

TRANSMITTAL

TO
The City Council

DATE
5/17/18

COUNCIL FILE NO.

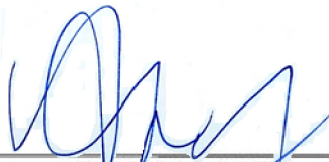
FROM
The Mayor

COUNCIL DISTRICT
4

**Supplemental Agreement to Concession Agreement No. 256 with Butterfield Games, Inc.
for the Operation of Arcade Concession at the Sharman Oaks Castle Park**

Approved and transmitted for your consideration. The Council has 60 days from the date of receipt to act, otherwise the contract will be deemed approved pursuant to Administrative Code Section 10.5(a). See the City Administrative Officer report attached.

(Ana Guerrero) for


ERIC GARCETTI
MAYOR

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: May 16, 2018

CAO File No. 0150-05935-0012

Council File No.

Council District: 4

To: The Mayor

From: Richard H. Llewellyn, Jr.  City Administrative Officer

Reference: Letter to the Mayor from the Board of Recreation and Park Commissioners dated March 5, 2018; referred by the Mayor on March 7, 2018

Subject: **SUPPLEMENTAL AGREEMENT TO CONCESSION AGREEMENT 256 WITH BUTTERFIELD GAMES, INC. RELATIVE TO THE ARCADE CONCESSION AT THE SHERMAN OAKS CASTLE PARK**

RECOMMENDATION

That the Council approve and authorize the President and Secretary of the Board of Recreation and Park Commissioners to execute the proposed supplemental agreement with Butterfield Games, Inc. to extend the term by five years, subject to the approval of the City Attorney as to form.

SUMMARY

At its meeting of February 21, 2018, the Board of Recreation and Park Commissioners (Board) approved a supplemental agreement to Concession Agreement No. 256 with Butterfield Games, Inc. (Concessionaire). The proposed supplemental agreement 1) exercises five-year renewal option, 2) expands the Concession premises, 3) authorizes addition of an outdoor entertainment attraction, 4) updates insurance requirements, and 5) adds Standard Provisions for City Contracts (Rev. 10/17)[v.2] to the Concession Agreement.

The City, through the Board and the Department of Recreation and Parks (Department), owns and operates the Sherman Oaks Castle Park located at 4989 Sepulveda Boulevard in Council District 4. The Sherman Oaks Castle Park is a family-oriented entertainment center that features three miniature golf courses, an arcade, food service and batting cages. On June 8, 2007, the Board executed Concession Agreement No. 256 for the operation of the arcade, as authorized by Council (C.F. 06-2794) for a ten-year term.

According to the Department, the Concessionaire generated \$2,505,680.26 in gross revenue and made a revenue sharing payment of \$1,064,914.11 (42.5% of gross revenue) in 2016. The

addition of an outdoor entertainment attraction is expected to generate approximately \$60,000 in gross revenue or approximately \$25,000 in revenue share payment per year.

In accordance with Charter Section 1022, the Board determined that the services provided would be performed more feasibly by a contractor than by City employees because the Department does not have personnel available in its employ with sufficient time and expertise to undertake these specialized professional services.

Council approval of the proposed supplemental agreement is required because Council approved the original agreement. To the best of our knowledge, the Concessionaire has complied with all standard provisions for City contracts, as well as City contracting requirements.

FISCAL IMPACT STATEMENT

Butterfield Games, Inc. will pay the City 42.5 percent of gross receipts from the operation of the arcade concession at the Sherman Oaks Castle Park. The addition of an outdoor entertainment attraction is expected to increase revenue share payment by approximately \$25,000 per year (from approximately \$1.065 million to \$1.09 million). Revenues from this concession agreement will be deposited into the Department of Recreation and Parks' operating fund. There is no additional impact on the General Fund.

DEPARTMENT OF RECREATION
AND PARKS

BOARD OF COMMISSIONERS

SYLVIA PATSAOURAS
PRESIDENT

LYNN ALVAREZ
VICE PRESIDENT

MELBA CULPEPPER
PILAR DIAZ
JOSEPH HALPER

IRIS L. DAVIS
BOARD SECRETARY (213) 202-2640

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

MICHAEL A. SHULL
GENERAL MANAGER

ANTHONY-PAUL (AP) DIAZ, ESQ.
EXECUTIVE OFFICER &
CHIEF OF STAFF

RAMON BARAJAS
ASSISTANT GENERAL MANAGER

VICKI ISRAEL
ASSISTANT GENERAL MANAGER

SOPHIA PIÑA-CORTEZ
ASSISTANT GENERAL MANAGER
(213) 202-2633 FAX (213) 202-2614

March 5, 2018

Honorable Eric Garcetti, Mayor
City of Los Angeles
Room 303, City Hall

Attention: Ms. Mandy Morales

Dear Mayor Garcetti:

In accordance with Executive Directive No. 3 (Villaraigosa Series), attached herewith is a copy of a proposed Supplemental Agreement to Agreement No. 256 between the Department of Recreation and Parks and Butterfield Games, Inc., to exercise the five (5) year renewal option as provided in the Agreement, expand the Concession premises, provide authorization to add an outdoor entertainment attraction within the expanded premises, allow video game price changes, make updates to the insurance requirements and add the Standard Provisions for City Contracts (Rev.10/17)[v.2] to the Agreement.

Also attached for the assistance of your Office in reviewing the proposed Supplemental Agreement is Report No. 18-030, which was adopted by the Board of Recreation and Park Commissioners at its Special Meeting held on February 21, 2018. After your review and recommendation, the proposed MOU will be submitted to the Board Office for final action.

If you have any questions with regard to this matter, please contact Mr. Mark Stipanovich, Management Analyst, Concessions Unit, Finance Division, at (213) 202-5680.

Very truly yours,

BOARD OF RECREATION AND
PARK COMMISSIONERS

IRIS L. DAVIS
Commission Executive Assistant II

Attachments

cc: Mr. Mark Stipanovich, Management Analyst, Concessions Unit, Finance Division



**SUPPLEMENTAL AGREEMENT TO AGREEMENT NO. 256
BETWEEN THE CITY OF LOS ANGELES
AND
BUTTERFIELD GAMES, INC.
FOR THE OPERATION OF THE ARCADE CONCESSION AT THE
SHERMAN OAKS CASTLE PARK**

This **SUPPLEMENTAL AGREEMENT** to Agreement No. 256 ("SUPPLEMENTAL AGREEMENT") is made this _____ of _____, 2018, by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners (collectively, "City") and Butterfield Games, Inc. ("Contractor" or "Concessionaire"). CITY and Contractor may be referred to herein individually as "PARTY", or collectively as "PARTIES".

WITNESSETH

WHEREAS, on or about June 8, 2007, the City and the Contractor entered into that certain Agreement No. 256 for Concession Operation of the Arcade Concession at the Sherman Oaks Castle Park ("Agreement"); and,

WHEREAS, the Agreement was executed on or about June 8, 2007 with a ten (10) year term that expired on June 7, 2017 and included an option to extend the term for an additional five (5) years exercisable at the City's sole discretion ("Option"); and,

WHEREAS, the City desires to exercise such Option to extend the term of the Agreement to June 7, 2022 and to make other amendments to the Agreement as set forth in this Supplemental Agreement, and the Contractor desires to accept such extension and amendments; and,

WHEREAS, the Board of Recreation and Park Commissioners ("Board") approved this Supplemental Agreement at the meeting of the Board of Recreation and Park Commissioners on February 21, 2018 (Report No. 18-030)].

NOW THEREFORE, in consideration of the foregoing, and the terms and conditions contained herein, and the performance thereof, the Parties agree to enter into this Supplemental Agreement as follows:

The Agreement (Agreement No. 256) for the Concession Operation of the Arcade Concession at the Sherman Oaks Castle Park is hereby incorporated by reference into this Supplemental Agreement as if fully set forth herein, except as specifically modified below. The term "AGREEMENT" as used in the Agreement, and all references thereto, shall also mean this Supplemental Agreement. The term "CONCESSIONAIRE" as used in the Agreement, and all references thereto, shall also mean the Contractor.

SECTION 3 – CONCESSION PREMISES

Section 3 of the Agreement is hereby amended to include the following in the quotations marks:

"With regards to the Supplemental Agreement, the CONCESSION PREMISES to be authorized for use by the CONCESSIONAIRE shall include the premises map originally attached as Exhibit A to the Agreement and the premises map attached as Appendix B to the Supplemental Agreement, which includes an expanded premises area, as follows:

- Arcade floor (approximately 5.743 square feet)
- Office (approximately 154 square feet, which may be shared from time to time with other SOCP concessionaires)
- Storage room (108 square feet), located inside the main building facility
- Cement pad area located near the Arcade entrance in the SOCP parking lot and measuring 25'6" X 32'6"

Any expansion of amusement amenities offered for public use in the cement pad area must receive prior written approval of the General Manager or designee, with input from the Office of Council District 4 and the applicable Neighborhood Council."

SECTION 5 – TERM

Section 5 of the Agreement is hereby amended to include the following in quotation marks:

"The term of the Supplemental Agreement of which this Agreement is made a part ("Term") shall be for five (5) years. The Supplemental Agreement shall be effective as of June 8, 2017 and shall end upon the expiration of the Term on June 7, 2022. The City shall have the right to terminate this Supplemental Agreement in accordance with the termination provisions of the Standard Provisions for City Contracts (Rev. 10/17)[v.2] as attached to the Supplemental Agreement as Appendix A. Neither City, its Department of Recreation and Parks, the Board, nor any officer, employee, or Board member thereof shall be liable in any manner to Contractor because of such termination."

SECTION 7.I.

The following Sub-Section 7.I. Constitutional and Other Limits on Concessionaire's Rights to Exclusivity is added to the Agreement as part of this Supplemental Agreement:

"Notwithstanding exclusivity granted to Concessionaire by the terms of this Agreement, the City in its discretion may require Concessionaire, without any reduction in rent or other valuable consideration to Concessionaire, to accommodate the rights of persons to access and engage in expressive activities, as guaranteed by the first amendment to the United States constitution, the California constitution, and other laws, as these laws are interpreted by the City. Expressive activities include, but are not limited to, protesting, picketing, proselytizing, soliciting, begging, and vending of certain expressive, message-bearing items."

SECTION 8 – INSURANCE REQUIREMENTS

Section 8 of the Agreement is amended to add the following in quotation marks:

"Contractor (Concessionaire) shall procure at its expense, and keep in effect at all times during the Term of the Supplemental Agreement, the types and amounts of insurance specified in Appendix C of the Supplemental Agreement."

INCORPORATION OF DOCUMENTS

The following documents, and all exhibits thereto, in hereby incorporated into and made a part of this Supplemental Agreement:

1. The Agreement and all exhibits thereto, as may be explicitly amended by this Supplemental Agreement.
2. Appendix A of this Supplemental Agreement, which Contractor agrees and acknowledges is the Standard Provisions for City Contracts (Rev. 10/17)[v.2] which shall be a part of the terms and conditions of this Supplemental Agreement.
3. Appendix B of this Supplemental Agreement, which, along with Exhibit A of the Agreement, sets forth the expanded Concession Premises (as such term is defined in the Agreement) for this Supplemental Agreement.
4. Appendix C of this Supplemental Agreement, which are the Insurance Requirements for this Supplemental Agreement.

In the event of any conflict or inconsistency between the provisions of this Supplemental Agreement and any of the documents incorporated herein, the order of precedence of these documents shall be: (1) this Supplemental Agreement, (2) Appendix A Standard Provisions for City Contracts (Rev. 10/17)[v.2], (3) the Agreement; and (3) the other exhibits incorporated into this Agreement.

With the exception of the terms and provisions of the Agreement explicitly amended by this Supplemental Agreement, the remainder of the terms and conditions of the Agreement (Agreement No. 256) as incorporated into this Supplemental Agreement as if fully set forth herein shall remain unchanged and in full force and effect by way of this Supplemental Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to Agreement No. 256, to be executed by their duly authorized representatives.

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners.

BY: _____
President

DATE: _____

BY: _____
Secretary

DATE: _____

Butterfield Games, Inc.

BY: _____
President

DATE: _____

BY: _____
Secretary

DATE: _____

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

BY: _____
Deputy City Attorney

DATE: _____

Appendix A

Appendix B

Appendix C

APPROVED

FEB 21 2018

BOARD REPORT

BOARD OF RECREATION AND PARK COMMISSIONERS

NO. 18-030

DATE February 21, 2018

C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: SHERMAN OAKS CASTLE PARK - ARCADE CONCESSION
SUPPLEMENTAL AGREEMENT TO AGREEMENT NO. 256 WITH
BUTTERFIELD GAMES, INC. - EXERCISE RENEWAL OPTION, EXPAND
CONCESSION PREMISES, ADD OUTDOOR ENTERTAINMENT ATTRACTION
AND ALLOW A PRICE CHANGE

AP Diaz	_____	V. Israel	_____
R. Barajas	_____	S. Piña-Cortez	_____
H. Fujita	_____	*N. Williams	<u>NDW</u>



General Manager

Approved X

Disapproved _____

Withdrawn _____

RECOMMENDATIONS:

1. Approve a proposed Supplemental Agreement to Agreement No. 256 (Agreement) (Attachment 1), between The Department of Recreation and Parks (RAP) and Butterfield Games, Inc., subject to approval of the Mayor, the City Council and the City Attorney as to form, to exercise the five (5) year renewal option as provided in the Agreement, expand the Concession premises, provide authorization to add an outdoor entertainment attraction within the expanded premises, allow video game price changes, make updates to the insurance requirements and add the Standard Provisions for City Contracts (Rev.10/17)[v.2] to the Agreement;
2. Find, in accordance with Charter Section 1022, that it is necessary, feasible and economical to secure these services by contract as RAP lacks sufficient and necessary personnel to undertake these specialized professional services;
3. Direct the Board Secretary to transmit the proposed Supplemental Agreement to the Mayor in accordance with Executive Directive No. 3, and the City Attorney for approval as to form;
4. Authorize the Board of Recreation and Park (Board) President and Secretary to execute the Supplemental Agreement upon receipt of necessary approvals; and,
5. Authorize the General Manager or designee to make any necessary technical changes to carry out the intent of this Report.

BOARD REPORT

PG. 2

NO. 18-030

SUMMARY:

Sherman Oaks Castle Park (SOCP) is a five-acre family entertainment center in the Sherman Oaks community of Los Angeles featuring three (3) landscaped 18-hole miniature golf courses, an arcade, a food service concession, and batting cages. In the center of the property is a 7,500 square-foot medieval castle-themed building which houses the arcade, food concession, and miniature golf administration. Each year approximately three hundred thousand (300,000) guests visit the facility, which is open every day of the year. Parking for approximately one hundred forty (140) vehicles is available at the facility. The miniature golf portion of the park is operated by RAP; the batting cage, arcade, and food service are each operated by independent, private business entities under concession agreements with RAP.

The SOCP Arcade Concession (Concession) features all the latest state-of-the-art arcade games providing entertainment for all ages. The games are continually rotated and updated to meet the demands of the SOCP arcade patrons. The operator provides an ATM, redemption game cards and redemption prizes.

Butterfield Games, Inc. (Concessionaire), the current arcade concessionaire, has been operating the Concession under Agreement No. 256 (Agreement) with a ten (10) year term since June 8, 2007, which was awarded as the result of a Request for Proposal process. Prior to the award, Concessionaire had been operating the Concession on an Interim Permit basis. The Agreement allows RAP to extend the term by an additional five (5) years.

In 2016, the Concession generated Two Million, Five Hundred Five Thousand, Six Hundred Eighty Dollars and Twenty-Six Cents (\$2,505,680.26) in gross revenue and made revenue sharing payments of forty-two and one half percent (42.5%) of gross revenue or, One Million, Sixty-Four Thousand, Nine Fourteen Dollars and Eleven Cents (\$1,064,914.11).

The Concessionaire estimates that a proposed entertainment attraction, a climbing wall in the expanded Concession premises area, upon approval, will increase gross revenue by approximately Sixty Thousand Dollars (\$60,000.00) annually, of which RAP would receive the contractual revenue share of forty-two and one half percent (42.5%) or approximately Twenty-Five Thousand, Five Hundred Dollars (\$25,500.00) annually.

Staff has found that Concessionaire has been operating in compliance with its obligations under the initial ten (10) year term of the Agreement and has demonstrated its capability to provide quality arcade entertainment by being very attentive to ever-changing gaming tastes. RAP staff headquartered at SOCP would welcome a five-year extension of the Agreement.

Staff recommends approval of the proposed Supplemental Agreement which will:

1. Extend the Agreement's expiration date from June 7, 2017 to June 7, 2022, subject to earlier termination by RAP as provided in the Standard Provisions for City Contracts (Rev. 10/17)[v.2], attached as Appendix A to the Supplemental Agreement;

BOARD REPORT

PG. 3

NO. 18-030

2. Expand the Concession premises onto a concrete pad within the SOCP parking lot, as identified in Appendix B of the Supplemental Amendment;
3. Provide for an additional outdoor entertainment attraction within the expanded Concession premises, following review and approval of the General Manager or designee, and review of Council District 4 and the applicable Neighborhood Council; and,
4. Make updates to the insurance requirements as set forth in Appendix C of the Supplemental Agreement.

Charter Section 1022 Determination

Los Angeles City Charter Section 1022 prohibits contracting out work that could be done by City employees unless the Board determines it is more economical and/or feasible to contract out the service.

On December 9, 2015, the Personnel Department completed a Charter Section 1022 review (Attached) and determined that while the City classification of Park Services Attendant could perform some of the work requested, City staff does not have the appropriate expertise and experience to perform arcade related work in its entirety.

The Concessionaire currently employs staff with the necessary expertise and experience with the existing system in order to perform the required services. Therefore, it is more feasible to contract out the services to ensure the needs of the public are met in a timely and efficient manner.

Pricing Changes

The Concessionaire has requested approval for video game price changes that will reflect comparable pricing in similar businesses in the Southland. Staff conducted a sampling of pricing and noted that there is comparable pricing at Mountasia Arcade and Dave and Buster's Arcade destinations in the Southland. Staff recommends approval of the pricing changes. A sample of pricing and the proposed pricing changes are listed below:

Video Games	Proposed Castle Park Arcade Prices	Mountasia Arcade Prices	Dave and Buster's Arcade Prices
Walking Dead	\$1.50	---	\$1.70
Down the Clown	\$1.50	\$1.50	\$1.70
Star Wars: Battle Pod	\$3.00	\$3.00	\$3.75
Fishbowl Frenzy	\$1.00	\$1.05	\$2.50

BOARD REPORT

PG. 4

NO. 18-030

FISCAL IMPACT STATEMENT:

Approval of this Supplemental Agreement to Agreement No. 256 positively impacts the RAP's General Fund. As revenue increases, deposits to the RAP's General Fund will also increase.

Based on the Concessionaire's estimates, RAP's General Fund will be increased by approximately Twenty-Five Thousand, Five Hundred Dollars (\$25,500.00) annually, of which ninety percent (90%) or approximately Twenty-Two Thousand, Nine Hundred Fifty Dollars (\$22,950.00) would be earmarked for the General Fund and ten percent (10%) for the Concession Improvement Account, or approximately Two Thousand, Five Hundred Fifty Dollars (\$2,550.00).

This report was prepared by Mark Stipanovich, Management Analyst, Finance Division/Concessions Unit.

LIST OF ATTACHMENTS

1. Supplemental Agreement to Agreement No. 256
2. Appendix A: Standard Provisions (Rev. 10/17)[v. 2]
3. Appendix B: Concession Premises Map
4. Appendix C: Insurance Requirements

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	<u>Insurance</u>	9
PSC-24	<u>Best Terms</u>	9
PSC-25	<u>Warranty and Responsibility of Contractor</u>	10
PSC-26	<u>Mandatory Provisions Pertaining to Non-Discrimination in Employment</u>	10
PSC-27	<u>Child Support Assignment Orders</u>	10
PSC-28	<u>Living Wage Ordinance</u>	11
PSC-29	<u>Service Contractor Worker Retention Ordinance</u>	11
PSC-30	<u>Access and Accommodations</u>	11
PSC-31	<u>Contractor Responsibility Ordinance</u>	12
PSC-32	<u>Business Inclusion Program</u>	12
PSC-33	<u>Slavery Disclosure Ordinance</u>	12
PSC-34	<u>First Source Hiring Ordinance</u>	12
PSC-35	<u>Local Business Preference Ordinance</u>	12
PSC-36	<u>Iran Contracting Act</u>	12
PSC-37	<u>Restrictions on Campaign Contributions in City Elections</u>	12
PSC-38	<u>Contractors' Use of Criminal History for Consideration of Employment Applications</u>	13
PSC-39	<u>Limitation of City's Obligation to Make Payment to Contractor</u>	13
PSC-40	<u>Compliance with Identity Theft Laws and Payment Card Data Security Standards</u>	14
PSC-41	<u>Compliance with California Public Resources Code Section 5164</u>	14
PSC-42	<u>Possessory Interests Tax</u>	14
PSC-43	<u>Confidentiality</u>	15
Exhibit 1	<u>Insurance Contractual Requirements</u>	16

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 active 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. Access and Accommodations

CONTRACTOR represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

CONTRACTOR understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

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 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.

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), 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: _____

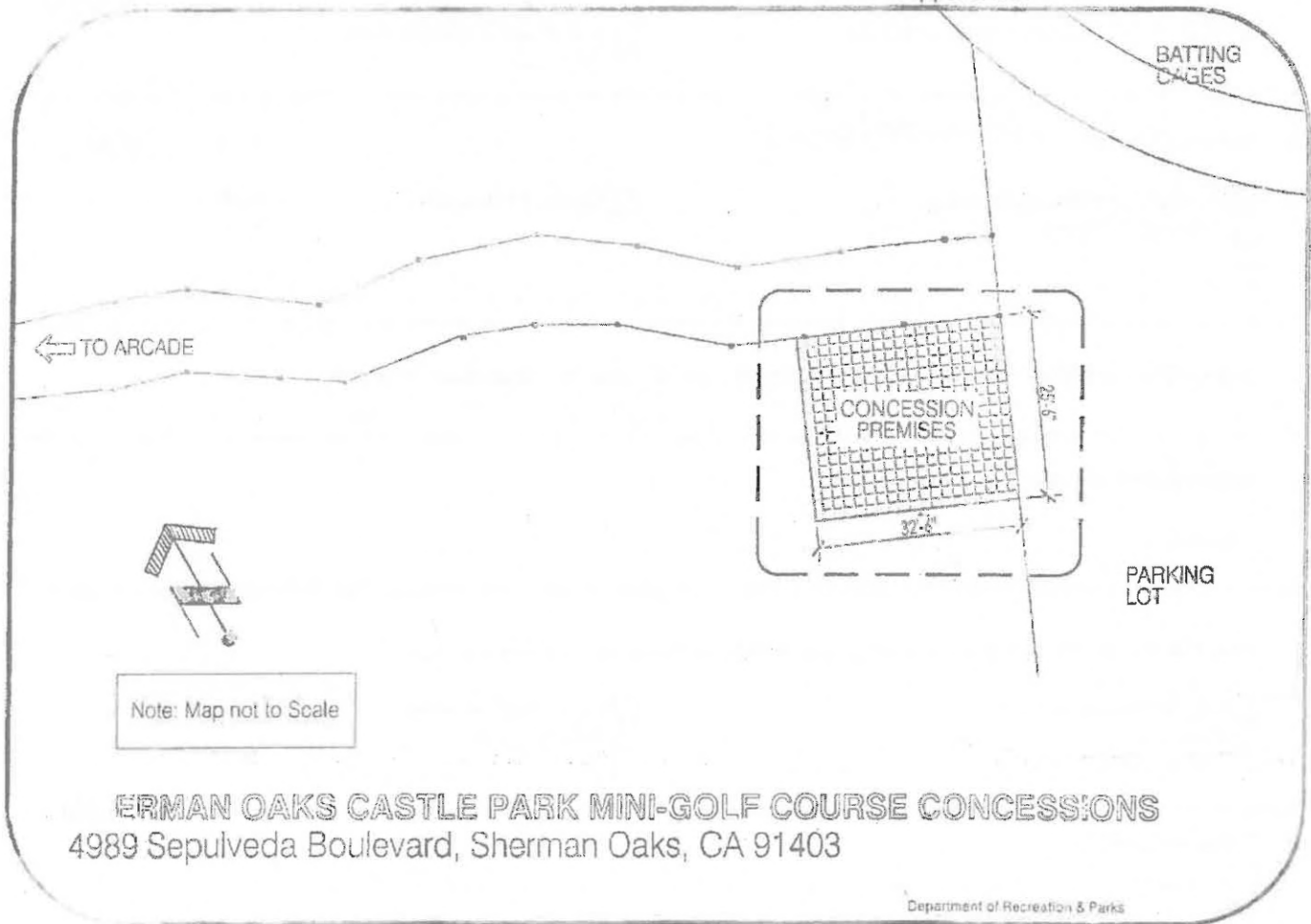
Date: _____

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

Appendix B



Required Insurance and Minimum LimitsName: Butterfield Games, IncorporatedDate: 04/17/2017

Agreement/Reference: Amendment to Agreement 256 for the operation of the Arcade Concession at the Sherman Oaks Castle Park
 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

☒ **Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)**

 WC Statutory
 EL \$1,000,000
☒ Waiver of Subrogation in favor of City
☐ Longshore & Harbor Workers
☐ Jones Act

☒ **General Liability** with \$2,000,000 aggregate
\$1,000,000☒ Products/Completed Operations☐ Sexual Misconduct☐ Fire Legal Liability☐
☐ **Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work)

☐ **Professional Liability** (Errors and Omissions)

Discovery Period _____

☐ **Property Insurance** (to cover replacement cost of building - as determined by insurance company)
☐ All Risk Coverage☐ Boiler and Machinery☐ Flood☐ Builder's Risk☐ Earthquake☐
☐ **Pollution Liability**
☐
☐ **Surety Bonds - Performance and Payment (Labor and Materials) Bonds**

100% of the contract price

☐ **Crime Insurance**

Other: *In the absence of imposed auto liability requirements, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.