

## CONDITIONS OF APPROVAL

(As modified by the City Planning Commission on November 8, 2018 and October 10, 2019)

Pursuant to Section 14.5.6 B, 12.24 W.1, and 16.05 of the Los Angeles Municipal Code, the following conditions are hereby imposed upon the use of the subject property:

### Development Conditions:

1. **Site Development.** Except as modified herein, the project shall be in substantial conformance with the architectural plans, renderings, and materials submitted by the Applicant, stamped "Exhibit A," dated October 15, 2018 and August 1, 2019, as modified, and attached to the subject case file.
2. **Transfer of Floor Area Rights.**
  - a. **Floor Area.** The Development shall not exceed a maximum Floor Area Ratio (FAR) of 13:1 and a total floor area of 657,943 square feet. The Transfer Payment and Public Benefit Payment shall be pro-rated to the amount of TFAR being acquired in the event the maximum amount of TFAR is not required. The base lot area used to calculate the base floor area shall be 303,666 square feet with a 6:1 FAR. Changes to the Project that result in a twenty percent decrease in floor area, or more, shall require new entitlements.
  - b. **TFAR Transfer Payment.** The Project is subject to and shall pay a TFAR Transfer Payment in conformance with Section 14.5.6 through 14.5.12 of the Code. Such payment shall be based on the actual amount of floor area transferred to the Project site.
    - i. The total amount of floor area authorized to be transferred from the Los Angeles Convention Center by this action shall not exceed 354,277 square feet. The total floor area of the Project Site (Receiver Site) shall not exceed 657,943 square feet.
    - ii. The Applicant shall provide a TFAR Transfer Payment consistent with LAMC Section 14.5.10 in the amount of \$5 per square foot, or \$1,771,385, for the transfer of 354,277 square feet from the Los Angeles Convention Center located at 1201 South Figueroa Street (Donor Site) to the Project Site (Receiver Site).
  - c. **Public Benefit Payment.** The Project is subject to and shall pay a Public Benefit Payment in conformance with Section 14.5.6 through 14.5.12 of the Code.
    - i. The Applicant shall provide a Public Benefit Payment consistent with LAMC Section 14.5.9 in the amount of \$12,740,000 provided that at least 50 percent (or \$6,370,000) of the Public Benefit Payment consist of cash payment by the Applicant to the Public Benefit Trust Fund. Consistent with the TFAR Ordinance, the Project shall provide 50 percent (or \$6,370,000) of the Public Benefit Payment by directly providing the following public benefits:
      1. Off-Site Improvements. A total payment of \$476,000 (7.5%) to be utilized for off-site improvements as follows:

- a. The construction of off-site improvements adjacent to the property on Olympic Boulevard, Hill Street, and Blackstone Court (alley) as described in Exhibit A landscape plans in the amount of \$476,000. Improvements shall include scored concrete paving, decorative corten steel band paving, pre-cast paving with inset lighting, porcelain tile paving, custom metal benches, and planting bed spot lighting. The applicant shall demonstrate that the proposed off-site improvements are beyond the standard cost of street improvements required by the Bureau of Engineering. If it is determined that the enhanced improvements have a cost below \$476,000, the Applicant shall provide a revised Public Benefits Cost Summary.
2. A payment to the Pershing Square Improvement Fund in the amount of \$3,594,000 (56.4%).
3. A payment to the Affordable Housing Trust Fund in the amount of \$2,300,000 (36.1%). The funds shall be utilized towards affordable housing projects within Council District 14.
- ii. At the time of issuance of the Certificate of Occupancy for the project, the Applicant shall provide an update to the file from each recipient of direct provisions detailing how the money has been spent thus far.
- iii. The Applicant shall pay the required Public Benefit Payment, less the cost of the Direct Provision of Public Benefits, in cash to the Public Benefit Trust Fund, pursuant to the terms of Transfer of Floor Area Rights Ordinance No. 181,574, Article 4.5 of the LAMC. The Public Benefit Payment proof of cash payment and direct provision of public benefits is required upon the earliest occurrence of either:
  1. The issuance of the building permit for the Project; or
  2. Twenty-four months after the final approval of the Transfer and the expiration of any appeals or appeal period; should the Applicant not make the required payments within the specified time, subject approval shall expire, unless extended by the Director in writing.
3. **Uses.** The project shall be limited to a maximum density of 700 residential dwelling units and a maximum of 15,000 square feet of commercial uses. The use and development of the 700 residential dwelling units shall not be permitted as a Transient Occupancy Residential Structure (TORS). Hotel uses are prohibited.
4. **Sustainability.**
  - a. The project shall comply with the Los Angeles Municipal Green Building Code, Section 99.05.211, to the satisfaction of the Department of Building and Safety.
  - b. Prior to the issuance of the Certificate of Occupancy, the applicant shall install solar panels with a surface area no less than 10 percent of the rooftop area of the residential tower.
  - c. During construction, the power contractor shall use plug-in electric and/or solar powered on-site generators to the extent feasible.

## 5. Parking.

- a. The minimum number of residential and commercial automobile parking spaces shall be provided as required by LAMC Section 12.21 A.4(a), (i), and (p), and no more than 1,075 automobile parking spaces shall be provided.
- b. Electric Vehicle Parking. The project shall include at least twenty percent (20%) of the total provided parking spaces as capable of supporting electric vehicle supply equipment (EVSE). Plans shall indicate the proposed type and location(s) of EVSE and also include raceway method(s), wiring schematics and electrical calculations to verify that the electrical system has sufficient capacity to simultaneously charge all electric vehicles at all designated EV charging locations at their full rated amperage. Plan design shall be based upon Level 2 or greater EVSE at its maximum operating capacity. Five (5) percent of the total provided parking spaces shall be further provided with EVSE installed to immediately accommodate electric vehicles within the parking areas. When the application of either the 20% or 5% results in a fractional space, round up to the next whole number. A label stating "EVCAPABLE" shall be posted in a conspicuous place at the service panel or subpanel and next to the raceway termination point.
- c. Bicycle Parking. Residential and commercial bicycle parking shall be provided consistent with LAMC 12.21 A.16.
- d. Prior to the issuance of a building permit, the driveway and parking plan shall be submitted for review and approval to the Department of Transportation.
- e. There shall be no more than four (4) levels of above-grade parking. A minimum of three (3) above-grade parking levels shall be lined with residential or commercial uses along Hill Street and Olympic Boulevard, while the remaining above-grade parking level shall be lined with glass on the street-facing facades to resemble the habitable floors of the podium.

## 6. Landscaping.

- a. Landscaping and paving materials shall be in substantial conformance with Exhibit A.
  - i. Landscaping plans shall be substantially revised to provide details on planting location and species.
  - ii. Vegetated screen walls along the alley way shall be designed with a variety of plant materials.
- b. A minimum of 189 trees shall be provided, or as required pursuant to LAMC Section 12.21 G. Additionally, the trees in the fifth floor amenity deck shall be subject to the following requirements:
  - i. The minimum depth of tree wells shall be as follows:
    1. Minimum depth for trees shall be 42 inches.
    2. Minimum depth for shrubs shall be 30 inches.
    3. Minimum depth for herbaceous plantings and ground cover shall be 18 inches.

- c. New trees planted within the public right-of-way shall be spaced not more than an average of 30 feet on center, unless otherwise required by the Urban Forestry Division, Bureau of Public Works.
  - d. The developer shall install bioswales in the public right-of-way to the extent feasible as part of the Project's streetscape improvements.
7. **Materials and Glazing.** Materials, surfaces, and glazing shall be in substantial conformance with Exhibit A. The applicant shall submit additional elevation plans exclusively of the ground floor, including material palettes, showing the street-level façade design in detail. The applicant shall submit revised plans showing the addition of a unique skyline feature on the roof of the building.
  8. **Ground Floor Transparency.** The ground floor shall allow visibility from sidewalk areas into the interior of all commercial uses. Windows shall be free of signs or other obstructions. Clear and non-reflective glass allowing a minimum of 80 percent light transmission shall be used for ground floor commercial uses, unless considered a safety hazard. The applicant shall submit revised plans showing a highlighted residential entrance design on Olympic Boulevard.
  9. **Aesthetics (Light).** Outdoor lighting shall be designed and installed with shielding, such that the light source cannot be seen from adjacent residential properties, the public right-of-way, nor from above.
  10. **Aesthetics (Glare).** The exterior of the proposed structure shall be constructed of materials such as, but not limited to, high- performance and/or non-reflective tinted glass (no mirror-like tints or films) and pre-cast concrete or fabricated wall surfaces to minimize glare and reflected heat.

**Conditional Use for the Sale and Dispensing of On-Site Alcoholic Beverages:**

11. The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the Zoning Administrator to impose additional corrective Conditions, if, in the Administrator's opinion, such Conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.
12. Each individual establishment shall be subject to a Zoning Administrator's Approval of Plans determination pursuant to Section 12.24 M of the Los Angeles Municipal Code in order to implement and utilize the Conditional Use authorization granted herein as follows:
  - a. The on-site sale and consumption of a full-line of alcoholic beverages in conjunction with up to four (4) establishments;
  - b. The purpose of the Approval of Plans determination is to review each proposed venue in greater detail and to tailor site-specific conditions of approval for each of the premises including but not limited to hours of operation, seating capacity, size, security, live entertainment, the length of a term grant and/or any requirement for a subsequent Approval of Plans application to evaluate compliance and effectiveness of the conditions of approval.
  - c. A public hearing for any Approval of Plans request may be waived at the discretion of the Chief Zoning Administrator.

13. Maximum cumulative square footage for all four (4) establishments shall not exceed 15,000 square feet.
14. No conditional use for dancing has been requested or approved.
15. Prior to the utilization of this grant and the filing of an Approval of Plans for the first venue, the applicant shall prepare a security plan which shall be submitted to the Police Department's Central Area's Vice Section for review and approval. A copy of the security plan approved by the Police Department shall be included with the application materials submitted for an Approval of Plans. The security plan shall address security measures applicable to all the venues as well as any measures specific to the individual venue reviewed under each corresponding Approval of Plans.
16. Prior to the utilization of this grant, surveillance cameras shall be installed which cover all common areas of the venues, including all high-risk areas, entrances and exits to each tenant space, including cameras that provide a view of the street.
17. Prior to the utilization of this grant, surveillance cameras shall be installed which cover all common areas of the venues, including all high-risk areas, entrances and exits to each tenant space, including cameras that provide a view of the street.
18. The applicant, tenants and on-site managers shall comply with all applicable laws and conditions of this action and any corresponding Approval of Plans determination and shall properly manage the facility to discourage illegal and criminal activity on the subject property and any accessory parking area over which they exercise control.
19. The applicant shall maintain on the premises and present upon request to the Police or other enforcement agency, a copy of the Business Permit, Insurance Information, and valid emergency contact phone number for any Valet Service utilized and for any Security Company Service employed.
20. The applicant shall be responsible for maintaining the area adjacent to the premises over his/her control free of litter.
21. If at any time during the period of the grant, should documented evidence be submitted showing continued violation(s) of any condition(s) of the grant, resulting in a disruption or interference with the peaceful enjoyment of the adjoining and neighboring properties, the Zoning Administrator will have the right to require the petitioner(s) to file for a plan approval application together with the associated fees, to hold a public hearing for review the petitioner's compliance with and the effectiveness of the conditions of the grant. The petitioner(s) shall submit a summary and supporting documentation of how compliance with each condition of the grant has been attained.
22. **MViP – Monitoring Verification and Inspection Program.** Prior to the effectuation of this grant, fees required per LAMC Section 19.01 E.3 for Monitoring of Conditional Use Permits and Inspection and Field Compliance Review of Operations shall be paid to the City. Within 12 to 18 months from the beginning of operations or issuance of a Certificate of Occupancy, a City inspector will conduct a site visit to assess compliance with, or violations of, any of the conditions of this grant. Observations and results of said inspection will be documented and included in the administrative file. The owner/operator shall be notified of the deficiency or violation and required to correct or eliminate the deficiency or violation. Multiple or continued documented violations or Orders to Comply issued by the Department of Building and Safety which are not addressed within the time prescribed, may result in additional corrective conditions imposed by the Zoning

Administrator.

23. **Prior to the effectuation of this grant**, a covenant acknowledging and agreeing to comply with all the terms and conditions established herein shall be recorded in the County Recorder's Office. The agreement (standard master covenant and agreement form CP-6770) shall run with the land and shall be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Department of City Planning for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided for inclusion in case file. Fees required per LAMC Section 19.01 E.3 for Monitoring of Conditional Use Permits and Inspection and Field Compliance Review of Operations shall be paid to the City prior to the final clearance of this condition.

### **Environmental Conditions**

24. **Increased Noise Levels (Parking Structure Ramps)**

Concrete, not metal, shall be used for construction of parking ramps. The interior ramps shall be textured to prevent tire squeal at turning areas.

25. **Public Services (Police)**

The plans shall incorporate the design guidelines relative to security, semi-public and private spaces, which may include but not be limited to access control to building, secured parking facilities, walls/fences with key systems, well-illuminated public and semi-public space designed with a minimum of dead space to eliminate areas of concealment, location of toilet facilities or building entrances in high-foot traffic areas, and provision of security guard patrol throughout the project site if needed. Please refer to "Design Out Crime Guidelines: Crime Prevention Through Environmental Design", published by the Los Angeles Police Department. Contact the Community Relations Division, located at 100 W. 1st Street, #250, Los Angeles, CA 90012; (213) 486-6000. These measures shall be approved by the Police Department prior to the issuance of building permits.

26. **Transportation Demand Management Plan and Monitoring Program**

The Applicant shall prepare and submit a Transportation Demand Management (TDM) Plan to the Department of Transportation prior to the issuance of the first building permit for the Project. A final TDM Plan shall be submitted and approved by the Department of Transportation prior to the issuance of the first certificate of occupancy for the Project. The TDM Plan shall include strategies, as determined to be appropriate by the Department of Transportation, that would have a minimum fifteen (15) percent effectiveness in reducing new vehicle trips. TDM program elements should include, but not be limited to, the strategies listed in Mitigation Measure T-1 and the following:

- Site Design – The site will be designed to encourage walking, biking, and transit. Amenities would include:
  - New sidewalks and street trees along the perimeter
  - Improved street and pedestrian lighting.
- Unbundled Parking – Unbundling parking typically separates the cost of purchasing or renting parking spaces from the cost of the purchasing or renting a dwelling unit. Saving money on a dwelling unit by forgoing a parking space acts as an incentive that minimizes auto ownership. Similarly, paying for parking (by

purchasing or leasing a space) acts as a disincentive that discourages auto ownership and trip-making.

- Bicycle Parking – As described in Chapter 7, the Project will provide both long term and short-term bicycle parking. In addition, the Project could provide complementary amenities such as a self-service bike repair area.

A Monitoring Program shall be prepared to provide continued monitoring of the TDM Plan's effectiveness. The Monitoring Program shall be prepared by a licensed Transportation Engineer and be submitted to the Department of Transportation for review. The Monitoring Program shall continue until such time that the Project has shown, for three consecutive years, at a minimum of 85 percent occupancy, a minimum fifteen (15) percent effectiveness in reducing new vehicle trips through implementation of the TDM Plan. Should the review show that the trip reductions have not been met, the Project shall have one year to attain compliance or be subject to a penalty program.

## 27. **Habitat Modification (Nesting Native Birds)**

Proposed project activities (including disturbances to native and non-native vegetation, structures and substrates) should take place outside of the breeding bird season which generally runs from March 1- August 31 (as early as February 1 for raptors) to avoid take (including disturbances which would cause abandonment of active nests containing eggs and/or young). Take means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill (Fish and Game Code Section 86).

If project activities cannot feasibly avoid the breeding bird season, beginning thirty days prior to the disturbance of suitable nesting habitat, the applicant shall:

- Arrange for weekly bird surveys to detect any protected native birds in the habitat to be removed and any other such habitat within 300 feet of the construction work area (within 500 feet for raptors) as access to adjacent areas allows. The surveys shall be conducted by a Qualified Biologist with experience in conducting breeding bird surveys. The surveys shall continue on a weekly basis with the last survey being conducted no more than 3 days prior to the initiation of clearance/construction work.
- If a protected native bird is found, the applicant shall delay all clearance/construction disturbance activities within 300 feet of suitable nesting habitat for the observed protected bird species (within 500 feet for suitable raptor nesting habitat) until August 31.
- Alternatively, the Qualified Biologist could continue the surveys in order to locate any nests. If an active nest is located, clearing and construction within 300 feet of the nest (within 500 feet for raptor nests) or as determined by a qualified biological monitor, shall be postponed until the nest is vacated and juveniles have fledged and when there is no evidence of a second attempt at nesting. The buffer zone from the nest shall be established in the field with flagging and stakes. Construction personnel shall be instructed on the sensitivity of the area.
- The applicant shall record the results of the recommended protective measures described above to document compliance with applicable State and Federal laws pertaining to the protection of native birds. Such record shall be submitted and received into the case file for the associated discretionary action permitting the project.

**28. Soil Management Plan**

Due to the historic UST removed from 1022 S. Hill Street, when mass excavation/grading is to be conducted at this portion of the Project Site, proper soil management protocols would need to be followed in the event that petroleum hydrocarbon impacted soil is encountered and displaced.

Construction and grading activities on-site shall implement a Soil Management Plan to the satisfaction of the Los Angeles Fire Department and the Department of Building and Safety.

**29. Increased Noise Levels (Demolition, Grading, and Construction)**

Construction and demolition shall be restricted to the hours of 7:00 AM to 6:00 PM Monday through Friday, and 8:00 AM to 6:00 PM on Saturday

**30. Increased Noise Levels (Demolition, Grading, and Construction)**

To the maximum extent practical, demolition and construction activities shall be scheduled so as to avoid operating several pieces of equipment simultaneously, which causes high noise levels.

**31. Increased Noise Levels (Demolition, Grading, and Construction)**

The project contractor shall use power construction equipment with noise shielding and muffling devices.

**32. Increased Noise Levels (Demolition, Grading, and Construction)**

The project contractor shall erect a temporary noise-attenuating sound barrier along the perimeter of the Project Site. The sound wall shall be a minimum of 8 feet in height to block the line-of-site of construction equipment and off site receptors at the ground level. The sound barrier shall include  $\frac{3}{4}$  inch plywood or other sound absorbing material capable of achieving a 5-dBA reduction in sound level.

**33. Increased Noise Levels (Demolition, Grading, and Construction)**

During structural framing, the project contractor shall utilize temporary portable acoustic barriers, partitions, or acoustic blankets to effectively block the line-of-sight between noise producing equipment and the adjacent residential land uses for purposes of ensuring noise levels at the adjacent residential land uses does not exceed 5 dBA over the ambient noise levels.

**34. Increased Noise Levels (Demolition, Grading, and Construction)**

An information sign shall be posted at the entrance to each construction site that identifies the permitted construction hours and provides a telephone number to call and receive information about the construction project or to report complaints regarding excessive noise levels. Any reasonable complaints shall be rectified within 24 hours of their receipt.

**35. Temporary Groundborne Vibration Impacts**



All new construction work shall be performed so as not to adversely affect the structural integrity of the adjacent buildings. Prior to commencement of construction, the applicant shall retain a qualified structural engineer to survey the existing foundations and structures of the adjacent buildings, and provide a plan to protect them from potential damage. The performance standards of the structure monitoring plan shall including the following:

- Documentation shall consist of video and/or photographic documentation of accessible and visible areas on the exterior and select interior facades of the buildings. A registered structural engineer shall develop recommendations for the adjacent structure monitoring program that will include, but not be limited to, vibration monitoring, elevation and lateral monitoring points, crack monitors and other instrumentation deemed necessary to protect the adjacent structures from construction-related damage.
- The monitoring program shall survey for vertical and horizontal movement, as well as vibration thresholds. If the thresholds are met or exceeded, or noticeable structural damage becomes evident to the project contractor, work shall stop in the area of the affected building until measures have been taken to stabilize the affected building to prevent construction related damage to historic resources.
- In the event damage occurs to historic finish materials due to construction vibration, such materials shall be repaired in consultation with a qualified preservation consultant and, if warranted, in a manner that meets the Secretary of the Interior's Standards.
- The structure monitoring program and initial survey documentation shall be submitted to the Department of Building and Safety and received into the case file for the associated discretionary action permitting the project prior to construction.

**36. Public Services (Police – Demolition/Construction Sites)**

Temporary construction fencing shall be placed along the periphery of the active construction areas to screen as much of the construction activity from view at the local street level and to keep unpermitted persons from entering the construction area.

**37. Compliance with LADOT**

The Applicant shall implement the project requirements detailed in DOT's communication to the Planning Department (DOT Case No. CEN 17-45630 dated July 12, 2017, attached) and as listed below.

*Construction Impacts*

DOT recommends that a construction work site traffic control plan be submitted to DOT for review and approval prior to the start of any construction work. The plan should show the location of any roadway or sidewalk closures, traffic detours, haul routes, hours of operation, protective devices, warning signs and access to abutting properties. DOT also recommends that construction related traffic be restricted to off-peak hours to the extent possible.

*Transportation Demand Management (TDM) Program*

A final TDM program approved by DOT is required prior to the issuance of the first certificate of occupancy for the project. The TDM program should include, but not be limited to the following strategies:

- Provide an internal Transportation Management Coordination Program with an on-site transportation coordinator;
- Administrative support for the formation of carpools/vanpools;
- Design the project to ensure a bicycle, transit, and pedestrian friendly environment;
- Establish bike and walk to work promotions;
- Provide unbundled parking that separates the cost of obtaining assigned parking spaces from the cost of purchasing or renting residential units;
- Accommodate flexible/alternative work schedules and telecommuting programs;
- Coupled with the unbundled parking, provide on-site car share amenities for residents;
- Guaranteed ride home program;
- A provision requiring compliance with the State Parking Cash-out Law in all leases;
- Coordinate with DOT to determine if the project location is eligible for a future Integrated Mobility Hub (which can include space for a bike share kiosk, and/or parking spaces on-site for car-share vehicles);
- Provide on-site transit routing and schedule information;
- Provide a program to discount transit passes for residents/employees possibly through negotiated bulk purchasing of passes with transit providers;
- Provide rideshare matching services;
- Preferential rideshare loading/unloading or parking location;
- Contribute a one-time fixed fee contribution of \$50,000 to be deposited into the City's Bicycle Plan Trust Fund to implement bicycle improvements in the vicinity of the project.

### 38. **Construction Management Plan**

The following will be implemented prior to construction:

- As traffic lane, parking lane and/or sidewalk closures are anticipated, worksite traffic control plan(s), approved by the City of Los Angeles, should be implemented to route vehicular traffic, bicyclists, and pedestrians around any such closures.
- Ensure that access will remain unobstructed for land uses in proximity to the project site during project construction.
- Coordinate with the City and emergency service providers to ensure adequate access is maintained to the project site and neighboring businesses and residences.
- Consult with public transit service providers, including LADOT and Metro, who have bus stops adjacent to the site to coordinate the temporary relocation of bus stop(s).

### 39. **Tribal Cultural Resources**

In the event that objects or artifacts that may be tribal cultural resources are encountered during the course of any ground disturbance activities, all such activities shall temporarily cease on the project site until the potential tribal cultural resources are properly assessed and addressed pursuant to the process set forth below:

- a. Upon a discovery of a potential tribal cultural resource, the project Permittee shall immediately stop all ground disturbance activities and contact the following: (1) all California Native American tribes that have informed the City they are traditionally and culturally affiliated with the geographic area of the proposed project; (2) and the Department of City Planning at (213) 978-1454.

- b. If the City determines, pursuant to Public Resources Code Section 21074 (a)(2), that the object or artifact appears to be tribal cultural resource, the City shall provide any effected tribe a reasonable period of time, not less than 14 days, to conduct a site visit and make recommendations to the Project Permittee and the City regarding the monitoring of future ground disturbance activities, as well as the treatment and disposition of any discovered tribal cultural resources.
- c. The project Permittee shall implement the tribe's recommendations if a qualified archaeologist, retained by the City and paid for by the project Permittee, reasonably concludes that the tribe's recommendations are reasonable and feasible.
- d. The project Permittee shall submit a tribal cultural resource monitoring plan to the City that includes all recommendations from the City and any effected tribes that have been reviewed and determined by the qualified archaeologist to be reasonable and feasible. The project Permittee shall not be allowed to recommence ground disturbance activities until this plan is approved by the City.
- e. If the project Permittee does not accept a particular recommendation determined to be reasonable and feasible by the qualified archaeologist, the project Permittee may request mediation by a mediator agreed to by the Permittee and the City who has the requisite professional qualifications and experience to mediate such a dispute. The project Permittee shall pay any costs associated with the mediation.
- f. The project Permittee may recommence ground disturbance activities outside of a specified radius of the discovery site, so long as this radius has been reviewed by the qualified archaeologist and determined to be reasonable and appropriate.
- g. Copies of any subsequent prehistoric archaeological study, tribal cultural resources study or report, detailing the nature of any significant tribal cultural resources, remedial actions taken, and disposition of any significant tribal cultural resources shall be submitted to the South Central Coastal Information Center (SCCIC) at California State University, Fullerton.
- h. Notwithstanding the above, any information determined to be confidential in nature, by the City Attorney's office, shall be excluded from submission to the SCCIC or the general public under the applicable provisions of the California Public Records Act, California Public Resources Code, and shall comply with the City's AB 52 Confidentiality Protocols.

### **Administrative Conditions**

40. **Approvals, Verification and Submittals.** Copies of any approvals, guarantees or verification of consultations, reviews or approval, plans, etc., as may be required by the subject conditions, shall be provided to the Department of City Planning for placement in the subject file.
41. **Code Compliance.** All area, height and use regulations of the zone classification of the subject property shall be complied with, except wherein these conditions explicitly allow otherwise.
42. **Covenant.** Prior to the issuance of any permits relative to this matter, an agreement concerning all the information contained in these conditions shall be recorded in the County Recorder's Office. The agreement shall run with the land and shall be binding on any subsequent property owners, heirs or assign. The agreement must be submitted to

the Department of City Planning for approval before being recorded. After recordation, a copy bearing the Recorder's number and date shall be provided to the Department of City Planning for attachment to the file.

43. **Definition.** Any agencies, public officials or legislation referenced in these conditions shall mean those agencies, public offices, legislation or their successors, designees or amendment to any legislation.
44. **Enforcement.** Compliance with these conditions and the intent of these conditions shall be to the satisfaction of the Department of City Planning and any designated agency, or the agency's successor and in accordance with any stated laws or regulations, or any amendments thereto.
45. **Building Plans.** A copy of the first page of this grant and all Conditions and/or any subsequent appeal of this grant and its resultant Conditions and/or letters of clarification shall be printed on the building plans submitted to the Development Services Center and the Department of Building and Safety for purposes of having a building permit issued.
46. **Corrective Conditions.** The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the City Planning Commission, or the Director pursuant to Section 12.27.1 of the Municipal Code, to impose additional corrective conditions, if, in the Commission's or Director's opinion, such conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.
47. **INDEMNIFICATION AND REIMBURSEMENT OF LITIGATION COSTS.**

Applicant shall do all of the following:

- a. Defend, indemnify and hold harmless the City from any and all actions against the City relating to or arising out of, in whole or in part, the City's processing and approval of this entitlement, including but not limited to, an action to attack, challenge, set aside, void, or otherwise modify or annul the approval of the entitlement, the environmental review of the entitlement, or the approval of subsequent permit decisions, or to claim personal property damage, including from inverse condemnation or any other constitutional claim.
- b. Reimburse the City for any and all costs incurred in defense of an action related to or arising out of, in whole or in part, the City's processing and approval of the entitlement, including but not limited to payment of all court costs and attorney's fees, costs of any judgments or awards against the City (including an award of attorney's fees), damages, and/or settlement costs.
- c. Submit an initial deposit for the City's litigation costs to the City within 10 days' notice of the City tendering defense to the Applicant and requesting a deposit. The initial deposit shall be in an amount set by the City Attorney's Office, in its sole discretion, based on the nature and scope of action, but in no event shall the initial deposit be less than \$50,000. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).
- d. Submit supplemental deposits upon notice by the City. Supplemental deposits may be required in an increased amount from the initial deposit if found necessary by the City to protect the City's interests. The City's failure to notice or collect the deposit does

not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).

- e. If the City determines it necessary to protect the City's interest, execute an indemnity and reimbursement agreement with the City under terms consistent with the requirements of this condition.

The City shall notify the applicant within a reasonable period of time of its receipt of any action and the City shall cooperate in the defense. If the City fails to notify the applicant of any claim, action, or proceeding in a reasonable time, or if the City fails to reasonably cooperate in the defense, the applicant shall not thereafter be responsible to defend, indemnify or hold harmless the City.

The City shall have the sole right to choose its counsel, including the City Attorney's office or outside counsel. At its sole discretion, the City may participate at its own expense in the defense of any action, but such participation shall not relieve the applicant of any obligation imposed by this condition. In the event the Applicant fails to comply with this condition, in whole or in part, the City may withdraw its defense of the action, void its approval of the entitlement, or take any other action. The City retains the right to make all decisions with respect to its representations in any legal proceeding, including its inherent right to abandon or settle litigation.

For purposes of this condition, the following definitions apply:

"City" shall be defined to include the City, its agents, officers, boards, commissions, committees, employees, and volunteers.

"Action" shall be defined to include suits, proceedings (including those held under alternative dispute resolution procedures), claims, or lawsuits. Actions include actions, as defined herein, alleging failure to comply with any federal, state or local law.

Nothing in the definitions included in this paragraph are intended to limit the rights of the City or the obligations of the Applicant otherwise created by this condition.