with the Developer or the Developer's general contractor, as the case may be, the Maximum Hotel Incentive Amount shall be automatically reduced in an amount equal to the revenues lost by the City as a result of the failure of the Major Contractor or Subcontractor to comply with this Section, City shall provide notice to the Developer setting forth the name of the Major Contractor or Subcontractor that has failed to comply. Such notice shall include the amount of lost revenue suffered by the City. Developer shall have thirty (30) days to provide evidence refuting the City's claim.

(f) Subject to Applicable Law. The obligations set forth in this Section 2.4 shall in all cases be subject to applicable laws and regulations, including without limitation the California Sales and Use Tax Law, and in no event shall the Developer (or any of its contractors or subcontractors) be required to do anything that is in violation of or inconsistent with such laws and regulations.

#### Progress Reports

. Until the Hotel Completion Date, the Developer shall provide the City with a yearly progress report by December 31<sup>st</sup> of each calendar year as well as periodic progress reports, as reasonably requested by the City (but not more than once every calendar quarter), regarding the status of the construction of the Improvements relating to the Hotel. Such reports shall consist of an executive summary of the work to date, including, but not limited to, the causes for any delays and the work that is anticipated for the following quarter, a reasonable number of construction photographs taken since the last report submitted to the City, and shall be in a form reasonably acceptable to the City. The City shall be entitled to utilize and reproduce the information and photographs contained in the progress reports for government activities and other governmental purposes as determined by the City.

#### Conditions to City Obligation

. The Developer acknowledges and agrees that the City's obligation to make the City Deposits into the Special Fund, or to make Hotel Incentive Payment to the Developer, are obligations which are conditioned upon the Developer's material compliance with the following obligations:

(a) Construction, maintenance and operation of the Hotel in accordance with the standards set forth in this Agreement.

(b) The Hotel Brand obtaining and maintaining the Three (3) Diamond Rating.

(c) The City's review of the CASp Report with respect to the Hotel, which reports shall include CASp disability access inspection certificates acknowledged by the CASp and the Hotel Project architect of the following:

(1) That the CASp has reviewed the plans and specifications for the applicable Hotel for compliance with state and federal accessibility laws, standards, codes, and regulations.

(2) The CASp has conducted accessibility research, prepared accessibility reports and/or conducted accessibility inspections, as authorized and issued inspection reports to the City.

(3) That the Hotel has been constructed in accordance with state and federal accessibility laws, standards, codes, and regulations.

(d) The Developer's continued compliance in all material respects with the Community Benefits Program.

(e) The Hotel Brands' continued compliance in all material respects with the Hotel Operating Covenant.

(f) Collection and remittance of all City taxes at the Hotel Site.

(g) The Developer shall execute and require the Hotel Operator and each business at the Hotel Site to execute a valid Tax Confidentiality Waiver.

(h) The Developer shall execute the Room Block Agreement.

(i) Within three (3) years of the date of this Agreement, the Developer shall enter into an Accommodations Guarantee (“Accommodations Guarantee”) for the benefit of the Los Angeles Organizing Committee (“LAOC”) for the Olympic and Paralympic Games of 2028 on terms and conditions consistent with Accommodations Guarantees between the LAOC and other hotels of similar size and quality within the downtown Los Angeles market.

(j) The Developer shall cause the Hotel Operators to comply with all material provisions of this Agreement, the Room Block Agreement, the Accommodations Guarantee, the Hotel Operating Covenant and all other relevant agreement contemplated by this Agreement.

(k) The Developer shall cooperate with the City in complying with the Government Code Disclosure Requirements by making available to the City any information and/or waivers which the City requires, whether from the Developer, a Hotel Operator, or any business operating at the Hotel Site, which the City determines in its reasonable discretion are necessary to comply with the Government Code Disclosure Requirements.

### **ARTICLE 3 OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION**

#### Use of the Hotel Project

The Developer shall ensure that the Hotel Project will be operated, furnished, serviced, maintained, and refurbished to at least the standard of quality of a Three (3) Diamond Rating for the duration of the City Financial Assistance Term; provided, however, that the Developer shall not be in default of this Section 3.1 if a Hotel is damaged or destroyed or there occurs a force majeure event (including, without limitation a condemnation event) that precludes the operation of such Hotel and the Developer takes commercially reasonable steps to repair and restore such Hotel (subject to the availability of insurance proceeds for such restoration) or to address the force majeure event, as the case may be, within a reasonable period of time.

#### Maintenance

The Developer hereby agrees that prior to completion of construction of the Hotel Project, the Hotel Site shall be maintained in a neat and orderly condition to the extent practicable and in accordance with applicable industry health and safety standards, and that the Hotel Project shall be well maintained as to both external and internal appearance of the buildings, the common areas, and the parking areas consistent with the standards associated with a Three (3) Diamond Rating. The Developer shall maintain or cause to be maintained the Hotel Project in good repair and working order, including the walkways, driveways, parking areas, and landscaping, and from time to time make all necessary and proper repairs, renewals, and replacements. If the Developer fails to implement and continuously maintain the standard described above, the City shall notify the Developer in writing of such condition, giving the Developer thirty (30) days from receipt of such notice to commence and thereafter diligently to proceed to cure such condition. In the event the Developer fails to cure or commence to cure the condition within thirty (30) days and such other additional time as may be required by the Developer to cure the condition, the City

shall notify the Developer in writing and thereafter the City shall have the right to perform all acts necessary to cure such a condition, or to take other recourse at law or equity that the City may then have. The Developer shall reimburse the City's reasonable costs, plus ten percent (10%) interest from the date of expenditure, in taking such action. The provisions of Section 3.1 and this Section 3.2 shall be assumed by all successors to the Developer and shall be in effect until the expiration or termination of the Hotel Operating Covenant, enforceable by the City, its successors and assigns.

#### Employment Opportunity

. During the operation of the Hotel Project, there shall be no discrimination by the Developer on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, or handicap in the hiring, firing, promoting, or demoting of any person engaged in the operation of the Hotel Project.

#### Community Benefits Program

. The Developer shall provide the community benefits described in the Community Benefits Program for the duration of the City Financial Assistance Term. Further, the Developer, at a reasonable cost to the Developer, shall comply with the reporting and inspection requirements established by the Bureau of Contract Administration, as set forth in Exhibit L attached hereto.

#### Compliance with Applicable Law

. The Developer shall cause all work performed in connection with construction of the Improvements on the Hotel Site to be performed in compliance with: (a) all applicable laws, ordinances, rules and regulations of federal, state, or local regulatory bodies, now in force or that may be enacted hereafter that apply to the Hotel Site; (b) all lawful directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of the City; (c) all applicable disabled access requirements; and (d) all applicable City policies. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by the City or any other governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Hotel Site.

#### Section 3.6 Limited Tax Confidentiality Waiver.

(a) The Developer shall insure that each Hotel Operator and each tenant and subtenant on the Hotel Site executes and files a Tax Confidentiality Waiver with the City's Office of Finance, which provides for the release of tax information to the extent reasonably necessary to comply with the Government Code Disclosure Requirements.

(b) The Developer shall meet with the appropriate City departments, including the City's Office of Finance and the City Administrative Officer (and such other office as directed by the City's Chief Legislative Analyst) not less than three (3) months prior to the Hotel Completion Date to review the Tax Confidentiality Waiver so as to ensure that the appropriate parties responsible for executing the Tax Confidentiality Waiver are identified and notified of

their requirement to execute the Tax Confidentiality Waiver and review the administrative steps required to implement the Government Code Disclosure Requirements.

(c) All waivers will be executed by a corporate officer for any registered corporate entity that is required to submit a Tax Confidentiality Waiver.

#### Government Code Disclosures

. The Developer hereby acknowledges that Section 53083 of the California Government Code requires the City to hold periodic public hearings and to provide certain information in written form to the public and through its internet website for each recipient of an economic development subsidy. The Developer agrees that it shall cause each Hotel Operator and its tenants and subtenants, if any, with respect to the Hotel Project, to provide information or a written report to the City which shall include all information that the City determines is reasonably necessary to comply with the Government Code Disclosure Requirements, as such may be amended from time to time, including, but not limited to, the following:

(a) The name and address of all corporations or any other business entities, except sole proprietorships, that are the beneficiary of the economic development subsidy provided for by this Agreement.

(b) The number of jobs filled by each business at the Hotel Site, broken down by the name of the business and the number of full-time, part-time, and temporary positions filled for the past fiscal year.

(c) Any other information or documents which the City determines in its reasonable discretion is necessary to comply with the Government Code Disclosure Requirements, including any confidentiality waivers which the City determines to be reasonably necessary to comply with the Government Code Disclosure Requirements.

#### Standard Contract Provisions

. The terms of this Agreement are subject to the Standard Contract Provisions, the terms of which are set forth in **Exhibit J**, provided that (a) the Developer shall not be required to comply with any provision of the Standard Contract Provisions that does not specifically relate to the subject matter of this Agreement and (b) in the event of any conflict between the terms of this Agreement (excluding the Standard Contract Provisions) and a non-statutory provision of the Standard Contract Provisions, the terms of this Agreement (excluding the Standard Contract Provisions) shall prevail. The City acknowledges that it includes the Standard Contract Provisions in all City contracts, regardless of the subject matter of any particular contract, so that many of the Standard Contract Provisions are not applicable with respect to a particular contract.

#### Waiver

. Any waiver by either Party of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by a Party to take action on any breach or default of the other Party or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to a Party to perform any obligation under this Agreement shall not

operate as a waiver or release from any of such Party's obligations under this Agreement. Consent by a Party to any act or omissions by the other Party shall not be construed to be a consent to any other subsequent act or omission or to waive the requirement for the first Party's written consent to future waivers.

#### Other Agreements

. Each Party represents that it has not entered into any agreements that would restrict or compromise its ability to comply with the terms of this Agreement. Neither Party shall enter into any agreements that is inconsistent with the terms of this Agreement without an express waiver by the other Party in writing.

#### No Attorney's Fees

. Neither Party shall be entitled to attorneys' fees for any action resulting from this Agreement.

### **ARTICLE 4 ASSIGNMENTS AND TRANSFERS**

#### Definitions

. As used in this Article 4 and elsewhere in this Agreement, the term "Transfer" means:

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

(b) Any total or partial sale, assignment, or conveyance, or any transfer in any other mode or form, of or with respect to more than fifty percent (50%) ownership interest in the Developer, or any contract or agreement to do any of the same, provided that such transfer results in a change of Control; or

(c) For the avoidance of doubt, a Transfer shall not include the creation of a security interest that constitutes a Mortgage.

#### Purpose of Restrictions on Transfer

. This Agreement is entered into for the purpose of the development and operation of the Hotel Project in accordance with the terms of this Agreement. It is because of the qualifications and identity of the Developer, as well as the existence of the Funding Gap, that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement, in view of:

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

(b) The financial resources, reputation, and experience of the Developer in development of projects; and

(c) The fact that a Transfer as defined in Section 4.1, above, is for practical purposes a transfer or disposition of the Hotel Project.

#### Prohibited Transfers

. Except as expressly permitted in this Agreement, the Developer shall not make or create or suffer to be made or created, any Transfer, other than a Permitted Transfer (as set forth in Section 4.4, below), either voluntarily or by operation of law, without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed. In the event of a proposed Transfer that is not a Permitted Transfer, the Developer shall submit to the City such documentation as the City reasonably determines is sufficient to evaluate the relevant experience, financial capability, and reputation of the proposed transferee necessary to fulfill the obligations undertaken in this Agreement by the Developer. Any Transfer made in contravention of this Section 4.3 shall be void and shall be deemed to be a material default under this Agreement, subject to the Developer's right to cure such default in accordance with this Agreement.

#### Permitted Transfers

. Notwithstanding the provisions of Section 4.3, above, the Developer shall have the right to effect the following Transfers without the prior approval of the City (each a "Permitted Transfer"):

(a) Any Transfer creating a Mortgage or other security or financing for the Hotel Project, or any transfer that results from a Mortgagee exercising its rights under a Mortgage and other loan documents with the Developer, including without limitation, any Transfer resulting from the foreclosure of a Mortgage or other security financing interest or the granting of a deed in lieu of foreclosure of a Mortgage (including, without limitation, a conveyance in lieu of foreclosure of a pledge of equity interests) or other security financing interest and any subsequent transfer to any buyer of successor after such foreclosure or granting of a deed or conveyance in lieu of foreclosure.

(b) The leasing of any space within the Hotel Site or the Improvements.

(c) The leasing of the Hotel Site to an approved Hotel Operator.

(d) The conveyance or dedication of a portion of the Hotel Site to any public entity, including a public utility, required to allow for the development or operation of the Improvements.

(e) The granting of temporary or permanent easements, licenses, rights-of-way or permits to facilitate development and/or operation of the Hotel Project.

(f) A Transfer which may result from any merger, consolidation or reorganization involving the Developer so long as the same shall possess all or substantially all of the business and assets of the Developer immediately prior thereto.

(g) The Transfer of a non-controlling interest in the equity interests in the Developer or the Transfer of any membership interests held by any member of the Developer.

(h) A Transfer of the direct or indirect membership interests in the Developer to its joint venture partner or from its joint venture partner to the Developer pursuant to the provisions of their joint venture agreements or a change in the manager of the Developer.

(i) A Transfer to a Hotel Operator or to a new entity consisting of an entity directly or indirectly owned or Controlled by an initial Hotel Operator.

(j) A Transfer by the Developer in connection with a lease-back of a Hotel to the Developer.

(k) A Transfer to an Affiliate of the Developer.

(l) A Transfer to a tenant at the Hotel Site pursuant to the terms of its lease.

(m) A Transfer to a Person which, with its Affiliates, has a net worth or assets under management (whether through a separate account or other investment vehicle) in excess of Two Hundred Fifty Million Dollars (\$250,000,000) or that has sufficient expertise in owning or operating hotel projects of a similar nature to the Hotel Project.

(n) A Transfer of membership interests in Developer or its Affiliates that results in Developer not having less than 15% of the ownership and Control of Developer.

(o) A Transfer, assignment, pledge, collateral assignment of the Developer's right to receive any payment or reimbursement under this Agreement; provided, however, that a notice is provided to the City indicating where it should remit payment not less than thirty (30) days prior to the Transfer.

(p) A Transfer of non-income producing, non-material portions of the Hotel Site.

All Transfers other than those enumerated in this Section 4.4 shall require the administrative written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed. The City shall respond to such request for approval within ten (10) days after receipt of the request. Failure of the City to respond in such ten (10) day period shall be deemed approval by the City.

#### Effectuation of Permitted Transfers

. No Transfer of the Developer's interest in the Hotel Project that requires City's consent shall be permitted unless, at the time of the Transfer, the Person to which such Transfer is made, by an agreement reasonably satisfactory to the City, expressly agrees to perform and observe, from and



after the date of such transfer, all the obligations, terms, and conditions of this Agreement, and if less than all of the Hotel Project is transferred, the transferee shall agree to perform the obligations, terms, and conditions of this Agreement relating to the portion of the Hotel Project that is transferred to the transferee; provided, however, that no such transferee shall be liable for the failure of its predecessor(s) to perform any such obligation. The assumption agreement shall be executed by the Developer and the assignee or transferee, and shall name the City as an express third party beneficiary with respect to such agreement with a copy thereof delivered to the City within thirty (30) days after the effective date thereof. Upon transfer of this Agreement pursuant to an assumption agreement, the assignor's liability with respect to any such obligations relating to the Hotel Project accruing from and after the date of such assignment or transfer shall be as set forth in the assumption agreement.

#### Transfers of Interests in Non-Controlling Membership Interests in Developer

. The prohibition on Transfers of interests in the Developer shall not restrict transfers of non-controlling interests in the Developer pursuant to this Article 4.

#### Change in a Hotel Operator

. Notwithstanding the provisions of Section 4.3, above, a change in the identity of a Hotel Operator by way of transfer of the applicable hotel operating agreement or otherwise, shall not constitute a Transfer. During the City Financial Assistance Term, any change in a Hotel Operator (a "Replacement Operator") shall require the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed; provided, however, the City's approval will not be required if the Replacement Operator is a Preapproved Hotel Operator. The City shall respond to such request for approval within ten (10) days after receipt of the request and supporting documentation. The City's approval of such request shall be deemed given if the City fails to respond within such ten (10)-day period. The list of Preapproved Hotel Operators in Exhibit F shall be deemed preapproved by the City as the initial Hotel Operators and Replacement Operators and shall not require the further approval of the City.

### **ARTICLE 5 MORTGAGEE PROTECTIONS**

Provided that any Mortgagee provides the City with a conformed copy of each Mortgage that contains the name and address of such Mortgagee, the City hereby covenants and agrees to faithfully perform and comply with the following provisions with respect to such Mortgage:

#### Encumbrances of Hotel Site

. The Parties agree that this Agreement shall not prevent or limit the Developer from executing one or more Mortgages with respect to the financing, construction, development, use or operation of all or a portion of the Hotel Project. The City acknowledges that a Mortgagee may require certain clarifications and modifications of this Agreement and agrees, upon request, from time to time, to meet with the Developer and representatives of any such Mortgagee to negotiate in good faith any such request for clarification or modification. The City shall not unreasonably withhold, delay or condition its consent to any such requested interpretation or modification,

provided such clarification or modification is consistent with the intent and purposes of this Agreement.

#### No Termination

. No action by the Developer or the City to cancel or surrender this Agreement or to materially modify the terms of this Agreement, including the provisions of this Article 5, shall be binding upon a Mortgagee without its prior written consent, which such Mortgagee shall not unreasonably withhold, condition or delay, unless (solely with respect to cancelling or surrendering this Agreement) such Mortgagee shall have failed to cure a default within the time frames set forth in this Article 5. The lien of any Mortgage shall at all times be senior and superior to any lien in favor of the City established pursuant to the terms of this Agreement.

#### Notices

. If the City shall give any notice of default to the Developer hereunder, the City shall simultaneously give a copy of such notice of default to any Mortgagee that has filed or recorded a request for such notice, at the address theretofore designated by it; provided, however, that the failure of the City to provide any such notice is not a default or breach of the City. No notice of default given by the City to the Developer shall be binding upon or affect said Mortgagee unless a copy of said notice of default shall be given to Mortgagee pursuant of this Article 5. In the case of an assignment of such Mortgage or change in address of such Mortgagee, said assignee or Mortgagee, by written notice to the City, may change the address to which such copies of notices of default are to be sent. The City shall not be bound to recognize any assignment of such Mortgage unless and until the City shall be given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Mortgagee hereunder with respect to the Mortgage being assigned. If such Mortgage is held by more than one Person, no provision of this Agreement requiring the City to give notices of default or copies thereof to said Mortgagee shall be binding upon the City unless and until all of such Persons shall designate in writing one such Person to receive all such notices of default and copies thereof and shall have given to the City an original executed counterpart of such designation.

#### Performance of Covenants

. A Mortgagee shall have the right (but not the obligation) to perform any term, covenant, or condition and to remedy any default by the Developer hereunder within the time periods specified herein, and the City shall accept such performance with the same force and effect as if furnished by the Developer; provided, however, that said Mortgagee shall not thereby or hereby be subrogated to the rights of the City. Notwithstanding the foregoing, nothing herein shall be deemed to permit or authorize such Mortgagee (or its designee) to undertake or continue the construction or completion of the Improvements or any portion thereof without first having expressly assumed the Developer's obligations to the City or its designee by written agreement reasonably satisfactory to the City.

#### Default by Developer

. In the event of a Developer Event of Default, the City agrees not to terminate this Agreement (1) unless and until the Developer's notice and cure periods have expired and the City thereafter provides written notice of such default to any Mortgagee(s) and such Mortgagee(s) shall have failed to cure such Developer Event of Default within thirty (30) days of delivery of such notice, and (2) as long as:

(A) In the case of a default which cannot practicably be cured by a Mortgagee without taking possession of the Improvements, said Mortgagee shall proceed diligently to obtain possession of the Improvements or the applicable portion thereof as Mortgagee (including possession by receiver) and, upon obtaining such possession, shall proceed diligently to cure such default; or

(B) In the case of a default which is not susceptible to being cured by said Mortgagee, said Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire the Developer's right, title and interest hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure) and upon such completion of acquisition or foreclosure such default shall be deemed to have been cured.

A Mortgagee shall not be required to obtain possession or to continue in possession as Mortgagee of the Improvements or the applicable portion thereof pursuant to Subsection (A), above, or to continue to prosecute foreclosure proceedings pursuant to Subsection (B), above, if and when such default shall be cured. Nothing herein shall preclude the City from exercising any of its rights or remedies with respect to any other Developer Event of Default during any period of such forbearance, but in such event Mortgagee shall have all of its rights provided for herein. If a Mortgagee, its nominee, or a purchaser in a foreclosure sale, shall acquire the Developer's right, title and interest hereunder and shall cure all defaults which are susceptible of being cured by such Mortgagee or by said purchaser, as the case may be, then prior defaults which are not susceptible to being cured by such Mortgagee or by said purchaser shall no longer be deemed defaults hereunder. References herein to defaults which are "not susceptible of being cured" by a Mortgagee or purchaser (or similar language) shall not be deemed to refer to any default which Mortgagee or purchaser is not able to cure because of the cost or difficulty of curing such default, but rather shall be deemed to refer only to defaults specifically relating to the identity of the Developer which by their nature can be cured only by the Developer (such as a Developer bankruptcy or a change in control of the Developer). Any acquisition or acceptance of title or any right or interest in or with respect to the Hotel Project or any portion thereof by a Mortgagee, pursuant to foreclosure, trustee's sale, deed or conveyance in lieu of foreclosure, or otherwise, shall be subject to all of the terms and conditions of this Agreement except that any such Mortgagee, including its Affiliate or designee, who takes title to the Hotel Site or any portion thereof shall be entitled to the benefits arising under this Agreement.

#### No Obligation to Cure

. No Mortgagee shall have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of the Developer or other affirmative covenants of the Developer hereunder, or to guarantee such performance, and nothing herein contained shall require any Mortgagee to cure any Developer Event of Default referred to above. No default by

the Developer or termination of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage.

#### Separate Agreement

. The City shall, upon request by Mortgagee, execute, acknowledge and deliver to each Mortgagee, an agreement prepared at the sole cost and expense of the Developer, in form satisfactory to each Mortgagee, between the City, the Developer and the Mortgagee, agreeing to all of the provisions hereof.

#### Form of Notice

. Any Mortgagee under a Mortgage shall be entitled to receive the notices required to be delivered to it hereunder provided that such Mortgagee shall have delivered to the City a notice substantially in the following form:

The undersigned, whose address is \_\_\_\_\_, does hereby certify that it is the Mortgagee (as such term is defined in that certain Hotel Development Incentive Agreement ("Funding Agreement") dated as of \_\_\_\_\_, 20\_\_ between \_\_\_\_\_ and the City of Los Angeles) of the parcel of land described in **Exhibit A** attached hereto. In the event that any notice shall be given of a default of the Developer under the Funding Agreement, a copy thereof shall be delivered to the undersigned who shall have the rights of a Mortgagee to cure the same, as specified in the Funding Agreement. Failure to deliver a copy of such notice shall in no way affect the validity of the notice to the Developer, but no such notice shall be effective as it relates to the rights of the undersigned under the Funding Agreement with respect to the Mortgage (as such term is defined in the Funding Agreement), including the commencement of any cure periods applicable to the undersigned, until actually received by the undersigned.

All notices to be provided by a Mortgagee to the City shall be provided in accordance with Section 7.2, below.

#### Further Assurances

. The City and the Developer agree to cooperate in including in this Agreement at no cost to the City, by suitable amendment, any provision which may be reasonably requested by any Mortgagee or any proposed Mortgagee for the purpose of (a) more fully or particularly implementing the mortgagee protection provisions contained herein, (b) adding mortgagee protections consistent with those contained herein and which are otherwise commercially reasonable, (c) allowing such Mortgagee reasonable means to protect or preserve the security interest of such Mortgagee in the collateral, including its lien on all or any portion of the Hotel Site, the Improvements and/or the equity interest of the Developer, and the collateral assignment of this Agreement, and/or (d) clarifying terms or restructuring elements of the transactions contemplated hereby; provided, however, in no event shall the City be obligated to materially and adversely modify any of the Developer's obligations or the City's rights under this Agreement in any manner not already contemplated in this Article 5.

## ARTICLE 6

## DEFAULT AND REMEDIES

### Application of Remedies

. The provisions of this Article 6 shall govern the Parties' remedies for breach of this Agreement.

### No Fault of Parties

(a) Basis for Termination. The lack of performance by either Party shall not be deemed a default where performance is prevented due to a court order or final judgment is rendered in a lawsuit and all applicable appeal periods have expired, successfully challenging any governmental approval for the Hotel Project, this Agreement or the Developer's or the City's authority to perform their respective obligations hereunder. The preceding events constitute a basis for any Party to terminate this Agreement upon thirty (30) days' notice to the other Party.

(b) No Liability. Upon the effective date of the notice of termination, no Party shall have any rights against or liability to the other, except further that the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect and those liabilities occurring or arising prior to the date of such termination shall remain effective.

### Fault of City

(a) Event of Default. Following the notice and cure procedures as set forth in Subsection (b), below, a City breach of any material provision of this Agreement constitutes a "City Event of Default" and a basis for the Developer to exercise its remedies hereunder.

(b) Notice and Cure Procedure; Remedies. Upon the occurrence of a City Event of Default, the Developer shall first notify the City in writing of its purported breach or failure, giving the City thirty (30) days from receipt of such notice to cure such breach or failure. In the event the City does not then cure the default within such thirty-day period (or, if the default is not reasonably susceptible of cure within such thirty-day period, the City fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the Developer shall be entitled to any rights afforded it in law or in equity by pursuing any or all of the following remedies: (1) terminating this Agreement by written notice to the City; (2) prosecuting an action for damages (excluding punitive, exemplary and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive, exemplary and consequential damages). In no event shall any remedy include recovery of attorneys' fees. If the Developer elects to terminate this Agreement, the provisions of this Agreement relating to the other portion of the Hotel Project with respect to which there is not a default and other provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

### Fault of Developer

(a) Event of Default. Following the notice and cure procedures as set forth in Subsection (b), below, each of the following events constitutes a "Developer Event of Default" and a basis for the City to exercise its remedies hereunder:

(i) The Developer completes a Transfer that is not a Permitted Transfer or otherwise approved by the City in writing pursuant to Article 6.

(ii) The Developer breaches any other material provision of this Agreement.

(iii) The Developer's: (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; or (4) failure, inability or admission in writing of its inability to pay its debts as they become due.

(iv) The Developer or the Hotel Operator fails to strictly comply with the Room Block Agreement or the Accommodations Guarantee.

(b) Notice and Cure Procedure; Remedies. Upon the occurrence of any of the above-described events contained in Section 6.4(a), the City shall first notify the Developer in writing of its purported breach or failure, giving the Developer thirty (30) days from receipt of such notice to cure such breach or failure. If the Developer does not cure the default within such thirty-day period (or if the default is not reasonably susceptible of being cured within such thirty-day period, the Developer fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the City shall be entitled to terminate this Agreement by written notice to the Developer. In no event shall any remedy include recovery of attorneys' fees. If the City elects to terminate this Agreement, the provisions of this Agreement relating to the other portion of the Hotel Project with respect to which there is not a default and other provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

#### Rights and Remedies Cumulative

Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default. If the City or any designated or authorized agency, representative or other party acting on its behalf, fails to pay any amount due hereunder or commences (or becomes the subject of) any insolvency, liquidation, receivership or any similar action, case or proceeding, Developer shall have the right to exercise any remedies available to it at law or in equity.

## ARTICLE 7 GENERAL PROVISIONS

## Representations and Warranties

(a) The Developer. The Developer represents and warrants to the City as of the Effective Date, as follows:

(i) Organization. The Developer is a limited liability company, duly formed in the State of Delaware, validly existing and in good standing under the laws of the State of California, with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.

(ii) Authorization. The Developer has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement, performance of this Agreement. Upon the Effective Date, this Agreement shall constitute an obligation of the Developer.

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

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

(v) Default Under Other Agreements. There is no event, act or omission which constitute, or but for the passage of time or the giving of notice, or both, would constitute a breach, violation or default by the Developer under any agreement materially related to the development or operation of the Hotel Project, including but not limited to any partnership agreement, joint venture agreement, or loan agreement executed by the Developer that would materially and adversely affect the Developer or the Property or the Developer's ability to perform its obligations under this Agreement or to develop and operate the Hotel Project.

Until the expiration or earlier termination of this Agreement, the Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 7.1 not to be true, promptly give written notice of such fact or condition to the City. The representations and warranties contained in this Section 7.1 shall be true for any transferee assuming the obligations of this Agreement as of the date of the Transfer.

(b) The City: The City represents and warrants to the Developer as of the Effective Date, as follows:

(i) Authorization. The City has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement, performance of this Agreement. Upon the Effective Date, this Agreement shall constitute an obligation of the City.

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

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

#### Notices Demands and Communications

. Formal notices, demands, submittals, and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, delivered personally, or dispatched by certified mail, return receipt requested, or by reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the City and the Developer as set forth in Section 1.3 and Section 1.4, above. Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 7.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

#### Non-Liability of Officials, Employees and Agents

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

#### Enforced Delay

. In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; terrorist acts; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God or other deities; acts of the public enemy; epidemics; quarantine restrictions; moratoria, or other governmental restrictions; a condemnation event; freight embargoes; the filing of a lawsuit challenging any Governmental Approvals, the Maximum Hotel Incentive Amount, this Agreement, or the Developer's or the City's authority to perform their respective obligations hereunder (which shall be deemed to be a delay of the Parties); or court order; an act or omission of the other Party; or



any other similar causes (other than lack of funds of the Developer or the Developer's inability to finance the Hotel Project) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within thirty (30) days from the commencement of the cause. In no event shall the cumulative delays exceed twenty-four (24) months, unless otherwise agreed to by the Parties in writing.

#### Estoppel Certificates

. Any Party to this Agreement shall, promptly upon the written request of any other Party, execute, acknowledge, and deliver to or for the benefit of any other party a certificate certifying: (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the modifications), (ii) whether there are then existing any defaults on the part of the Party requesting the certificate known to the Party delivering the certificate in the performance or observance of any agreement, covenant or condition hereof to be performed or observed and whether any notice has been given of any default which has not been cured (and, if so, specifying the same), and (iii) such other matters as may be reasonably requested.

#### Inspection of Books and Records

. Not more than once per calendar year, the City has the right at all reasonable times during normal business hours and upon ten (10) Business Days' prior written notice to inspect on a confidential basis the books, records and all other documentation of the Developer pertaining to its obligations under this Agreement. Not more than once per calendar year, the Developer also has the right at all reasonable times during normal business hours and upon ten (10) Business Days' prior written notice to inspect the books, records and all other documentation of the City pertaining to its obligations under this Agreement.

#### Title of Parts and Sections

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

#### Applicable Law

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

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

#### Binding Upon Successors; Covenants to Run With Land

. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties; provided, however, that there

shall be no Transfer except as permitted in Article 4. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

The terms of this Agreement shall run with the land, and shall bind all successors in title to the Hotel Site until the termination of this Agreement, except that the provisions of this Agreement that are specified to survive termination of this Agreement shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Hotel Site, or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases the Hotel Site, or the applicable portion of the Hotel Site, from the requirements of this Agreement. Upon the termination of this Agreement, the City shall execute and deliver such documents in recordable form as are reasonably necessary to release the Property from the requirements of this Agreement.

#### Relationship of Parties

. The relationship of the Developer and the City shall not be construed as joint venture, equity venture, or partnership. The City neither undertakes nor assumes any responsibility or duty to the Developer or any third party with respect to the operation of the Hotel Project or the actions of the Developer. Except as the City may specify in writing, the Developer shall have no authority to act as an agent of the City or to bind the City to any obligation.

#### Entire Understanding of the Parties

. This Agreement, including the ancillary agreements attached to this Agreement, constitutes the entire understanding and agreements of the Parties with respect to the subject matter hereof. There are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein (or any such representations, understandings or ancillary covenants, undertakings or agreements are integrated in this Agreement).

#### Discretion Retained By City

. The City's approval, as called for in various sections of this Agreement, in no way limits the discretion of the City in the permit and approval process in connection with the Hotel Project.

#### Counterparts

. This Agreement may be executed in counterparts and multiple originals.

#### Amendments

. The Parties can amend this Agreement only by means of a writing signed by both Parties; provided, however, that any amendments, modifications, or supplements to this Agreement

required as a matter of tax law compliance for the City or the Developer shall be made as a matter of ministerial duty by the Parties.

#### Recordation of Hotel Operating Covenant

. The Developer and the City consent to the recordation of Hotel Operating Covenants against portions of the Hotel Site in the Office of the Los Angeles County Recorder, in the form of **Exhibit E** attached hereto and incorporated herein by this reference.

#### Standard of Approval

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

#### Indemnity: City

. Except for the negligence, fraud, or intentional or willful misconduct of the City or its vendors, contractors, subcontractors, or employees, the Developer undertakes and agrees to indemnify, hold harmless and defend the City, its Councilmembers, officers, employees, and agents, from and against all suits and causes of action, claims, losses, demands, and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation, damage due to any challenge to any portion of this Agreement, including but not limited to any challenge as to any ancillary agreement entered into pursuant to this Agreement. The Developer further undertakes and agrees to indemnify, hold harmless, and defend the City, its Councilmembers, officers, employees, and agents, from and against all suits and causes of action, claims, losses, demands, and expenses (collectively, a "Claim"), including, but not limited to, reasonable attorney's fees and costs of litigation, damage due to the death or personal injury of any person, or physical damage to any person's real or personal property, occurring during the course of construction of the Hotel Project by the Developer, including any construction related activities of the Developer on the Hotel Site, provided that the cause of such Claim arises solely and directly from any act or omission by the Developer. The Developer's indemnification obligation under this Section 7.18 shall include, but not be limited to, any litigation related to any challenges made to the City's action regarding the approval of this Agreement or the funding thereunder. In the event of an occurrence requiring indemnification, the Developer shall select qualified legal counsel to represent itself and any person to be indemnified in this Section 7.18.

#### Effectiveness of this Agreement

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

Section 7.19 Standard Provisions for City Contracts. Developer shall comply with all applicable provisions of the Standard Provisions for City Contracts, which is attached hereto as **Exhibit J** and incorporated herein by reference. The provisions of the body of this Agreement shall prevail over any non-statutory provision of the Standard Provisions for City Contracts should there be any inconsistency. The term "contract" as used in the Standard Provisions for City Contracts shall include this Agreement

Further Assurances

. Each Party hereto shall execute and deliver such further documents, papers and instruments and take such further action as is necessary, appropriate or helpful as the other Party may reasonably request in order to carry out the purposes, effect and intent of this Agreement.

Time of the Essence

. Time is of the essence for each provision of this Agreement of which time is an element.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

APPROVED AS TO FORM AND LEGALITY: **CITY:**

Michael N. Feuer, City Attorney

Executed this \_\_\_\_ day of \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Deputy/Assistant City Attorney

For: THE CITY OF LOS ANGELES

Eric Garcetti, Mayor  
By: \_\_\_\_\_

Date \_\_\_\_\_

ATTEST:

HOLLY WOLCOTT, City Clerk

By: \_\_\_\_\_  
Deputy City Clerk

Date \_\_\_\_\_

**DEVELOPER**

AECOM Capital Management, LLC,  
a Delaware limited liability company

By: AECOM Capital, Inc.,  
a Delaware corporation  
Its: sole member

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

City Business License Number:  
Internal Revenue Service ID Number:  
Said Contract is Number of City Contracts

**EXHIBIT A**

**LEGAL DESCRIPTION OF HOTEL SITE**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOT "A" OF TRACT NO. 2327, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 22, PAGE 56 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THE NORTHWESTERLY 12.5 FEET CONDEMNED FOR PUBLIC ALLEY PURPOSES BY FINAL DECREE OF CONDEMNATION, A CERTIFIED COPY OF WHICH WAS RECORDED IN BOOK 10513, PAGE 221, OF OFFICIAL RECORDS.

PARCEL 2:

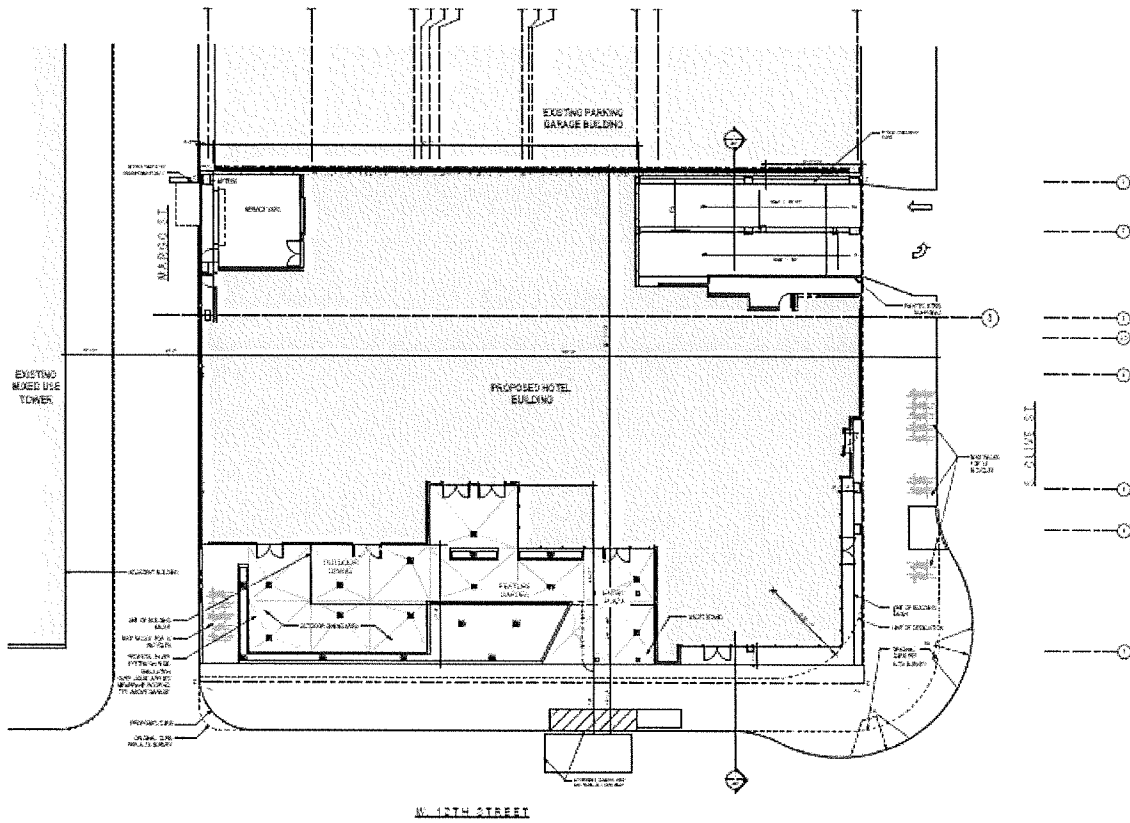
LOTS 1 AND 2 OF SUBDIVISION OF BLOCK 78 OF ORD'S SURVEY, IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 43, PAGE 74 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ANY PORTION THEREOF INCLUDED WITHIN THE LINES OF LOT "A" OF TRACT NO. 2327, AS PER MAP RECORDED IN BOOK 22, PAGE 56 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THE SOUTHEASTERLY 5 FEET OF SAID LAND CONDEMNED FOR PUBLIC STREET PURPOSES BY ANAL DECREE OF CONDEMNATION, A CERTIFIED COPY OF WHICH WAS RECORDED IN BOOK 7374, PAGE 205, OFFICIAL RECORDS.

APN: 5139-020-022

**EXHIBIT B**  
**HOTEL SITE MAP**



## EXHIBIT C

### COMMUNITY BENEFITS PROGRAM

The Hotel Project will provide public benefits to the City, consisting of the elements described below. The Developer's obligation to provide these benefits is hereby incorporated into the Hotel Development Incentive Agreement (the "Agreement") as if set forth therein.

1. The Developer will designate the City of Los Angeles as the "point of sale" for construction related purchases to maximize tax benefits.
2. Each Hotel will have at least a Three (3) Diamond Rating as described in the Agreement.
3. The Developer shall implement a Local Hire program.
4. The Developer shall provide an Accommodations Guarantee for the Hotel at the discretion of the LA Tourism & Convention Board and the 2028 Olympic and Paralympic Games.
5. The Developer entered into that certain Project Labor Agreement with the Los Angeles & Orange Counties Building and Construction Trades Council and The Local Unions and District Councils Signatory to the Agreement dated August 20, 2015, as assigned to Hunt Development Group.



## EXHIBIT D-1

### CONTRACT PROVISIONS FOR MAJOR CONTRACTS

#### Construction Sales and Use Tax Insert for Major Contractors and Subcontractors

Contractor shall comply with the provisions of this Section \_\_\_\_\_ to provide that local sales and use taxes generated in connection with all eligible purchases of materials, fixtures, furniture, machinery, equipment and supplies for the work to be performed hereunder are allocated directly to the City of Los Angeles (the "City"). In particular, Contractor shall:

- (a) Apply for a jobsite sub-permit with the California State Board of Equalization ("CBOE") prior to the purchase of any materials, fixtures, furniture, machinery, equipment and supplies for the work to be performed hereunder (a "Jobsite Sub-Permit"). Upon the request of Owner, Contractor shall furnish a copy of its application for Jobsite Sub-Permit. Promptly following Contractor's receipt of a Jobsite Sub-Permit from the CBOE, Contractor shall provide Owner and the City with a copy of such Jobsite Sub-Permit.
- (b) If Contractor is a seller and/or retailer of tangible items, apply for a seller's permit from the CBOE and provide the City with a copy of such seller's permit when it is received by Contractor from the CBOE.
- (c) Incorporate a "transfer of title clause" in contracts for the purchase of materials and fixtures to be used in connection with the work to be performed hereunder and (ii) issue resale certificates to Contractor's suppliers, whether based in state or out of state, when purchasing materials and fixtures. The "transfer of title clauses" in such purchase contracts shall (A) explicitly provide for the transfer of title to the materials prior to the time materials are installed, and (B) separately state the price of materials, exclusive of the charge for installation.
- (d) Provide the Owner and the City, upon the reasonable request of either, with:
  - (A) a list Major Contractors and Subcontractors in connection with the work to be performed hereunder, which list shall include (unless such information requires the disclosure of confidential information, trade secrets, or information that impairs the Developer's ability to gain pricing advantages relative to materials and services):
    - i. Name of subcontractor
    - ii. Address and telephone number of headquarters or office
    - iii. Name and telephone number of contact person
    - iv. Estimated value of the contract
    - v. Scope of Work

- (B) A copy of the first page and signature page of the subcontract
- (C) Such additional information as may be reasonably requested in writing by the City to ensure compliance with the foregoing provisions, including without limitation copies of the Contractor's sales and use tax returns and schedules of purchases of materials, fixtures, equipment, and machinery.

CONTRACTOR ACKNOWLEDGES AND AGREES THAT THE CITY IS A THIRD PARTY BENEFICIARY OF THE FOREGOING PROVISIONS AND THAT CONTRACTOR'S AGREEMENT TO COMPLY WITH SUCH PROVISIONS FOR THE BENEFIT OF THE CITY IS A MATERIAL INDUCEMENT TO OWNER IN ENTERING INTO THIS CONTRACT. CONTRACTOR FURTHER AGREES THAT ANY FAILURE BY CONTRACTOR TO COMPLY WITH THE FOREGOING PROVISIONS MAY BE DIRECTLY ENFORCED BY THE CITY. WITHOUT LIMITING THE REMEDIES OR OWNER OR THE CITY, THE CITY SHALL HAVE THE RIGHT TO SEEK, AS DAMAGES, THE FULL AMOUNT OF ANY SALES AND USE TAXES NOT ALLOCATED TO THE CITY AS A RESULT OF CONTRACTOR'S FAILURE TO COMPLY WITH THE FOREGOING PROVISIONS, WITHOUT REGARD TO WHETHER CONTRACTOR OR ITS SUBCONTRACTORS PAID SUCH SALES AND USE TAX, TOGETHER WITH INTEREST AT THE LOWER OF 10% OR THE HIGHEST INTEREST RATE ALLOWED BY LAW.

## EXHIBIT D-2

### **CONTRACT PROVISIONS FOR OTHER CONTRACTS**

Contractor shall comply with the provisions of Section 3.4(c) to provide that local sales and use taxes generated in connection with all eligible purchases of materials, fixtures, furniture, machinery, equipment and supplies for the work to be performed hereunder are allocated directly to the City of Los Angeles (the "City"). In particular, Contractor shall:

- (a) If Contractor makes any purchases of materials and fixtures amounting to \$500,000 or more (but less than \$5,000,000) from an out-of-state retailer in connection with the work performed hereunder and such materials or fixtures are shipped directly to Contractor from a point outside of California, Contractor shall state the jobsite address (i.e. in the City of Los Angeles) in Schedule C of its sales tax return, and
- (b) If Contractor makes any purchases of furniture totaling \$500,000 or more (but less than \$5,000,000) from a retailer at an out-of-state location and has that property shipped directly to them from a point outside of California, Contractor shall state the jobsite address (i.e. in the City of Los Angeles) in Schedule C of its sales tax return.

Contractor acknowledges and agrees that the City is a third party beneficiary of the foregoing provisions and that Contractor's agreement to comply with such provisions for the benefit of the City is a material inducement to Owner in entering into this contract. Contractor further agrees that any failure by Contractor to comply with the foregoing provisions may be directly enforced by the City.

EXHIBIT E

FORM OF HOTEL OPERATING COVENANT

HOTEL OPERATING COVENANT

NO FEE DOCUMENT

RECORDING REQUESTED BY	)
AND WHEN RECORDED RETURN TO:	)
	)
THE CITY OF LOS ANGELES	)
	)
	)
	)
Los Angeles, CA 90012	)
Attn: _____	)

Assessor's Parcel Numbers:

**HOTEL OPERATING COVENANTS AFFECTING REAL PROPERTY**

These HOTEL OPERATING COVENANTS AFFECTING REAL PROPERTY ("Covenant Agreement") are made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between The City of Los Angeles (the "City"), and \_\_\_\_\_, a \_\_\_\_\_ ("Owner").

RECITALS

A. The City wishes to promote the economic development of the Los Angeles Sports Entertainment District and surrounding areas, including the development of new high quality hotels to serve the planned expansion of the Los Angeles Convention Center.

B. Owner is the owner of an approximately \_\_\_\_\_-square-foot site located at \_\_\_\_\_ **[INSERT HOTEL ADDRESS]** (the "Property" or "Hotel Site"), which is depicted on the Site Map attached as **Exhibit A** and legally described in **Exhibit B**.

C. Owner desires to develop a hotel on the Property consisting of approximately \_\_\_\_\_ guestrooms (the "Hotel"). The Hotel would also include retail establishments and restaurants.

D. The City and Owner have entered into a Hotel Development Incentive Agreement (the "HDIA"), City Contract No. \_\_\_\_\_, which provides in part that the City will provide \_\_\_\_\_ (\$ \_\_\_\_\_) in net present value back to the Hotel Completion Date (as

defined in the HDIA), discounted at a rate of ten percent (10%) over the duration of the City Financial Assistance Term (as defined in the HDIA) in financial assistance for the development of the Hotel and two other hotels.

F. As a condition of the City's incentives described above, Owner shall execute, among other things, the HDIA for the Hotel, and this Covenant Agreement, which shall be recorded against the Property. This instrument is intended to secure the City's continuing interest in the development of the Hotel in accordance with the HDIA.

G. The purpose of this Covenant Agreement is to regulate and restrict the development, construction, operation, ownership, and management of the Property. The covenants in this Covenant Agreement are intended to run with the land and be binding on Owner and Owner's successors for the full term of this Covenant Agreement.

NOW THEREFORE, IN CONSIDERATION of the aforesaid Recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner and City hereby agree as follows:

## **I. DEFINITIONS**

1.1 "**CITY**" is the City of Los Angeles, a municipal corporation, and its officers, officials, directors, employees, agents and authorized representatives.

1.2 "**HDIA**" means that certain Hotel Development Incentive Agreement dated as of \_\_\_\_\_, 2018, by and between the Owner and the City, which provides for, among other things, the development on the Hotel on the Property.

1.3 "**HOTEL**" shall have the meaning set forth in Recital C.

1.4 "**IMPROVEMENTS**" shall mean all improvements to be constructed by Owner on the Hotel Site as part of the Hotel.

1.5 "**OWNER**" is \_\_\_\_\_, a \_\_\_\_\_, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

1.6 "**PROPERTY**" or "**HOTEL SITE**" is defined in Recital B, depicted on Exhibit A and legally described on Exhibit B.

1.7 "**ROOM BLOCK AGREEMENT**" means that certain Room Block Agreement dated as of \_\_\_\_\_, 20\_\_\_\_, by and between Owner and \_\_\_\_\_, which provides that Owner and/or the Hotel Operator (as defined in the HDIA) shall set aside and make available a certain number of hotel rooms for use by the LACC and for the 2028 Olympic and Paralympic Games in accordance with the procedures set forth in the Room Block Agreement and a separate Accommodations Guarantee.

## **II. OWNER'S OBLIGATIONS**

2.1 **COMPLIANCE WITH HDIA.** Owner shall at all times comply with all of the terms, conditions, covenants, and provisions of the HDIA, including the Room Block Agreement and Accommodations Guarantee, with respect to the construction, development, redevelopment, leasing, operation, and maintenance of the Hotel in good repair and working order and in a neat, clean, orderly, sanitary, and safe condition, making all repairs and replacements necessary to comply herewith so as to achieve and maintain no less than a Three (3) Diamond Rating.

2.2 **TERM OF AGREEMENT.** This Covenant Agreement shall commence upon execution and delivery hereof by both parties and shall remain in full force and effect until the date which is the earlier of (a) twenty-five (25) years, commencing on the date on which the City issues a temporary certificate of occupancy or certificate of occupancy (if no temporary certificate of occupancy is issued) with respect to the Hotel or (b) a termination by the City of the HDIA pursuant to Section 6.4 of the HDIA; provided, however, that Owner shall not be in default under this Covenant Agreement if the Hotel is damaged or destroyed or another force majeure event described in Section 7.4 of the HDIA occurs that precludes the operation of the Hotel and Owner takes commercially reasonable steps to repair and restore the Hotel or to otherwise address the force majeure event within a reasonable period of time. Failure to record this Covenant Agreement shall not relieve Owner of any of the obligations specified herein.

2.3 **NONDISCRIMINATION.** Owner covenants and agrees for itself, its successors and its assigns in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person or persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

2.4 **COMPLIANCE WITH LAW.** Owner shall at all times comply with all applicable local, state and federal laws and regulations relating to the Hotel. Without limiting the generality of the foregoing, the Hotel shall be developed and the Improvements shall be maintained, for the duration of this Covenant Agreement, to comply with all applicable federal, state and local disabled and handicapped access requirements, including, without limitation the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section, 4450, et seq., Government Code Section, 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

### **III. GENERAL PROVISIONS**

3.1 **TRANSFER AND ENCUMBRANCE OF PROPERTY.** Except for Permitted Transfers (as defined in the HDIA), during the term of this Covenant Agreement, Owner shall not make or permit any Transfer (as defined in the HDIA) of the Property or any part thereof, without the prior written consent of the City, which consent shall be not be unreasonably withheld, conditioned or delayed, and any such Transfer shall comply with the HDIA.

3.2 **GOVERNING LAW.** This Covenant Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

3.3 **TIME.** Time is of the essence in this Covenant Agreement.

3.4 **BINDING UPON SUCCESSORS.** All provisions of this Covenant Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of Owner and the City, and shall run with the land for the term of this Covenant Agreement. Any successor-in-interest to Owner and any purchaser or transferee of the Property shall be subject to all of the duties and obligations imposed on Owner under this Covenant Agreement for the full term of this Covenant Agreement. The term "Owner" as used in this Covenant Agreement shall include all such assigns, successors-in-interest, and transferees.

3.5 **OTHER AGREEMENTS.** Owner represents that it has not entered into any agreements that would restrict or compromise its ability to comply with the terms of this Covenant Agreement. Owner shall not enter into any agreements that are inconsistent with the terms of this Covenant Agreement without an express waiver by the City in writing.

3.6 **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Covenant Agreement must be in writing, and shall be made only if executed by both Owner and the City.

3.7 **COUNTERPARTS.** This Covenant Agreement may be executed in counterparts and multiple originals.

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

(signature page follows)

IN WITNESS WHEREOF, the City and the Owner have caused this Covenant Agreement to be executed by their duly authorized representatives.

**CITY:**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2018

For: THE CITY OF LOS ANGELES

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

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

Its: \_\_\_\_\_

APPROVED AS TO FORM:  
MICHAEL N. FEUER, City Attorney

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

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

**OWNER:**

\_\_\_\_\_, a  
\_\_\_\_\_

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_

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

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

Its: \_\_\_\_\_



**EXHIBIT F****PREAPPROVED BRANDS AND OPERATORS**

Ace Hotel Group	AC Hotels by Marriott	Aqua Hotels & Resorts
Affinia	aloft Hotels	Ayres
Alila Hotels & Resorts	APA Hotel	Best Western Executive Residency
Autograph Collection	Ascend Collection	Best Western Plus
Bridgestreet	Aston Hotels	Boarders Inn & Suites
Canopy by Hilton	Best Western Premier	Boulders Inn & Suites
Club Med	BW Premier Collection	BW Signature Collection
Club Quarters	Cambria hotel & suites	Centerstone Hotels
Curio Collection by Hilton	Canad Inns	Chase Suites
Disney's Deluxe Resorts	Citadines	Clarion
Dolce Hotels & Resorts	citizenM Hotels	Cobblestone
Dream Hotels	Coast Hotels USA	Comfort Inn
Embassy Suites by Hilton	Courtyard	Comfort Suites
Fireside Inn & Suites	Crowne Plaza	Country Inn & Suites
Gaylord Entertainment	Dazzler Hotels	Disney's Value Resorts
Graduate Hotels	Delta Hotels	DoubleTree Club
Hard Rock	Disney's Moderate Resorts	Drury Inn
Hilton	DoubleTree by Hilton	Drury Inn & Suites
Hilton Grand Vacations	Eaton	Drury Plaza Hotel
Hotel Indigo	element	Fairfield Inn
Hotel Nikko	Eurostars Hotel	Glo Hotel
The Hoxton	EVEN Hotels	GrandStay Hotels
Hyatt	Four Points by Sheraton	Hampton by Hilton
Hyatt Centric	Grand America Hotels & Resort	Holiday Inn
Hyatt Regency	Great Wolf Lodge	Holiday Inn Express Hotel
Instinct Hotel	Hilton Garden Inn	Home2 Suites by Hilton
Joie De Vivre	Homewood Suites by Hilton	Isle of Capri
Kimpton	Hotel RL	La Quinta Inns & Suites
Le Meridien	Hyatt House	Lexington
Lyric Suites	Hyatt Place	Mama Shelter
Magnolia Hotel	Iberostar Hotels & Resorts	MOXY
Margaritaville	Innside by Melia	My Place Hotels
Marriott	Larkspur Landing	OHANA Hotels
Marriott Conference Center	Legacy Vacation Club	Oxford Suites
Millennium Hotels	Mantra	Park Inn
Mint House	Melia	Red Lion Hotel
New Otani Hotels	Miyako Hotels	Shilo Inn
Oakwood Apartments	NH Hotels	Sonesta ES Suites
Omni	Novotel Hotels	The Red Collection
Outrigger Resorts	Prince Hotels	TownePlace Suites

Pan Pacific Hotel Group	Radisson	Trademark Hotel Collection
Pestana	Residence Inn	Tryp by Wyndham
Pullman	RIU Hotel	Wyndham Garden Hotel
Radisson Blu	Room Mate Hotels	Yotel
Radisson RED	Sandman Signature	
Renaissance	Sonesta Hotel	
Sheraton Hotel	Springhill Suites	
Silver Cloud	Staybridge Suites	
St. Giles Hotels	Stoney Creek	
Starhotels	Tapestry Collection by Hilton	
Swissotel	Travel Inn Hotel	
Time Hotels	Vacation Condos by Outrigger	
Tribute Portfolio	Vib	
Virgin Hotels	Westmark	
Warwick Hotels	Wyndham Hotels	
Westin	Wyndham Vacation Resort	
Wyndham Grand Hotels		

**EXHIBIT G**

**FORM OF ROOM BLOCK AGREEMENT**

## ROOM BLOCK AGREEMENT

This Room Block Agreement (this "Agreement") dated \_\_\_\_\_, 2019, is entered into by and between AECOM Capital (the "Owner"), and the City of Los Angeles a municipal corporation (the "City"). The City and the Owner are sometimes individually referred to in this Agreement as a "Party" and collectively as the "Parties."

### RECITALS

A. Owner is constructing an approximately 258 room hotel on a one block site located at 1155 South Olive Street, Los Angeles CA 90015 (the "Hotel"). Pursuant to a Hotel Management Agreement, the Hotel will be managed by an hotel management company (the "Operator") to be identified at a later date.

B. Owner is party to a Hotel Development Incentive Agreement dated July \_\_\_\_, 2019 (the "Hotel Development Incentive Agreement"), with the City of Los Angeles, pursuant to which the City has agreed to provide financial assistance to Owner in connection with the construction of the Hotel.

C. Concurrently with the execution of the Hotel Development Incentive Agreement, and as partial consideration for the benefits conferred upon Owner therein, the Parties are entering into this Agreement to preserve the availability of certain rooms at the Hotel, in order to promote the use of the Hotel and the Los Angeles Convention Center ("LACC") by groups for meetings, tradeshows, conferences and conventions.

D. Definitions. Capitalized terms not otherwise defined in this Agreement shall have the following meanings:

**Los Angeles Convention and Tourism Board (LATCB)** - The City's agent with regard to long-term bookings of the Los Angeles Convention Center (LACC).

**Protected Room Inventory** - Number of rooms which will be controlled by the LATCB and set aside by the Operator of the Hotel for the purpose of having rooms available to sell to conventions.

**Operator Controlled Inventory** - Hotel inventory not subject to the provisions of this Hotel Development Incentive Agreement and are considered "Free-Sell" by Operator.

**Booking Window** - The period of time between the request for rooms and the first day of the convention.

**Released Inventory (Free-Sell Calendar)** - Rooms returned to Operator Control Inventory by LATCB due to low potential for Projected Room Activity.

**Room Block Compliance** - Number of Convention Rooms for which maximum Protected Room Inventory was requested by LATCB.

All other capitalized, but undefined terms used herein shall have the meaning set forth in the Hotel Development Incentive Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Term.** The term of this Room Block Agreement shall commence upon execution and delivery hereof by both parties and shall remain in full force and effect until the date on which the Hotel Development Incentive Agreement terminates pursuant to the terms thereof (the "Term").

2. **Room Block.** At all times during the Term of this Agreement, except during the period that the Accommodation Guarantee ("Accommodation Guarantee") is in effect with the Los Angeles Organizing Committee for the Olympic and Paralympic Games 2028 "**LAOC**"), Operator shall reserve for the LATCB's use a block of rooms (the "Room Block") to be used to induce conventioners to use the LACC. The block of rooms to be protected for LATCB's use are defined in Section 4 below. The Owner has the right to set room rates during the Term of this Agreement, at its discretion, subject to any restrictions set forth in the Accommodation Guarantee.

3. **Free Sell.** LATCB recognizes that activity at LACC runs in variable demand cycles. For that reason, LATCB will release on a semi-annual basis a "Free-Sell" calendar to Operator for rooms that it does not believe it can sell for use by conventioners at LACC. After release by LATCB, these rooms will be considered under the control of the Operator as Released Inventory. Additionally, should Operator be aware of a unique group booking opportunity Operator can petition LATCB in writing for the return of "Protected Room Inventory".

4. **Booking Period.** The Room Block inventory during which the operator must protect rooms for LATCB's use will vary depending upon the booking window between the date of the request submitted and the agreed upon cut-off date for the arrival of the convention. The chart below defines the Protected Room Inventory and Booking Window parameters.

**Room Block Protection Schedule**

<b>Number of Years Prior to the Commencement of the Convention</b>	<b>Protected Room Inventory</b>
1 year	0% of Protected Room Inventory
2 years	20% of Protected Room Inventory
3 years	40% of Protected Room Inventory
4 years	60% of Protected Room Inventory
5 years	80% of Protected Room Inventory

5. **Room Block Request.** The LATCB must submit all requests for Room Block days for a specific group ("Room Block Request") in writing to Operator and Owner. Operator may

request that each Room Block Request be supported by a documented history of the group's history for the same meeting for the two most recent meetings.

6. **Hotel Food and Beverage.** Operator may not require any group subject to a Room Block Request to meet Operator's food and beverage minimums and/or meeting room rental minimums in order for the group to have access to the Protected Room Inventory as outlined in this Agreement in Section 4 above.

7. **Operator's Response.** Operator shall have five (5) business days from its receipt of the Room Block Request to respond to the Room Block Request in writing, in the form of a "Room Block Proposal."

8. **Acceptance.** Upon receipt of an acceptable Room Block Proposal, LATCB will inform the respective convention group to contract the Room Block with the Operator. If the group and the Operator fail to sign a convention contract within sixty (60) days of LATCB's receipt of the Room Block Proposal from Operator for an event less than 12 months prior to the request, the Room Block Proposal shall be deemed withdrawn. If the group and the Operator fail to sign a convention contract within one hundred eighty days (180) days of LATCB's receipt of the Room Block Proposal from Operator for an event greater than 12 months but less than 36 months prior to the request, the Room Block Proposal shall be deemed withdrawn. If the group and the Operator fail to sign a convention contract within three hundred sixty five days (365) days of LATCB's receipt of the Room Block Proposal from Operator for an event greater than 36 months but less than 60 months the Room Block Proposal shall be deemed withdrawn. The period of time for the group and the Operator to sign Convention contracts for Room Block Proposals that are in excess of 60 months before the first day of the event shall be negotiated to determine a reasonable period of time to execute the contract.

9. **Renovation.** In connection with its operations of the Hotel, either Owner or Operator may be permitted under the Management Agreement to periodically renovate the Hotel. Owner or Operator may, provided Owner or Operator has given advance written notice to the LATCB at least one (1) year prior to the date on which said renovations shall be commenced, during the course of said renovations, decrease the Protected Room Inventory pursuant to Section 4 above by up to 40%; provided, however, that Owner or Operator shall make reasonable efforts to complete such renovations as quickly as practical (to the extent funding is available) and to accommodate customer requirements for events at the LACC to the extent practical during the course of said renovations.

10. **Notice and Cure.** Upon a material default by any party hereto (a "Breaching Party") in the performance of the terms and conditions of this Agreement, the non-breaching party (or parties) shall first notify such Breaching Party in writing of its purported breach or failure, giving such Breaching Party thirty (30) days from receipt of such notice to cure such breach or failure. If such Breaching Party does not cure the default within such thirty-day period (or if the default is not reasonably susceptible of being cured within such thirty-day period, such Breaching Party fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the non-breaching party (or parties) shall be afforded the remedies under the Hotel Development Incentive Agreement.

11. **Olympics 2028.** Owner will enter into the Accommodation Guarantee with the LAOC for the needs and requirements of the LA 2028 Organizing Committee for the 2028 Olympic and Paralympic Games.

12. **Annual Audit.** An “Annual Audit” of the Room Block Agreement for the purpose of determining compliance to this agreement is required at the end of each Fiscal Year. This annual audit will be paid for by the City and conducted by a third party. If it is determined by the audit that the Owner/Operator has failed to comply fully with providing the required number of rooms for all applicable Room Block Requests in the audited year, then City shall seek a remedy as provided in the Hotel Development Incentive Agreement. The Annual Audit will focus on Operator’s obligation to provide the room pursuant to the Proposal, however, the Operator is not responsible for occupancy of rooms provided in the Protected Room Block.

13. **Notices.** Formal notices, demands, submittals and communications among Owner, Operator, the City, and LATCB shall be sufficiently given if, and shall not be deemed given unless, delivered personally, or dispatched by certified mail, return receipt requested, or by reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of Owner and the City as follows:

City: City of Los Angeles  
Office of the City Administrative Officer  
City Hall East  
200 North Main Street, Suite 1500  
Los Angeles, CA 90012  
Attention: City Administrative Officer

City of Los Angeles  
Economic and Workforce Development Department  
1200 West Seventh Street, 6<sup>th</sup> Floor  
Los Angeles, CA 90017  
Attention: General Manager

With a copy to:

City of Los Angeles  
Office of the Chief Legislative Analyst  
Los Angeles City Hall  
200 North Spring Street, Suite 255  
Los Angeles, CA 90012  
Attention: Chief Legislative Analyst

With a copy to:

Office of the Los Angeles City Attorney  
City Hall East  
200 North Los Angeles Street, Suite 800  
Los Angeles, CA 90012  
Attention: General Counsel/Economic Development

Owner: AECOM Capital  
1999 Avenue of the Stars, Suite 2600  
Los Angeles, CA 90067  
Attention: Warren Wachsberger

With a copy to:

Holland & Knight LLP  
400 S. Hope Street, 8<sup>th</sup>  
Los Angeles, CA 90071  
Attention: Douglas Praw, Esq.

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 10. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

14. **Liability of Officials, Officers, Directors, Employees and Agents.** No member, officer, director, official, employee or agent of any party shall be personally liable to any other party, or any successor in interest, in the event of any default or breach hereunder or for any amount which may become due to such other party or on any obligation under the terms of this Agreement.

15. **Enforced Delay.** In addition to specific provisions of this Agreement, performance by any Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of; acts of the public enemy; terrorist acts; epidemics; quarantine restrictions; moratoria, or other governmental restrictions; freight embargoes; the filing of a lawsuit challenging the Addendum to the Final Environmental Impact Report, any Governmental Approval, this Agreement, or any Party's authority to perform their respective obligations hereunder (which shall be deemed to be a delay of the Parties); or court order; an act or omission of the other Parties hereto; or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within thirty (30) days from the commencement of the cause. In no event shall the cumulative delays exceed twenty-four (24) months, unless otherwise agreed to by all Parties in writing. Capitalized terms used in this Section 15 and not otherwise defined shall have the meanings ascribed to them in the Development Agreement.

16. **Assignment.** Section 3.5 of the Hotel Development Incentive Agreement requires the Owner to enter into this Agreement. Accordingly, the transfer and assignment obligations of the Owner set out in this Article IV of the Hotel Development Incentive Agreement shall apply to this Agreement. Any assignment of the Hotel Development Incentive Agreement shall apply to this Agreement and cause this Agreement to follow the Hotel Development Incentive Agreement so that the obligated party under this Agreement shall be the same as Owner's successor(s) under the Hotel Development Incentive Agreement. No further consent or approval shall be required pursuant to this Agreement, if the Transfer is otherwise permitted under the Hotel Development Incentive Agreement.



17. **Applicable Law.** This Agreement shall be interpreted under and pursuant to the laws of the State of California.

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

19. **Counterparts.** This Agreement may be executed in counterparts and multiple originals.

20. **Amendments.** The Parties can amend this Agreement only by means of a writing signed by all the Parties.

21. **Effect.** This Agreement is intended to be a legally binding agreement enforceable against the Parties in accordance with the terms and conditions set forth herein.

22. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

[Signature pages to follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

APPROVED AS TO FORM AND LEGALITY: **CITY:**

Michael N. Feuer, City Attorney

Executed this \_\_\_\_ day of \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Deputy/Assistant City Attorney

For: THE CITY OF LOS ANGELES

Eric Garcetti, Mayor

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

Date \_\_\_\_\_

ATTEST:

HOLLY WOLCOTT, City Clerk

By: \_\_\_\_\_  
Deputy City Clerk

Date \_\_\_\_\_

**OWNER**

AECOM Capital Management, LLC,  
a Delaware limited liability company

By: AECOM Capital, Inc.,  
a Delaware corporation

Its: sole member

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

**EXHIBIT H**

**SCHEDULE OF PERFORMANCE**

<b>Milestone</b>	<b>Date</b>
Issuance of Building Permit	December 15, 2020
Groundbreaking	March 15, 2021
Construction Completion	July 15, 2023
Certificate of Occupancy	January 15, 2024
Hotel Opening	February 15, 2024

**EXHIBIT I**

**SCHEDULE OF PROJECTED HOTEL INCENTIVE PAYMENTS**

<b>Years After Completion Date</b>	<b>Projected Hotel Incentive Payments <sup>1</sup></b>
1	\$2,400,000
2	\$2,689,000
3	\$2,813,000
4	\$2,869,000
5	\$2,927,000
6	\$3,000,000
7	\$3,075,000
8	\$3,152,000
9	\$3,230,000
10	\$2,320,796
<b>TOTAL</b>	<b>\$28,475,796</b>
<b>TOTAL (NPV @ 10%)</b>	<b>\$17,301,000</b>

<sup>1</sup> Per the Hotel Development Incentive Agreement, the Maximum Hotel Incentive Amount is \$17,301,000 in net present value back to the Hotel Completion Date, discounted at the rate of 10 percent.

**EXHIBIT J**

**STANDARD CONTRACT PROVISIONS**

# STANDARD PROVISIONS FOR CITY CONTRACTS

## TABLE OF CONTENTS

PSC-1	<u>Construction of Provisions and Titles Herein</u> .....	1
PSC-2	<u>Applicable Law, Interpretation and Enforcement</u> .....	1
PSC-3	<u>Time of Effectiveness</u> .....	1
PSC-4	<u>Integrated Contract</u> .....	2
PSC-5	<u>Amendment</u> .....	2
PSC-6	<u>Excusable Delays</u> .....	2
PSC-7	<u>Waiver</u> .....	2
PSC-8	<u>Suspension</u> .....	3
PSC-9	<u>Termination</u> .....	3
PSC-10	<u>Independent Contractor</u> .....	5
PSC-11	<u>Contractor's Personnel</u> .....	5
PSC-12	<u>Assignment and Delegation</u> .....	6
PSC-13	<u>Permits</u> .....	6
PSC-14	<u>Claims for Labor and Materials</u> .....	6
PSC-15	<u>Current Los Angeles City Business Tax Registration Certificate Required</u> ....	6
PSC-16	<u>Retention of Records, Audit and Reports</u> .....	6
PSC-17	<u>Bonds</u> .....	7
PSC-18	<u>Indemnification</u> .....	7
PSC-19	<u>Intellectual Property Indemnification</u> .....	7
PSC-20	<u>Intellectual Property Warranty</u> .....	8
PSC-21	<u>Ownership and License</u> .....	8
PSC-22	<u>Data Protection</u> .....	9

**TABLE OF CONTENTS (Continued)**

**PSC-23** Insurance ..... 9

**PSC-24** Best Terms..... 10

**PSC-25** Warranty and Responsibility of Contractor..... 10

**PSC-26** Mandatory Provisions Pertaining to Non-Discrimination in Employment..... 10

**PSC-27** Child Support Assignment Orders..... 10

**PSC-28** Living Wage Ordinance ..... 11

**PSC-29** Service Contractor Worker Retention Ordinance ..... 11

**PSC-30** Americans with Disabilities Act..... 11

**PSC-31** Contractor Responsibility Ordinance..... 11

**PSC-32** Business Inclusion Program..... 11

**PSC-33** Slavery Disclosure Ordinance..... 12

**PSC-34** First Source Hiring Ordinance..... 12

**PSC-35** Local Business Preference Ordinance..... 12

**PSC-36** Iran Contracting Act ..... 12

**PSC-37** Restrictions on Campaign Contributions in City Elections..... 12

**PSC-38** Contractors' Use of Criminal History for Consideration of Employment Applications..... 13

**PSC-39** Limitation of City's Obligation to Make Payment to Contractor ..... 13

**PSC-40** Compliance with Identity Theft Laws and Payment Card Data Security Standards..... 13

**PSC-41** Compliance with California Public Resource Code 5164 ..... 14

**PSC-42** Possessory Interests Tax..... 14

**PSC-43** Confidentiality..... 14

**Exhibit 1** Insurance Contractual Requirements..... 15

## STANDARD PROVISIONS FOR CITY CONTRACTS

### **PSC-1.** Construction of Provisions and Titles Herein

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

### **PSC-2.** Applicable Law, Interpretation and Enforcement

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

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

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

### **PSC-3.** Time of Effectiveness

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

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



- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

**PSC-4. Integrated Contract**

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

**PSC-5. Amendment**

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

**PSC-6. Excusable Delays**

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

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

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

**PSC-7. Waiver**

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

**PSC-8. Suspension**

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

**PSC-9. Termination**

A. Termination for Convenience

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

B. Termination for Breach of Contract

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

coverage and Contractor's obligation to suspend performance of services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

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

abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

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

**PSC-10. Independent Contractor**

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

**PSC-11. Contractor's Personnel**

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

**CONTRACTOR** shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors,

**CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

**PSC-12. Assignment and Delegation**

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

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

**PSC-13. Permits**

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

**PSC-14. Claims for Labor and Materials**

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

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

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

**PSC-16. Retention of Records, Audit and Reports**

**CONTRACTOR** shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration

of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

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

**PSC-17. Bonds**

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

**PSC-18. Indemnification**

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

**PSC-19. Intellectual Property Indemnification**

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

this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

**PSC-20. Intellectual Property Warranty**

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

**PSC-21. Ownership and License**

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

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

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

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

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract

such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

**PSC-22. Data Protection**

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

**PSC-23. Insurance**

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



**PSC-24. Best Terms**

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

**PSC-25. Warranty and Responsibility of Contractor**

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

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

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

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

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

**PSC-27. Child Support Assignment Orders**

**CONTRACTOR** shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal

employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-28. Living Wage Ordinance**

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

**PSC-29. Service Contractor Worker Retention Ordinance**

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

**PSC-30. Americans with Disabilities Act**

**CONTRACTOR** shall comply with the Americans with Disabilities Act, 42 U.S.C. Section 12101 *et seq.*, and its implementing regulations.

**PSC-31. Contractor Responsibility Ordinance**

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

**PSC-32. Business Inclusion Program**

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

**PSC-33. Slavery Disclosure Ordinance**

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

**PSC-34. First Source Hiring Ordinance**

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

**PSC-35. Local Business Preference Ordinance**

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

**PSC-36. Iran Contracting Act**

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

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

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

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

You are a subcontractor on City of Los Angeles Contract

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

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

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

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

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

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

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

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

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

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

**PSC-42. Possessory Interests Tax**

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

**PSC-43. Confidentiality**

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

## EXHIBIT 1

### INSTRUCTIONS AND INFORMATION ON COMPLYING WITH CITY INSURANCE REQUIREMENTS

(Share this information with your insurance agent or broker)

1. **Agreement/Reference** All evidence of insurance should identify the nature of your business with the **CITY**. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the **types of coverage and minimum dollar amounts** specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) as determined in writing by the CAO-RM.

2. **When to submit** Normally, no work may begin until a **CITY** insurance certificate approval number ("CA number") has been obtained, so insurance documents should be submitted as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.

Submitting your documents. **Track4LA®** is the **CITY'S** online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used by insurance brokers and agents as they submit client insurance certificates directly to the **CITY**. It uses the standard insurance industry form known as the **ACORD 25 Certificate of Liability Insurance** in electronic format. Track4LA® advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **Track4LA®** at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Insurance industry certificates other than the ACORD 25 may be accepted, however *submissions other than through Track4LA® will significantly delay the insurance approval process as documents will have to be manually processed.* **CONTRACTOR must provide CITY** a thirty day notice of cancellation (ten days for non-payment of premium) AND an Additional Insured Endorsement naming the **CITY** an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the **CITY** is an automatic or blanket additional insured. An endorsement naming the **CITY** an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Completed **Insurance Industry Certificates other than ACORD 25 Certificates** are sent electronically to [CAO.insurance.bonds@lacity.org](mailto:CAO.insurance.bonds@lacity.org).

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law.
- Professional Liability insurance.

Verification of approved insurance and bonds may be obtained by checking **Track4LA®**, the **CITY'S** online insurance compliance system, at <http://track4la.lacity.org>.

4. **Renewal** When an existing policy is renewed, have your insurance broker or agent submit a new Acord 25 Certificate or edit the existing Acord 25 Certificate through **Track4LA®** at <http://track4la.lacity.org>.

5. **Alternative Programs/Self-Insurance** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the **CITY** has reviewed the relevant audited financial statements. To initiate a review of your program, you should complete the Applicant's Declaration of Self Insurance form (<http://cao.lacity.org/risk/InsuranceForms.htm>) to the CAO-RM for consideration.

6. **General Liability** insurance covering your operations (and products, where applicable) is required whenever the **CITY** is at risk of third-party claims which may arise out of your work or your presence or special event on City premises. **Sexual Misconduct** coverage is a required coverage when the work performed involves minors. **Fire Legal Liability** is required for persons occupying a portion of **CITY** premises. Information on two **CITY** insurance programs, the SPARTA program, an optional source of low-cost insurance which meets the most minimum requirements, and the Special Events Liability Insurance Program, which provides liability coverage for short-term special events on **CITY** premises or streets, is available at ([www.2sparta.com](http://www.2sparta.com)), or by calling (800) 420-0555.

7. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on **CITY** premises; it is not required for simple commuting unless **CITY** is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

8. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

9. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement (<http://cao.lacity.org/risk/InsuranceForms.htm>). **A Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on **CITY** premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the **CITY**) any workers' compensation paid to an injured employee of the contractor.

10. **Property** insurance is required for persons having exclusive use of premises or equipment owned or controlled by the **CITY**. **Builder's Risk/Course of Construction** is required during construction projects and should include building materials in transit and stored at the project site.

11. **Surety** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A **Crime Policy** may be required to handle **CITY** funds or securities, and under certain other conditions. **Specialty coverages** may be needed for certain operations. For assistance in obtaining the **CITY** required bid, performance and payment surety bonds, please see the City of Los Angeles Bond Assistance Program website address at <http://cao.lacity.org/risk/BondAssistanceProgram.pdf> or call (213) 258-3000 for more information.

12. **Cyber Liability & Privacy** coverage may be required to cover technology services or products for both liability and property losses that may result when a **CITY** contractor engages in various electronic activities, such as selling on the Internet or collecting data within its internal electronic network. **CONTRACTOR'S** policies shall cover liability for a data breach in which the **CITY** employees' and/or **CITY** customers' confidential or personal information, such as but not limited to, Social Security or credit card information are exposed or stolen by a hacker or other criminal who has gained access to the **CITY'S** or **CONTRACTOR'S** electronic network. The policies shall cover a variety of expenses associated with data breaches, including: notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, and loss resulting from identity theft. The policies are required to cover liability arising from website media content, as well as property exposures from: (a) business interruption, (b) data loss/destruction, (c) computer fraud, (d) funds transfer loss, and (e) cyber extortion.

## Required Insurance and Minimum Limits

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

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

Agreement/Reference: \_\_\_\_\_

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

	Limits
<p>___ <b>Workers' Compensation (WC) and Employer's Liability (EL)</b></p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 45%;"> <p><input type="checkbox"/> Waiver of Subrogation in favor of City</p> </div> <div style="width: 45%;"> <p><input type="checkbox"/> Longshore &amp; Harbor Workers <input type="checkbox"/> Jones Act</p> </div> </div>	<p>WC <u>Statutory</u> EL _____</p>
<p>___ <b>General Liability</b></p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 45%;"> <p><input type="checkbox"/> Products/Completed Operations <input type="checkbox"/> Fire Legal Liability <input type="checkbox"/></p> </div> <div style="width: 45%;"> <p><input type="checkbox"/> Sexual Misconduct</p> </div> </div>	<p>_____</p>
<p>___ <b>Automobile Liability</b> (for any and all vehicles used for this contract, other than commuting to/from work)</p>	<p>_____</p>
<p>___ <b>Professional Liability</b> (Errors and Omissions)</p> <p>Discovery Period _____</p>	<p>_____</p>
<p>___ <b>Property Insurance</b> (to cover replacement cost of building - as determined by insurance company)</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 45%;"> <p><input type="checkbox"/> All Risk Coverage <input type="checkbox"/> Flood <input type="checkbox"/> Earthquake</p> </div> <div style="width: 45%;"> <p><input type="checkbox"/> Boiler and Machinery <input type="checkbox"/> Builder's Risk <input type="checkbox"/></p> </div> </div>	<p>_____</p>
<p>___ <b>Pollution Liability</b></p> <p><input type="checkbox"/></p>	<p>_____</p>
<p>___ <b>Surety Bonds - Performance and Payment (Labor and Materials) Bonds</b></p>	<p>_____</p>
<p>___ <b>Crime Insurance</b></p>	<p>_____</p>
<p>Other: _____ _____ _____</p>	<p>_____</p>



**EXHIBIT K**

**FORM OF TAX CONFIDENTIALITY WAIVER**

ANTOINETTE CRISTOVALE  
DIRECTOR of FINANCE

**CITY OF LOS ANGELES**  
CALIFORNIA



ERIC GARGETTI  
MAYOR

OFFICE OF FINANCE  
LOS ANGELES CA 90012  
(213) 978-1774

*June 19, 2019*

**WAIVER OF CONFIDENTIALITY**

**AECOM Hotel**

I understand that any and all individual taxpayer information and records, documents, and data from which taxpayer data may be deduced, provided to me by the Office of Finance, or accessed or reviewed by me during performance of this project, are confidential under Chapter II, Section 21.17 of the Los Angeles Municipal Code (copy provided on reverse side of this page) and other statutes. I hereby authorize the disclosure of the confidential information described below to the persons or entities listed below. The City of Los Angeles shall be authorized to disclose this confidential information until June 30, 2047 or as specified pursuant to the Hotel Development Incentive Agreement (Agreement) for the purposes identified in this Agreement therein (C.F. 18-0399). I hereby absolve the City of Los Angeles from all claims for damages, liability, or injunctive relief and waive any such claims based on the disclosure of confidential information under this Waiver of Confidentiality.

**INFORMATION TO BE DISCLOSED**

Tax Year	Taxpayer Account Number	Description of Information
2022 – 2047		Transient Occupancy Taxes

**RECIPIENTS OF CONFIDENTIAL INFORMATION**

Name	Address	Telephone Number/Email
Sarai Bhaga or successor, Chief Administrative Analyst	Office of the City Administrative Officer 200 N. Main St., Room 1500 Los Angeles, CA 90012	(213) 978-0604 <a href="mailto:Sarai.Bhaga@lacity.org">Sarai.Bhaga@lacity.org</a>

If I am executing this document as a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer. [NOTE: This must be executed by an authorized representative of the same entity who obtains a Business Tax Registration Certificate and pays TOT.]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Taxpayer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**SECTION 21.17, LOS ANGELES MUNICIPAL CODE.** (Amended by Ord. No. 180,380, Eff. 1/5/09.)

**CONFIDENTIAL CHARACTER OF INFORMATION OBTAINED – DISCLOSURE UNLAWFUL.**

(a) It shall be unlawful for the Director of Finance or any person having an administrative duty under the provisions of this Article or Article 1.6 to make known in any manner whatever the business affairs and operations of, or the nature, amount or source of income, profits, losses, expenditures, net worth, or any particular thereof, or any other information set forth in any statement or return or obtained by an investigation of records and equipment of, any person required to obtain a business tax registration certificate or sales or use tax permit, or pay business, sales or use tax or any other person visited or examined in the discharge of official duty, or to permit any statement or return, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person.

(b) Nothing in this section shall be construed to prevent:

1. the disclosure of information to, or the examination of records and equipment by, another City official or employee or a member of the Board of Review for the sole purpose of administering or enforcing any provision of this article or Article 1.6;
2. the disclosure of information to, or the examination of records by federal or state officials, or the tax officials of another city or county, or city and county, if a reciprocal arrangement exists; or to a grand jury;
3. the disclosure of information and results of examination of records of a particular taxpayer, or relating to a particular taxpayer, with respect to any proceeding in a court of law or before an administrative body in which the existence or amount of any business, sales or use tax liability of the particular taxpayer to the City of Los Angeles is relevant and material and the particular taxpayer is a party to the proceeding, including but not limited to proceedings before any Board or Commission as set forth in Municipal Code section 22.02;
4. the disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to the items included in the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Director of Finance may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;
5. the disclosure of the names and addresses of persons to whom registration certificates or sales tax and use tax permits have been issued;
6. the disclosure of such information as may be necessary to the City Council in order to permit it to be fully advised as to the facts when a taxpayer files a claim for refund of business, sales or use taxes, or submits an offer of compromise with regard to a claim for refund of business, sales or use taxes, or submits an offer of compromise with regard to a claim asserted against him by the City for business, sales or use taxes, or where the existence or amount of business, sales, or use taxes are otherwise relevant to the determination of a matter required to be submitted to the City Council under the City of Los Angeles Charter, the Los Angeles Municipal Code, or the Los Angeles Administrative Code;
7. the disclosure of information to, or the examination of records by, contractors or employees of contractors with whom the City of Los Angeles has contracted to assist the City of Los Angeles for the sole purpose of administering or enforcing any provision of this Article or Article 1.6, if the contract requires the persons granted access to such information or records to abide by the confidentiality requirements of this Section, and if the City Council has approved the award and execution of such contract;
8. the disclosure of information to, or the examination of records by, purchasers of accounts receivable pursuant to Los Angeles Administrative Code section 5.186, or the disclosure to any employees of such purchasers of accounts receivable, if the purchase agreement requires the persons granted access to such information or records to abide by the confidentiality requirements of this Section;
9. the disclosure of the identity of any particular taxpayer with delinquent business, sales, or use taxes and the type and amount of the delinquent business, sales, or use tax liability of that taxpayer, and the publication of such information at the discretion of the Office of Finance pursuant to Los Angeles Municipal Code section 21.15 (m);
10. the disclosure of information when compelled by an order of court or other judicial process; and
11. the disclosure of statistical or cumulative information when the disclosure does not identify any particular taxpayer or reveal information in a manner that could identify a particular taxpayer.

## EXHIBIT L

### BUREAU OF CONTRACT ADMINISTRATION REGULATIONS

#### **I. COMPENSATION**

All payments for services performed and furnished by the BCA shall be made on a quarterly basis and paid through the Financial Status Reports, as invoiced by the Department of Public Works, Office of Accounting. Upon execution of the Hotel Development Incentive Agreement, the Developer shall establish a Work Order from which the BCA shall be reimbursed for all reasonable actual incurred and invoiced costs for the services to be provided herein as invoiced by the BCA quarterly. The total work and compensation to the BCA under this agreement is based on the following tier system:

Tier 1 – Shall not exceed \$101,000 per year

Tier 2 – Shall not exceed \$151,000 per year; provided, however, that it is not contemplated that with respect to this particular Hotel, no Tier 2 work will be required.

The annual amount is also subject to adjustments in accordance to the employee's MOU and cost allocation plan (indirect and related costs).

#### **II. IDENTIFICATION OF ASSIGNED PERSONNEL**

The BCA intends to employ staff equivalent to a maximum of one (1) Senior Management Analyst I who will be assigned to perform compliance monitoring and reporting activities within the Scope of Services for this agreement. Individual names will be provided to the Developer upon the employees' assignment.

#### **III. SCOPE OF SERVICES**

Between the Effective Date and the Hotel Completion Date, the BCA shall perform the scope of services set forth in this Exhibit L. Upon the Hotel Completion Date, all work of BCA shall cease and the Developer shall have no further obligations under this Exhibit 1. The degree of services BCA will provide is grouped into two (2) tiers based on the scope of work being performed. The tiered work performed is dependent on the Developer ensuring the following:

1. All certified payrolls and other documents are submitted in a timely manner.
2. Records are properly maintained and accessible.
3. Contractor(s) are cooperative.
4. Certified payrolls and supporting documents do not indicate any problems.
5. No employee/third party complaints are received.
6. Prompt responses to BCA request(s) for information in response to an audit or complaint.

**Tier 1 - BCA will not exceed sixty (60) hours a month to verify or provide the following:**

- 1. Labor Compliance and Local Hire Monitoring**
  - a. Attend, coordinate and/or conduct prevailing wage, apprentice utilization (to the extent available at no additional cost to Developer) and other labor compliance related meetings and trainings.
  - b. Ensure certified payrolls are submitted in a timely manner.
  - c. Review certified payrolls (to the extent available at no additional cost to Developer) and supporting documents for compliance.
  - d. Provide Online Certified Payroll System (OCPS) support for certified payroll entries, as needed (to the extent available at no additional cost to Developer).
  - e. Produce local hire reports.
  - f. Respond to complaints, including those that may require an investigation.
  - g. Conduct worker interviews at the project site.
  - h. Monitor efforts to cure contractor out-of-compliance with labor compliance policies.

**Tier 2 - BCA will not exceed ninety (90) hours a month to verify or provide the following:**

- 1. Labor Compliance and Local Hire Monitoring**
  - a. All items from Tier 1.
  - b. Provide official requests for certified payrolls that have not been submitted in a timely manner.
  - c. Penalize contractor(s) that do not adhere to certified payroll official requests.
  - d. Provide three (3) consecutive months of aggressive monitoring to ensure compliance due to failure to achieve sustained labor compliance.
  - e. Investigate and resolve valid complaints.
  - f. Conduct assessments for labor compliance violations. This may include conducting meetings with contractor(s) to discuss the assessments.
  - g. Act as liaison to the City Attorney during any Hearing before a state appointed Hearing Officer in the event of an egregious labor compliance violation.
  - h. Provide a resolution of a violation when a contractor or subcontractor disputes the findings of AECOM of prevailing wage violations. This may include presentation of the case before a Judge or Hearing Officer.

#### **IV. CERTIFIED PAYROLL REPORTING**

Certified payroll records (to the extent available at no additional cost to Developer) shall be submitted, to the City's Office of Contract Compliance by the Design/Builder and all Subcontractors performing work on the project, regardless of dollar amount or type of contract. These payroll records shall be submitted to the Office of Contract Compliance,

through the Department of Public Works, Bureau of Contract Administration's Online Certified Payroll System (OCPS).

The OCPS is a web based program that will allow contractors to electronically submit certified payrolls. Contractors (of any tier) will be required to submit their certified payrolls through the OCPS. Contractors (of any tier) shall be responsible for maintaining certified copies of payroll records as required by law (§ 1776 of the California Labor Code). Either AECOM or their designee shall be responsible for ensuring that all contractors regardless of tier submit certified payrolls through OCPS. Training for OCPS will be provided by the BCA during the second Wednesday of each month. For further questions, please send an email to [ocps.help@lacity.org](mailto:ocps.help@lacity.org).