

**AMENDED AND RESTATED LEASE  
(6550 Odessa, Van Nuys)**

THIS AMENDED AND RESTATED GROUND LEASE ("Lease") is made and entered into as of \_\_\_\_\_, 2025, by and between the Department of Airports, a proprietary department of the **CITY OF LOS ANGELES** ("City"), a municipal corporation acting by order of and through its Board of Airport Commissioners ("Board") of its Department of Airports ("LAWA" or "Department"), and **L & W World LLC**, a California limited liability company ("Lessee").

**RECITALS**

LAWA owns property located at 6550 Odessa Street in the City of Van Nuys, California, with approximately 55 acres of land ("Property").

LAWA elected to solicit proposals from potential lessees through a Request for Proposals ("LAWA's RFP") process for the redevelopment management, operation and maintenance of the Property.

Lessee submitted its proposal ("Lessee's RFP Response") in response to LAW A's RFP and to this Lease to accomplish LAW A's objectives.

**LEASE TERMS AND CONDITIONS**

Effective as of the above date, the City and Lessee agree in consideration of and to the terms, covenants and conditions provided below.

**ARTICLE 1**

**Section 1.     Demised Premises.**

1.1     Subject to Section 1.1(a) below, the demised premises ("Premises" or "Demised Premises") consist of approximately 55 acres of real property with all structures and appurtenances thereon located at 6550 Odessa Street, Van Nuys, California. The Premises are depicted on the attached drawing marked as Exhibit A incorporated herein by this reference. The Premises shall be delivered to Lessee free and clear of all mortgages, security interests, liens, charges and monetary encumbrances other than the liens of current taxes and assessments not in default.

1.2     As of the Possession Date (as defined in Section 2.1 below), LAW A delivers to Lessee and Lessee accepts the Premises in an "as-is" condition, subject to Section 8.2. Lessee acknowledges notice of any environmental conditions or hazardous substances identified in the Baseline (as defined in Section 8.2 below).

1.3     Surrender. Upon the expiration of the Term or earlier termination of this Lease, Lessee shall quit and surrender the Premises to City with all interiors broom clean, and with the Premises in good order and condition, ordinary wear and tear excepted, free and clear of all mortgages, security interests, liens, charges and encumbrances that have been created by Lessee, other than the liens of current taxes and assessments not in default, and such other title matters to which the Premises may be subject on the Lease Commencement Date. On or before the expiration

or termination of this Lease, Lessee shall, without expense to City, remove or cause to be removed from the Premises:

- (a) All debris and rubbish;
- (b) Any items of furniture, equipment, freestanding cabinet work, and other articles of personal property owned by Lessee or installed or placed by Lessee or any of its agents, representatives, employees, contractors, and invitees (the "Lessee Parties") in the Premises;
- (c) Any similar articles of any other persons claiming under Lessee that City, in City's sole discretion, requires to be removed; and
- (d) Any alterations and improvements that Lessee is required to remove under the terms of this Lease or that the Chief Executive Officer notified Lessee in writing prior to approval of the alterations and/or improvements that removal at termination as a condition of his or her consent.
- (e) On or prior to the surrender of the Premises to the City, Lessee shall also satisfy its obligations regarding environmental matters, which obligations are set forth in Section 8.

Lessee shall, at Lessee's sole expense, repair all damage or injury that may occur to the Premises or the buildings and other improvements thereon caused by Lessee's removal of those items and shall restore the Premises and building and other improvements to their condition prior to such damage or injury. If Lessee has not completed the foregoing obligations prior to the expiration or termination of this Lease, Lessee shall be deemed a tenant at sufferance subject to the provisions of Section 3.2 below. Lessee shall have no obligations to repair or remove any Pre-Existing Environmental Conditions (defined in Section 8.2) that have not been disturbed or knowingly exacerbated by Lessee or Lessee Parties.

1.4 If Lessee remains in possession of all or any part of the Premises after the termination of this Lease (whether at the expiration of the Term or otherwise), with or without the express or implied consent of City, such tenancy shall be from month-to-month only, and not a renewal hereof or an extension for any further term, and in such case, rent and other monetary sums due hereunder shall be payable in the amount of one hundred fifty percent (150%) of the rent payable before the last month of the Term of this Lease, plus other charges payable hereunder at the time specified in the Lease, and such month-to-month tenancy shall be subject to every other provision, covenant and agreement contained herein. Acceptance by City of rent after such expiration or earlier termination shall not be deemed to create or evidence a renewal of this Lease. The foregoing provisions are cumulative of all other remedies available to City and do not affect the right of re-entry or any right of City hereunder or as otherwise provided by law, and in no way shall such provisions affect any right which City may otherwise have to recover damages from Lessee for loss or liability incurred by City resulting from such failure by Lessee to surrender the Premises. Lessee shall indemnify, defend and hold City harmless for all damages that City incurs from Lessee's delay in vacating the Premises, including but not limited to lost profits. Nothing contained herein shall be construed as consent by City to any holdover by Lessee, and City expressly reserves the right to require Lessee to surrender possession of the premises to City as provided in this Lease upon the expiration or other termination of this Lease.

## **Section 2.     Term of Lease; Extension Option**

2.1     The term (“Term”) of this Lease shall commence as of                      (Lease Commencement Date”), and shall expire on the fifth (5<sup>th</sup>) anniversary of the date on which possession is delivered to Lessee (“Possession Date”), unless terminated earlier or extended under the provisions of this Lease. The term of this Lease, before the exercise of the First Extension Option and Second Extension Option in Section 2.2 and 2.3 below, shall be called “Initial Term.”

2.2     Subject to Section 2.4 and so long as no Default Event (hereinafter defined) has occurred and is continuing, upon completion of the Schedule 5.1A Improvements (as defined in Section 5 below), Lessee shall have the right to extend the Term of this Lease for an additional term of up to fifteen (15) years (“First Extension Option”) without the requirement of a further request for proposal process. No later than [one year] prior to the expiration of the Initial Term, Lessee shall have delivered to City an irrevocable written request to exercise the Extension Option.

2.3     Subject to Section 2.4 and so long as no Default Event (hereinafter defined) has occurred and is continuing, upon completion of the Schedule 5.1A Improvements and Schedule 5.1B Improvements (as defined in Section 5 below), Lessee shall have the right to extend the Term of this Lease for an additional term of up to ten (10) years (“Second Extension Option”) without the requirement of a further request for proposal process. No later than [one year] prior to the expiration of the Initial Term, Lessee shall have delivered to City an irrevocable written request to exercise the

2.4     The availability of the First Extension Option and Second Extension Option herein shall not constitute a legally binding commitment of City to proceed with any future development or any renovation plan. City expressly reserves discretion to determine the appropriate level of CEQA review for any proposed future development or renovation plan and the right to consider all mitigation measures and alternatives for any proposed development or any renovation plan, including the “no project” alternative. In the event that the improvements and work described in the proposed Redevelopment Plan are not permitted as a result of the CEQA, NEPA, or other restrictions under applicable law, City and Lessee agree to enter into good faith negotiations to redesign the Required Improvements (as defined in Section 5.1 below) to equitably adjust the terms of this Lease and to allow for the Extension Option, provided that such redesigned Required Improvements shall require a minimum additional capital investment equal to or in excess of the Minimum Investment (defined in Section 5.1 below). The exercise of the Extension Option is subject to the condition subsequent that the Required Improvements is at least the amount of the Minimum Investment, or that Lessee pay to City the difference between the Minimum Investment and the Required Improvements, as described more fully in Section 5.1 below. In the event the Required Improvement is less than the Minimum Investment and Lessee fails to pay to City the difference between the Minimum Investment and the Required Improvement, the extended term of the Lease will be eliminated or reduced, all as described in Section 5.1 below.

## **Section 3.     Use of the Premises.**

3.1     Authorized Uses. The use of the Demised Premises is limited to: a golf course, clubhouse, parking, and uses incidental thereto. Without limiting the foregoing, Lessee shall limit the use of the Premises in strict compliance with applicable zoning ordinances and applicable laws.

3.2. **Unauthorized Uses:** Lessee acknowledges that any use other than those expressly set forth in Article 1, Subsection 3.1 above are prohibited, and that prior written consent of the Chief Executive Officer is required to modify the use of the Demised Premises in any manner. Without limitation to the foregoing, Lessee shall not use the Demised Premises for any purpose that is contrary to the Leasing Policy and Minimum Standards (as defined in Section 3.3 below), or that constitutes waste or nuisance, or that would unreasonably annoy other occupants or invitees at Airport.

3.3. **Minimum Standards:** Use of the Demised Premises will be subject to and Lessee agrees to comply fully with the Minimum Standards as and when adopted by the Board, which will then be attached hereto and incorporated by reference herein as Exhibit C, Minimum Standards. Lessee acknowledges that the Minimum Standards may be supplemented, amended, or modified (and Exhibit C revised accordingly) by Executive Directive. Lessee shall be solely responsible for fully complying with any and all supplements, amendments, and/or modifications to the Minimum Standards.

3.3.1. Lessee shall comply with City's rules and regulations for parking, as well as passenger pickup and drop off that are applicable to similarly situated lessees and other users of the Airport. Lessee must comply with all rules and regulations for off-airport rental car services (including services such as Turo). Upon City's request, Lessee shall execute a nonexclusive license agreement for rental car services.

3.4. **Access to Demised Premises:** Throughout the term of this Lease, Lessee, its agents, servants, employees, contractors, licensees and business invitees, shall have ground ingress and egress to and from the Demised Premises. Such access to the Demised Premises shall be subject to reasonable airfield access control and permitting requirements as may be established by City and temporary blockage or redirection due to Airport security, Airport construction or Airport operational necessity.

3.5. **Parking:** Parking Spaces. Lessee shall make an adequate number of parking spaces available for all persons needing access to the Demised Premises, including Lessee's employees, contractors, sublessees, invitees, visitors, and other users of the leasehold, without infringing upon the rights of the City, other tenants, or other third parties, provided that nothing in this Lease shall be construed to provide any third parties with any causes of action against City or Lessee.

#### **Section 4.     Payments to the City: Rent.**

4.1     Commencing on the Effective Date ("Rent Commencement Date"), Lessee shall pay monthly rent ("Monthly Rent"). Monthly Rent shall be as set forth in Exhibit B, Payments, and shall be adjusted pursuant to Article 1, Subsection 4.2. **Rental Adjustments.** Lessee acknowledges that the Chief Executive Officer is authorized to replace Payments, Exhibit B to reflect rental adjustments made pursuant to Article 1, Subsection 4.2 and to reflect fees and/or other charges established periodically by the Board that shall be generally applicable to similarly-situated lessees at airport and Lessee accepts responsibility for payments based upon such modifications. If adjustments to rental, fees and/or other charges are adopted by the Board retroactive to an effective date established by the Board, the adjustment(s) shall be applied retroactively to said effective date, and Lessee must pay all increased amounts due at the next scheduled payment date. Lessee shall be responsible for payment of any and all amounts due City by sublessees of this Lease, if any, unless the Chief Executive Officer specifically waives such responsibility.

4.2 **Rental Adjustments.** It is agreed that Monthly Rent under Section 4.1 shall be adjusted each year in accordance with the procedures provided hereinafter.

4.2.1. **Annual Adjustments.**

4.2.1.1. Subject to Section 4.2.1.2 and except when adjusted as provided in Article 1, Subsection 4.2.2. **Periodic Adjustment to Fair Market Rental,** below, the Monthly Rent for the Demised Premises covered under this Lease shall each be subject to automatic, annual rental adjustments on July 1 (hereinafter referred to as "Annual Adjustment Date").

4.2.1.2. The Monthly Rent shall be adjusted on the Annual Adjustment Date according to the percentage increases over the prior year, if any, in the Consumer Price Index, All Urban Consumers for the Los Angeles-Riverside-Orange County, California area, 1982-84=100 (CPI-U), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("B.L.S."), or its successor, as follows:

Monthly Rent shall be multiplied by the CPI-U for the month of March immediately preceding the Annual Adjustment Date (hereinafter referred to as the "Adjustment Index"), divided by the said CPI-U as it stood on March of the prior year (hereinafter referred to as the "Base Index") and the result shall be the "Adjusted Monthly Rent", to be applied effective July 1 through June 30, provided that the annual adjustment shall not be less than two percent (2%) per year and nor more than seven percent (7%) per year, in accordance with the calculation below. In the event that the Adjusted Monthly Rent indicates a rate increase in excess of seven percent (7%), the rental rate increase shall be carried over and implemented in the succeeding year, as necessary, at a rate not to exceed seven (7%) per year.

The formula for calculation of Adjusted Monthly Rent commencing each July 1 during the term of this Lease shall be as follows:

- Adjusted Monthly Rent = Monthly Rent x (Adjustment Index/Base Index)

If the B.L.S. should discontinue the preparation or publication of the CPI-U, and if no transposition table is available, then City shall adopt a comparable publicly-available local consumer price index for adjusting and revising the Monthly Rent on July 1 annually.

4.2.2. **Periodic Adjustment to Fair Market Rental.** Provided nothing herein shall be construed to grant Lessee any extension rights unless expressly stated in this Lease, it is agreed that the Monthly Rent shall be adjusted to fair market rental value effective as of the fifth anniversary of the Effective Date, and every five years thereafter. For the avoidance of doubt, all rental rates shall be reviewed by City and adjusted, as appropriate, in accordance with City Charter requirements, at intervals of no less than every five (5) years. However, nothing herein shall be construed to grant Lessee a right or option to extend the Lease. At no time under this provision shall the rent due to the City result in a rental reduction.

4.2.2.1. **Parties May Negotiate in Good Faith.** At least one (1) year prior to the scheduled Periodic Adjustment Date and in accordance with Section 4.2.2 above, the parties may (but are not required to), in good faith, negotiate the rental



rate(s) applicable to the subject adjustment period(s) as referenced above. Such good faith negotiations, initiated by either party, may include the involvement of a third party reviewer to review and make nonbinding recommendations regarding each party's rate adjustment proposal, discussions regarding external and internal factors that may be unique to the land and/or improvements so that the reviewer(s) can take them into consideration when making the recommendations, in substantially the same manner as corroborated by the parties and applicable to the Demised Premises. The parties shall have continuing opportunities to negotiate in good faith in an attempt to reach agreement on rental adjustment(s) notwithstanding each party's obligation to perform its duties as described under Section 4.2.2.2 below. If the parties are able to reach an agreement on the adjustment to the rental rate(s), then said rate(s) shall be presented as a recommendation to the Board. However, if the parties are unable to reach final agreement during said negotiation period, the parties may continue to negotiate in good faith to attempt to reach agreement until arbitration commences pursuant to Section 4.2.2.6 below.

4.2.2.2. Appraisal Process. If the parties cannot reach agreement on the rental rate(s) or the Board does not approve the agreed upon rental rate(s) as described in Section 4.2.2.1 at least nine (9) months prior to the scheduled Periodic Adjustment Date, then the parties shall determine the Land Rent (and, if applicable, the Improvements Rent) by the procedures described in Sections 4.2.2.3 through 4.2.2.5 below. City may elect to have such procedures apply separately to the rent applicable to improvements and may adjust the land rental rates on the basis of airport-wide land rental rates then in effect, provided that such rates were adopted in compliance with applicable laws. Should City choose to adopt this adjustment option, City will provide written notice to Lessee no later than ten (10) months prior to the Periodic Adjustment Date of the intention to adjust land and improvements separately. Separate appraisals will be procured for the land and the improvements (if any). Under this option, both the land and improvement adjustments will be completed separately under Sections 4.2.2.2 through 4.2.2.6. City or Lessee may elect to use the same appraiser for both appraisal reports. Every effort will be made by City and Lessee to consolidate any required meetings as required in the appraisal process described below.

4.2.2.3. Step 1: Independent Appraisals. City and Lessee shall each select an appraiser, who is a member of the Appraisal Institute or its successor organization and meets the Minimum Qualifications as defined within this Lease (a "Qualified Appraiser"). Either Lessee or City shall, when notified in writing by the other to do so, deliver to the other party the name and address of such appraiser (each, selected Qualified Appraiser, a "Main Appraiser"). The Chief Executive Officer shall immediately fix the time and place for a conference between the two parties and the Main Appraisers no later than fifteen (15) days from the date of the exchange of names and addresses of the Main Appraisers. At such meeting, both Lessee and City may have discussions with the Main Appraisers as to any externalities that may affect the derivation of rental value conclusions. The Appraisal Instructions to be given to the Main Appraisers are as defined within this Lease. City and Lessee shall each pay the fees and expenses of their respective Main Appraisers. The narrative appraisals must be completed according to the Uniform Standards of Professional Appraisal Practice

(USPAP) for the year in which the appraisal is completed. No later than one hundred (100) calendar days after the date of the appraiser meeting, a copy of the completed, final USPAP-compliant appraisal report procured by both City and Lessee will be made available for review by the other party on the same day. If either City or Lessee fails to deliver its appraisal report by the appraisal report delivery deadline, the late party will inform the other party in writing of the reason for the delay and the expected date on which appraisal reports will be exchanged. If either party's appraisal report cannot be delivered within four (4) months of the appraiser meeting, the complying party shall have its appraisal report presented to the Board for approval. Upon exchange of the two appraisal reports, in the event that the determination of the rental value in the two appraisal reports differs by fifteen percent (15%) or less, the rate that is the average of the determinations in the two appraisal reports shall be presented as a recommendation to the Board. If the rate determinations in the two appraisal reports differ by more than fifteen percent (15%), the parties shall proceed to Section 4.2.2.5 below.

4.2.2.4. Step 2: Arbitration Appraiser Selection. The Main Appraisers selected by each party shall be instructed to agree upon and select an Arbitration Appraiser (as defined below) no later than six (6) weeks after the appraiser meeting described above. The Arbitration Appraiser shall be a Qualified Appraiser that is not under contract with the City for appraisal services. If the Arbitration Appraiser selected is not available to perform the task pursuant to the instructions set forth in Section 4.2.2.6 below or is unwilling to execute a City contract for the performance of appraisal services, then City and Lessee shall inform the Main Appraisers and require them to repeat the selection process again until an available Arbitration Appraiser is selected. If the Main Appraisers cannot come to agreement on the selection of an Arbitration Appraiser within (6) six weeks from the date of the appraiser meeting, the Chief Executive Officer shall select an Arbitration Appraiser.

4.2.2.5. Appraisal Review Period. The parties shall have one (1) month to review each other's appraisal reports from the date of the appraisal exchange as described in 4.2.2.3 above. The parties may continue to negotiate the adjusted rental rates during this period. Within fifteen (15) calendar days of the appraisal report exchange in Section 4.2.2.3 above, the Chief Executive Officer shall fix a time and place for a negotiation meeting between the parties to be held no later than six (6) weeks from the date of the appraisal report exchange. At such meeting, the parties shall attempt to reach a final agreement on the adjusted rental rates. Either party may include its Main Appraiser in the meeting, if desired. If Lessee and City reach agreement on the rental rate adjustments, the Chief Executive Officer shall present the results as a recommendation to the Board. If Lessee and City are unable to reach agreement on the adjusted rental rate(s) by the date that is fourteen calendar (14) days from the date of the negotiation meeting, then the parties shall proceed to Step 3 below.

4.2.2.6. Step 3: Appraiser Arbitration. City and Lessee shall each pay one-half of the fees and expenses of the Arbitration Appraiser. The Arbitration Appraiser selected by the two Main Appraisers or the Chief Executive Officer, as the

case may be, in Step 2, shall receive copies of both Lessee and City's final appraisal reports that were procured in Step 1 and a list of the rental rate adjustments that have not been agreed to by the parties. The Arbitration Appraiser shall be allowed three (3) weeks to review both appraisal reports. After review of the two appraisal reports, the Arbitration Appraiser will determine which of the rental rate(s) from the two appraisal reports are the most reasonable, considering comparable data selection, market information and applicable valuation methodology. The Arbitration Appraiser will communicate its decision in writing to both Lessee and City three (3) weeks after engagement. The Chief Executive Officer shall present the agreed-upon rental rate(s) and the Arbitration Appraiser's determinations as a recommendation to the Board. City shall make every effort to present the rate(s) for approval to the Board prior to the Periodic Adjustment Date.

4.2.3. Appraisal Criteria. The following appraisal criteria shall apply to Sections 4.2.2.3 through 4.2.2.6.

4.2.3.1. Appraiser Minimum Qualifications. The Main Appraiser must possess, at a minimum, an MAI or SRPA designation and must be licensed in the State of California. The Main Appraiser must perform all of the calculations and technical portions of the appraisal report as well as derive the final value conclusions within the appraisal report. The Main Appraiser must have geographic market knowledge of the Los Angeles County area. Knowledge of the entire Southern California real estate market is preferred. The Main Appraiser must have a minimum seven (7) years of experience of appraising property in Southern California. If the Main Appraiser is valuing property within the perimeter fence of an airport ("on-airport"), he or she must have performed a minimum of five (5) appraisals of on-airport property within the past five (5) years.

4.2.3.2. Main Appraisers must be in good standing with the California Bureau of Real Estate Appraisers (CBREA) or its successor organization and have no more than one complaint filed against him or her for any reason and no complaints that have resulted in any disciplinary actions. The Main Appraisers must certify in the appraisal report that he or she has never received any disciplinary actions from the CBREA. The Main Appraisers must be able to provide documentation of the sources of comparable rental rate and sales data to the reasonable satisfaction of City and Lessee.

4.2.3.3. Appraisal Instructions. The Main Appraiser shall consider the following in completing the appraisal report:

4.2.3.3.1. Los Angeles Administrative requirements that are in force upon Lessee within its Lease at the date of value.

4.2.3.3.2. FAA regulations that may affect value such as the Building Restriction Line, Object Free Area, Runway Protection Zone, building height limitations as related to the "Transitional Zone" and any other regulations that may affect value.



4.2.3.3.3. City zoning that applies to the property. If the City-approved use does not conform to the current zoning at the date of value, and the current use is also determined to be the highest and best use, then the Main Appraiser will value the property as if it had the zoning that would allow its current use (variance granted).

4.2.3.3.4. Any public or private easements, such as utilities or rights-of-way, including avigation rights.

4.2.3.3.5. The appraisal of land shall be determined as if vacant under its highest and best use at the date of value, taking into consideration the government imposed restrictions listed above (both by law and restrictions as imposed under the Lease). The leasehold estate or "lessee's interest" (as defined within the most recent edition of "The Appraisal of Real Estate" as published by the Appraisal Institute) shall not be considered.

4.2.3.3.6. City and Lessee shall have the right to modify any conditions of the appraisal process upon mutual written agreement of the parties.

4.2.4. With respect to additions, improvements, or alterations to leasehold structures authorized by City and made by Lessee during the term of this Lease, Lessee shall not be charged rent for the rental value thereof unless and until title to said additions, improvements, or alterations revert to City pursuant to the terms of this Lease or by operation of law.

4.2.5. Nothing herein shall prejudice the right of Lessee to contest, in a court of competent jurisdiction, such adjusted rental in the event said Board may have acted arbitrarily or unreasonably. However, pending the outcome of any such litigation, Lessee shall be obligated first to either pay the new rental and all retroactive amounts directly to City as they come due, or deposit such increased amounts of such rental and the retroactive amounts into a joint escrow account. Provision shall be made for the payment to the City of the escrowed funds, including accrued interest, (to the extent such funds are owed by Lessee to City) upon a final determination of the appropriate rental adjustment, if any.

4.2.6. Notwithstanding Article 2, Section 71 below and subject to Section 4.2.7 below, if either Party alleges that the other Party has failed to comply with the procedure specified in Section 4.2.2.2 above, the Party alleging noncompliance must notify the other Party in writing within 30 days, describing such noncompliance in detail and providing the other Party a reasonable time for cure (in any case, not less than 10 days), otherwise such noncompliance shall be deemed waived; provided that failure by the parties to timely comply with the rental readjustment procedures herein shall not be construed to constitute a waiver of the right of City to a rental readjustment. In the event adjustment of rental is not completed prior to the adjustment date, Lessee shall continue to pay the rent set for the preceding period, at the intervals and in the manner fixed for such preceding period, and if such rent is thereafter fixed

in a different amount, such new rental shall take effect retroactively back to the beginning date of the readjustment period. Subject to Lessee's right of contest and right to escrow funds, unless the Board otherwise agrees to a payment plan with interest, Lessee shall promptly pay to City that sum, if any, which has accrued as a result of such retroactive application. If a rental reduction occurs, City shall provide a rent credit to Lessee's account equal to the sum which has accrued as a result of such retroactive application.

4.2.7. If City has complied with the appraisal procedure and related time frames as set forth above, City shall be entitled to receive, in addition to all retroactive rents that become due as a result of Board-adjusted rental rate(s), the time value of said rental increase(s) calculated from the effective date of the increase(s) to the time period that the rental increase(s) are assessed to the Lessee at an interest rate representing what the City may have otherwise been entitled to if the funds associated with the increase(s) were available for City's use; however, in no event shall the interest rate be less than 5%.

4.2.8. Assessments, Fees, and Charges. In addition to the rental obligation, Lessee hereby agrees to pay such assessments, fees, and charges as shall be set by the Board and that shall be generally applicable to similarly situated lessees at Airport.

4.3 Percentage of Gross Receipts. In addition to the Monthly Rent under Section 4.1 above, Lessee shall pay LAWA two percent (2.0%) of its Gross Receipts (as defined below) commencing on the sixth anniversary of the Possession Date, as follows (hereinafter "Percentage of Gross Receipts").

4.4 Gross Receipts Defined. "Gross Receipts" is defined as all income, revenue and proceeds resulting from the operation of the Demised Premises. Subject to the exclusions listed below, Gross Receipts shall include, without limitation, all amounts derived from the following:

- (a) Golf course fees, including green fees, tournament fees, annual passes, membership fees, initiation fees, and any other fees charged for access to or use of the golf course;
- (b) Driving range fees, including fees for driving range access, practice facility usage, ball dispensing machines, and any practice area fees;
- (c) Golf cart rental fees, including rental fees for both powered and non-powered carts, push carts, and specialized mobility vehicles used on the golf course;
- (d) Golf instruction revenue, including individual lessons, group clinics, golf schools, junior programs, specialized instructional programs, fitting services, and golf analysis technology services;
- (e) Food and beverage sales, whether sold in bars, lounges, restaurants, mobile carts, vending machines, halfway houses, provided in meeting or banquet rooms, or sold through catering operations, including for any events held off-site of the Premises if originating from the Premises operations;
- (f) Retail sales, including the sale of equipment, accessories, merchandise, apparel, memorabilia, and golf-related products;

(g) Digital revenue, including fees from online bookings, mobile applications, digital services, simulators, and technology-based golf experiences;

(h) Sponsorship, advertising and marketing revenue, including hole sponsorships, signage, digital advertising, promotional events, and naming rights;

(i) Event and facility rentals, including charges for admittance to or the use of any parking facilities, recreational facilities, meeting spaces, or any entertainment events at the Premises;

(j) Room, banquet, and conference rentals, including the rental of rooms, banquet facilities, conference facilities, and outdoor spaces for events;

(k) Subleases and concessions, including rentals paid under subleases and revenue sharing from approved concessionaires;

(l) Service and amenity fees, including charges for bag storage, locker rentals, club cleaning, club storage, shoe services, and other Premises services or amenities;

(m) Merchandise and service fees from any automated or self-service facilities on the Premises;

(n) Insurance proceeds, specifically the gross revenue amount on which the proceeds of business interruption or similar insurance are determined, with respect to any period for which such proceeds are received.

Excluded from Gross Receipts are the following:

(o) Taxes collected for remittance to taxing authorities, including sales tax, excise taxes, gross receipts taxes, and similar taxes, whether added to or included in the selling price;

(p) Third-party commissions and fees, including those paid to online booking platforms, payment processors, and reservation systems, provided such fees are separately accounted for and documented;

(q) Gratuities and service charges payable to employees;

(r) Operating receipts of vending machines or City-approved sublessee, licensee or concessionaires on the Premises if such machines or concessions are not owned or operated by Lessee, although the payment by the owner or operator of such vending machines or concessions, or sublessee or licensee, to Lessee is included in Gross Receipts;

(s) Receipts from the sale or the trade-in value, outside of the ordinary course of business, of any furniture, fixtures or equipment used on the Premises and owned by Lessee;

(t) Insurance or condemnation proceeds, exclusive of business interruption insurance as described above;

- (u) Financing proceeds;
- (v) Extraordinary receipts, such as a judgment in litigation to the extent it is not compensation for lost operating revenues from the Property;
- (w) Refundable deposits, provided such deposits are properly accounted for separately from Gross Receipts and are either (i) returned to customers or (ii) applied to purchases and subsequently included in Gross Receipts;
- (x) Refunds to customers and credit allowed on returned items;
- (y) Uncollectible amounts for any check or bank draft and credit card charges or other accounts receivable which, if previously included in Gross Receipts for the applicable period, are subsequently written off after reasonable collection efforts;
- (z) Receipts in the form of refunds from, or the value of merchandise, supplies or equipment returned to, shippers, suppliers or manufacturers;
- (aa) The amount of any sales, merchandise, or meals discounted to employees of Lessee, to the extent of the discount only;
- (bb) Receipts from the sale of uniforms or clothing required to be worn by employees; and
- (cc) Capital contributed by Lessee to the Premises.

#### 4.5 Method; Time of Payment and Reporting.

(a) Percentage of Gross Receipts. For the purpose of determining any additional amount of rent payable on the Percentage of Gross Receipts, Lessee shall, within twenty (20) days after the end of each calendar month, submit to LAWA, a copy of the Monthly Gross Receipts Report Form, completed with Gross Receipts information for the preceding calendar month in the form attached hereto as Schedule 4.5, and shall also remit therewith the appropriate amount such that if the Percentage of Gross Receipts payment is greater than the MAG paid for such month, the Gross Receipts payment shall be fully paid through the end of the preceding calendar month. A copy of the Monthly Gross Receipts Form shall also be electronically sent to the following e-mail address: activityreports@lawa.org. Lessee agrees that the Monthly Gross Receipts Form, may, from time to time, be modified by the Chief Executive Officer and following delivery of written request from LAWA, Lessee agrees to use the then most current form for reporting its Gross Receipts. LAWA reserves the right to require the reporting of specific business information, summaries of daily, weekly and monthly activities and Gross Receipts; monthly adjustment details and any other information that reasonably may be helpful to facilitate accurate billings, accountings and audits by the City, in such manner and detail and upon such forms as are reasonably prescribed by the Chief Executive Officer.

#### 4.6 Certified Public Accountant ("CPA") Audit Report; Computation of Final Lease Year Payment.

(a) Annual Reconciliation Statement. Within thirty (30) days following the end of each Lease Year, Lessee, at its own expense, shall submit an Annual Reconciliation Statement of its yearly Gross Receipts for its operations and such other reasonable financial and statistical reports as Chief Executive Officer may reasonably require by written notice to Lessee. The Annual Reconciliation Statement shall at a minimum, certify (i) all Gross Receipts by category by month for the Lease Year; (ii) the calculation of the total amount payable to LAWA based on the terms of this Lease, and (iii) the actual payments to LAWA during the Lease Year. If the Annual Reconciliation Statement establishes that additional monies are due the City, Lessee shall pay the amount to the City no later than fifteen (15) days after completion thereof. If through such Annual Reconciliation Statement it is established that Lessee has overpaid the City, subject to City's verification, then City shall reimburse Lessee with a credit and offset against any rents first coming due to LAWA in the following Lease Year.

(b) Audited Statement. Within ninety (90) days following the end of each fiscal year of Lease, Lessee, at its own expense, shall submit an audited statement of its Gross Receipts for the Lease Year most recently ended. This statement shall be prepared by an independent certified public accountant ("CPA"), licensed to do business in California, who is a member in good standing with the American Institute of Certified Public Accountants ("AICPA"). The audited statement shall, at a minimum, certify the most recent Annual Reconciliation Statement, including (i) all Gross Receipts by category by month for the Lease Year most recently ended; (ii) the calculation of the total amount payable to LAWA based on the terms of this Lease for the Lease Year most recently ended, and (iii) the actual payments to LAWA during such Lease Year. If through the audited statement it is established that additional monies are due the City, Lessee shall pay the amount to the City no later than fifteen (15) days after completion of such audited statement. If through such audited statement it is established that Lessee has overpaid the City, subject to City's verification of the audited statement, then City shall reimburse Lessee with a credit against any rents first coming due to LAWA in the following Lease Year.

(c) Failure to pay the monies on time or complete the audit on time (after written notice and expiration of the applicable cure period) shall be deemed a material default under this Lease. The calculation of Gross Receipts in a Lease Year shall only include Gross Receipts for that Lease Year as described in Section 4.4 and shall exclude any adjustment for recoupments of overpayments or overpayments for preceding Lease Years. In the event that Lessee overpays the total amount due the City in the final Lease Year, the City shall reimburse Lessee within ninety (90) days after Lessee vacates the Premises, subject to reduction in amount payable for damage to the area, equipment, improvements and facilities.

4.7 Lessee shall collect, or shall cause its agent to collect, all money and other consideration of any kind for all lodging, services and all food, retail and product sales earned or billed by Lessee as a result of any activities conducted on the Premises.

4.8 Lessee shall maintain accounting records for all Gross Receipts in accordance with generally accepted accounting standards. Lessee shall not change its fiscal year without City's prior consent.

4.9 Los Angeles Business Office, Record Retention, and Right to Inspect.

(a) Lessee agrees to maintain a business office, preferably in the metropolitan area of Los Angeles, where Lessee shall maintain, during the Term, its permanent books, ledgers, journals and accounts wherein are kept the records of business activity related to the Premises, including all entries reflecting both the Gross Receipts received or billed by it, all construction records and all other transactions of Lessee. If Lessee chooses not to maintain its records at a Los Angeles area business office, Lessee shall make all said records available to LAWA at the Premises or elsewhere in the City of Los Angeles no later than ten (10) business days after Lessee's receipt of notice. Such books, ledgers, journals, accounts and records shall be available for inspection and examination by the Chief Executive Officer during ordinary business hours.

(b) To facilitate the inspection of Lessee's books and records, documents shall be made available in electronically downloadable format whenever possible. When electronic files do not exist, legible printed copies of the daily, weekly, and monthly booking and sales summaries classified by type of receipts shall be provided.

(c) Lessee agrees to prepare and maintain, in accordance with the Uniform System, full and accurate books of account and other records reflecting all Gross Receipts. Such records shall include, but not be limited to, general ledgers, sales journals, daily booking and sales reports, detailed daily reports, trial balances, sales tax reports, occupancy tax reports, subsidiary ledgers, daily journals, original and closed rental agreements, corporate charts of accounts.

(d) It is agreed that examinations of books, ledgers, journals and accounts of Lessee shall be conducted in accordance with generally accepted auditing standards applicable in the circumstances and that, as such, said examinations do not require a detailed audit of all transactions. Testing and sampling methods may be used in verifying reports submitted by Lessee. Deficiencies ascertained by applying percentages of error, obtained from such testing and sampling, may be applied by City to the entire period of reporting under examination and shall be binding upon Lessee and, to that end, shall be admissible in any court of law to prove any amounts due City. In the event any deficiency in the amount of two percent (2%) or greater of the rent payable to City hereunder is ascertained, Lessee agrees to pay City for the cost of the audit and all deficiencies and all liquidated damages. LAWA agrees to pay for the cost of audit by LAWA, unless the audit shows that payments to LAWA were short more than two percent (2%). To the maximum extent permitted by applicable law, all information gained by City from such examinations shall be confidential and shall not be disclosed other than to carry out the purposes hereof, including any action or proceeding to enforce the terms of this Lease or as required by Federal, State, or Municipal codes or ordinances or by Court order or subpoena.

(e) If as a result of an audit, the City determines that additional funds are due the City, Lessee shall have thirty (30) days from the date the audit findings are delivered to Lessee to dispute the findings. Lessee may submit to the Chief Executive Officer documents supporting Lessee's dispute of the audit findings. The failure of Lessee to dispute the audit findings in writing within thirty (30) days the audit findings are delivered to Lessee shall constitute acceptance of the audit findings, and waiver of the right to dispute the audit findings with the Chief Executive Officer.

(f) If, at the end of thirty (30) days after the audit findings are delivered to Lessee, Lessee does not dispute the audit findings, the City shall deliver Lessee a written invoice of additional funds due. If, however, Lessee disputes the audit findings, the City shall evaluate the



documentation submitted by Lessee with the auditor and, following such evaluation, deliver to Lessee a written invoice (if LAWA disputes Lessee's objections) of any additional funds due. Any additional funds that the City finds, as the result of an audit, to be due to the City, shall be paid within thirty (30) days after the delivery of the applicable written invoice to Lessee that such funds are due. A late fee of the greater of One Hundred Dollars (\$100) or one-twentieth of one percent (0.05%) of the audit invoice amount per day shall be assessed for each day that payment is late. In the event that timely payment has not been made, liquidated damages as provided in Section 27.2 with respect thereto shall be assessed from the date of the audit invoice.

4.10 Payment of Operating Expenses. In addition to Rent, Lessee shall pay all Operating Expenses (as defined herein) for the Premises. "Operating Expenses" means all expenses, costs, utility service, and amounts of every kind incurred because of or in connection with the planning, design, redevelopment (if any), possession, operation, management, maintenance, repair, replacement, or restoration of the Premises, improvements thereon, and equipment therefor. Lessee shall pay all charges for water, gas, power, communications, and any and all other utility services used by Lessee in connection with its occupancy of the Premises, including deposits, connection fees, or charges and meter installation rentals required by the supplier of any such utility service, and the costs of all equipment and improvements necessary for connecting the Premises to such utility service facilities (collectively, "Utility Services"). Lessee shall pay all Operating Expenses directly to the respective suppliers, and shall reimburse City to the extent any such Operating Expenses are incurred by City, provided that nothing herein shall be construed to require City to advance such expenses on Lessee's behalf. For the avoidance of doubt, the Rent shall be absolutely net to City, and Lessee shall have sole responsibility for (i) operating and maintaining the Premises in accordance with the terms of this Lease, including section 12.11; and (ii) paying for Operating Expenses. City shall have no obligation to advance any of the Operating Expenses on Lessee's behalf but may do so in City's sole discretion.

## **Section 5. Lessee Improvements.**

5.1. Improvements by Lessee. For and in consideration of the execution of this Lease by City, and subject to the provisions contained in Article 2, Section 58 Improvements and Alterations and additional provisions in this Lease, Lessee, at its sole cost and expense, and at no cost to City, undertakes and agrees to construct at the Demised Premises the following improvements (collectively, "Required Improvements") at a minimum Permissible Cost (as defined in Section 5.2 below) of not less than \$9 Million Dollars ("Minimum Investment") as follows, provided that nothing herein shall preclude Lessee from contracting with third parties (including any sublessees) for any part of the Minimum Investment or Required Improvements:

(i) certain Lessee improvements agreed upon by City and Lessee as described in Schedule 5.1A ("Schedule 5.1A Improvements"), collectively to be completed and ready on or before the third anniversary of the Possession Date, at a Permissible Cost not less than Five Million Dollars (\$5,000,000, or "Phase 1 Minimum Investment") in accordance with the Chief Executive Officer's prior written approval for such Phase 1 Required Improvements. If Lessee constructs the Phase 1 Required Improvements at a Permissible Cost that is less than the Phase 1 Minimum Investment, then Lessee shall pay City the difference between the Phase 1 Minimum Investment and the Permissible Cost of the Phase 1 Required Improvements.

(ii) construct at the Demised Premises certain Lessee improvements agreed upon by City and Lessee as described in Schedule 5.1B ("Schedule 5.1B Improvements"), collectively to be completed and ready on or before the 20th anniversary of the Possession Date, at a Permissible Cost not less than Four Million Dollars (\$4,000,000 or "Phase 2 Minimum Investment") in accordance with the Chief Executive Officer's prior written approval for such Phase 2 Required Improvements. If Lessee constructs the Phase 2 Required Improvements at a Permissible Cost that is less than the Phase 2 Minimum Investment, then Lessee shall pay City the difference between the Phase 2 Minimum Investment and the Permissible Cost of the Phase 2 Required Improvements.

The Chief Executive Officer's prior written approval for the Schedule 5.1A Improvements and Schedule 5.1B Improvements shall only be granted following completion of appropriate CEQA review, as determined by City. City expressly reserves the right to consider and impose mitigation measures for and alternatives to the Required Improvements, including the "no project" alternative, in compliance with CEQA.

Lessee shall maintain the Demised Premises and improvements in compliance with all applicable laws for the duration of the Lease. The obligations under this Section 5.1 shall not be construed to limit the Lessee's obligations under the terms of this Lease including but not limited to Article 2, Section 63 Maintenance and Repair of Demised Premises.

## 5.2. Payment of Costs and Fees.

5.2.1 "Permissible Costs" shall mean the actual cost of demolition, design, and construction of any new improvements from time to time located on the Demised Premises, plus the cost of required bonds, construction insurance, building, and other similar fees related to the construction of such improvements incurred by Lessee, but shall not include financing costs; payments made by Lessee to independent contractors for engineering and architectural design work shall be included as Qualified Investments, provided that such costs shall not exceed twenty percent (20%) of the aggregate amount of Qualified Investments for each Qualified Investment submittal. Amounts paid to any lessee-affiliated entity ("Lessee Entity") shall be a Permissible Cost only to the extent that the amounts paid are (i) fair and are otherwise no less favorable to Lessee than would be obtained in a comparable arm's-length transaction with an unrelated third party or (ii) specifically approved in writing by the Executive Director, upon the separate written request of the Lessee, made prior to incurring such costs.

5.2.2 Only payments made by Lessee, and Lessee's contractors and subcontractors (without duplication) may be included as Permissible Costs. Any costs incurred by any sublessee, licensee or other occupant of any portion of the Demised Premises, other than Lessee, shall not constitute Permissible Costs. Costs associated with acquisition or installation of items that are not permanently affixed to the Demised Premises shall not be Permissible Costs.

5.2.3 **Verification**. To be deemed a Permissible Cost, amounts spent by Lessee must be verifiable by City, and must meet the following conditions:

4.2.3.1 The expenditure must be submitted to City for verification within one hundred twenty (120) calendar days following the earlier to occur of the following, to the extent applicable: (a) Lessee's receipt of a Certificate of Substantial Completion AIA Document G704 Form, certificate of occupancy, or temporary certificate of occupancy; (b) the completion of the improvements.

4.2.3.2 Lessee must provide to City a schedule of all expenditures, which shall show line item detailed information as to each cost, including but not limited to, description, payee and date of payment. Lessee shall be responsible for providing reasonable documentation to City indicating that the amounts were expended (including, but not limited to, copies of returned checks and lien waivers, if requested), and that they are true and correct. City, at its option, may conduct an audit of such expenditures, or may engage, at Lessee's expense, a CPA firm to conduct such audit.

4.2.3.3 Within five (5) years following the completion of any of the Required Improvements, City may, at its sole discretion, and with 30 days' prior written notice to Lessee, require Lessee to provide access to all records and other information necessary to perform an audit of fees and charges paid toward any or all of the improvements. City, at its option, may conduct an audit of such expenditures, or may engage, at Lessee's expense, a CPA firm to conduct such audit.

5.2.4. Lessee expressly agrees to pay all costs and expenses, direct and indirect, associated with Required Improvements or any other improvements by Lessee (collectively, "Lessee's Improvements"), including but not limited to all costs associated with inspection, design and engineering and other professional or consultant services, permitting and inspection fees, project financing, utility relocation and upgrading, environmental impact reports, landscaping, and other costs related to Lessee's Improvements. Lessee shall be solely responsible for all costs associated with Lessee's Improvements and any required environmental or regulatory review, including but not limited to CEQA, provided that LAWA shall be the lead agency for purposes of any CEQA review and CEQA environmental documents shall be subject to review and approval by the CEO. Without limiting the foregoing, if Lessee's Improvements cause any authority having jurisdiction to require upgrades or repairs to areas or facilities inside or outside of Lessee's Demised Premises, then Lessee shall be solely responsible for the cost of such upgrades or repairs.

If such upgrades or repairs are performed by City, then Lessee shall pay for the cost of such upgrades or repairs, plus an administrative fee of 15%.

**5.3 Compliance.** In Lessee's construction of Lessee Improvements, Lessee will comply with all applicable federal, state and local laws.

5.3.1 Construction work performed on Lessee Improvements may require payment of prevailing wages, and Lessee is obligated to make that determination. Lessee shall be bound by and comply with applicable provisions of the California Labor Code and Federal, State, and local laws related to labor. Lessee shall indemnify and pay or reimburse City for any damages, penalties or fines and interest (including, but not limited to, attorney's fees and costs of litigation) that City incurs, or pays, as a result of noncompliance with applicable prevailing wage laws in connection with the Lessee Improvements.

5.3.2 Before any work is performed for the Lessee Improvements, Lessee may be required to file a performance bond (the "Performance Bond") with City to be approved by City. If required by applicable law, Lessee shall provide the Performance Bond on a form provided by City. The amount required for the Performance Bond shall be determined by City during Tenant Improvement Approval Process (TIAP) as defined in Article 2, Section 58 Improvements and Alterations to guarantee faithful performance of all such work. The Performance Bond must be issued by a surety who is authorized to issue bonds in California.

5.3.3 Before any work is performed for the Lessee Improvements, Lessee may be required to file a payment bond (the "Payment Bond") with City to be approved by City. If required by applicable law, Lessee shall provide the Payment Bond on a form provided by City. The amount required for the Payment Bond shall be determined by City during TIAP for at least fifty percent (50%) of the price of completing all Lessee Improvements to satisfy claims of material suppliers, mechanics, laborers, and subcontractors employed by Lessee on all such repairs. The Payment Bond must be issued by a surety who is authorized to issue bonds in California.

## **Section 6. Compliance with Applicable Laws and Standards.**

6.1 Laws. All operations and business conducted on the Premises, all Improvements, and all equipment and interior design and decor, used on or about the Premises, including the plans and specifications shall in all material respects conform to and comply with all present or future statutes, laws and Department policies, including but not limited to the Americans with Disabilities Act, applicable ordinances, building codes, environmental, cultural, and historical requirements, directives, conditions, rules, orders, resolutions, restrictions and regulations of the City, the Board, the Chief Executive Officer, the Federal Aviation Administration ("FAA"), and such other authorities as may have jurisdiction over the Airport, the Premises, or Lessee's operations, including but not limited to the Department's Leasing Policy, as may be amended from time to time. Lessee shall be solely responsible for any and all civil or criminal penalties assessed as a result of its failure to comply with any of these rules, regulations, restrictions, ordinances, codes, requirements, statutes, laws, orders, directives and or conditions. Lessee, at its sole cost and expense, shall also procure all building, fire, safety and other permits necessary for the

construction and completion of Improvements. Lessee shall be fully responsible for all expenses incurred in complying with any and all applicable laws and requirements. Lessee is required to maintain all portions of the Premises, including all structures thereon, in compliance with all laws regardless of whether they are Improvements. For example, Lessee is required to apply all FAA mandated regulations regarding the height and size of trees, structures and fences on the Premises. The approval by Chief Executive Officer shall not constitute a representation or warranty as to such conformity or compliance with all laws.

6.2 Licenses. Lessee shall obtain and maintain all licenses and certificates required by any federal, state or local agency (including but not limited to City) for the operation of the Premises and Lessee's performance of its obligations hereunder.

6.3 Part 77. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Administration Regulations, to the extent applicable, and as may be amended from time to time. Lessee shall comply with building restriction lines on the airport layout plan pursuant to Part 77.

6.4 Zoning/Conditional Use Permits. Lessee shall identify and comply with any and all zoning requirements necessary for performance of its obligations under this Lease, including obtaining a conditional use permit for the sale of alcoholic beverages at any facility on the Premises prior to any such sale. If and when obtained, Lessee may utilize City's environmental approvals, if any, provided that City makes no representation or warranty as to the existence, adequacy or sufficiency thereof.

6.5 Noise Abatement and Environmental Issues. Lessee shall comply with any noise abatement and mitigation programs applicable to the Premises, including but not limited to VNY Noise Ordinances and any environmental ordinances.

6.6 Storm Water Pollution Prevention Program ("SWPPP"). Lessee shall comply with the requirements for permittees under the industrial National Pollutant Discharge Elimination System ("NPDES") program.

6.7 Master Plan and Specific Plans. Lessee shall comply with the VNY Master Plan and the VNY Specific Plan approved by the Los Angeles City Council in January 18, 2006.

6.8 Wildlife Mitigation Program. Lessee shall adhere to directives from LAWA staff and its consultants (such as the United States Department of Agriculture - Wildlife Services) that emphasize eliminating conditions conducive to the habitation of wildlife populations on the Airport property. Lessee shall grant reasonable access to the Premises by LAWA staff and/or its representatives to conduct wildlife mitigation efforts and inspections. All costs incurred for wildlife mitigation measures on the Premises are the responsibility of Lessee.

## **Section 7. Disclosure of Hazardous Substances**

7.1 City hereby notifies Lessee that petroleum products, Asbestos Containing Material ("ACM") (including but not limited to, building materials such as floor tile, mastic, roofing, and joint compound), Lead Based Paint ("LBP"), Possible Mercury-containing Switches and Fluorescent Tubes, and Possible PCB-Containing Materials (including but not limited to

fluorescent light ballast and electrical transformers ("Possible PCB") may be present in structures and materials on the Demised Premises. The disclosure in this Section 7 shall only be for purposes of providing Lessee with notice of some substances that may be present on the premises. The disclosure herein shall not be construed as evidence of preexisting substances for purposes of Article 2, Section 8 (Hazardous and Other Regulated Substances).

NOTICE IS HEREBY GIVEN TO LESSEE THAT ASBESTOS CONTAINING MATERIALS MAY BE PRESENT IN NUMEROUS STRUCTURES AND MATERIALS IN THE DEMISED PREMISES. ACM MAY BE PRESENT IN SOME BUILDING MATERIALS INCLUDING FLOOR TILE, MASTIC, ROOFING, JOINT COMPOUND AND OTHER VARIOUS MATERIALS. ACM IS REQUIRED BY THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT RULE 1403 TO BE REMOVED PRIOR TO DEMOLITION, IF ANY;

NOTICE IS HEREBY GIVEN TO THE LESSEE THAT LEAD BASED PAINT MAY BE PRESENT IN VARIOUS STRUCTURES IN THE DEMISED PREMISES INCLUDING WALLS, DOOR AND DOOR COMPONENTS, RAILINGS, TANKS, FLOORS, WINDOW SASHES AND OTHER PAINTED SURFACES.

NOTICE IS FURTHER GIVEN TO LESSEE THAT IF ANY LEAD-BASED PAINT WILL BE DISTURBED, THERE ARE OSHA AND CAL-OSHA REGULATIONS FOR WORKERS DISTURBING LEAD BASED PAINT THAT MUST BE FOLLOWED, AND THE WASTE STREAM MUST BE TESTED TO DETERMINE IF IT HAS TO BE DISPOSED OF AS RCRA HAZARDOUS WASTE, CALIFORNIA HAZARDOUS WASTE, OR CAN BE DISPOSED OF AS CONSTRUCTION DEBRIS. SEE CAL-OSHA CONSTRUCTION LEAD STANDARD (8 CCR 1532.1).

NOTICE IS FURTHER GIVEN TO THE LESSEE THAT POSSIBLE MERCURY CONTAINING SWITCHES AND FLUORESCENT TUBES MAY BE PRESENT IN THE DEMISED PREMISES. PRIOR TO ANY DEMOLITION OF ANY STRUCTURES AT THE DEMISED PREMISES, ANY ACTUAL MERCURY-CONTAINING SWITCHES AND FLUORESCENT TUBES MUST BE REMOVED AND MANAGED FOLLOWING THE REQUIREMENTS OF THE HAZARDOUS WASTE CONTROL ACT AND THE TOXIC SUBSTANCES CONTROL ACT.

NOTICE IS FURTHER GIVEN THAT POSSIBLE PCB-CONTAINING MATERIALS MAY BE PRESENT IN THE DEMISED PREMISES. SUSPECTED PCB-CONTAINING MATERIALS MAY INCLUDE BUT NOT BE LIMITED TO FLUORESCENT LIGHT BALLASTS AND ELECTRICAL TRANSFORMERS. PRIOR TO ANY DEMOLITION OR OTHER IMPROVEMENTS IN, ON, OR AT THE DEMISED PREMISES, ANY PCB-CONTAINING MATERIALS MUST BE REMOVED, MANAGED, AND DISPOSED OF IN ACCORDANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS.

7.2 General Release and Waiver by Lessee. Lessee on behalf of itself and its successors and assigns releases the City from and waives any and all claims of any nature whatsoever, whether direct or indirect, known or unknown, foreseen or unforeseen, arising from



or related petrochemicals, ACM, LBP, actual Mercury, fluorescent tubes and switches, and actual PCB-containing materials in the Demised Premises. The Lessee acknowledges and agrees that it has been advised by legal counsel in California and is familiar with the provisions of California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

The provisions of this section shall survive the expiration or earlier termination of this Lease.

**Section 8. Environmental Laws; CEQA.**

**8.1 Definition of "hazardous substance(s)."** For the purposes of this Lease, "hazardous substances" means:

(a) Any substance the presence of which requires the investigation or remediation under any federal, state or local statute, regulation, rule, ordinance, order, action, policy or common law; or

(b) Any substance which is or becomes defined as a hazardous waste, extremely hazardous waste, hazardous material, hazardous substance, hazardous chemical, toxic chemical, toxic substance, cancer causing substance, substance that causes reproductive harm, pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); or

(c) Any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, council, board, or instrumentality of the United States, the State of California, the City of Los Angeles, or any political subdivision of any of them; or

(d) Any substance the presence of which on the Demised Premises causes or threatens to cause a nuisance upon the Demised Premises or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Demised Premises; or

(e) Any substance the presence of which on adjacent properties could constitute a trespass by Lessee; or

(f) Any substance, without limitation, which contains gasoline, aviation fuel, jet fuel, diesel fuel or other petroleum hydrocarbons, lubricating oils, solvents, polychlorinated bipheynols (PCBs) asbestos, urea formaldehyde or radon gases.

8.2 **Environmental Indemnity.** Except for conditions existing prior to the original occupancy of the Demised Premises by Lessee or by Lessee's predecessors in interest ("Pre-Existing Environmental Conditions"), Lessee agrees to accept sole responsibility for full compliance with any and all applicable present and future rules, regulations, restrictions, ordinances, statutes, laws, and/or other orders of any governmental entity regarding the use, storage, handling, distribution, processing, and/or disposal of hazardous substances, regardless of whether the obligation for such compliance or responsibility is placed on the owner of the land, on the owner of any improvements on the Demised Premises, on the user of the land, or on the user of the improvements. Lessee agrees that any claims, damages, penalties, or fines asserted against or levied on City and/or the Lessee as a result of noncompliance with any of the provisions in this Section shall be the sole responsibility of the Lessee and that Lessee shall indemnify and hold City harmless from all such claims, damages, penalties, or fines. Further, City may, at its option, pay such claims, damages, penalties, or fines resulting from Lessee's non-compliance with any of the terms of this Section, and Lessee shall indemnify and reimburse City for any such payments.

8.3 Except for Pre-Existing Environmental Conditions, in the case of any hazardous substance spill, leak, discharge, release or improper storage on the Demised Premises or contamination of the Demised Premises by any person, Lessee agrees to make or cause to be made any necessary repairs or corrective actions as well as to clean up and remove any spill, leakage, discharge, release or contamination, in accordance with applicable laws. In the case of any hazardous substance spill, leak, discharge, release or contamination by Lessee or its employees, servants, agents, contractors, or subcontractors on the Demised Premises or as may be discharged or released by Lessee or its employees, servants, agents, contractors, or subcontractors in, on or under adjacent property which affects other property of City or its tenants, Lessee agrees to make or cause to be made any necessary corrective actions to clean up and remove any such spill, leakage, discharge, release or contamination. If Lessee fails to repair, clean up, properly dispose of, or take any other corrective actions as required herein, City may (but shall not be required to) take all steps it deems necessary to properly repair, clean up, or otherwise correct the conditions resulting from the spill, leak, discharge, release or contamination. Any such repair, cleanup, or corrective actions taken by City shall be at Lessee's sole cost and expense and Lessee shall indemnify and pay for and/or reimburse City for any and all costs (including any administrative costs) City incurs as a result of any repair, cleanup, or corrective action it takes.

8.4 If Lessee installs or uses already installed underground storage tanks, above-ground storage tanks, pipelines, or other improvements on the Demised Premises for the storage, distribution, use, treatment, or disposal of any hazardous substances, Lessee agrees, upon the expiration and/or termination of this Lease, to remove the above referenced improvements, clean up releases of hazardous substances, or both, at the sole option of the Executive Director, the above-referred-to improvements. Said removal and/or cleanup shall be at the Lessee's sole cost and expense and shall be undertaken and completed in full compliance with all federal, state, and local laws and regulations, as well as with the reasonable directions of the Executive Director.

8.5 **Lessee's Provision to City of Environmental Documents.** Unless otherwise agreed to by City, Lessee shall promptly supply City with complete and legible copies of all notices, reports, correspondence, and other documents sent by Lessee to or received by Lessee from any governmental entity regarding any hazardous substance. Such written materials include, without limitation, all documents relating to any threatened or actual hazardous substance spill, leak, or discharge, or to any investigations into or clean-up of any actual or threatened hazardous substance spill, leak, or discharge including all test results.

8.6 **Survival of Environmental Indemnity Obligations.** This Section and the obligations herein shall survive the expiration or earlier termination of this Lease.

8.7 **Environmental Documents.** Lessee shall cooperate with LAWA in the preparation of any required environmental documents. Lessee shall be solely responsible for all costs associated with any environmental compliance, including but not limited to any litigation costs, site environmental investigation and remediation as necessary, as well as compliance with all relevant government regulations dealing with hazardous materials, water quality, and air emissions. Notwithstanding the foregoing, Lessee shall not be responsible for any costs or expenses under this Section 8.7 with respect to: (i) the Pre-Existing Environmental Conditions, (other than as a result of knowing exacerbation of Pre-Existing Environmental Conditions caused by Lessee or Lessee Parties) or (ii) any Claims that are actually and solely caused by the affirmative action, negligence or intentional misconduct of the City.

(a) **Future Development.** All development of the Demised Premises, and any improvements, shall be contingent upon and shall comply with CEQA, NEPA and City and LAWA construction and land use requirements. Lessee shall be solely responsible for all costs related to such processes. The parties acknowledge and agree that (a) the receipt of FAA approval, compliance with CEQA and NEPA, and application for land use entitlements from the City for Improvements can be a labor-intensive and costly process, and (b) compliance with CEQA may require modifications to any proposed redevelopment plan submitted by Lessee to the City, including conditions to mitigate environmental impacts and adoption of alternatives, including the "no project" alternative.

8.8 Lessee shall defend, indemnify and hold harmless the City and the Indemnified Parties from any Claims against the City or any of the Indemnified Parties to attack, set aside, void or annul any permit approval for the Improvements or development on the Premises, including but not limited to, actions brought pursuant to CEQA; provided, however, Lessee shall not be required to indemnify or hold harmless City or the Indemnified Parties to the extent any Claim relates to the CEQA and NEPA permit approval (if any) for the Required Improvements. In the event that any Claim as described above is filed against the City or any of the Indemnified Parties (as defined in Section 38 below), Lessee shall, within ten (10) days of the filing, pay the City an initial deposit of \$50,000, from which actual costs shall be billed and deducted for the purpose of defraying the expenses involved in the City's cooperation in the defense. Lessee shall also pay the following supplemental deposits, from which actual costs shall be billed and deducted:

(a) If during the litigation process, actual costs incurred reach 80% of the amount on deposit, Lessee shall deposit additional funds sufficient to bring the balance up to

the amount of the initial deposit. There is no limit to the number of supplemental deposits that may be required prior to completion of the litigation.

(b) At the sole discretion of Lessee, the amount of an initial or supplemental deposit may exceed the minimum amounts defined herein. Lessee will pay the costs of collection and duplication of records and other related documents.

#### **Section 9. Noise.**

9.1 Noise Monitoring System and Navigation Aides. Lessee agrees to allow LAWA to enter the Premises at any time to install and maintain LAWA's aircraft noise monitoring system(s) on the Premises. Lessee acknowledges that numerous navigation aids, such as radar, radio, and related electronic devices, are now and shall be in the future operated near the Premises to facilitate the safe and efficient operation of aircraft at the Airport. The installation of such equipment shall be completed with the minimal impact on the use of the Premises or the improvements thereon. LAWA agrees to accept sole responsibility to, operate, and maintain the aircraft noise monitoring system(s) existing as of the time this Lease is entered into or hereafter installed. Lessee agrees that Improvements shall be designed and installed and constructed so as to not destroy, diminish, distort or adversely affect in any way present and future navigation aids and noise monitoring equipment.

9.2 Lessee specifically agrees that City shall not be liable or responsible to Lessee for any damage, injury, economic loss or deprivation which may develop or arise by reason of any existing noise abatement requirements or any future aircraft access, aircraft phase-out, noise abatement or noise curfew ordinances adopted by City at Airport. Lessee agrees not to institute any legal action or make any claims with regard to any such City noise reduction or abatement ordinances when they are related to airport operations.

#### **Section 10. Mortgages, Financing, and Other Encumbrances on Leasehold Estate.**

10.1 Notwithstanding the restrictions in Section 32 and Section 41 below, during the Term, Lessee shall have the right to assign Lessee's interest in this Lease for security purposes and/or encumber Lessee's interest in the leasehold estate hereby created by mortgage, pledge, deed of trust or other instrument (a "Leasehold Financing"), with the prior written consent of the Chief Executive Officer (which consent shall not be unreasonably withheld), approved as to form by the City Attorney, to a reputable lender or lending institution reasonably acceptable to the Chief Executive Officer for the purpose of financing or refinancing the redevelopment and/or construction of the Improvements authorized herein to be made to and constructed on the Premises, including any betterments or additions thereto.

10.2 Notwithstanding the terms and conditions of Section 41 below, in addition to the Leasehold Financings permitted by Section 10.1, Lessee shall have the right to enter into and perform its obligations under Leasehold Financings in connection with Foreclosure Transfers (as defined below), in each case, with the prior written consent of the Board (which consent shall not be unreasonably withheld), approved as to form by the City Attorney, provided that, in each case, (i) the acquiror and/or its principal or management company must demonstrate to the

reasonable satisfaction of the Board sufficient financial capability to perform the remaining obligations under this Lease as they come due and (ii) the acquiror and/or its principal, management company or the executives of the acquiror or management company must have at least five (5) years of experience managing or owning first class facilities similar to the Demised Premises. If Lessee desires the Board's consent under this Section 10.2, then Lessee shall so notify the Chief Executive Officer in writing, with a copy to the City Attorney, and the City shall have thirty (30) days to request copies of documentation and information from Lessee. If the Board fails to approve or deny the proposed transaction within ninety (90) days of Lessee submitting all requested documentation and information (which documentation and information shall be complete and in sufficient detail to City's reasonable satisfaction), the proposed transaction shall be deemed approved; provided, however, such time shall be extended in the event that the Los Angeles City Council has jurisdiction over the proposed transaction. For purposes of this Lease: "Foreclosure Transfer" shall mean any transfer of the leasehold estate under this Lease pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to a leasehold financing. The term "Lessee," solely for purposes of this Section 11 shall include Lessee's successors and assigns.

10.3 Notwithstanding the terms and conditions of Section 41 below, any assignment for security or encumbrance of Lessee's interest in the leasehold estate for any other purpose, including for any other financing or refinancing, in addition to those described in Sections 10.1 and 10.2 above shall be subject to the prior written consent of the Board (which consent shall not be unreasonably withheld), approved as to form by the City Attorney. If Lessee desires the Board's consent under this Section 10.3, then Lessee shall so notify the Chief Executive Officer in writing, with a copy to the City Attorney, and the City shall have thirty (30) days to request copies of documentation and information from Lessee. If the Board fails to approve or deny the proposed transaction within ninety (90) days of Lessee submitting all requested documentation and information (which documentation and information shall be complete and in sufficient detail to City's reasonable satisfaction), the proposed transaction shall be deemed approved; provided, however, such time shall be extended in the event that the Los Angeles City Council has jurisdiction over the proposed transaction.

10.4 Any Leasehold Financing attempted without the prior written consent of the Board or the Chief Executive Officer, as applicable, under Section 11, shall be null and void. Lessee may execute any and all instruments in connection therewith necessary and proper to complete such loan and perfect the security thereof provided Lessee has submitted for review and approval all such instruments and financial documents ("Leasehold Financing Documents") to the Board or Chief Executive Officer, as applicable, and Lessee has obtained the written approval of the Board or Chief Executive Officer, as applicable. In the event this Lease is so assigned, the leasehold estate hereby created is so encumbered, or title to the new improvements is transferred, City shall not be bound, nor shall the terms, conditions, and covenants of this Lease nor the rights and remedies of City hereunder be in any manner limited, restricted, modified, or affected by reason of the terms or provisions of the instruments or notes in connection therewith.

The only rights of the lender and Lessee in connection with any such encumbrances shall be as follows:

(a) The lender shall not be entitled to any notice required to be given by City to Lessee under the provisions of Section 42 hereof unless Lessee designates by written notice to City that notices of defaults or notices to cure defaults are to be sent to such lender's address, as well as to Lessee.

(b) Upon the giving of any notice of default or notice to cure default to either Lessee or its lender, such lender may do and perform all things necessary or required to cure such default and maintain this Lease in good standing including the right, if so provided by the instruments or notes by which this Lease is assigned, or the leasehold estate herein created is pledged or hypothecated or title to the improvements is transferred, to succeed to and take over possession of the leasehold estate; provided, however, that upon such succession to or taking over of the leasehold estate, such lender shall be bound by all of the terms, covenants, and conditions of this Lease and may continue operations on the Premises and maintain the improvements thereon, directly or through a sublease approved in writing by Chief Executive Officer, only for the purposes provided in Section 4 above or for such purpose as the Chief Executive Officer may, at that time, authorize in writing.

(c) In the event Lessee files with Chief Executive Officer a written assignment of its right to participate in the distribution of any insurance proceeds, assigning all of its right, title, and interest in and to such proceeds to the lender, and further, in the event the indebtedness upon the note secured by such assignment, mortgage, deed of trust, encumbrance, or instrument transferring title has not been fully paid, satisfied and the security for the debt released, then such lender shall be entitled to the distribution of the insurance proceeds, if any, payable to Lessee to the extent of such lender's interest therein.

(d) So long as any monetary defaults under this Lease have been cured by the lender on behalf of Lessee, the lender shall have the right to succeed to Lessee's interest in the leasehold estate herein created under the exercise of the power of foreclosure as provided by law or as may be done by voluntary act on the part of Lessee in lieu of sale on foreclosure and the lender may assign said leasehold estate to a third party acceptable to the Board; provided, however, that said lender shall be bound by all of the terms, conditions, and covenants of this Lease and shall continue the operation on the Premises for the purposes herein authorized, or for such other purpose as Chief Executive Officer may approve in writing; and provided further that if the successor to the leasehold estate is someone other than the lender, then such successor will likewise be so bound. In no event shall any transfer or assignment fee be due hereunder in connection with such any Foreclosure Transfer.

(e) Once an assignment or encumbrance is approved, two (2) copies of any and all executed security devices or instruments shall be filed with City at least two (2) weeks prior to the effective date thereof, and Lessee shall obtain the Chief Executive Officer's prior written consent of any changes or amendments thereto. Upon and immediately after the recording of any Leasehold Financing Documents, Lessee shall cause to be recorded in the Office of the County Recorder for the County of Los Angeles a request for a copy of any notice of default and of any notice of sale, as provided in Section 2924b of the Civil Code of the State of California, duly executed and acknowledged by City and specifying that said notice be mailed to City at the address set forth in Section 10 of the Lease.



(f) Any Leasehold Financing shall be specifically subject and subordinate to the City's rights under the Lease. Despite any provision which is or may appear to be contrary in the Lease, under no circumstances whatsoever shall the fee simple title interest of the City in the Premises be subordinated.

(g) Any Leasehold Financing Documents shall include the following provisions, mutatis mutandis:

(1) No provision of this [assignment] shall be construed to provide [assignee] any lien or security interest on any monies that are payable by [Lessee as assignor] to [City as ground lessor] including, without limitation, ground rent payments, [City as ground lessor]'s portion of any condemnation award, the proceeds of any casualty insurance payable to the [City as ground lessor] pursuant to [the ground lease, i.e., this Lease], and all other monies that may be payable to [City as ground lessor] pursuant to [the ground lease, i.e., this Lease] (collectively, the "Lessor's Amounts"). The Lessor's Amounts shall be paid directly to [City as ground lessor] as and when payable and such monies shall never be paid by [Lessee as assignor] to the [assignee], or to any other party, except [City as ground lessor].

(2) Nothing herein shall under any circumstances be construed to imply that [City as ground lessor] has subordinated its fee simple title interest in the real property described in [the ground lease, i.e., this Lease] or its ownership interest in any improvements located on the real property as described in [the ground lease, i.e., this Lease]. Notwithstanding anything to the contrary herein, the [assignee] is not the holder of any lien on (i) the fee simple title interest of [City as ground lessor] in the real property described in [the ground lease, i.e., this Lease]; (ii) the ownership interest of [City as ground lessor] in any improvements located on the real property as described in [the ground lease, i.e., this Lease]; or (iii) [City as ground lessor]'s interest as lessor under [the ground lease, i.e., this Lease].

## **Section 11. Operating Responsibilities.**

11.1 Disorderly Persons. Lessee shall use its best efforts to not permit intoxicated person or persons, profane or indecent language, or boisterous or loud conduct in or about the Premises and shall call upon the aid of peace officers to assist in maintaining peaceful conditions as may be necessary. Lessee shall not knowingly permit the use or possession of narcotics on the Premises, and shall promptly notify the authorities should it find persons doing so.

11.2 Management. Lessee shall select and appoint a General Manager with whom the Chief Executive Officer or his designee may communicate on a regular basis regarding the operation of the Premises. The General Manager shall devote, as necessary to fully comply with the terms and conditions of this Lease, his or her time and attention to the operation of the Premises. The General Manager shall be fully acquainted with Lessee's operations and Lease obligations and authorized by Lessee to act in its behalf and fulfill its obligations in the day-to-day operation of the Premises.

### 11.3 Maintenance of Equipment and Premises.

(a) For purposes of this section, "First Class Standard" means a high-quality golf course and related facilities, as understood in the golf industry, having operating, service and maintenance standards at least equal to those of (i) Woodley Lakes Golf Course; (ii) Balboa Golf Course; and (iii) Westchester Golf Course and Driving Range (or such other golf facilities as the Parties may mutually agree upon from time to time) or, if Lessee enters into a management agreement with a recognized golf management company during the Term, the standard imposed by such management company pursuant to the management agreement. The First Class Standard shall be reviewed by the Parties every three (3) years to ensure it remains current with industry standards and expectations. Such First Class Standard shall include, without limitation:

(1) Professional maintenance of the golf course, including fairways, greens, tees, bunkers, roughs, and landscaped areas according to industry best practices;

(2) Regular upkeep of all buildings, structures, parking areas, and outdoor spaces;

(3) Clean, well-maintained, and appropriately stocked restrooms, locker rooms, and public areas;

(4) Professional, courteous customer service;

(5) Well-maintained golf carts and equipment available for rental;

(6) Properly functioning irrigation systems and drainage;

(7) Regular pest control and turf management;

(8) Appropriately stocked pro shop with quality merchandise;

(9) Clean and appropriately equipped food and beverage facilities;

(10) Proper signage and wayfinding throughout the property;

(11) Compliance with all applicable industry standards, certifications, and best practices for golf course operations.

(b) Lessee is responsible for all maintenance and repair of the Premises (including completed Improvements and both existing and new capital items), both interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen. Lessee shall, at its sole cost and expense, keep and maintain the Premises in good repair and working order, reasonable wear and tear excepted, at levels consistent with the First Class Standard and in compliance with the Operating Requirements. Lessee shall provide all maintenance, repair,

replacement, and service required on all equipment and furnishings used on the Premises and keep such equipment in good repair and in a clean and orderly condition and appearance.

(c) All maintenance and repair work shall meet all building codes as well as levels consistent with the First Class Standard in Los Angeles County.

(d) Lessee shall remove all graffiti and repair all damage to the Premises (interior and exterior) that result from vandalism or from attempted or actual burglary or robbery on the Premises. Lessee is responsible for all damages and maintenance associated with all activities and events that take place on the Premises.

(e) Lessee is responsible for maintenance of the Premises in the manner prescribed in Operating Requirements.

(f) If Lessee fails to so maintain or repair the Premises as provided in this Section, City may deliver a "Notice to Cure" to Lessee. In addition, a copy of the "Notice to Cure" may be posted on the Premises in a conspicuous place. Said Notice shall prescribe the work to be accomplished by Lessee in order to correct the maintenance deficiencies.

(1) If the deficiency relates to health, safety or Hazardous Substances, then Lessee must commence and complete the work within the time specified in the Notice to Cure, unless the work physically cannot be completed within such time period, in which case Lessee shall diligently pursue the work until completion and in any event shall complete within 180 days of receipt of the Notice to Cure, unless a longer time period is agreed to by the Chief Executive Officer.

(2) If the deficiency does not relate to health, safety or Hazardous Substances, then Lessee shall have thirty (30) days to complete the work as prescribed in the Notice to Cure. The cure work shall commence within ten (10) days following City's deposit of said Notice to Cure in the mail. If any default is of such nature that it physically cannot be corrected within the period originally specified by City, and if Lessee has responded with a course of action and has commenced to remedy such default promptly after the receipt of such Notice, and shall continuously and diligently proceed in good faith to eliminate such default, then the period for correction shall be extended for such length of time as is reasonably necessary to complete the same not to exceed 180 days, unless a longer time period is agreed to by the Chief Executive Officer.

(3) If the work prescribed in the "Notice to Cure" is not completed by Lessee, and Lessee fails to correct such work within the time specified, City may, in addition to all other remedies, at City's sole option, and at Lessee's sole cost and expense, enter upon the Premises and perform whatever work is required to correct the maintenance deficiencies. If City exercises this option, Lessee shall pay to City a sum equal to the direct cost of labor and materials expended for said work, plus an administrative overhead surcharge equal to ten percent (10%) of said direct cost. Payment shall be made within thirty (30) days of delivery of the invoice. City's failure to deliver a Notice to Cure to Lessee shall not be construed as a waiver of Lessee's obligations under this Lease, including but not limited to Sections 7.1

(compliance with laws), 8.2 (hazardous substance laws), 8.3 (hazardous substance corrective actions), and 8.4 (hazardous substance disposal).

11.4 Signs. Any and all exterior identifications, monuments, signs and permanent banners (other than wayfinding, regulatory and informational signage) shall be submitted to and approved by the Chief Executive Officer, in writing, prior to the erection or installation of said identification, monument, sign or permanent banner. Such submission may be an overall signage program for the Premises or individual signs. The Chief Executive Officer shall not unreasonably withhold, condition or delay its approval of the matters described in this Section 12.5. All signs on the Premises shall be of high quality, and shall be made and installed professionally and safely. Lessee shall not use the LAWA name, LAWA logos, or LAWA's intellectual property without the Board's express written permission. Lessee shall not use offensive language or symbols in any sign. Lessee shall remove or refurbish any sign that has been damaged or substantially worn. Lessee shall not install billboards or any sign advertising any product outside of any building.

11.5 Safety. Lessee shall maintain and operate the Premises in a safe condition, consistent with the health and safety standards of the First Class Standard. Lessee shall correct violations of safety practices immediately and shall cooperate fully with the City in the investigation of accidents occurring on the Premises. Lessee shall keep internal documentation of any incident and provide Chief Executive Officer with such information upon request. If after reasonable notice, Lessee fails to correct hazardous conditions which have led or, in the reasonable opinion of the Chief Executive Officer, could lead to injury, the Chief Executive Officer may at its option, and in addition to all other remedies, take the necessary action to remedy that condition and recover the cost thereof, including twenty percent (20%) administrative overhead, to be paid by Lessee to LAWA.

11.6 Security. Lessee is responsible for the security of the Premises consistent with the security of the First Class Standard. Lessee may install equipment that assist in protecting the Premises from theft, burglary, or vandalism. Any such equipment shall be purchased, installed, and maintained by Lessee at its sole cost and expense.

## **Section 12. Prohibited Acts.**

12.1 Lessee shall not:

- (a) Allow any sale by auction upon the Premises (except in connection with an event at the conference center);
- (b) Permit loitering on or about the Premises;
- (c) Allow the sale, service, or consumption of alcoholic beverages of any kind without the required licenses issued by the California Department of Alcoholic Beverage Control and conditional use permits from the City;
- (d) Use the Premises, or any part thereof, in any manner that shall constitute waste;

(e) Use or allow the Premises to be used for any unlawful or objectionable purposes.

12.2 Lessee shall not permit gambling on the Premises or install or operate or permit to be installed or operated thereon, any device which is illegal; or use the Premises or permit it to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the Premises any activity which would constitute a nuisance.

**Section 13. Utility Services.**

13.1 All charges for water, gas, heat, light, power, telephone, and any other utility service used by Lessee in connection with its occupancy of the Premises, including deposits, connection fees, or charges and meter installation rentals required by the supplier of any such utility service, and the costs of all equipment and improvements necessary for connecting the Premises to such utility service facilities, shall be paid by Lessee. City may, at City's own expense, install, maintain and repair utilities under, over, through or in any part of the Premises and Lessee shall not be entitled to payment or abatement of rent or any other compensation in connection with any such installation, maintenance or repair. If City installs, maintains or repairs utilities under, over, through or in any part of the Premises and City damages the Premises during such utility work, then City shall repair the damage to the original condition. Furthermore, City shall make all reasonable efforts during the installation, maintenance or repair not to create a materially adverse effect on Lessee's use of the Premises, the improvements thereon and/or Lessee's on-going business concern. Lessee waives any and all claims against City for compensation for any and all loss or damage sustained by reason of any defect, deficiency, or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system, or electrical apparatus or wires serving the Premises, with the exception for claims against City for compensation for loss or damage directly resulting from installation, maintenance or repair performed by City.

**Section 14. Intellectual Property.**

14.1 Upon expiration of the Term, or earlier termination of the Lease, Lessee hereby grants, at no cost, an irrevocable nonexclusive license to LAWA to all intellectual properties which are required to be submitted to City during the term of this Lease. Lessee shall not be required to grant or submit intellectual property reasonably determined by Lessee to be confidential or proprietary and not otherwise required by the terms of this Lease to be submitted to City. Lessee makes no representations or warranties in connection with the granting of such license. Any of Lessee's proprietary information or intellectual property shall remain the exclusive property of Lessee. Lessee acknowledges that all submissions will be subject to the California Public Records Act (California Government Code Section 6250 et seq.).

**Section 15. Representations and Warranties.**

Lessee represents and warrants to City as follows:

15.1 Lessee is a limited liability company duly formed, validly existing and in good standing under the laws of California and qualified to do business in California. Lessee shall take all actions necessary to remain in good standing in California throughout the Term. Lessee



has the full right, power and authority to enter into this Lease and to carry out its obligations hereunder. The person signing this Lease on Lessee's behalf is authorized to do so, and this Lease and all documents required hereunder shall constitute valid and binding obligations of Lessee, enforceable in accordance with their terms.

15.2 There is no agreement to which Lessee is a party or, to Lessee's knowledge, binding on Lessee that is in conflict with this Lease. There is not now pending or threatened, any action, suit or proceeding before any court or government agency or body against Lessee that would prevent Lessee from performing its obligations under this Lease.

15.3 Lessee's managing principals have success, skill and experience in refurbishing, operating and maintaining first class facilities of a similar type to the Premises in the United States.

15.4 Lessee has no outstanding contract compliance obligations or overdue payments in any contracts with City.

**Section 16. Labor Peace Agreement.** The Lease shall not be approved or entered into unless: (i) Lessee shall each have a signed a Labor Peace Agreement ("LPA") with the labor organizations representing or seeking to represent workers covered by the Lease; (ii) Lessee shall have submitted to City a copy of such LPA, executed by all of the parties to such LPA; and (iii) such LPA shall prohibit such labor organizations and their members from engaging in picketing, work stoppages, boycotts or other economic interference with the business of such Lessee at any of the airports operated by City for the duration of the Lease.

**Section 17. Van Nuys Deficit Recovery.** In accordance with, and without any limitation with respect to, City's Leasing Policy, City reserves the right to implement a "Van Nuys Airport Deficit Recovery Program" (hereinafter "DRP") whereby certain annual deficits with respect to the operation of the Airport may be allocated to and recovered from tenants (including Lessee) at Airport. The DRP shall contain the following elements:

17.1 Such program shall include an annual determination of the actual (not budgeted) net income for the Airport. In making the determination of net income, either the Board of the Executive Director, as the case may be, shall exclude non-operating revenues, including by way of illustration: (a) any revenues from Los Angeles International Airport that have been used to defray expenses at the Airport; (b) any non-recurring transaction-based revenue; and (c) any payments received under the DRP on account of deficits in previous fiscal years. If the net income for any fiscal year is negative, then, subject to the limitations of Article 1, Subsection 8.6 below, such deficit (the "FY Deficit") shall be allocated in a proportional manner, as described in Article 1, Section 8.4 below to the tenants at the Airport occupying and/or leasing demised premises in any "Aviation Area" as such term is defined in the Van Nuys Master Plan (collectively, "Airfield Tenants"). If at the end of any fiscal year, there is positive net income at the Airport, such net surplus shall be carried over to the next succeeding fiscal years to reduce any otherwise indicated FY Deficit.

17.2 Within ninety (90) days following the determination of the FY Deficit, City shall make publicly available a statement showing in reasonable detail the calculation of the FY



Deficit and shall provide such statement to all Airfield Tenants. Lessee shall have the opportunity to comment on the FY Deficit and request copies of documentation for the FY Deficit, provided that City may request Lessee to pay for reasonable copying costs and any costs of providing Lessee with documentation that is not readily available. In any year when the DRP has been activated and Lessee is paying a FY Deficit, Lessee shall have a reasonable opportunity to review the Van Nuys Airport operating budget prior to Board approval by either (1) LAWA staff providing Lessee a copy of the proposed operating budget twenty one (21) days prior to consideration by the Board; or (2) LAWA staff presenting the VNY operating budget to the Board at least twenty one (21) days prior to the formal adoption of the operating budget by the Board. Within seven (7) days after receiving the proposed operating budget or Board presentation, Lessee may provide written comments to City. City shall use reasonable efforts to notify Lessee and consult with Lessee at Lessee's request regarding any capital projects not mandated by any law, regulation, policy or agreement, which project exceeds \$1 million in net cost to LAWA after accounting for anticipated grant funds.

17.3 Airfield Tenants (including Lessee) shall pay their FY Deficit allocation in the calendar year that commences six months after any fiscal year for which the City determines that a FY Deficit has occurred. Such payment may be made in one (1) lump sum, or in twelve (12) equal monthly payments.

17.4 The FY Deficit shall be allocated proportionately to the Airfield Tenants by multiplying the FY Deficit by a fraction, the numerator of which shall be the gross acreage of the total demised premises for the applicable Airfield Tenant and the denominator of which shall be (1) the gross acreage of all demised premises for all Airfield Tenants plus (b) the gross acreage of the "Runway Area" (as such term is defined in the Van Nuys Airport Master Plan Map) at the Airport.

17.5 In the event that any Airfield Tenant shall have occupied their demised premises for less than the entire fiscal year for which the FY Deficit is being allocated, then such Airfield Tenant's share of the FY Deficit shall be prorated accordingly.

17.6 Lessee's share of the FY Deficit during any given fiscal year shall not exceed fifty percent (50%) of Lessee's base rent for the preceding fiscal year. However, if as a result of this limitation the City does not fully recover a FY Deficit in the following calendar year, the shortfall shall be carried over to the subsequent calendar year until the City has fully recovered any and all FY Deficits. However, Lessee shall have no liability for any shortfall (accrued or otherwise) after Lessee's surrender of the Demised Premises after the expiration of the Lease.

17.7 Lessee shall only be obliged to pay its share of any FY Deficit so long as the program is imposed on Airfield Tenants in a manner that is reasonable and not unjustly discriminatory under applicable federal law.

17.8 Any failure of Lessee to comply with such program in accordance with the terms of this Section shall constitute a Default Event under the Lease.

**[Sections 19 to 25. Reserved.]**

**ARTICLE 2**  
**STANDARD TERMS AND PROVISIONS**

**Section 25. Additional Limitations on Use of Premises.**

25.1 Lessee shall not use the Premises, nor any portion thereof, for any purpose other than that set forth in Section 4 without first having had and obtained the written consent of the Chief Executive Officer, which consent may be withheld in the Chief Executive Officer's sole discretion, and which written consent is approved as to form by the City Attorney.

25.2 There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operating on Airport. Lessee agrees not to make any claim or institute legal action against City under any theory of recovery for any interference with Lessee's use and enjoyment of the Premises which may result from noise emanating from the operation of aircraft to, from, or upon Airport except for claims or actions brought by third parties against Lessee arising from City's operation of Airport.

25.3 Lessee, by accepting this Lease, agrees for itself and its successors and assigns that it shall not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard to such operations. In the event the aforesaid covenant is breached, City reserves the right to enter upon the Premises hereby leased and cause the abatement of such interference at the expense of Lessee.

25.4 Lessee shall conduct its operations, and cause the Lessee Parties, to conduct their operations on the Premises in such manner as to reduce as much as is reasonably practicable, considering the nature and extent of said operations, any and all activities which interfere unreasonably with the use of other premises adjoining the Premises at Airport, including, but not limited to, the emanation from the Premises of noise, vibration, movements of air, fumes, and odors.

25.5 Lessee is prohibited from installing or using any wireless workstations, access control equipment, wireless internet servers, application or system software such as transceivers, modems, or other interface units that access frequencies from 2.0 Gigahertz to 6.0 Gigahertz, inclusive, without first obtaining written approval from the Chief Executive Officer.

25.6 Lessee has no rights under this Lease to install or use any antennae or telecommunications equipment on the roof or exterior of any building or structure on the Premises, unless such installation or use is directly related to the conduct of Lessee's business and in full compliance with City's permit process and telecommunications policies as they may be modified from time to time at the sole discretion of the Chief Executive Officer. Lessee may not license or sublease to others the right to install or use antennae or other telecommunications equipment on the Premises.

25.7 Lessee shall not violate any easement agreements applicable to the property, including easements conferring the right of flight for the passage of aircraft in the airspace above the surface of the Airport, including the Premises.

**Section 26. Payments.**

26.1 Rent shall be paid by Lessee to City on or before the first day of each calendar month of the Term pursuant to Article 1, Section 5 hereof. In the event the commencement or termination date of this Lease falls on any date other than the first day of the calendar month, the applicable rental for that month shall be calculated pro rata according to the number of days during which the Premises, or any part of the same, were occupied by Lessee during said month. All payments to City shall include the contract number, which is stamped on the first page of this Lease, on each payment check and the remittance advice attached to the invoice, if any, delivered to Lessee by City. Upon written approval by the Chief Executive Officer (which approval shall not be unreasonably withheld), Lessee may be approved to make electronic rental payments to City.

26.2 All payments shall be mailed to the following address:

**Los Angeles World Airports  
P.O. Box 102662  
Pasadena, CA 91189-2662**

26.3 City may from time to time designate another address to which rental payments shall be made and will provide at least thirty (30) days advance, written notice of such address change. Invoices may be sent by City to Lessee as a customer courtesy, and receipt of such invoice shall not be a condition prior to payment of rent.

**Section 27. Liquidated Damages for Delinquent Payment.**

27.1 Payment of rent and any other amounts otherwise due and payable pursuant to this Lease shall be delinquent if not received by City within ten (10) days following the due date. Without waiving any rights available under this Lease or by law, in the event of delinquent payments, Lessee recognizes that City shall incur certain expenses, the amount of which is difficult to ascertain. Therefore, in addition to payment(s) owing, Lessee agrees to pay the liquidated damages set forth below to compensate City for all expenses and/or damages and loss resulting from said delinquent payments by Lessee.

27.2 Unless otherwise provided, the liquidated damages for delinquent payments shall be ten percent (10%) per annum on the balance of the unpaid monthly amount calculated from the date of the delinquency until the close of the business day upon which the delinquency payment is received by City.

**Section 28. Reports.** City may, at its discretion and with reasonable notice to Lessee, require Lessee to submit to Airport's Chief Financial Officer certain operating statistical and

financial data (“Data”) applicable to the Premises in such form and content as shall reasonably be specified by the Chief Financial Officer, subject to the following:

(a) The Data shall consist solely of information that is maintained by Lessee in the ordinary course of business operations; and

(b) The Data shall not include information reasonably deemed by Lessee as proprietary or trade secret (unless otherwise required by the terms of the Lease).

**Section 29. Audits.**

29.1 City may, at its sole discretion and with reasonable notice to Lessee, require Lessee to provide access to all records and other information necessary to confirm and audit Lessee’s compliance with the provisions of this Lease. City shall have the right to access such records and information for three (3) years beyond the expiration or early termination of this Lease. Lessee shall retain all records and other information necessary to perform an audit as described above for a minimum of seven (7) years.

**Section 30. Performance Guarantee.**

30.1 Concurrently with its execution and delivery of this Lease, City shall return to Lessee the \$50,000 cash deposit delivered to City by Lessee in connection with Lessee’s RFP Response.

30.2 Lessee shall furnish to City and maintain throughout the term of this Lease a “Faithful Performance Guarantee” (herein so called) in amount of \$100,000 and in the form of cash, letter of credit, performance bond, or comparable security instrument reasonably acceptable to City, in order to secure the faithful performance by Lessee of all the terms, provisions; and covenants contained herein including, but not limited to, the payment of rent and any other specified compensation. Such Guarantee shall be separate from any other Guarantee(s) required by City.

30.3 If Lessee has previously provided a Faithful Performance Guarantee to City and if, for any reason, Lessee’s monthly monetary obligation to City is thereafter increased in excess of ten percent (10%), then the amount of the Faithful Performance Guarantee shall, within thirty (30) days after receiving written notice from City, correspondingly be increased to a sum three (3) times the new amount.

30.4 If Lessee has previously provided the Faithful Performance Guarantee to City and if, for any reason, Lessee’s monthly monetary obligation to City is thereafter decreased in excess of ten percent (10%), then the amount of the Faithful Performance Guarantee may be correspondingly decreased to a sum three (3) times the new amount thirty (30) days following written notice to City by Lessee.

30.5 If the Faithful Performance Guarantee is in the amount of Five Thousand Dollars (\$5,000) or less it shall be in the form of a Cashier’s Check, Company Check, Money Order, Certificate of Deposit or Irrevocable Letter of Credit. If the Faithful Performance Guarantee is in excess of Five Thousand Dollars (\$5,000) it shall be in the form of an irrevocable letter of

credit. Letters of credit shall be self-renewing from year-to-year and subject to termination upon sixty (60) days written notice. All Faithful Performance Guarantees shall be approved as to form by the City Attorney.

30.6 Lessee shall furnish the Faithful Performance Guarantee prior to lease commencement or within thirty (30) days following notice of adjustment of rental. If, for any reason, said Guarantee is not provided by Lessee or is not thereafter maintained in sufficient amount throughout the term hereof, City, subject to the notice requirements of Section 42.1(b), may terminate this Lease at any time upon giving Lessee sixty (60) days prior written notice. Upon the expiration or earlier termination of this Lease, and if Lessee has satisfied all of its obligations to City hereunder, City shall relinquish to Lessee the Faithful Performance Guarantee following such expiration or earlier termination and satisfaction of all obligations to City. The Faithful Performance Guarantee shall be submitted to:

**Revenue Accounting  
Department of Airports  
P.O. Box 54078  
Los Angeles, CA 90054-0078**

**Section 31. Improvements and Alterations By City.**

31.1 City reserves the right to further develop or improve the landing area of Airport or any other portion of the Airport, as it sees fit, regardless of the desires or view of Lessee, and without interference or hindrance. If any such development or improvement materially interferes substantially with Lessee's use and occupancy of the Premises, Lessee shall be entitled to an appropriate reduction in rental or termination of this Lease; provided that upon such termination, the Termination Fee (defined in Section 33.1) shall be paid to Lessee.

31.2 City reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard.

31.3 Lessee acknowledges that City retains the right, if reasonably necessary for operation of the Airport or to comply with any law, without compensation to Lessee, to install or use antennae or telecommunications equipment on the roof or exterior of any building or structure on the Premises (and the right to install and attach cables, wires and conduits on, over or under the Premises), or to lease or license others to do so. City agrees to install such antennae or telecommunications equipment in such a manner that shall not cause a loss of water-tightness in the roof or wall structures or their related components. The right to install or use said antennae or telecommunications equipment shall not include the right to penetrate fully through roof or wall structures without first obtaining approval of Lessee, which approval may not be unreasonably withheld. City further agrees to repair any damage caused by City's installation of antennae or telecommunications equipment on the roof or exterior of any building or structure on the Premises and indemnify and hold harmless Lessee from any Claims (as defined in Section 38.1) relating to such damage. City shall make reasonable efforts not to interfere with the use of the Premises, as described herein, during the installation, use or maintenance of such antennae or telecommunications equipment.

**Section 32. Liens on Fee Interest Prohibited.**

32.1 During the term of this Lease, the fee interest in the real property underlying the Premises shall not be used as security for any loans or mortgages nor otherwise have any liens placed on it. Additionally, Lessee shall keep any City-owned improvements on the Premises free and clear of any liens or other encumbrances. By way of specification without limitation, Lessee shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Lessee and shall indemnify, hold harmless and defend City from any liens and encumbrances arising out of any work performed or materials furnished by or at the request of Lessee. In the event that Lessee does not, within forty-five (45) calendar days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by law, the right, but not the obligation to cause, upon ten (10) business days prior written notice to Lessee, the same to be released by such means as it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. All such sums paid by City and all expenses incurred by it in connection therewith, including costs and attorney's fees, shall be paid by Lessee to City on demand. Nothing in this Section shall be construed to limit any rights of Lessee to use its leasehold interest as security for any loans to the extent that such use is permitted under this Lease under Section 11. Nothing in this Section shall be construed to place any obligations upon Lessee with respect to liens, loans, or mortgages placed upon the Premises by City, its Department of Airports, its Board, City officers, agents, or employees.

**Section 33. Early Termination**

33.1 Early Termination. City may terminate this Lease upon [sixty (60)] days' prior written notice to Lessee provided that: (a) after the effective date of the termination ("Termination Date"), the use of the Premises is required for the expansion of the Airport runways or facilities; and (b) on the Termination Date, City shall pay to Lessee the Termination Fee. The "Termination Fee" means the greater of either of the following: (i) the unamortized cost of Improvements made by Lessee amortized on a straight-line basis over a period from the date of such completion of such Improvements until the date of the expiration of Term (as extended); or (ii) the net present value of EBITDA (defined below) anticipated to be generated at the Premises over the remainder of the Term (as extended) as calculated in accordance with this Section 33.1. To be included as part of the Termination Fee pursuant to subsection (i), the costs of said Improvements must have been identified in the construction report specified in Section 6.6 of this Lease and must have been determined in the reasonable discretion of the Chief Executive Officer to constitute reasonable and permanent Improvements to the Premises. Said costs shall only be part of the Termination Fee if Lessee has constructed Improvements authorized by City during the Term of this Lease and absent reimbursement conditions to the contrary in the City's construction approval letter. The Termination Fee calculated under subsection (ii) shall be the net present value of the average EBITDA generated during the three (3) Lease Years preceding the Termination Date increased for each of the remaining Lease Years by the average CPI increase for the three (3) Lease Years preceding the Termination Date, using the Discount Rate. The "Discount Rate" means the annual interest rate equal to the then current U.S. treasury bill rate for a term closest to the number of years remaining in the unexpired portion of the Term (as extended), plus two percent (2%); provided that the Discount Rate shall not exceed eight percent (8%) per annum. "EBITDA" means Gross Receipts minus Operating Expenses. (For clarification purposes, Operating Expenses



shall not include any charges for interest, taxes, depreciation, amortization or other non-cash items.)

**Section 34. Damage to or Destruction of Improvements.**

34.1 If, during the Term (as may be extended under the Extension Option), any buildings, structures, or improvements on the Premises are partially or totally destroyed from a risk covered by the insurance required under Section 37 (Insurance), thereby rendering said Premises partially or totally inaccessible or unusable, Lessee shall restore the Premises to substantially the same condition as they were immediately before destruction.

34.2 If, during the Term (as may be extended under the Extension Option), improvements on the Premises are partially or totally destroyed from a risk not covered by the fire and extended coverage insurance required under Section 37 (Insurance), and said Premises are rendered partially or totally inaccessible or unusable, such destruction shall not automatically terminate this Lease. If, however, the cost of restoration exceeds fifty percent (50%) of the full replacement value of improvements, as said value existed immediately before said destruction, Lessee may, at Lessee's option, terminate this Lease by giving written notice to City within sixty (60) days from the date of destruction. If Lessee elects to terminate as above provided, Lessee shall be obligated, unless otherwise directed by City, to demolish all damaged improvements and remove all debris from the Premises at Lessee's sole cost. If Lessee fails to exercise its right to terminate this Lease, this Lease shall continue in full force and effect for the remainder of the term specified herein and Lessee shall restore the Premises to substantially the same condition as they were in immediately before destruction.

**Section 35. Ownership of Improvements.**

35.1 The City owns all structures and facilities on the Premises as of the Lease Commencement Date, excluding utilities. During the Term, title to all Improvements constructed or installed by Lessee shall remain in Lessee. Upon the expiration or termination of this Lease, said Improvements, other than machines, equipment, trade fixtures, and similar installations of a type commonly removed without structural damage to the Premises, shall become a part of the land upon which they are constructed, or of the building to which they are affixed, and title thereto shall thereupon vest in City unless, however, City requests Lessee to remove some or all of said Improvements, in which case Lessee shall promptly remove said Improvements at Lessee's sole cost and expense. If the removal of any fixture damages any part of the Premises, Lessee shall repair such damage and restore the Premises to as good condition as the same was in prior to said damage.

**Section 36. City's Right of Access and Inspection.**

36.1 City, by and through its officers, employees, agents, representatives, and contractors, shall have the right at all reasonable times and in a reasonable manner, upon notice to Lessee, to enter upon the Premises for the purpose of inspecting the same or for doing any act or thing which City may be obligated or have the right to do under this Lease, or otherwise, and no abatement of rental shall be claimed by or allowed to Lessee by reason of the exercise of such rights. In the exercise of its rights under this Section, City, its officers, employees, agents, and

contractors shall not unreasonably interfere with the conduct of Lessee's business on the Premises as herein authorized.

**Section 37. Insurance.**

37.1 Lessee shall procure at its expense, and keep in effect at all times during the term of this Lease, the types and amounts of insurance specified on Insurance Exhibit G attached hereto and incorporated by reference herein. The specified insurance shall also, either by provisions in the policies, by City's own endorsement form or by other endorsement attached to such policies, include and insure City, its Department of Airports, its Board and all of City's officers, employees, and agents, their successors and assigns, as additional insureds, against the areas of risk described on Exhibit G hereof with respect to Lessee's acts or omissions in its operations, use, and occupancy of the Premises or other related functions performed by or on behalf of Lessee in, on or about Airport.

37.2 Each specified insurance policy (other than Workers' Compensation and Employers' Liability and fire and extended coverages) shall contain a Severability of Interest (Cross Liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability," and a Contractual Endorsement which shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under this Lease with the City of Los Angeles."

37.3 All such insurance shall be primary and noncontributing with any other insurance held by City's Department of Airports where liability arises out of or results from the acts or omissions of Lessee, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Lessee. Such policies may provide for reasonable deductibles or retentions acceptable to the Chief Executive Officer based upon the nature of Lessee's operations and the type of insurance involved.

37.4 City shall have no liability for any premiums charged for such coverage(s). The inclusion of City, its Department of Airports, Board and all of City's officers, employees, and agents, their successors and assigns, as insureds is not intended to, and shall not, make them, or any of them, a partner or joint venturer with Lessee in Lessee's operations at Airport. In the event Lessee fails to furnish City evidence of insurance and maintain the insurance as required, City, upon ten (10) days prior written notice to comply, may (but shall not be required to) procure such insurance at the cost and expense of Lessee, and Lessee agrees to promptly reimburse City for the cost thereof plus fifteen percent (15%) for administrative overhead. Payment shall be made within thirty (30) days of invoice date.

37.5 At least ten (10) days prior to the expiration date of the above policies, documentation showing that the insurance coverage has been renewed or extended shall be filed with City. If such coverage is canceled or reduced, Lessee shall, within fifteen (15) days of such cancellation of coverage, file with City evidence that the required insurance has been reinstated or provided through another insurance company or companies.

37.6 Lessee shall provide proof of all specified insurance and related requirements to City either by production of the actual insurance policy(ies), by use of City's own endorsement form(s), by broker's letter acceptable to the Chief Executive Officer in both form and content in the case of foreign insurance syndicates, or by other written evidence of insurance acceptable to the Chief Executive Officer. The documents evidencing all specified coverages shall be filed with City in duplicate and shall be procured and approved in strict accordance with the provisions in Sections 11.47 through 11.56 of City's Administrative Code prior to Lessee occupying the Premises. The documents shall contain the applicable policy number, the inclusive dates of policy coverages, and the insurance carrier's name, shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, reduction in coverage, or nonrenewal except after written notice by certified mail, return receipt requested, to the City Attorney of the City of Los Angeles at least thirty (30) days prior to the effective date thereof. City may require Lessee to submit all pertinent information about the agent and carrier providing such insurance.

37.7 The insurance policy limits specified herein shall be reviewed for adequacy annually throughout the term of this Lease by the Chief Executive Officer who may, thereafter, require Lessee, on thirty (30) days prior, written notice, to adjust the amounts of insurance coverage to whatever reasonable amount said Chief Executive Officer deems to be adequate, in comparison with other facilities at the First Class Standard.

37.8 Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code Sections 1760 through 1780, and any other regulations or directives from the State Department of Insurance or other regulatory board or agency. Lessee agrees, except where exempted, to provide City proof of said insurance by and through a surplus line broker licensed by the State of California.

#### **Section 38. City Held Harmless.**

38.1 To the fullest extent permitted by law, Lessee shall defend, indemnify and hold City and all of City's Boards, officers, agents, employees, assigns and successors in interest (collectively, the "Indemnified Parties"), harmless from and against any and all Claims claimed by anyone (including Lessee or Lessee Parties) by reason of injury to, or death of, any person(s) (including Lessee or any of the Lessee Parties), or for damage to, or destruction of, any property (including property of Lessee or any of the Lessee Parties) or for other Claims of any kind, alleged to arise out of, pertain to, or relate to the Lessee's possession or use of the Premises or performance under this Lease, or any of the Lessee Parties' activities at the Premises (including, without limitation, any use, occupancy, or possession of the Premises), whether or not contributed to by any act or omission of City, or of any of the Indemnified Parties. However, this paragraph shall not be construed so as to require Lessee to indemnify or hold the Indemnified Parties harmless to the extent such Claims are caused by (i) the sole negligence or willful misconduct of the Indemnified Parties; (ii) Pre-Existing Environmental Conditions, other than as a result of knowing exacerbation of Pre-Existing Environmental Conditions caused by Lessee or Lessee Parties; or (iii) matters related to the operation of the Airport, including without limitation, the operation of noise monitoring systems and navigation aids. "Claims" means any and all allegations, suits, claims, causes of action, liability, losses, damages, demands or expenses (including but not limited to reasonably attorneys' fees and costs of litigation).

38.2 In addition, Lessee agrees to protect, defend, indemnify, keep and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses arising out of any threatened, alleged or actual claim that Lessee's performance under this Lease violates any patent, copyright, trade secret, proprietary right, intellectual property right, moral right, privacy, or similar right, or any other rights of any third party anywhere in the world. Lessee shall pay all damages, settlements, expenses and costs, including costs of investigation, court costs and attorney's fees, and all other costs and damages sustained or incurred by City arising out of, or relating to, the matters set forth in this Section.

38.3 The provisions of this Section shall survive the termination of this Lease.

38.4 In Lessee's defense, negotiation, compromise, or settlement under this Section of any action against the Indemnified Parties, the City shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

**Section 39. Nondiscrimination and Equal Employment Practices/Affirmative Action Program.**

**39.1 Federal Non-Discrimination Provisions.**

(a) Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease, for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) Lessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(c) Lessee assures that it shall comply with pertinent statutes, Executive Orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Lessee or its transferee for the period during which Federal assistance is extended to the airport program, except

where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

(d) Lessee shall furnish its services on a reasonable and not unjustly discriminatory basis to all users, and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

(e) Lessee agrees that it shall insert the provisions found in Sections (c) and (d) above in any sublease, assignment, license, or permit by which said Lessee grants a right or privilege to any person, firm, or corporation to render accommodations or services to the public on the Premises.

### 39.2 Municipal Non-Discrimination Provisions.

(a) Non-Discrimination in Use of Premises. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition in the lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Premises or any part of the Premises or any operations or activities conducted on the Premises or any part of the Premises. Nor shall Lessee or any person claiming under or through Lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, subtenants, or vendees of the Premises. Any sublease or assignment which may be permitted under this Lease shall also be subject to all non-discrimination clauses contained in Section 39.2.

(b) Non-Discrimination in Employment. During the term of this Lease, Lessee agrees and obligates itself in the performance of this Lease not to discriminate against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition. Lessee shall take affirmative action to insure that applicants for employment are treated, during the term of this Lease, without regard to the aforementioned factors and shall comply with the affirmative action requirements of the Los Angeles Administrative Code, Sections 10.8, et seq., or any successor ordinances or law concerned with discrimination.

(c) Equal Employment Practices. During the performance of this Lease, Lessee shall comply with Section 10.8.3 of the Los Angeles Administrative Code ("Equal Employment Practices"), which is incorporated herein by this reference. A copy of Section 10.8.3 has been attached to this Lease for the convenience of the parties as Exhibit S-1. By way of specification but not limitation, pursuant to Sections 10.8.3.E and 10.8.31 of the Los Angeles

Administrative Code, the failure of Lessee to comply with the Equal Employment Practices provisions of this Lease may be deemed to be a material breach of this Lease. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Lessee. Upon a finding duly made that Lessee has failed to comply with the Equal Employment Practices provisions of this Lease, this Lease may be forthwith terminated, cancelled, or suspended.

(d) Affirmative Action Program. During the performance of this Lease, Lessee agrees to comply with Section 10.8.4 of the Los Angeles Administrative Code ("Affirmative Action Program"), which is incorporated herein by this reference. A copy of Section 10.8.4 has been attached to this Lease for the convenience of the parties as Exhibit S-2 By way of specification but not limitation, pursuant to Sections 10.8.5.E and 10.8.5.F of the Los Angeles Administrative Code, the failure of Lessee to comply with the Affirmative Action Program provisions of this Lease may be deemed to be a material breach of this Lease. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Lessee. Upon a finding duly made that Lessee has failed to comply with the Affirmative Action Program provisions of this Lease, this Lease may be forthwith terminated, cancelled, or suspended.

#### **Section 40. Taxes, Permits and Licenses.**

40.1 Lessee shall pay any and all other taxes of whatever character that may be levied or charged upon the Premises, or upon Lessee's improvements, fixtures, equipment, or other property thereon or upon Lessee's use thereof. Lessee shall also pay all license or permit fees necessary or required by law or regulation for the conduct of Lessee's business or use of the Premises.

40.2 If a claim is made against City for any of the above charges, City shall promptly notify Lessee in writing; provided, however, that failure by City to give such notice shall not constitute a waiver of Lessee's obligation to pay such taxes, license or permit fees.

40.3 In addition, by executing this Lease and accepting the benefits thereof, a property interest may be created known as a "possessory interest." If such possessory interest is created, Lessee, as the party in whom the possessory interest is vested, shall pay all taxes levied upon such interest. This notice is included in this Lease pursuant to the requirements of Section 107.6(a) of the Revenue and Taxation Code of the State of California.

40.4 The obligations of Lessee under this Section, however, shall not prevent Lessee from contesting the validity or applicability of any of the above taxes or fees and during the period of any such lawful contest, Lessee may refrain from making, or direct the withholding of, any such payment without being in breach of the above provisions. Upon a final determination in which Lessee is held responsible for such taxes or fees, Lessee shall promptly pay the required amount plus all legally imposed interest, penalties and surcharges. If all or any part of such taxes or fees, penalties, or surcharges are refunded to City, City shall remit to Lessee such sum(s) to which Lessee is legally entitled.



**Section 41. Assignments and Subleases.**

41.1 Subject to the provisions of Section 11 above, Lessee shall not, in any manner, assign, transfer, or encumber this Lease, or any portion thereof or any interest therein, without the prior written consent of the Board, nor sublet or sublease the whole or any part of the Premises, nor license or permit the use of the same, in whole or in part, without the prior written consent of the Board. Any transfer of more than 50% of the direct or indirect beneficial interest in Lessee shall constitute an assignment of this Lease and be subject to the requirements of this Section 41. Any attempts to transfer, assign, or sublease without the consent required by this Section 41 shall be void and shall transfer no rights to the Premises. Consent to one assignment, subletting, use, or occupancy shall not be deemed to be consent to any subsequent assignment, subletting, use, or occupancy. This Lease shall not, nor shall any interest therein, be assignable as to the interest of Lessee by operation of law without the prior written consent of the Board.

41.2 Board shall not unreasonably withhold its consent to the assignment of this Lease or the subletting of the Premises or any portion thereof; provided, however, that the use of said premises by any such assignee or sublessee must be consistent with the use authorized herein, any prospective assignee must have a financial capability equal to or greater than Lessee, and the prospective sublessee or assignee must agree to execute City's Consent to Sublease or Assignment Agreement. A request by Lessee for assignment or subletting shall be submitted to City in writing along with a fully executed copy of the proposed assignment or sublease, as well as a copy of all contracts or writings which set forth payments from sublessee(s)/assignee(s) to Lessee or that describe the acts or services to be performed by or for the sublessee(s)/assignee(s) in connection with the use of the space covered by this Lease. Lessee shall promptly advise City of early termination of subleases.

41.3 City reserves the right to charge an assignment fee in the case of an assignment of any portion of the Premises equal to three percent (3%) of the gross sale price paid for the assignment of this Lease. For the purposes of calculating the assignment fee, if any, should City reasonably dispute the fair market valuation of the gross sale price used in calculating the assignment fee, Lessee shall supply a third-party independent appraisal ("Appraised Valuation") of the Lease and should the Appraised Valuation exceed the actual gross sale price paid for the assignment of this Lease, the assignment fee shall be calculated as an amount equal to three percent (3%) of the Appraised Valuation. No assignment fee shall be required for an assignment of the Lease to a third party assignee where the gross sales price paid for the assignment (determined in accordance with this Section 41.3) is less than forty percent (40%) of the costs incurred by Lessee to complete the Required Improvements;

41.4 Nothing in this Section 41 shall be construed to limit any rights of Lessee to use its leasehold interest as security for any loans to the extent that such use is otherwise permitted under this Lease.

41.5 The following shall not be deemed to be an assignment of the Lease or sublease of the Premises: (i) the death, retirement, or removal of any member of the Lessee (provided that the net worth of the Lessee after such event is equal to or superior to the net worth of the Lessee as of the Lease Commencement Date); (ii) transfers by inter vivos gift or by testamentary transfer or sale to any spouse, parent, sibling, in-law, child or grandchild of a member,

manager or executive officer of Lessee, or to a trust for the benefit of a member, manager or executive officer of Lessee or such spouse, parent, sibling, in-law, child or grandchild of a member, manager or executive officer of Lessee.

**Section 42. Default.**

42.1 Default Events. The following events shall be deemed to be events of default by Lessee under the Lease (each a “Default Event”):

(a) Lessee fails to pay any rental due under this Lease, which failure continues for a period of ten (10) days after such payment should have been paid pursuant to the terms and conditions of this Lease;

(b) Lessee abandons or vacates the Premises, or discontinues operating the Premises for more than forty-eight (48) consecutive hours, except in case of damage to or destruction of the Premises, repairs or maintenance of the Leased Premises (subject to prior notification by Lessee and approval by the Chief Executive Officer, such approval not to be unreasonably withheld), or the construction of any Required Improvements approved by City;

(c) Lessee fails to comply with any term, provision or covenant of this Lease, other than as described in subsections (a) and (b) above, and does not cure such failure within thirty (30) days after Lessor has sent written notice to Lessee specifying such failure or such longer period of time as may be reasonably approved by Chief Executive Officer to cure such default as long as Lessee commences to cure such default within such thirty (30) day period and diligently proceeds to cure such default;

(d) Lessee makes an assignment of this Lease, or any rights granted to Lessee hereunder, to, and for the benefit of, Lessee’s creditors;

(e) Lessee files a voluntary petition for bankruptcy, consents to the appointment of a trustee or receiver;

(f) Lessee within one hundred twenty (120) days after: (i) the commencement of any involuntary petition against Lessee seeking adjudication of bankruptcy or reorganization, rearrangement, composition, readjustment, liquidation, dissolution or similar relief, fails to cause such proceedings to be dismissed; (ii) the appointment without Lessee’s consent or acquiescence of any trustee, receiver, or liquidator of Lessee or a material part of its assets, fails to cause such appointment to be discharged;

(g) Possession of the Premises is taken by virtue of any attachment, execution, or the levy of any judicial process.

42.2 Lessor’s Remedies. Upon the occurrence of a Default Event, City, in addition to any other rights or remedies available to City at law or in equity, shall have the right to:

(a) Terminate this Lease and all rights of Lessee under this Lease, in which case, City may recover from Lessee the aggregate sum of:

(1) The worth at the time of award of any unpaid rent that had been earned at the time of termination;

(2) The worth at the time of award of the amount by which (A) the unpaid rent that would have been earned after termination until the time of award exceeds (B) the amount of rental loss, if any, that Lessee affirmatively proves could be reasonably avoided;

(3) The worth at the time of award of the amount by which (A) the unpaid rent for the balance of the term after the time of award exceeds (B) the amount of rental loss, if any, that Lessee affirmatively proves could be reasonably avoided;

(4) Any other amount necessary to compensate City for all the detriment caused by Lessee's failure to perform Lessee's obligations or that, in the ordinary course of things, would be likely to result from Lessee's failure; and

(5) All other amounts in addition to or in lieu of those previously set out as may be permitted from time to time by applicable California law.

(6) As used in Subsections (1) and (2) of this Section 42.2(a), the "worth at the time of award" is computed by adding interest at the rate of ten percent (10%) per annum. As used in Subsection (3) of this Section 42.2(a), the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%). As used in this Section, the term "rent" shall include the monthly rent any and all other payments required by Lessee under this Lease.

(b) Continue this Lease, and from time to time, without terminating this Lease, either

(1) Recover all rent and other amounts payable as they become due or,

(2) Relet the Premises or any part on behalf of Lessee on terms and at the rent that City, in City's sole discretion, may deem advisable, all with the right to make alterations and repairs to the Premises, at Lessee's sole cost, and apply the proceeds of reletting to the rent and other amounts payable by Lessee. To the extent that the rent and other amounts payable by Lessee under this Lease exceed the amount of the proceeds from reletting, the City may recover the excess from Lessee as and when due.

(c) Upon the occurrence of a Default Event, City shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all property from the Premises. City may store the property removed from the Premises at the expense and for the account of Lessee.

(d) None of the following remedial actions, alone or in combination, shall be construed as an election by City to terminate this Lease unless City has in fact given Lessee written notice that this Lease is terminated or unless a court of competent jurisdiction decrees

termination of this Lease: any act by City to maintain or preserve the Premises; any efforts by City to relet the Premises; any re-entry, repossession, or reletting of the Premises by City pursuant to this Section. If City takes any of the previous remedial actions without terminating this Lease, City may nevertheless at any later time terminate this Lease by written notice to Lessee.

(e) If City relets the Premises, City shall apply the revenue from the reletting as follows: first, to the payment of any indebtedness other than rent due from Lessee to City; second, to the payment of any cost of reletting; third, to the payment of the cost of any maintenance and repairs to the Premises; and fourth, to the payment of rent and other amounts due and unpaid under this Lease. City shall hold and apply the residue, if any, to payment of future amounts payable under this Lease as the same may become due, and shall be entitled to retain the eventual balance with no liability to Lessee. If the revenue from reletting during any month, after application pursuant to the previous provisions, is less than the sum of (i) City's expenditures for the Premises during that month and (ii) the amounts due from Lessee during that month, Lessee shall pay the deficiency to City immediately upon demand.

(f) After the occurrence of a Default Event, City, in addition to or in lieu of exercising other remedies, may, but without any obligation to do so, cure the breach underlying the Default Event for the account and at the expense of Lessee. However, City shall by prior written notice first allow Lessee a reasonable opportunity to cure, except in cases of emergency, where City may proceed without prior notice to Lessee. Lessee shall, upon demand, immediately reimburse City for all costs, including costs of settlements, defense, court costs, and attorney fees that City may incur in the course of any cure.

(g) No security or guaranty for the performance of Lessee's obligations that City may now or later hold shall in any way constitute a bar or defense to any action initiated by City or unlawful detainer or for the recovery of the Premises, for enforcement of any obligation of Lessee, or for the recovery of damages caused by a breach of this Lease by Lessee or by a Default Event.

(h) Except where this is inconsistent with or contrary to any provisions of this Lease, no right or remedy conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, or any right or remedy given now or later existing at law or in equity or by statute. Except to the extent that either party may have otherwise agreed in writing, no waiver by a party of any violation or nonperformance by the other party of any obligations, agreements, or covenants under this Lease shall be deemed to be a waiver of any subsequent violation or nonperformance of the same or any other covenant, agreement, or obligation, nor shall any forbearance by either party to exercise a remedy for any violation or nonperformance by the other party be deemed a waiver by that party of the rights or remedies with respect to that violation or nonperformance.

#### **Section 43. Waiver.**

43.1 The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or of any subsequent breach of the same term, covenant, or condition. The subsequent acceptance of rent hereunder by City shall not be deemed to be a waiver of any preceding breach by Lessee of

any term, covenant, or condition of this Lease other than the failure of Lessee to pay the particular rent so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent.

**Section 44. Airfield Security.** Lessee shall cooperate with City to maintain and improve Airport security, and shall cooperate in investigations of violations of state and local laws, ordinance, and rules and regulations, of any federal, state and/or local governmental entity regarding airport and airfield security. Lessee shall provide necessary assistance to, and cooperate with, City in case of any emergency. Lessee shall, upon request, provide City relevant information which will enable City to provide efficient and effective management in response to any airport or airfield emergency.

**Section 45. Business Tax Registration.**

45.1 Lessee represents that it has registered its business with the Office of Finance of the City of Los Angeles and has obtained and presently holds from that Office a Business Tax Registration Certificate, or a Business Tax Exemption Number, required by City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00 and following, of City's Municipal Code). Lessee shall maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended during the term hereof.

**Section 46. Disabled Access.**

46.1 Lessee shall be solely responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws or orders of any federal, state, and/or local governmental entity and/or court regarding disabled access to improvements on the Premises including any services, programs, or activities provided by Lessee. Lessee shall be solely responsible for and shall indemnify, defend and hold harmless City[Defendants] against any and all damages caused by, and/or penalties levied as the result of, Lessee's noncompliance with such disabled access Laws. Further, Lessee agrees to cooperate fully with City in its efforts to comply with the Americans with Disabilities Act of 1990, and any amendments thereto or successor statutes.

46.2 Should Lessee fail to comply with Subsection 46.1, then, without limiting City's other rights and remedies under this Lease, City shall have the right, but not the obligation, to perform, or have performed, whatever work is necessary to achieve equal access compliance. Lessee shall then be required to reimburse City for the actual cost of achieving compliance, plus a fifteen percent (15%) administrative charge.

**Section 47. Living Wage Ordinance and Service Contractor Worker Retention Ordinances.**

**47.1 Living Wage Ordinance.**

(a) General Provisions: Living Wage Policy. This Lease is subject to the Living Wage Ordinance ("LWO") (Section 10.37, et seq., of the Los Angeles Administrative Code) which is incorporated herein by this reference. A copy of Section 10.37 has been attached



hereto for the convenience of the parties as Exhibit S-3. Unless specific exemptions apply, any employees of Lessee who render services on the Premises are covered by the LWO. Employees covered by the LWO are required to be paid not less than a minimum initial wage rate, as adjusted each year. The LWO also requires that employees be provided with at least twelve (12) compensated days off per year for sick leave, vacation, or personal necessity at the employee's request, and at least ten (10) additional days per year of uncompensated time. The LWO requires employers to inform employees making less than twelve dollars (\$12) per hour of their possible right to the federal Earned Income Tax Credit ("EITC") and to make available the forms required to secure advance EITC payments from the employer. Lessee shall permit access to work sites for authorized City representatives to review the operation, payroll, and related documents, and to provide certified copies of the relevant records upon request by the City. Whether or not subject to the LWO, Lessee shall not retaliate against any employee claiming non-compliance with the provisions of the LWO, and, in addition, pursuant to Section 10.37.6(c) of the LWO, Lessee agrees to comply with federal law prohibiting retaliation for union organizing.

(b) Living Wage Coverage Determination. An initial determination has been made that this is a public lease under the LWO, and, that it is not exempt from coverage by the LWO. Determinations as to whether this Lease is a public lease or license covered by the LWO, or whether an employer or employee are exempt from coverage under the LWO are not final, but are subject to review and revision as additional facts are examined or other interpretations of the law are considered. In some circumstances, applications for exemption shall be reviewed periodically. City shall notify Lessee in writing about any redetermination by City of coverage or exemption status. To the extent Lessee claims non-coverage or exemption from the provisions of the LWO, the burden shall be on Lessee to prove such non-coverage or exemption.

(c) Compliance; Termination Provisions And Other Remedies: Living Wage Policy. Lessee shall comply with all of the provisions of the LWO, including payment to employees at the minimum wage rates, effective on the Lease Commencement Date. Under the provisions of Section 10.37.6(c) of the Los Angeles Administrative Code, violation of the LWO shall constitute a material breach of this Lease and City shall be entitled to terminate this Lease and otherwise pursue legal remedies that may be available, including those set forth in the LWO, if City determines that Lessee violated the provisions of the LWO. The procedures and time periods provided in the LWO are in lieu of the procedures and time periods provided elsewhere in this Lease. Nothing in this Lease shall be construed to extend the time periods or limit the remedies provided in the LWO.

#### **Section 48. Contractor Responsibility Program.**

48.1 Lessee shall comply with the provisions of the Contractor Responsibility Program adopted by the Board. The Executive Directives setting forth the rules, regulations, requirements and penalties of the Contractor Responsibility Program and the Pledge of Compliance Form is attached hereto as Exhibit S-4 and incorporated herein by reference.

#### **Section 49. Service Contract Worker Retention Ordinance.**

49.1 This Lease is subject to the Service Contract Worker Retention Ordinance ("SCWRO") (Section 10.36, et seq., of the Los Angeles Administrative Code), which is



incorporated herein by this reference. A copy of Section 10.36 has been attached hereto for the convenience of the parties as Exhibit S-5. Lessee shall also comply with the SCWRO which requires that, unless specific exemptions apply, all employers under contracts that are primarily for the furnishing of services to or for the City of Los Angeles and that involve an expenditure or receipt in excess of \$25,000 and a contract term of at least three (3) months shall provide retention by a successor contractor for a ninety-day (90-day) transition period of the employees who have been employed for the preceding twelve (12) months or more by the terminated contractor or subcontractor, if any, as provided for in the SCWRO. Under the provisions of Section 10.36.3(c) of the Los Angeles Administrative Code, City has the authority, under appropriate circumstances, to terminate this Lease and otherwise pursue legal remedies that may be available if City determines that the subject contractor violated the provisions of the SCWRO.

**Section 50. Child Support Orders.**

50.1 This Lease is subject to Section 10.10, Article I, Chapter 1, Division 10 of the Los Angeles Administrative Code related to Child Support Assignment Orders, which is incorporated herein by this reference. A copy of Section 10.10 and the Declaration of Compliance Form have been attached hereto for the convenience of the parties as Exhibit S-6. Pursuant to this Section, Lessee (and any subcontractor of Lessee providing services to City under this Lease) shall (1) fully comply with all State and Federal employment reporting requirements for Lessee's or Lessee's subcontractor's employees applicable to Child Support Assignments Orders; (2) certify that the principal owner(s) of Lessee and applicable subcontractors are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code Section 5230, et seq.; and (4) maintain such compliance throughout the term of this Lease. Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, failure of Lessee or an applicable subcontractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of Lessee or applicable subcontractors to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default of this Lease subjecting this Lease to termination where such failure shall continue for more than ninety (90) days after notice of such failure to Lessee by City (in lieu of any time for cure provided elsewhere in this Lease).

**Section 51. Visual Artists' Rights Act.**

51.1 Lessee shall not install, or cause to be installed, any work of art subject to the Visual Artists' Rights Act of 1990 (as amended), 17 U.S.C. 106A, et seq., or California Code Section 980, et seq., hereinafter collectively "VARA" on or about the Premises without first obtaining a waiver, in writing, of all rights under VARA, satisfactory to the Chief Executive Officer and approved as to form and legality by the City Attorney's Office, from the artist. Said waiver shall be in compliance with VARA and shall name City as a party for which the waiver applies. Any work of art installed on the Premises without such prior approval and waiver shall be deemed a trespass, removable by City, by and through its Chief Executive Officer, upon three (3) days written notice, all costs, expenses, and liability therefore to be borne exclusively by Lessee.

51.2 Lessee, in addition to other obligations to indemnify and hold City harmless, as more specifically set forth in this Lease, shall indemnify and hold harmless City from all liability resulting from Lessee's failure to obtain City's waiver of VARA and failure to comply with any portion of this provision. The rights afforded City under this provision shall not replace any other rights afforded City in this Lease or otherwise, but shall be considered in addition to all its other rights.

**Section 52. Equal Benefits Ordinance.**

52.1 Unless otherwise exempt in accordance with the provisions of the Equal Benefits ("EBO") Ordinance, this Lease is subject to the applicable provisions of EBO Section 10.8.2.1 of the Los Angeles Administrative Code.

52.2 During the term of this Lease, Lessee certifies and represents that Lessee shall comply with the EBO. Furthermore, Lessee agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the term of a Lease with the City of Los Angeles, Lessee shall provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance at (213) 847-6480."

**Section 53. Sustainability.**

53.1 When applicable and feasible, Lessee shall comply with LAWA's Sustainable Airport Planning Design and Construction Guidelines, as may be amended from time to time. All sustainable design measures must meet the life cycle assessment criteria and may not compromise safety or security.

**Section 54. Subcontractor Compliance.**

54.1 Lessee agrees to include, in every subcontract or sublease covering the Premises property or work to be performed on the Premises, entered into between Lessee and any subcontractor or sublessee, a provision pursuant to which such subcontractor or sublessee (A) accepts and agrees to be bound by all of the provisions of this Lease pertaining to compliance with applicable laws, regulations and ordinances, including the LWO, the SCWRO and the EBO, with respect to City's property; (B) agrees not to retaliate against any employee lawfully asserting noncompliance on the part of such subcontractor or sublessee with the provisions of the LWO, SCWRO or the EBO; and (C) agrees and acknowledges that City, as the intended third-party beneficiary of this provision may (i) enforce the LWO, SCWRO or the EBO directly against such subcontractor or sublessee, and (ii) invoke, directly against such subcontractor or sublessee with respect to City property, all the rights and remedies available to City under the LWO, the SCWRO or the EBO.

**Section 55. Condemnation.**

55.1 If the Premises, or any portion thereof, or any interest therein, are taken by eminent domain, or otherwise, by any governmental authority, or by a “quasi-public entity” for public use, or sold to a governmental authority threatening to exercise the power of eminent domain, this Lease, and Lessee’s obligation to pay rent hereunder, shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs, and the rent, fees and/or other charges hereunder shall be apportioned and paid to the date of such taking. A taking of the Premises includes the taking of easements for air, light and any other easements in the land, including, but not limited to an impairment or taking of access to adjoining streets. A total taking of the Premises shall terminate this Lease.

55.2 Effect of Partial Condemnation. In the event a portion of the Premises are appropriated or taken and Lessee, at its sole discretion, determines that the remainder thereof is not suitable for the continued use of the Premises by Lessee for conducting Lessee’s operations thereon in the same manner and extent as carried on prior to such taking, Lessee shall have the right to terminate this Lease upon giving City written notice of its intent to exercise said right. Said notice shall be given not more than one hundred twenty (120) days following the date of service of a complaint in eminent domain upon Lessee, or one hundred twenty (120) days following City’s demand that Lessee acknowledge its intent to terminate this Lease, unless City and Lessee agree, in writing, to an earlier termination or to extend said period. If Lessee exercises its right to terminate this Lease pursuant to this Subsection, Lessee shall give City thirty (30) days prior written notice of the effective date of said termination.

(a) If, in the event of such taking of a portion of the Premises, Lessee does not terminate this Lease, this Lease shall continue in full force and effect as to the part not taken, and the rent to be paid by Lessee during the remainder of the term, subject to adjustment as provided elsewhere in this Lease, shall be as follows: the land and improvement rental shall be reduced in the same proportion as the land taken by eminent domain bears to the area of the Premises before the taking.

(b) In determining whether a partial condemnation renders the remainder of the Premises unsuitable for the use then being made of the Premises by Lessee, Lessee, among other things, shall take into consideration the cost of restoration, the rentable area of the remaining improvements and the suitability of the remaining Premises for conducting Lessee’s operations thereon in the same manner and extent as carried on prior to such taking.

(c) Except as provided for in Section 35 (Ownership of Improvements) hereof, should Lessee terminate this Lease pursuant to this Section 55, title to all improvements, additions or alterations constructed or installed by Lessee upon the Premises and which have not already vested in City shall thereupon vest in City.

55.3 Application of Award Upon a Total or Partial Taking. If this Lease is terminated pursuant to this Section 55, or, if all or a portion of the Premises are taken, then the entire award or compensation paid for land, improvements, LAWA and buildings owned by City, the amortized portion of the value of buildings and improvements built by Lessee and which shall

become the property of City upon termination of this Lease, or loss or taking of business shall of City or its Department, shall be the property of City.

(a) Lessee shall have the right to receive compensation for the unamortized value of the buildings and any improvements which are still owned by Lessee and which were placed on the Premises by Lessee and located thereon at the time of such taking or appropriation, and for its trade fixtures, equipment, and supplies, and for loss or damage to Lessee's business goodwill. The "amortized value" which City shall be entitled to receive is a portion of the award for said Lessee-owned buildings and improvements equal to an amount determined by a ratio equal to the number of years the building or improvements have been in existence over the original term of the Lease, without consideration of any possibility or probability of renewal, or of options, if any. There shall be no amortization of partially constructed improvements authorized by City, if said construction is incomplete within the time period set forth in the approval granted by City. The value, to be determined by City, of such partially constructed improvements shall be paid to Lessee.

(b) Severance Damages. The entire award of compensation paid for any severance damages, whether paid for impairment of access, for land, buildings, or improvements shall be the property of City, regardless of whether any buildings or improvements so damaged are owned or were constructed by City or Lessee. However, should City determine that improvements are to be restored, that portion of the severance damages necessary to pay the cost of restoration, as set forth in Subsection 55.5 below, shall be paid to Lessee upon the written request of Lessee accompanied by evidence that the sum requested has been paid for said restoration and is a proper item of such cost and used for such purpose.

55.4 Partial Taking: Restoration. In case of a taking of the Premises other than a total taking, and where Lessee elects not to terminate this Lease, City and Lessee may mutually agree that Lessee shall restore any improvements on the Premises, and Lessee shall, at Lessee's expense, whether or not the awards or payments, if any, on account of such taking are sufficient for the purpose, promptly commence and proceed with reasonable diligence to effect (subject to Force Majeure) restoration of the improvements on the remaining portion of the Premises as nearly as possible to their condition and character immediately prior to such taking, except for any reduction in area caused thereby, or with such changes or alterations as may be made at the election of Lessee in accordance with Section 6 (Required Improvements), of this Lease. In the event the improvements damaged or taken belong to City, City shall not be obligated to restore said improvements should City, in its sole discretion, determine not to do so.

55.5 Taking for Temporary Use. In the event of a taking of all or any portion of the Premises for temporary use, this Lease shall continue in full force and effect without reduction or abatement of rental or other sum payable hereunder, and Lessee shall be entitled to make claim for, recover and retain any awards or proceeds made on account thereof, whether in the form of rent or otherwise, unless such period of temporary use or occupancy extends beyond the term of this Lease, in which case such awards or proceeds shall be apportioned between City and Lessee as heretofore specified. Lessee shall restore or cause to be restored any such areas temporarily taken to the condition existing before the taking.

**Section 56. Minority/Women/Disadvantaged Business Enterprises**

56.1 As part of the procurement process, the anticipated level of participation for the construction of the Required Improvements has been set at eighteen percent (18%) Minority/Women Business Enterprises (“MBE/WBE”) subcontractor level of participation.

56.2 Should a substitution or an addition of subcontractor(s) become necessary, LAWA may require Lessee to make an additional good faith effort to attain the anticipated level of participation. Lessee shall notify the Contracting Division and Contract Administration Division of LAWA of the need for a substitution as soon as such need is determined, and shall not make a substitution until said Division has been notified, and the substitution has been authorized by LAWA. Should such a substitution result in a lower level of MBE/WBE, Lessee shall be required to document its good faith efforts at LAWA’s request.

**Section 57. Airport Concession Disadvantaged Business Enterprises**

57.1 Pursuant to United States Department of Transportation 49 Code of Federal Regulations (CFR) Subtitle A, Part 23, it is the policy of LAWA to provide Airport Concessions Disadvantaged Business Enterprises (hereinafter referred to as “ACDBE”) the opportunity to compete for and participate in the performance of all LAWA contracts. LAWA’s overall goal for ACDBE participation in this Lease is fifteen percent (15%) for the operation of the Premises.

**Section 58. Miscellaneous Provisions.**

58.1 Fair Meaning. The language of this Lease shall be construed according to its fair meaning, and not strictly for or against either City or Lessee.

58.2 Section Headings. The section headings appearing herein are for the convenience of City and Lessee, and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Lease.

58.3 Void Provisions. If any provision of this Lease is determined to be invalid or void by any court of competent jurisdiction, then such determination shall not affect the validity or enforceability of any other provision of this Lease, and all such other provisions shall remain in full force and effect. The invalid provision shall be limited to the extent required in order to make it valid and enforceable, and if necessary, severed from this Lease. If any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

58.4 Use of Terms. Use of the word “or” shall be deemed to include “and/or.” Use of “including” shall be deemed to mean “including, without limitation.” The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.

58.5 Laws of California. This Lease shall be construed and enforced in accordance with the laws of the State of California and venue shall lie at Airport.

58.6 City's Consent. In each instance herein where City's, Board's or the Chief Executive Officer's approval or consent is required before Lessee may act, such approval or consent shall not be unreasonably withheld, unless otherwise provided.

58.7 Exclusivity. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act [49 U.S.C. 40103(e) and 47107(a)(4) (Public Law 103-272; 108 STAT. 1102)].

58.8 Rights of United States Government. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States relative to the development, operation, or maintenance of Airport. Failure of Lessee or any occupancy to comply with the requirements of any existing or future agreement between the City and the United States, which failure continues after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Lessee's rights hereunder.

58.9 War or National Emergency. This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of Airport or the exclusive or nonexclusive use of Airport by the United States during the time of war or national emergency.

58.10 Time. Time shall be of the essence in complying with the terms, conditions, and provisions of this Lease.

58.11 Integration Clause. It is understood that no alteration or variation of the terms of this Lease shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement, not incorporated herein in writing, shall be binding on any of the parties hereto. This Lease contains the entire agreement between the Parties hereto and supersedes any and all prior written or oral communications between them concerning the subject matter contained herein. There are no representations, agreements or understandings, oral or written, between and among the Parties relating to the subject matter in this Lease which are not fully set forth herein.

58.12 Force Majeure. Whenever a day is established in this Lease on which, or a period of time, including a reasonable period of time, is designated within which, either Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of strikes, lockouts, embargoes, disruption of service or brownouts from utilities not due to action or inaction of City, wars, insurrections, rebellions, civil disorder, declaration of national emergencies, acts of God ("Force Majeure"); provided, however, that nothing contained in this Section shall excuse Lessee from the prompt payment of any rental or other monetary charge required of Lessee hereunder.

58.13 Approvals. Any approvals required by City under this Lease shall be approvals of the Department of Airports acting as Lessor and shall not relate to, constitute a waiver or, supersede or otherwise limit or affect the governmental approvals or rights of the City as a



governmental agency, including the approval of any permits required for construction or maintenance of the Premises and the passage of any laws including those relating to zoning, land use, building and safety.

58.14 Conflicts in this Lease. If there are any direct conflicts between the provisions of Article 1 and Article 2 of the Lease, the provisions of Article 1 shall be controlling. If there are any direct conflicts between the provisions of this Lease and any Exhibits hereto, the Lease shall be controlling.

58.15 Ordinance and Los Angeles Administrative Code (hereinafter referred to as "Code") Language Governs. Ordinance and Code Exhibits are provided as a convenience to the Parties only. In the event of a discrepancy between the Exhibits and the applicable ordinance and/or code language, or amendments thereto, the language of the ordinance and/or code shall govern. The obligation to comply with any ordinances and codes which have been incorporated into this Lease by reference, shall extend to any amendments which may be made to those ordinances and/or codes during the term of this Lease.

58.16 Days. Unless otherwise specified, "days" shall mean calendar days.

58.17 Deprivation of Lessee's Rights. City shall not be liable to Lessee for any diminution or deprivation of Lessee's rights under this Lease which may result from Lessee's obligation to comply with any and all applicable laws, rules, regulations, restrictions, ordinances, statutes, or orders of any federal, state or local government authority or court hereunder on account of the exercise of any such authority as is provided in this Subsection, nor shall Lessee be entitled to terminate the whole or any portion of the Lease by reason thereof.

58.18 Certified Access Specialist Disclosure. Inspection by Certified Access Specialist. City discloses that the Premises have not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Pursuant to the foregoing Section 1938(e), Lessee acknowledges and agrees that, if Lessee wishes to have the Premises inspected by a CASp: (i) Lessee must notify City on or before the date when Lessee executes this Lease pursuant to the election below; (ii) the inspection will be at Lessee's sole cost and expense; (iii) the inspection must be scheduled through City and in coordination with the Hotel's manager; (iv) any repairs or modifications necessary to correct any violation of construction-related accessibility standards that is noted in the CASp report shall be Lessee's responsibility; and (v) Lessee must provide a copy of the CASp report to City on completion. By initialing below, Lessee represents that:

Lessee wishes to have a CASp inspection of the Premises

Initials: \_\_\_\_\_

Lessee hereby waives its right a CASp inspection of the Premises

Initials: \_\_\_\_\_

**58.19 Counterparts and Electronic Signatures.** This Lease and any other document necessary for the consummation of the transaction contemplated by this Lease may be executed in counterparts, including counterparts that are manually executed and counterparts that are in the form of electronic records and are electronically executed. An electronic signature means a signature that is executed by symbol attached to or logically associate with a record and adopted by a Party with the intent to sign such record, including facsimile or e-mail signatures. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The Parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Lease and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called PDF format shall be legal and binding and shall have the same full force and effect as if a paper original of this Lease had been delivered that had been signed using a handwritten signature. All Parties to this Lease (i) agree that an electronic signature, whether digital or encrypted, of a Party to this Lease is intended to authenticate this writing and to have the same force and effect as a manual signature; (ii) intended to be bound by the signatures (whether original, faxed, or electronic) on any document sent or delivered by facsimile or electronic mail or other electronic means; (iii) are aware that the other Party(ies) will rely on such signatures; and, (iv) hereby waive any defenses to the enforcement of the terms of this Lease based on the foregoing forms of signature. If this Lease has been executed by electronic signature, all parties executing this document are expressly consenting, under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 ("E-SIGN") and the California Uniform Electronic Transactions Act ("UETA") (California Civil Code §1633.1 et seq.), that a signature by fax, e-mail, or other electronic means shall constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

**Section 59. Other Agreements Not Affected.**

59.1 Except as specifically stated herein, this Lease, and the terms, conditions, provisions and covenants hereof, shall apply only to the Premises herein particularly described and shall not in any way change, amend, modify, alter, enlarge, impair, or prejudice any of the rights, privileges, duties, or obligations of either of the parties hereto, under or by reason of any other agreement between said parties, except that nothing contained in such other agreement shall limit the use by Lessee of the within Premises for the herein referred to purpose.

**Section 60. Notices.**

60.1 Written notices to City hereunder shall be sent to the Chief Executive with a copy sent to the City Attorney of the City of Los Angeles and addressed to said parties at:

**Chief Executive Officer  
Department of Airports  
1 World Way  
Post Office Box 92216  
Los Angeles, CA 90009-2216**

**City Attorney  
Department of Airports  
1 World Way  
Post Office Box 92216  
Los Angeles, CA 90009-2216**

or to such other address as these parties may designate by written notice to Lessee.

60.2 Written notices to Lessee hereunder shall be addressed to:

**Stephen Whang  
L & W World LLC  
Managing Member  
3435 Wilshire #2830  
Los Angeles, CA 90010**

or to such other address as Lessee may designate by written notice to City, including to a lender providing financing secured by this Lease.

60.3 The execution of any such notice by the Chief Executive Officer shall be as effective as to Lessee as if it were executed by Board or by Resolution or Order of said Board, and Lessee shall not question the authority of the Chief Executive Officer to execute any such notice.

60.4 All such notices, except as otherwise provided herein, may either be delivered personally to the Chief Executive Officer and to the Office of the City Attorney, Airport Division, in the one case, or to Lessee in the other case, or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid by certified or registered mail, return receipt requested, and shall be effective upon delivery at the required address, or may be delivered by a nationally recognized overnight commercial courier service that requires the recipient's signature for delivery, and shall be effective upon delivery.

**SIGNATURE BLOCKS ON FOLLOWING PAGE**

**IN WITNESS WHEREOF**, City has caused this Lease to be executed on its behalf by its Chief Executive Officer, and Lessee has caused the same to be executed by its duly authorized officers, and its corporate seal to be hereunto affixed, all as of the Effective Date.

APPROVED AS TO FORM:  
Hydee Feldstein Soto,  
City Attorney

**CITY OF LOS ANGELES**

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

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

John Ackerman  
Chief Executive Officer

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

Assistant/Deputy City Attorney

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

Tatiana Starostina  
Chief Financial Officer

By signing above, the signatories attest that they have no personal, financial, beneficial, or familial interest in this Lease.

ATTEST:

**LESSEE:**  
**L & W World LLC**

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

Signature

By: Manager

Its: Secretary / Asst. Sec. / Treasurer / Asst.  
Treas. / Authorized Signatory

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

Signature

Stephen Whang

Print Name

manager

Print Title

## **EXHIBIT B**

### **Monthly Rent**

Starting at \$185,000 per year (\$15,416,67 per month), subject to Annual Adjustment each year, and subject to Periodic Adjustment to Fair Market Rental as of the fifth anniversary of the Effective Date.

### **Percentage Rent**

2.0% of Gross Revenues, commencing on the sixth anniversary of the Possession Date.

# EXHIBIT A

Demised Premises



**TOTAL AREA**  
**56.29± Acres**

**PARCEL 1  
NORTHERN SITE  
29.23± Acres**

**PARCEL 2  
SOUTHERN SITE  
27.06± Acres**

**AVAILABLE ACCESS POINT  
VANOWEN ST**

**DRIVING RANGE**

**ACCESS POINTS  
ODESSA AVE**

**RETAIL / RESTAURANT**

**240 ± PARKING SPACE**

**SOUTH NON-AVIATION**

**LAMA**  
**VNY**  
**CONSTRUCTION**

**20200407-**

# EXHIBIT B

Payments

**Exhibit B  
Payment Schedule  
6550 Odessa Street at VNY Airport**

**RENT PAYMENT**

**Rent, fees and other charges effective on Commencement Date of the Lease.**

<u>Property:</u>	<u>Monthly Rent</u>
<u>Minimum Annual Guarantee</u> (\$185,000 per year/12)	<b>\$15,416.67</b>
Total:	<b>\$15,416.67</b>

Faithful Performance Guarantee Amount  
shall be three times the highest monthly rental: **\$46,250.01**

\*Note: Rental, fees and other charges, as set forth in this Exhibit "B" are subject to adjustments pursuant to this Lease.

# EXHIBIT C

Minimum Standards

# ~~MINIMUM STANDARDS FOR USE OF REAL PROPERTY AT~~ **LOS ANGELES WORLD AIRPORTS**

## **1.0 INTRODUCTION**

### **1.1 *Governing Policy***

Los Angeles World Airports (LAWA), a department of the City of Los Angeles (City), has through its Board of Airport Commissioners (Board), adopted a Leasing Policy (Policy) to provide a framework for making leasing and property management decisions for Los Angeles International Airport, Ontario International Airport, Van Nuys Airport, and Palmdale land holdings (collectively and individually referred to herein as Airport). Under the Policy, the Executive Director of LAWA is authorized to promulgate Executive Directives to implement the Policy.

### **1.2 *Purpose and Scope***

1.2.1 These Minimum Standards for Use of Real Property at Los Angeles World Airports (Minimum Standards) have been established by the Executive Director to (1) encourage the provision of high quality products, services, and facilities to Airport users; (2) promote safety; and (3) promote the economic health of Airport businesses. To this end, all entities desiring to use Airport property will be accorded reasonable opportunities, without unlawful discrimination, to engage in such activities, subject to these Minimum Standards.

1.2.2 These Minimum Standards specify the standards and requirements that must be met by any entity using Airport property. These Minimum Standards are not intended to be all-inclusive. Any entity using LAWA property will also be required to comply with all applicable regulatory measures pertaining to such activities.

1.2.3 Throughout these Minimum Standards, the words "standards" or "requirements" will be understood to be modified by the word "minimum" except where explicitly stated otherwise. Any required determinations, interpretations, or judgments regarding what constitutes an acceptable minimum standard, or regarding compliance with such standard, will be made by LAWA. All entities are encouraged to exceed the applicable minimum standards. No entity will be allowed to use Airport property under conditions that do not, in LAWA's discretion, meet these Minimum Standards.

1.2.4 Appropriate minimum standards may be developed on a case-by-case basis for certain activities, and promulgated by Executive

Directive or incorporated into agreements/permits relating to the occupancy or use of particular Airport land or improvements.

- 1.2.5 These Minimum Standards may be supplemented, amended, or modified by Executive Directive from time to time and in such manner and to such extent as is deemed appropriate by LAWA.

### **1.3 Applicability**

- 1.3.1 These Minimum Standards will apply to all agreements relating to the occupancy or use of Airport property or improvements.

- 1.3.2 These Minimum Standards will not be deemed to modify any existing agreement under which an entity is required to exceed these Minimum Standards, nor will they prohibit LAWA from entering into or enforcing an agreement that requires an entity to exceed the Minimum Standards.

### **1.4 Non-Compliance/Violations**

LAWA reserves the right to prohibit any entity from using Airport property upon determination by LAWA that such entity has not complied with these Minimum Standards, or has otherwise jeopardized the safety of other entities using the Airport.

### **1.5 Severability**

If one or more clauses, sections, or provisions of these Minimum Standards are held to be unlawful, invalid, or unenforceable by final judgment of any court of competent jurisdiction, the invalidity of such clauses, sections, or provisions will not in any way affect other clauses, sections, or provisions of these Minimum Standards.

## **2.0 GENERAL REQUIREMENTS**

All Users (hereinafter includes: lessees, licensees, permittees, facility users, operators, occupants, etc.) using Airport property must comply with the requirements of this Section.

### **2.1 Experience/Capability**

- 2.1.1 User must have the capability of providing products, services, and facilities and engaging in activities in a good quality manner.



- 2.1.2 User must have the financial capability to, as appropriate, develop and maintain improvements; procure and maintain required vehicles, equipment, and/or aircraft; employ personnel, and engage in the activity, as may be required by the agreement.

## **2.2 Agreement/Approval**

- 2.2.1 No entity may engage in an activity unless the entity has an agreement with LAWA authorizing such activity or the entity has received written approval from LAWA to sublease land or improvements from an authorized lessee to conduct the activity at the Airport.
- 2.2.2 An agreement will not reduce or limit User's obligations with respect to these Minimum Standards.
- 2.2.3 User must comply with all the provisions of the agreement between User and LAWA.

## **2.3 Payment of Rents, Fees, and Charges**

- 2.3.1 User must pay the rents, fees, or other charges specified by LAWA for leasing or using land or improvements or engaging in activities.
- 2.3.2 No User will be permitted to engage in activities unless said User is current in the payment of all rents, fees, charges, or other sums due to LAWA under any and all agreements User has with LAWA.
- 2.3.3 User's failure to remain current in the payment of any and all rents, fees, charges, and other sums due to LAWA will be grounds for revocation of the agreement or approval authorizing the occupancy or use of land or improvements or the conduct of activities at the Airport.

## **2.4 Facility Maintenance**

- 2.4.1 User must maintain the Premises (including all related and associated appurtenances, landscaping, paved areas, installed equipment and utility services, and security lighting) in a clean, neat, and orderly condition, as may be required by the agreement.
- 2.4.2 User must comply with the Airport's signage requirements.

## **2.5 Products, Services, and Facilities**

- 2.5.1 Products, services, and facilities must be provided on a reasonable and non-discriminatory basis to all users of the Airport.
- 2.5.2 User must charge reasonable and non-discriminatory prices for each product or service, provided that User may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- 2.5.3 User must conduct its activities on and from the Premises in a safe, efficient, and professional manner consistent with the degree of care and skill exercised by experienced users providing comparable products, services, and facilities and engaging in similar activities from similar leaseholds in like markets.

## **2.6 Non-Discrimination**

User must not discriminate against any person or class of persons by reason of race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition in providing any products or services or in the use of any of its facilities provided for the public, in any manner prohibited by applicable regulatory measures.

## **2.7 Licenses, Permits, Certifications, and Ratings**

User (and/or User's personnel) must obtain and comply with, at User's sole expense, all necessary licenses, permits, certifications, or ratings required for the conduct of User's activities at the Airport as required by LAWA or any other duly authorized agency prior to engaging in any activity at the Airport. Upon request, User must provide copies of such licenses, permits, certifications, or ratings to LAWA in a timely manner.

## **2.8 Personnel**

- 2.8.1 User must have in its employment (as employees), on duty, and on premises during operating hours, trained and courteous personnel in such numbers as to meet the reasonable demands of the aviation public for each activity being conducted in a courteous, prompt, safe, and efficient manner.
- 2.8.2 User must provide a responsible person on its Premises to supervise activities and such personnel will be authorized to represent and act for and on behalf of User during required hours of activities.

## **2.9 Equipment**

All required equipment must be fully operational and functional at all times. Equipment not being used and not scheduled for repair must be removed from the Premises within a timely basis.

## **2.10 Regulatory Measures**

User must engage in activities in accordance with all applicable regulatory measures, including the Certified Service Provider Program (CSPP) and these Minimum Standards.

## **2.11 Insurance**

User must procure and maintain, during the term of an agreement, insurance policies required by law and the types and minimum limits set forth by LAWA. The insurance company or companies underwriting the required policies must be licensed or authorized to write such insurance in the state of California or be approved in writing by LAWA.

## **2.12 Suspension, Revocation of Privileges**

LAWA reserves the right to suspend or revoke User's privileges (including the right to revoke ramp badges, if issued/required), on a temporary or permanent basis, for failing to abide by these Minimum Standards or any applicable regulatory measures governing the Airport. A cure period may be considered, if in LAWA's discretion one is appropriate and consistent with an agreement.

## **2.13 City of Los Angeles, Los Angeles World Airports, Board of Airport Commissioners, and Executive Director**

The Airport is owned by the City of Los Angeles, operated by LAWA, and governed by and through the Board. Only the Executive Director can amend or modify these Minimum Standards.

# VAN NUYS AIRPORT NOISE ORDINANCE

Ordinance 155727

## Ordinance No. 155,727

An Ordinance approving a Regulation adopted by Resolution No. 12655 of the Board of Airport Commissioners of the City of Los Angeles, which Resolution established a noise abatement and curfew regulation for aircraft operating at Van Nuys Airport and incorporated by reference Advisory Circular 36-3A published by the Federal Aviation Administration.

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

Sec. 1. The Regulation adopted by Resolution No. 12655 of the Board of Airport Commissioners on June 17, 1981, is hereby approved. Said Regulation contained in said resolution provides for the establishment of a noise abatement regulation for aircraft at Van Nuys Airport and is in words and figures as follows:

### VAN NUYS NOISE ABATEMENT AND CURFEW REGULATION

#### SECTION 1. Definitions:

Except where the context otherwise requires, the following terms, when used in this regulation, shall have the following definitions:

(a) Advisory Circular 36-3A - Estimated maximum A-weighted Sound Levels for Airplanes at Part 36 Appendix C Locations - Takeoff - as set forth in United States Department of Transportation, Federal Aviation Administration, Advisory Circular 36-3A, dated June 11, 1980, attached as Exhibit "A" to this regulation and made a part hereof as though set forth in full, and as said Advisory Circular may be amended from time to time.

(b) Aircraft - All fixed-wing aircraft driven by one or more propeller, turbojet, or turbo fan engines.

(c) Airport - Van Nuys Airport.

(d) Airport Manager - Van Nuys Airport Manager.

(e) Board - Board of Airport Commissioners of the City of Los Angeles as described in Article XXIV, Section 238, et seq. of the Charter of the City of Los Angeles.

(f) dBA - A - weighted sound pressure level.

(g) Depart - The movement of an aircraft from the time it commences its departure until it is airborne.

(h) General Manager - General Manager of the Department of Airports, as described and defined in Article VI, Section 70, et seq. and Article XXIV, Section 238, et seq. of the Charter of the City of Los Angeles.

(i) Person - An individual, partnership, business, corporation, joint venture, or any entity responsible for an aircraft operation.

(j) Repetitive Operation - A practice operation, including but not limited to "touch and go" or "stop and go" operations, which utilizes an Airport runway to land where the aircraft after touching down or landing takes off again within five minutes. However, this definition does not include such operations as are necessary because of safety considerations or weather phenomena.

(k) Run-up - The ground testing or revving of an aircraft engine not immediately connected to contemporaneous air operation.

(l) "Stop and Go" Operation - The action by an aircraft consisting of a landing, followed by a complete stop on the runway, and then a takeoff from that point.

(m) "Touch and Go" Operation - The action by an aircraft consisting of a landing and departure on a runway without stopping or exiting the runway.

(n) For the purposes of this regulation, all times are local Pacific Standard Time, unless Daylight Savings Time is in force and, in such event, it shall be used.

SECTION 2. Curfew. No aircraft may depart from Van Nuys Airport between the hours of 11:00 p.m. and 7:00 a.m. of the following day, except those aircraft listed below:

(a) Military aircraft and any government-owned or operated aircraft involved in law enforcement, emergency, fire or rescue operations.

(b) Aircraft whose estimated takeoff noise levels, as set forth in Federal Aviation Administration Advisory Circular 36-3A (or in any revision, supplement or replacement thereof listing the noise levels), are equal to or less than 74 dBA.

(c) Aircraft of a type or class not included in Advisory Circular 36-3A, for which evidence has been furnished to the Board that the departure noise of said aircraft will not exceed the established noise value limitation of 74.0 dBA set forth in Advisory Circular 36-3A. When furnishing evidence that an aircraft has the ability to depart and not exceed the dBA level of 74.0, the person producing such evidence shall be required to provide appropriate information to validate conclusions and ability to comply with this regulation. The Board reserves the right to validate the aircraft's compliance ability through the utilization of actual flight noise measurements.

(d) Aircraft which have been identified by the Federal Aviation Administration in writing as having a 74.0 dBA or lower takeoff noise level although such figure is not published in Advisory Circular 36-3A.

(e) Aircraft engaged in a bona fide medical or life-saving emergency for which acceptable evidence has been submitted in writing to the General Manager within seventy-two (72) hours prior to or subsequent to said departure.

#### SECTION 3. Repetitive Aircraft Operations.

(a) No person shall engage in repetitive operations in any propeller powered aircraft between the hours of 10:00 p.m. and 7:00 a.m. of the following day from June 21 through September 15, and between the hours of 9:00 p.m. and 7:00 a.m. of the following day, from September 16 through June 20.

(b) No person shall engage in repetitive operations in any turbojet or fan jet powered aircraft, at any time, at Airport.

SECTION 4. Preferential Runway. Between the hours of 11:00 p.m. and 7:00 a.m. of the following day, weather and traffic permitting, all aircraft shall depart on Runway 16R and shall arrive on Runway 16L of Airport unless instructed otherwise by the Federal Aviation Administration Air Traffic Controller.

SECTION 5. Run-ups. No person shall test or run-up an air-

craft engine for maintenance purposes between the hours of 7:00 p.m. and 7:00 a.m. of the following day. Engine run-ups shall be conducted only in areas designated in writing by the General Manager.

**SECTION 4. Presumption.** For the purposes of this regulation, the beneficial owner of an aircraft shall be rebuttably presumed to be the pilot of the aircraft with authority to control the aircraft's operations, except that where the aircraft is leased, the lessee shall be presumed to be the pilot.

In the case of any pilot training operation in which both an instructor and student pilot are in the aircraft operated in violation of any provision of this regulation, the instructor shall be rebuttably presumed to have caused such violation.

**SECTION 7. Enforcement and Penalties.**

(a) **Civil Penalties.** In addition to any other remedy provided for by this regulation or elsewhere, any person who violates any provision of this regulation shall be liable for a civil penalty not to exceed seven hundred fifty (\$750) dollars.

Any person who violates any provision of this regulation for a second time within one year of a prior violation shall be liable for a civil penalty not to exceed one thousand five hundred (\$1500) dollars upon such second violation.

Any person who violates any provision of this regulation for a third or any subsequent time within a three (3) year period shall be liable for a civil penalty not to exceed three thousand five hundred (\$3500) dollars.

Civil penalties shall be assessed and recovered in a civil action brought in the name of the City of Los Angeles by the City Attorney of Los Angeles in any court of competent jurisdiction in Los Angeles County. Funds recovered thereby shall be placed in the Airport Revenue Fund.

(b) **Denial of Use of Airport.** In the event any person has violated any provision of this regulation three (3) or more times within a three-year period of the first violation, then for a period of three years thereafter, such person shall be deemed a persistent violator and be denied permission

to depart from Airport in an aircraft owned, borrowed, rented or leased by such person and denied the right to lease, rent or use space for any aircraft (including tie-down) at Airport.

(c) **Exclusion of Aircraft for Violations.** In the event an aircraft has been operated in violation of any provisions of this regulation on three or more occasions within a three-year period of the first violation, whether piloted by the same or different individuals, then it shall be presumed that future operations of said aircraft will result in continued violations. The Airport Manager shall thereafter deny said aircraft permission for a period of three years to tie-down, be based at, or take off from Airport provided, however, that a new owner, who has not operated the aircraft or caused it to be operated in violation of this regulation, shall be entitled to appeal such decision to the Airport Manager upon furnishing satisfactory evidence of a change in both the operating personnel and ownership of such aircraft. Upon receiving such evidence, the Airport Manager shall restore all rights to said aircraft.

(d) **Other Enforcement.** The provisions of this regulation may be judicially enforced by injunction or other relief deemed appropriate by any court of competent jurisdiction.

Any person, except employees of the Federal Aviation Administration acting in the course and scope of their employment, who counsels, aids, assists, or abets any other person in the operation of any aircraft in violation of this regulation is subject to the same penalty provisions as are specified in this section.

The remedies described herein shall be deemed to be cumulative, and the election to seek any remedy shall not be deemed to be a waiver of other remedies nor a bar to seek more than one remedy for the same violation of this regulation.

**SECTION 8. Savings Clause.** If any section, subsection, sentence, clause or phrase of this regulation is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision

shall not affect the validity of the remaining portions of this regulation. The City Council hereby declares that it would have passed this regulation and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**SECTION 9. Designated Officers and Employees.** The General Manager, and such other City employees as are designated by the General Manager, shall have the duty and authority to enforce the provisions of this regulation.

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

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles of July 29, 1981 and was passed at its meeting of August 5, 1981.

REX E. LAYTON,  
City Clerk.

By Chauncy B. Pruner, Deputy.  
Approved August 10, 1981

TOM BRADLEY,  
Mayor.

File No. 73-2158 51 & 52, 77-1557  
(DJG7588) Aug 31

**PUBLIC NOTICE**  
**RE: ORDINANCE 155727**  
**EFFECTIVE AUGUST 8, 1981**  
**VAN NUYS AIRPORT DOES**  
**NOT HAVE AIR TRAFFIC CON-**  
**TROLLERS BETWEEN THE**  
**HOURS OF 2245 AND 0615 OF**  
**THE FOLLOWING DAY, LOCAL**  
**TIME DAILY.**  
**THE FEDERAL AVIATION**  
**ADMINISTRATION AIR TRAF-**  
**FIC CONTROLLER HAS**  
**SUSPENDED THE PROVI-**  
**SIONS OF SECTION 4 OF THE**  
**VAN NUYS NOISE ABATE-**  
**MENT AND CURFEW OR-**  
**DINANCE NO. 155727 UNTIL**  
**FURTHER NOTICE.**  
**SECTION 3, PARAGRAPHS**  
**222 AND 223 OF THE AIRMAN'S**  
**INFORMATION MANUAL AP-**  
**PLIES AT VAN NUYS AIRPORT**  
**BETWEEN HOURS 2245 AND**  
**0615 OF THE FOLLOWING DAY,**  
**LOCAL TIME DAILY UNTIL**  
**FURTHER NOTICE.**



ORDINANCE NO. 171889

An Ordinance approving a Regulation adopted by Resolution No. 20030 of the Board of Airport Commissioners of the City of Los Angeles amending Ordinance 155,727 of the City of Los Angeles, known as the Van Nuys Noise Abatement and Curfew Regulation, to add Section 2.1 extending the curfew hours at Van Nuys Airport.

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

Section 1. The Regulation, adopted by Resolution No. 20030 of the Board of Airport Commissioners on December 4, 1997, is hereby approved. Said Regulation contained in said Resolution provides an additional curfew hour for aircraft at Van Nuys Airport.

Section 2. Ordinance 155,727 of the City of Los Angeles is hereby amended by adding one new section to read as follows:

SECTION 2.1. Curfew. Except for aircraft exempted by subdivisions (a) through (e) of Section 2, no aircraft may depart from Van Nuys Airport between the hours of 10:00 p.m. and 11:00 p.m. The provisions of this section shall not be applicable to any aircraft certificated as Stage 3 pursuant to 14 Code of Federal Regulations Part 36.

THROCKMORTON



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

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of DEC. 19, 1997

J. MICHAEL OAREY, City Clerk

*J. Michael Oarey*  
Deputy

Approved JAN 07 1998

*[Signature]*  
Mayor

Approved as to Form and Legality

JAMES K. HAHN, City Attorney

By *[Signature]*  
BRETON K. LOBNER  
Senior Assistant City Attorney

File No. 97-1639

FILED VNT.ORG

## ORDINANCE 173215

ORDINANCE NO. 173215

An Ordinance approving a Regulation adopted by Resolution 20736 of the Board of Airport Commissioners of the City of Los Angeles amending Ordinance 155,727 of the City of Los Angeles, known as the Van Nuys Noise Abatement and Curfew Regulation, to add Section 5.1 and subsection (ga) to Section 1, thereby adding a Non-addition Rule at Van Nuys Airport.

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

Section 1. The Regulation, adopted by Resolution No. 20736 of the Board of Airport Commissioners on July 28, 1999, is hereby approved. Said Regulation contained in said Resolution provides an additional noise abatement regulation for aircraft at Van Nuys Airport.

Section 2. Ordinance 155,727 of the City of Los Angeles is hereby amended by adding one new section and one new subsection to read as follows:

#### SECTION 5.1. Non-addition

No person or entity may tie down, park or hangar any aircraft at Van Nuys Airport, whose Advisory Circular 36-30 takeoff noise level equals or exceeds 77 dBA, for more than thirty (30) days in any calendar year, unless said aircraft is an exempt based aircraft.

EXEMPTION A - STAGE 1: The provisions of this section shall not be applicable to any aircraft certificated as Stage 1 pursuant to 14 Code of Federal Regulations Part 36

EXEMPTION B - REPAIR AND MAINTENANCE: Notwithstanding the restrictions of Section 5.1, a Stage 2 aircraft with a takeoff noise level in excess of 77 dBA may be parked, tied down or hangared at Airport in excess of the 30 day limit (and such additional time as is necessary) to perform major repairs or refurbishment, required maintenance inspections or systems installations and warranty work (hereinafter "work"), provided all of the following conditions are fully satisfied:

(a) Prior to the day of arrival of the aircraft at Airport, the Airport Manager receives a written "work notice" containing the anticipated date of arrival, the name of the aircraft owner and operator, the aircraft type and registration "N" number, the name of the company or entity contracted to perform the work, a description of the work to be performed, and an estimate of the duration of the stay; and

(b) The aircraft is not being charged a tie-down fee or other use fee by an Airport tenant; and

(c) The aircraft owner or operator obtains a written permit from the Airport Manager authorizing an exemption under this subsection prior to or within 24 hours of arrival of the aircraft at Airport; and

(d) The aircraft owner or operator fully complies with all conditions and terms stated in the written permit granted by the Airport Manager, including but not limited to mandatory daytime hours for flight arrivals and departures; and

(e) The aircraft owner or operator provides written notice of departure to the Airport Manager within 24 hours of departure from the Airport.

**EXEMPTION C - REPLACEMENT:** Until December 31, 2005, notwithstanding the provisions of Section 5.1, an exempt based stage 2 aircraft, as defined in Section 1, subsection (gg), may be replaced with another stage 2 aircraft exceeding 77dBA ("replacement stage 2 aircraft"), provided all of the following apply:

(a) The stage 2 aircraft being replaced will no longer be based at Airport; and

(b) Calculated on the date of replacement, the replacement stage 2 aircraft has an Advisory Circular 36-30 takeoff noise level not exceeding 85 dBA; and

(c) The replacement stage 2 aircraft, after January 1, 2011, shall not be tied down, parked or hangared at Van Nuys Airport for more than thirty (30) days in any calendar year.

A replacement stage 2 aircraft exceeding 77dBA shall not be considered an "exempt based aircraft", nor shall its continued presence at Van Nuys Airport under Exemption C ever entitle it to "exempt based aircraft" status.

Section 1, Subsection (gg):

(gg) Exempt Based Aircraft - All aircraft which were parked, tied down or hangared at Airport for ninety (90) days or more during the twelve (12) months immediately preceding December 31, 1999.

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

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of APR 18 2000.

J MICHAEL CAREY, City Clerk

Michael Carey  
Deputy

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to Form and Legality

# EXHIBIT D

Maintenance

# MAINTENANCE

Lessee shall, at Lessee's sole cost and expense, keep and maintain the Demised Premises in good repair and working order, and in a clean, neat, attractive, properly maintained, and safe condition. All maintenance, repairs, and replacements shall be in accordance with applicable prevailing industry maintenance standards and in compliance with all manufacturers' recommendations and Federal, State, and Local government rules and regulations.

Except as specifically identified herein as City's responsibilities, Lessee is responsible for all maintenance and repair of the Demised Premises (including improvements).

Area of Responsibility	City-Owned Improvements	Lessee-Owned Improvements
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## BUILDING AND SYSTEMS

Building shell enclosure, including roofs and primary structural system	Lessee	Lessee
Exterior doors and openings, including hangar bay doors and overhead roll-up doors.	Lessee	Lessee
Building interior, including partitions, walls, floors, ceilings, doors, as well as their attachments to the primary structural system and the building shell enclosure	Lessee	Lessee
Furniture, fixtures, and equipment, including exterior mounted equipment	Lessee	Lessee
Exterior and interior windows	Lessee	Lessee
Base building systems including electrical, mechanical, plumbing, telecommunications, acoustics, energy, and internal conveyance systems	Lessee	Lessee
Fire Life Safety systems, including emergency generators, smoke detectors, fire suppression, fire extinguishers	Lessee	Lessee
Exterior and interior lighting and lighting fixtures, including aircraft ramp and equipment area lighting	Lessee	Lessee
Natural gas, water, and electricity infrastructure to meter or main panel	City	City

## EXHIBIT D

Maintenance

Area of Responsibility	City-Owned Improvements	Lessee-Owned Improvements
Sewer lines to Demised Premises boundary	City	NA
HVAC equipment	Lessee	Lessee
All other HVAC equipment and systems	Lessee	Lessee
Exterior and interior signage	Lessee	Lessee
Janitorial	Lessee	Lessee

#### **EXTERIOR AREAS**

Aircraft ramp and equipment area pavement maintenance, including striping, cleaning, and sweeping	Lessee	Lessee
Perimeter fencing, aircraft ramp area guardrail and handrails	Lessee	Lessee
Automobile parking lot cleaning, sweeping, paving, striping, curb stops, guard rail, and handrail	Lessee	Lessee
Surface markings, including lead-in lines, nose wheel, aircraft safety envelope, and equipment staging	Lessee	Lessee
Dumpster provision and trash removal	Lessee	Lessee
Trash container provision and servicing	Lessee	Lessee
Interior and exterior landscaping and hardscaping, including site drainage	Lessee	Lessee
Janitorial	Lessee	Lessee

#### **CAPITAL IMPROVEMENTS**

Repairs due to Lessee's failure to properly perform all other maintenance and repair responsibilities	Lessee	Lessee
Repairs not caused by Lessee's failure to properly perform all other maintenance and repair responsibilities	Lessee	Lessee

### **EXHIBIT D**

Maintenance



# EXHIBIT G

Affirmative Action

# EXHIBIT S-1

Equal Employment Practices

#### Sec. 10.8.2.1. Equal Benefits Ordinance.

(a) **Legislative Findings.** The City awards many contracts to private firms to provide services to the public and to City government. Many City contractors and subcontractors perform services that affect the proprietary interests of City government in that their performance impacts the success of City operations. The City holds a proprietary interest in the work performed by many employees employed by City contractors and subcontractors. In a very real sense, the success or failure of City operations may turn on the success or failure of these enterprises, for the City has a genuine stake in how the public perceives the services rendered for them by these businesses.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

(b) **Definitions.** For purposes of the Equal Benefits Ordinance only, the following shall apply.

(1) **Awarding Authority** means any Board or Commission of the City, or any employee or officer of the City, that is authorized to award or enter into any Contract, as defined in this ordinance, on behalf of the City, and shall include departments having control of their own funds and which adopt policies consonant with the provisions of the Equal Benefits Ordinance.

(2) **Benefits** means any plan, program or policy provided or offered by a Contractor to its employees as part of the employer's total compensation package. This includes but is not limited to the following types of benefits: bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits.

(3) **Cash Equivalent** means the amount of money paid to an employee with a Domestic Partner (or spouse, if applicable) in lieu of providing Benefits to the employee's Domestic Partner (or spouse, if applicable). The Cash Equivalent is equal to the direct expense to the employer of providing Benefits to an employee for his or her Domestic Partner (or spouse, if applicable) or the direct expense to the employer of providing Benefits for the dependents and family members of an employee with a Domestic Partner (or spouse, if applicable).

(4) **City** means the City of Los Angeles.

(5) **Contract** means an agreement the value of which exceeds \$25,000. It includes agreements for work or services to or for the City; for public works or improvements to be performed; agreements for the purchase of goods, equipment, materials, or supplies; or grants to be provided, at the expense of the City or to be paid out of monies under the control of the City. The term also includes a Lease or License, as defined in the Equal Benefits Ordinance.

(6) **Contractor** means any person or persons, firm, partnership, corporation, joint venture, or any combination of these, or any governmental entity acting in its proprietary capacity, that enters into a Contract with any Awarding Authority of the City. The term does not include Subcontractors.

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

(8) **Domestic Partner** means any two adults, of the same or different sex, who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing this registration or with an internal registry maintained by the employer of at least one of the domestic partners.

(9) **Equal Benefits Ordinance** means Los Angeles Administrative Code Section 10.8.2.1, *et seq.*, as amended from time to time.

(10) **Equal Benefits** means the equality of benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(11) **Lease or License** means any agreement allowing others to use property owned or controlled by the City, any agreement allowing others the use of City property in order to provide services to or for the City, such as for concession agreements, and any agreement allowing the City to use property owned or controlled by others.

(12) **Subcontractor** means any person or persons, firm, partnership, corporation, joint venture, or any combination of these, and any governmental entity, that assists the Contractor in performing or fulfilling the terms of the Contract. Subcontractors are not subject to the requirements of the Equal Benefits Ordinance unless they otherwise have a Contract directly with the City.

**(c) Equal Benefits Requirements.**

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

**(d) Other Options for Compliance.** Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

**(e) Applicability.**

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

**(f) Mandatory Contract Provisions Pertaining to Equal Benefits.** Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City.

The City may also pursue any and all other remedies at law or in equity for any breach.

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

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, *et seq.*, Contractor Responsibility Ordinance.

**(g) Administration.**

(1) The DAA is responsible for the enforcement of the Equal Benefits Ordinance for all City Contracts. Each Awarding Authority shall cooperate to the fullest extent with the DAA in its enforcement activities.

(2) In enforcing the requirements of the Equal Benefits Ordinance, the DAA may monitor, inspect, and investigate to ensure that the Contractor is acting in compliance with the Equal Benefits Ordinance. Contractor's failure to cooperate with the DAA may result in a determination by the DAA that the Contractor is not in compliance with the Equal Benefits Ordinance, which may subject the Contractor to enforcement measures set forth in Section 10.8.2.1(h).

(3) The DAA shall promulgate rules and regulations and forms for the implementation of the Equal Benefits Ordinance. No other rules, regulations or forms may be used by an Awarding Authority of the City to accomplish this contract compliance program.

**(h) Enforcement.**

(1) If the Contractor fails to comply with the Equal Benefits Ordinance:

a. The failure to comply may be deemed to be a material breach of the Contract by the Awarding Authority; or

b. The Awarding Authority may cancel, terminate or suspend, in whole or in part, the contract; or

c. Monies due or to become due under the Contract may be retained by the City until compliance is achieved;

d. The City may also pursue any and all other remedies at law or in equity for any breach.

e. The City may use failure to comply with the Equal Benefits Ordinance as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, *et seq.*, Contractor Responsibility Ordinance.

**(i) Non-applicability, Exceptions and Waivers.**

(1) Upon request of the Awarding Authority, the DAA may waive compliance with the Equal Benefits Ordinance under the following circumstances:

a. The Contract is for the use of City property, and there is only one prospective Contractor willing to enter into the Contract; or

b. The Contract is for needed goods, services, construction of a public work or improvement, or interest in or right to use real property that is available only from a single prospective Contractor, and that prospective Contractor is otherwise qualified and acceptable to the City; or

c. The Contract is necessary to respond to an emergency that endangers the public health or safety, and no entity which complies with the requirements of the Equal Benefits Ordinance capable of responding to the emergency is immediately available; or

d. The City Attorney certifies in writing that the Contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of the Equal Benefits Ordinance; or

e. The Contract is (i) with a public entity; (ii) for goods, services, construction of a public work or improvement, or interest in or right to use real property; and (iii) that is either not available from another source, or is necessary to serve a substantial public interest. A Contract for interest in or the right to use real property shall not be considered as not being available from another source unless there is no other site of comparable quality or accessibility available from another source; or

f. The requirements of the Equal Benefits Ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of the agency with respect to the grant, subvention or agreement, provided that the Awarding Authority has made a good faith attempt to

change the terms or conditions of the grant, subvention or agreement to authorize application of the Equal Benefits Ordinance; or

g. The Contract is for goods, a service or a project that is essential to the City or City residents and there are no qualified responsive bidders or prospective Contractors who could be certified as being in compliance with the requirements of the Equal Benefits Ordinance; or

h. The Contract involves bulk purchasing arrangements through City, federal, state or regional entities that actually reduce the City's purchasing costs and would be in the best interests of the City.

(2) The Equal Benefits Ordinance does not apply to contracts which involve:

a. The investment of trust monies, bond proceeds or agreements relating to the management of these funds, indentures, security enhancement agreements (including, but not limited to, liquidity agreements, letters of credit, bond insurance) for City tax-exempt and taxable financings, deposits of City's surplus funds in financial institutions, the investment of City monies in competitively bid investment agreements, the investment of City monies in securities permitted under the California State Government Code and/or the City's investment policy, investment agreements, repurchase agreements, City monies invested in U.S. government securities or pre-existing investment agreements;

b. Contracts involving City monies in which the Treasurer or the City Administrative Officer finds that either:

(i) No person, entity or financial institution doing business in the City, which is in compliance with the Equal Benefits Ordinance, is capable of performing the desired transaction(s); or

(ii) The City will incur a financial loss or forego a financial benefit which in the opinion of the Treasurer or City Administrative Officer would violate his or her fiduciary duties.

(3) The Equal Benefits Ordinance does not apply to contracts for gifts to the City.

(4) Nothing in this Subsection shall limit the right of the City to waive the provisions of the Equal Benefits Ordinance.

(5) The provisions of this Subsection shall apply to the Equal Benefits Ordinance only. The Equal Benefits Ordinance is not subject to the exemptions provided in Section 10.9 of this Code.

(j) **Consistency with Federal or State Law.** The provisions of the Equal Benefits Ordinance do not apply where the application of these provisions would violate or be inconsistent with the laws, rules or regulations federal or state law, or where the application would violate or be inconsistent with the terms or conditions of a grant or contract with the United States of America, the State of California, or the instruction of an authorized representative of any of these agencies with respect to any grant or contract.

(k) **Severability.** If any provision of the Equal Benefits Ordinance is declared legally invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

**(l) Timing of Application.**

(1) The requirements of the Equal Benefits Ordinance shall not apply to Contracts executed or amended prior to January 1, 2000, or to bid packages advertised and made available to the public, or any bids received by the City, prior to January 1, 2000, unless and until those Contracts are amended after January 1, 2000 and would otherwise be subject to the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to competitively bid Contracts that are amended after April 1, 2003, and to competitively bid Contracts that result from bid packages advertised and made available to the public after May 1, 2003.

(3) Unless otherwise exempt, the Equal Benefits Ordinance applies to any agreement executed or amended after January 1, 2000, that meets the definition of a Contract as defined within Subsection 10.8.2.1(b).

**SECTION HISTORY**

Added by Ord. No. 172,908, Eff. 1-9-00.

Amended by: Ord. No. 173,054, Eff. 2-27-00; Ord. No. 173,058, Eff. 3-4-00; Ord. No. 173,142, Eff. 3-30-00; Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00; In Entirety, Ord. No. 175,115, Eff. 4-12-03; Subsec. (b)(7), Ord. No. 176,155, Eff. 9-22-04; Subsecs. (b)(5) and (g)(2), Ord. No. 184,294, Eff. 6-27-16.



# EXHIBIT S-2

Insurance

#### **Sec. 10.8.4. Affirmative Action Program Provisions.**

Every non-construction and construction Contract with, or on behalf of, the City of Los Angeles for which the consideration is \$25,000 or more shall contain the following provisions which shall be designated as the **AFFIRMATIVE ACTION PROGRAM** provisions of such Contract:

**A.** During the performance of a City Contract, the Contractor certifies and represents that the Contractor and each Subcontractor hereunder will adhere to an Affirmative Action Program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

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

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

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

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

**C.** At the request of the Awarding Authority or the DAA, the Contractor shall certify on an electronic or hard copy form to be supplied, that the Contractor has not discriminated in the performance of City Contracts against any employee or applicant for employment on the basis or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

**D.** The Contractor shall permit access to, and may be required to provide certified copies of, all of its records pertaining to employment and to its employment practices by the Awarding Authority or the DAA for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City Contracts and, upon request, to provide evidence that it has or will comply therewith.

**E.** The failure of any Contractor to comply with the Affirmative Action Program provisions of City Contracts may be deemed to be a material breach of a City Contract. The failure shall only be established upon a finding to that effect by the Awarding Authority, on the basis of its own investigation or that of the DAA. No finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the Contractor.

**F.** Upon a finding duly made that the Contractor has breached the Affirmative Action Program provisions of a City Contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the Awarding Authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the Contractor is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of this Code. In the event of such determination, the Contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

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

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

**I.** The Public Works Board of Commissioners shall promulgate rules and regulations through the DAA and provide to the Awarding Authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an Awarding Authority of the City to accomplish this contract compliance program.

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

**K.** By affixing its signature to a Contract that is subject to this article, the Contractor shall agree to adhere to the provisions in this article for the duration of the Contract. The Awarding Authority may also require Contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying

Affirmative Action Program.

1. The Contractor certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the Contractor's field of work. The Contractor shall:

(a) Recruit and make efforts to obtain employees through:

(i) Advertising employment opportunities in minority and other community news media or other publications.

(ii) Notifying minority, women and other community organizations of employment opportunities.

(iii) Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.

(iv) Encouraging existing employees, including minorities and women, to refer their friends and relatives.

(v) Promoting after school and vacation employment opportunities for minority, women and other youth.

(vi) Validating all job specifications, selection requirements, tests, etc.

(vii) Maintaining a file of the names and addresses of each worker referred to the Contractor and what action was taken concerning the worker.

(viii) Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the Contractor has a collective bargaining agreement, has failed to refer a minority, woman or other worker.

(b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a non-discriminatory manner so as to achieve and maintain a diverse work force.

(c) Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in the training programs to enhance their skills and advancement.

(d) Secure cooperation or compliance from the labor referral agency to the Contractor's contractual Affirmative Action Program obligations.

(e) Establish a person at the management level of the Contractor to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the Contractor's Equal Employment and Affirmative Action Program policies.

(f) Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to City, State and Federal authorities upon request.

(g) Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all its operations and Contracts. The policies shall be provided to all employees, Subcontractors, vendors, unions and all others with whom the Contractor may become involved in fulfilling any of its Contracts.

(h) Document its good faith efforts to correct any deficiencies when problems are experienced by the Contractor in complying with its obligations pursuant to this article. The Contractor shall state:

(i) What steps were taken, how and on what date. .

(ii) To whom those efforts were directed.

(iii) The responses received, from whom and when.

(iv) What other steps were taken or will be taken to comply and when.

(v) Why the Contractor has been or will be unable to comply.

2. Every contract of \$25,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall also comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

L. The Affirmative Action Program required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Awarding Authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

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

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

N. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by Contractors engaged in the performance of City Contracts.

O. All Contractors subject to the provisions of this article shall include a similar provision in all subcontracts awarded for work to be performed under the Contract with the City and shall impose the same obligations including, but not limited to, filing and reporting obligations, on the Subcontractors as are applicable to the Contractor. Failure of the Contractor to comply with this requirement or to obtain the compliance of its Subcontractors with all such obligations shall subject the Contractor to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of the Contractor's Contract with the City.

#### SECTION HISTORY

Amended by Ord. No. 147,030, Eff. 4-28-75; Subsecs. A., B., C., Ord. No. 164,516, Eff. 4-13-89; Subsecs. B. and C., Ord. No. 168,244, Eff. 10-18-92; Title and Section, Ord. No. 173,186, Eff. 5-22-00; Subsec. F., Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00; In Entirety, Ord. No. 184,292, Eff. 6-27-16.

# EXHIBIT S-3

Living Wage Ordinance/Compliance

## CHAPTER 1, ARTICLE 11

### LIVING WAGE

- Section
- 10.37 Legislative Findings.
  - 10.37.1 Definitions.
  - 10.37.2 Payment of Minimum Compensation to Employees.
  - 10.37.3 Health Benefits.
  - 10.37.4 Employer Reporting and Notification Requirements.
  - 10.37.5 Retaliation Prohibited.
  - 10.37.6 Enforcement.
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  - 10.37.13 Liberal Interpretation of Coverage; Rebuttable Presumption of Coverage.
  - 10.37.14 Contracts, Employers and Employees Not Subject to this Article.
  - 10.37.15 Exemptions.
  - 10.37.16 Severability.

#### Sec. 10.37. Legislative Findings.

The City awards many contracts to private firms to provide services to the public and to City government. Many lessees or licensees of City property perform services that affect the proprietary interests of City government in that their performance impacts the success of City operations. The City also provides financial assistance and funding to other firms for the purpose of economic development or job growth. The City expends grant funds under programs created by the federal and state governments. These expenditures serve to promote the goals established for the grant programs and for similar goals of the City. The City intends that the policies underlying this article serve to guide the expenditure of such funds to the extent allowed by the laws under which such grant programs are established.

Experience indicates that procurement by contract of services all too often has resulted in the payment by service contractors to their employees of wages at or slightly above the minimum required by federal and state minimum wage laws. The minimal compensation tends to inhibit the quantity and quality of services rendered by those employees to the City and to the public. Underpaying employees in this way fosters high turnover, absenteeism and lackluster performance. Conversely, adequate compensation promotes amelioration of these undesirable conditions. Through this article, the City intends to require service contractors to provide a minimum level of compensation which will improve the level of services rendered to and for the City.

The inadequate compensation leaves service employees with insufficient resources to afford life in Los Angeles. Contracting decisions involving the expenditure of City funds should not foster conditions that place a burden on limited social services. The City, as a principal provider of social support services, has an interest in promoting an employment environment that protects such limited resources. In requiring the payment of a higher minimum level of compensation, this article benefits that interest.

In comparison with the wages paid at San Francisco International Airport, the wage for Los Angeles airport workers is often lower even though the airports are similar in the number of passengers they serve and have similar goals of providing a living wage to the airport workforce. Studies show that higher wages at the airport leads to increases in worker productivity and improves customer service. Higher wages for airport workers also results in a decline in worker turnover, yielding savings to the employers and alleviating potential security concerns. Therefore, the City finds that a higher wage for airport employees is needed to reduce turnover and retain a qualified and stable workforce.

Many airport workers who provide catering services to the airlines are paid below the living wage. Federal law allows employment contract agreements between airline caterers and its workers to remain in effect without an expiration date, effectively freezing wages for workers. Long-term employment contract agreements provide little incentive for employers to renegotiate the employment contract agreements with their workers. Airline catering



workers often struggle to pay their bills, sometimes having to choose between paying medical bills and buying food for their families. The City finds that airline caterers should pay their workers, at a minimum, the living wage with benefits.

Airport workers are also the first to respond when an emergency occurs at the airport. In order to properly assist first responders during a crisis at the airport, the City finds that airport employees of Certified Service Provider License Agreement holders should be formally trained for an emergency response at the airport.

Nothing less than the living wage should be paid by employers that are the recipients of City financial assistance. Whether workers are engaged in manufacturing or some other line of business, the City does not wish to foster an economic climate where a lesser wage is all that is offered to the working poor.

The City holds a proprietary interest in the work performed by many employees of City lessees and licensees and by their service contractors, subcontractors, sublessees and sublicensees. The success or failure of City operations may turn on the success or failure of these enterprises, for the City has a genuine stake in how the public perceives the services rendered for them by such businesses. Inadequate compensation of these employees adversely impacts the performance by the City's lessee or licensee and thereby hinders the opportunity for success of City operations. A proprietary interest in providing a living wage is important for various reasons, including, but not limited to: 1) the public perception of the services or products rendered to them by a business; 2) security concerns related to the location of the business or any product or service the business produces; or 3) an employer's industry-specific job classification which is in the City's interest to cover by the living wage. This article is meant to cover all such employees not expressly exempted.

Requiring payment of the living wage further serves a proprietary concern of the City. If an employer does not comply with this article, the City may: 1) declare a material breach of the contract; 2) declare the employer non-responsible and limit its ability to bid on future City contracts, leases or licenses; and 3) exercise any other remedies available.

#### SECTION HISTORY

Article and Section Added by Ord. No. 171,547, Eff. 5-5-97.  
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; In Entirety, Ord. No. 184,318, Eff. 7-7-16; In Entirety, Ord. No. 185,321, Eff. 1-20-18.

#### Sec. 10.37.1. Definitions.

The following definitions shall apply throughout this article:

(a) "Airline Food Caterer" means any Employer that, with respect to the Airport:

(1) prepares food or beverage to or for aircraft crew or passengers;

(2) delivers prepared food or beverage to or for aircraft crew or passengers;

(3) conducts security or inspection of aircraft food or beverage; or

(4) provides any other service related to or in connection with the preparation of food or beverage to or for aircraft crew or passengers.

(b) "Airport" means the Department of Airports and each of the airports which it operates.

(c) "Awarding Authority" means the governing body, board, officer or employee of the City or City Financial Assistance Recipient authorized to award a Contract and shall include a department which has control of its own funds.

(d) "City" means the City of Los Angeles and all awarding authorities thereof, including those City departments which exercise independent control over their expenditure of funds.

(e) "City Financial Assistance Recipient" means any person who receives from the City discrete financial assistance for economic development or job growth expressly articulated and identified by the City, as contrasted with generalized financial assistance such as through tax legislation, in accordance with the following monetary limitations. Assistance given in the amount of \$1,000,000 or more in any 12-month period shall require compliance with this article for five years from the date such assistance reaches the \$1,000,000 threshold. For assistance in any 12-month period totaling less than \$1,000,000 but at least \$100,000, there shall be compliance for one year, with the period of compliance beginning when the accrual of continuing assistance reaches the \$100,000 threshold.

Categories of assistance include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan at market rate shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. §§ 1274(d) and 7872(f). A recipient shall not be deemed to include lessees and sublessees.

A recipient shall be exempted from application of this article if:

(1) it is in its first year of existence, in which case the exemption shall last for one year;

(2) it employs fewer than five Employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; or

(3) it obtains a waiver as a recipient who employs the long-term unemployed or provides trainee positions intended to prepare Employees for permanent positions. The recipient shall attest that compliance with this article would cause an economic hardship and shall apply in writing to the City department or office administering the assistance. The department or office shall forward the waiver application and the department or office's recommended action to the City Council. Waivers shall be effected by Council resolution.

(f) "Contractor" means any person that enters into:

(1) a Service Contract with the City;

(2) a contract with a Public Lessee or Licensee; or

(3) a contract with a City Financial Assistance Recipient to help the recipient in performing the work for which the assistance is being given.

(g) "Designated Administrative Agency (DAA)" means the Department of Public Works, Bureau of Contract Administration, which shall bear administrative responsibilities under this article.

(h) "Employee" means any person who is not a managerial, supervisory or confidential employee who expends any of his or her time working for an Employer in the United States.

(i) "Employer" means any person who is:

(1) a City Financial Assistance Recipient;

(2) Contractor;

(3) Subcontractor;

(4) Public Lessee or Licensee; and

(5) Contractor, Subcontractor, sublessee or sublicensee of a Public Lessee or Licensee.

(j) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association or other entity that may employ individuals or enter into contracts.

(k) "Public Lease or License" means, except as provided in Section 10.37.15, a lease, license, sublease or sublicense of City property, including, but not limited to, Non-Exclusive License Agreements, Air Carrier Operating Permits and Certified Service Provider License Agreements (CSPLA), for which services are furnished by Employees where any of the following apply:

(1) The services are rendered on premises at least a portion of which is visited by members of the public (including, but not limited to, airport passenger terminals, parking lots, golf courses, recreational facilities);

(2) Any of the services feasibly could be performed by City employees if the City had the requisite financial and staffing resources; or

(3) The DAA has determined in writing as approved by the Board of Public Works that coverage would further the proprietary interests of the City. Proprietary interest includes, but is not limited to:

(i) the public perception of the services or products rendered to them by a business;

(ii) security concerns related to the location of the business or any product or service the business produces; or

(iii) an Employer's industry-specific job classifications as defined in the regulations.

(l) "Service Contract" means a contract involving an expenditure in excess of \$25,000 and a contract term of at least three months awarded to a Contractor by the City to furnish services for the City where any of the following apply:

(1) at least some of the services are rendered by Employees whose work site is on property owned or controlled by the City;

(2) the services feasibly could be performed by City employees if the City had the requisite financial and staffing resources; or

(3) the DAA has determined in writing as approved by the Board of Public Works that coverage would further the proprietary interests of the City. Proprietary interest includes, but is not limited to:

(i) the public perception of the services or products rendered to them by a business;

(ii) security concerns related to the location of the business or any product or service the business produces; or

(iii) an Employer's industry-specific job classifications as defined in the regulations.

(m) "Subcontractor" means any person not an Employee who enters into a contract:

(1) to assist in performance of a Service Contract;

(2) with a Public Lessee or Licensee, sublessee, sublicensee or Contractor to perform or assist in performing services for the leased or licensed premises.

(n) "Willful Violation" means that the Employer knew of its obligations under this article and deliberately failed or refused to comply with its provisions.

#### SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (e), Ord. No. 176,155, Eff. 9-22-04; Subsec. (e), Ord. No. 176,283, Eff. 12-25-04, Oper. 9-22-04; Subsecs. (a) through (l) re-lettered (d) through (o), respectively and new Subsecs. (a), (b), and (c) added, Ord. No. 180,877, Eff. 10-19-09; In Entirety, Ord. No. 184,318, Eff. 7-7-16; In Entirety, Ord. No. 185,321, Eff. 1-20-18.

#### Sec. 10.37.2. Payment of Minimum Compensation to Employees.

(a) **Wages.** An Employer shall pay an Employee for all hours worked on a Service Contract or if a Public Lease or License or for a Contractor of a Public Lessee or Licensee, for all hours worked furnishing a service relating to the City, a wage of no less than the hourly rates set under the authority of this article.

##### (1) Non-Airport Employee Wages.

(i) If an Employer provides an Employee with health benefits as provided in Section 10.37.3 of this article, the Employee shall be paid the following:

a. On July 1, 2018, the wage rate for an Employee shall be no less than \$13.25 per hour.

b. On July 1, 2019, the wage rate for an Employee shall be no less than \$14.25 per hour.

c. On July 1, 2020, the wage rate for an Employee shall be no less than \$15.00 per hour.

d. On July 1, 2022, and annually thereafter, the hourly wage rate paid to an Employee shall be adjusted consistent with any adjustment pursuant to Section 187.02 D. of the Los Angeles Municipal Code.

(ii) If an Employer does not provide an Employee with health benefits as provided in Section 10.37.3 of this article, the Employee shall be paid the applicable wage rate in Section

10.37.2(a)(1)(i) and an additional wage rate of \$1.25 per hour.

(iii) Section 10.37.11 is not applicable to this subdivision.

**(2) Airport Employee Wages.**

(i) If an Employer servicing the Airport provides an Employee with health benefits as provided in Section 10.37.3 of this article, the Employee shall be paid the following:

a. On July 1, 2017, the wage rate for an Employee shall be no less than \$12.08 per hour.

b. On July 1, 2018, the wage rate for an Employee shall be no less than \$13.75 per hour.

c. On July 1, 2019, the wage rate for an Employee shall be no less than \$15.25 per hour.

d. On July 1, 2020, the wage rate for an Employee shall be no less than \$16.50 per hour.

e. On July 1, 2021, the wage rate for an Employee shall be no less than \$17.00 per hour.

f. Beginning on July 1, 2022, the wage rate for an Employee shall increase annually, on July 1, to an amount \$2.00 above the minimum rate under the City's Minimum Wage Ordinance for that same period of time.

(ii) If an Employer servicing the Airport does not provide an Employee with health benefits as provided in Section 10.37.3 of this article, the Employee shall be paid the applicable wage rate in Section 10.37.2(a)(2)(i) and an additional wage rate as follows:

a. On July 1, 2017, an Employer servicing the Airport shall pay an Employee an additional wage rate of \$5.18 per hour.

b. Beginning on July 1, 2018, an Employer servicing the Airport shall pay an Employee an additional wage rate per hour

equal to the health benefit payment in effect for an Employee pursuant to Section 10.37.3(a)(5).

(3) An Employer may not use tips or gratuities earned by an Employee to offset the wages required under this article.

(b) **Compensated Time Off.** An Employer shall provide an Employee compensated time off as follows:

(1) An Employee who works at least 40 hours per week or is classified as a full-time Employee by the Employer shall accrue no less than 96 hours of compensated time off per year.

(2) An Employee who works less than 40 hours per week and is not classified as a full-time Employee by the Employer shall accrue hours of compensated time off in increments proportional to that accrued by an Employee who works 40 hours per week.

(3) **General Rules for Compensated Time Off.**

(i) An Employee must be eligible to use accrued paid compensated time off after the first 90 days of employment or consistent with company policies, whichever is sooner. Compensated time off shall be paid at an Employee's regular wage rate at the time the compensated time off is used.

(ii) An Employee may use accrued compensated time off hours for sick leave, vacation or personal necessity.

(iii) An Employer may not unreasonably deny an Employee's request to use the accrued compensated time off. The DAA, through regulations, may provide guidance on what is considered unreasonable.

(iv) The DAA may allow an Employer's established compensated time off policy to remain in place even though it does not meet these requirements, if the DAA determines that the Employer's established policy is overall more generous.

(v) Unused accrued compensated time off shall carry over until time off reaches a maximum of 192 hours, unless the Employer's established policy is overall more generous.

(vi) After an Employee reaches the maximum accrued compensated time off, an Employer shall provide a cash payment once every 30 days for accrued compensated time off over the maximum. An Employer may provide an Employee with the option of cashing out any portion of, or all of, the Employee's accrued compensated time off, but, an Employer shall not require an Employee to cash out any accrued compensated time off. Compensated time off cashed out shall be paid to the Employee at the wage rate that the Employee is earning at the time of cash out.

(vii) An Employer may not implement any unreasonable employment policy to count accrued compensated time off taken under this article as an absence that may result in discipline, discharge, suspension or any other adverse action.

(4) **Compensated Release Time.** An Employer servicing the Airport who holds a Certified Service Provider License Agreement and is subject to this article shall comply with the following additional requirements:

(i) A CSPLA Employer shall provide an Employee at the Airport, 16 hours of additional compensated release time annually to attend and complete emergency response training courses approved by the Airport.

(ii) By December 31, 2018, and continuing thereafter on an annual basis, an Employee of a CSPLA Employer shall successfully complete the 16 hours of emergency response training.

(iii) An Employee of a CSPLA Employer hired after December 31, 2018, shall complete the 16 hours of emergency response training within 120 days of the first date of hire.

(iv) The 16 hours of compensated release time shall only be used to attend Airport approved annual emergency response training courses. The 16 hours of compensated release time does not accumulate or carry over to the following year. The 16 hours of compensated release time shall not be included as part of the 96 hours of compensated time off required under this article.

(c) **Uncompensated Time Off.** An Employer shall provide an Employee uncompensated time off as follows:

(1) An Employee who works at least 40 hours a week or is classified as a full-time Employee by an Employer shall accrue no less than 80 hours of uncompensated time off per year.

(2) An Employee who works less than 40 hours per week and is not classified as a full-time Employee by the Employer shall accrue hours of uncompensated time off in increments proportional to that accrued by an Employee who works 40 hours per week.

(3) **General Rules for Uncompensated Time Off.**

(i) An Employee must be eligible to use accrued uncompensated time off after the first 90 days of employment or consistent with company policies, whichever is sooner.

(ii) Uncompensated time off may only be used for sick leave for the illness of an Employee or a member of his or her immediate family and where an Employee has exhausted his or her compensated time off for that year.

(iii) An Employer may not unreasonably deny an Employee's request to use the accrued uncompensated time off. The DAA, through regulations, may provide guidance on what is considered unreasonable.

(iv) Unused accrued uncompensated time off shall carry over until the time off reaches a maximum of 80 hours, unless the Employer's established policy is overall more generous.

(v) An Employer may not implement any unreasonable employment policy to count accrued uncompensated time off taken under this article as an absence that may result in discipline, discharge, suspension or any other adverse action.

#### SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec.

(a), Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00; Subsec.

(a), Ord. No. 180,877, Eff. 10-19-09; In Entirety, Ord. No.

184,318, Eff. 7-7-16; In Entirety, Ord. No. 185,321, Eff.

1-20-18; Subsec. (a)(1), Ord. No. 185,745, Eff. 10-15-18.

**Sec. 10.37.3. Health Benefits.**

(a) **Health Benefits.** The health benefits required by this article shall consist of the payment by an Employer of at least \$1.25 per hour to Employees towards the provision of health care benefits for an Employee and his or her dependents. On July 1, 2017, the health benefit rate for an Employee working for an Employer servicing the Airport shall be at least \$5.18 per hour. On July 1, 2018, the annual increase for Employees working for an Employer servicing the Airport shall continue as provided in Section 10.37.3(a)(5).

(1) Proof of the provision of such benefits must be submitted to the Awarding Authority to qualify for the wage rate in Section 10.37.2(a) for Employees with health benefits.

(2) Health benefits include health coverage, dental, vision, mental health and disability income. For purposes of this article, retirement benefits, accidental death and dismemberment insurance, life insurance and other benefits that do not provide medical or health related coverage will not be credited toward the cost of providing Employees with health benefits.

(3) If the Employer's hourly health benefit payment is less than that required under this article, the difference shall be paid to the Employee's hourly wage.

(4) Health benefits are not required to be paid on overtime hours.

(5) On July 1, 2018, and annually thereafter each July 1, the amount of payment for health benefits provided to an Employee working for an Employer servicing the Airport shall be adjusted by a percentage equal to the percentage increase, if any, in the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers: Medical Care Services, as measured from January to December of the preceding year. The DAA shall announce the adjusted rates on February 1st and publish a bulletin announcing the adjusted rates, which shall take effect on July 1st of each year.

(b) **Periodic Review.** At least once every three years, the City Administrative Officer shall review the health benefit payment by Employers servicing the Airport set forth in Section 10.37.3(a) to determine whether the payment accurately reflects the cost of health care and to

assess the impacts of the health benefit payment on Airport Employers and Airport Employees and shall transmit a report with its findings to the Council.

**SECTION HISTORY**

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; In Entirety, Ord. No. 180,877, Eff. 10-19-09; In Entirety, Ord. No. 184,318, Eff. 7-7-16; In Entirety, Ord. No. 185,321, Eff. 1-20-18.

**Sec. 10.37.4. Employer Reporting and Notification Requirements.**

(a) An Employer shall post in a prominent place in an area frequented by Employees a copy of the Living Wage Poster and the Notice Regarding Retaliation, both available from the DAA.

(b) An Employer shall inform an Employee of his or her possible right to the federal Earned Income Credit (EIC) under Section 32 of the Internal Revenue Code of 1954, 26 U.S.C. § 32, and shall make available to an Employee forms informing them about the EIC and forms required to secure advance EIC payments from the Employer.

(c) An Employer is required to retain payroll records pertaining to its Employees for a period of at least four years, unless more than four years of retention is specified elsewhere in the contract or required by law.

(d) A Contractor, Public Lessee, Licensee, and City Financial Assistant Recipient is responsible for notifying all Contractors, Subcontractors, sublessees, and sublicensees of their obligation under this article and requiring compliance with this article. Failure to comply shall be a material breach of the contract.

**SECTION HISTORY**

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; In Entirety, Ord. No. 184,318, Eff. 7-7-16; In Entirety, Ord. No. 185,321, Eff. 1-20-18.

**Sec. 10.37.5. Retaliation Prohibited.**

An Employer shall not discharge, reduce in compensation, or otherwise discriminate against any Employee for complaining to the City with regard to the Employer's compliance or anticipated compliance with this article, for opposing any practice proscribed by this article,



for participating in proceedings related to this article, for seeking to enforce his or her rights under this article by any lawful means, or for otherwise asserting rights under this article.

#### SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; In Entirety, Ord. No. 184,318, Eff. 7-7-16; In Entirety, Ord. No. 185,321, Eff. 1-20-18.

#### Sec. 10.37.6. Enforcement.

(a) An Employee claiming violation of this article may bring an action in the Superior Court of the State of California against an Employer and may be awarded:

(1) For failure to pay wages required by this article, back pay shall be paid for each day during which the violation occurred.

(2) For failure to comply with health benefits requirements pursuant to this article, the Employee shall be paid the differential between the wage required by this article without health benefits and such wage with health benefits, less amounts paid, if any, toward health benefits.

(3) For retaliation the Employee shall receive reinstatement, back pay or other equitable relief the court may deem appropriate.

(4) For Willful Violations, the amount of monies to be paid under Subdivisions (1) - (3), above, shall be trebled.

(b) The court shall award reasonable attorney's fees and costs to an Employee who prevails in any such enforcement action and to an Employer who prevails and obtains a court determination that the Employee's lawsuit was frivolous.

(c) Compliance with this article shall be required in all City contracts to which it applies. Contracts shall provide that violation of this article shall constitute a material breach thereof and entitle the Awarding Authority to terminate the contract and otherwise pursue legal remedies that may be available. Contracts shall also include an agreement that the Employer shall comply with federal law proscribing retaliation for union organizing.

(d) The DAA may audit an Employer at any time to verify compliance. Failure by the Employer to cooperate

with the DAA's administrative and enforcement actions, including, but not limited to, requests for information or documentation to verify compliance with this article, may result in a determination by the DAA that the Employer has violated this article.

(e) An Employee claiming violation of this article may report the claimed violation to the DAA, which shall determine whether this article applies to the claimed violation.

(1) If any of the Employee's allegations merit further review, the DAA shall perform an audit; the scope of which will not exceed four years from the date the complaint was received.

(2) If the claimed violation is filed after a contract has expired, and information needed for the review is no longer readily available, the DAA may determine this article no longer applies.

(3) In the event of a claimed violation of the requirements relating to compensated time off, uncompensated time off or wages, the DAA may require the Employer to calculate the amount the Employee should have earned and compensate the Employee. Nothing shall limit the DAA's authority to evaluate the calculation.

(i) If the DAA determines that an Employer is in violation of Section 10.37.2(b), the time owed must be made available immediately. At the Employer's option, retroactive compensated time off in excess of 192 hours may be paid to the Employee at the current hourly wage rate.

(ii) If the DAA determines that an Employer is in violation of Section 10.37.2(c), the Employer shall calculate the amount of uncompensated time off that the Employee should have accrued. This time will be added to the uncompensated time off currently available to the Employee and must be available immediately.

(f) Where the DAA has determined that an Employer has violated this article, the DAA shall issue a written notice to the Employer that the violation is to be corrected within ten days or other time period determined appropriate by the DAA.

(g) In the event the Employer has not demonstrated to the DAA within such period that it has cured the violation, the DAA may then:

(1) Request the Awarding Authority to declare a material breach of the Service Contract, Public Lease or License, or financial assistance agreement and exercise its contractual remedies thereunder, which may include, but not be limited to: (i) termination of the Service Contract, Public Lease or License, or financial assistance agreement; (ii) the return of monies paid by the City for services not yet rendered; and (iii) the return to the City of money held in retention (or other money payable on account of work performed by the Employer) when the DAA has documented the Employer's liability for unpaid wages, health benefits or compensated time off.

(2) Request the Awarding Authority to declare the Employer non-responsible from future City contracts, leases and licenses in accordance with the Contractor Responsibility Ordinance (LAAC Section 10.40, et seq.) and institute proceedings in a manner that is consistent with law.

(3) Impose a fine payable to the City in the amount of up to \$100 for each violation for each day the violation remains uncured.

(4) Exercise any other remedies available at law or in equity.

(h) Notwithstanding any provision of this Code or any other law to the contrary, no criminal penalties shall attach for violation of this article.

#### SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (d), Para. (1), Ord. No. 173,747, Eff. 2-24-01; In Entirety, Ord. No. 184,318, Eff. 7-7-16; In Entirety, Ord. No. 185,321, Eff. 1-20-18.

#### Sec. 10.37.7. Administration.

The DAA shall administer the requirement of this article and monitor compliance, including the investigation of claimed violations. The DAA shall promulgate rules and regulations consistent with this article for the implementation of the provision of this article. The DAA shall also issue determinations that persons are City Financial Assistance Recipients, that particular contracts shall be regarded as "Service Contracts" for purposes of Section 10.37.1(l), and that particular leases and licenses shall be regarded as "Public Leases" or "Public Licenses" for purposes of Section 10.37.1(k), when it receives an

application for a determination of non-coverage or exemption as provided for in Section 10.37.14 and 10.37.15.

The DAA may require an Awarding Authority to inform the DAA about all contracts in the manner described by regulation. The DAA shall also establish Employer reporting requirements on Employee compensation and on notification about and usage of the federal Earned Income Credit referred to in Section 10.37.4. The DAA shall report on compliance to the City Council no less frequently than annually.

Every three years after July 1, 2018, the Chief Legislative Analyst (CLA) with the assistance of the City Administrative Officer (CAO) shall commission a study to review the state of the Airport's regional economy; minimum wage impacts for Employees servicing the Airport; Airport service industry impacts; temporary workers, guards and janitors impacts; restaurants, hotels and bars impacts; transitional jobs programs impacts; service charges, commissions and guaranteed gratuities impacts; and wage theft enforcement. On an annual basis, the CLA and CAO shall collect economic data, including jobs, earnings and sales tax. The Study shall also address how extensively affected Employers are complying with this article, how the article is affecting the workforce composition of affected Employers, and how the additional costs of the article have been distributed among Employees, Employers and the City.

#### SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00; Ord. No. 173,747, Eff. 2-24-01; In Entirety, Ord. No. 184,318, Eff. 7-7-16; In Entirety, Ord. No. 185,321, Eff. 1-20-18.

#### Sec. 10.37.8. City is a Third Party Beneficiary of Contracts Between an Employer and Subcontractor for Purposes of Enforcement.

Any contract an Employer executes with a Contractor or Subcontractor, as defined in Section 10.37.1(f) and (m), shall contain a provision wherein the Contractor or Subcontractor agree to comply with this article and designate the City as an intended third party beneficiary for purposes of enforcement directly against the Contractor or Subcontractor, as provided for in Section 10.37.6 of this article.

## SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.  
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Ord. No. 173,285, Eff. 6-26-00; Oper. 7-1-00; In Entirety, Ord. No. 184,318, Eff. 7-7-16; In Entirety, Ord. No. 185,321, Eff. 1-20-18.

### Sec. 10.37.9. Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.

This article shall not be construed to limit an Employee's right to bring legal action for violation of other minimum compensation laws.

## SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.  
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; In Entirety, Ord. No. 184,318, Eff. 7-7-16; In Entirety, Ord. No. 185,321, Eff. 1-20-18.

### Sec. 10.37.10. Expenditures Covered.

This article shall apply to the expenditure – whether through aid to City Financial Assistance Recipients, Service Contracts let by the City or Service Contracts let by its Financial Assistance Recipients – of funds entirely within the City's control and to other funds, such as federal or state grant funds, where the application of this article is consonant with the laws authorizing the City to expend such other funds.

## SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.  
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; In Entirety, Ord. No. 184,318, Eff. 7-7-16; In Entirety, Ord. No. 185,321, Eff. 1-20-18.

### Sec. 10.37.11. Timing of Application.

The provisions of this article shall become operative 60 days following the effective date of the ordinance and are not retroactive.

## SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.  
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (b), Subsec. (c) Added, Ord. No. 173,747, Eff. 2-24-01; Subsec. (d) Added, Ord. No. 180,877, Eff. 10-19-09; In Entirety, Ord. No. 184,318, Eff. 7-7-16; In Entirety, Ord. No. 185,321, Eff. 1-20-18.

### Sec. 10.37.12. Express Supersession by Collective Bargaining Agreement.

The requirements of this article may be superseded by a collective bargaining agreement if expressly stated in the agreement. This provision applies to any collective bargaining agreement that expires or is open for negotiation of compensation terms after the effective date of this ordinance. Any collective bargaining agreement that purports to supersede any requirement of this article shall be submitted by the Employer to the DAA.

(a) A collective bargaining agreement may expressly supersede the requirements of this article with respect to Employees of Employers servicing the Airport only when an Employee is paid a wage not less than the applicable wage rate in Section 10.37.2(a)(2)(i).

(b) A collective bargaining agreement may expressly supersede the requirements of this article with respect to Employees of Airline Food Caterers only when an Employee of the Airline Food Caterer is paid a total economic package no less than the applicable wage rate in Section 10.37.2(a)(2)(ii).

## SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.  
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; In Entirety, Ord. No. 184,318, Eff. 7-7-16; Title and Section In Entirety, Ord. No. 185,321, Eff. 1-20-18.

### Sec. 10.37.13. Liberal Interpretation of Coverage; Rebuttable Presumption of Coverage.

The definitions of "City Financial Assistance Recipient" in Section 10.37.1(e), of "Public Lease or License" in Section 10.37.1(k), and of "Service Contract" in Section 10.37.1(l) shall be liberally interpreted so as to further the policy objectives of this article. All City Financial Assistance Recipients meeting the monetary thresholds of Section 10.37.1(e), all Public Leases and Licenses (including subleases and sublicenses) where the City is the lessor or licensor, and all City contracts providing for services shall be presumed to meet the corresponding definition mentioned above, subject, however, to a determination by the DAA of non-coverage or exemption on any basis allowed by this article, including, but not limited to, non-coverage for failure to satisfy such definition. The DAA shall by regulation establish procedures for informing persons engaging in such transactions with the City of their opportunity to apply for

a determination of non-coverage or exemption and procedures for making determinations on such applications.

#### SECTION HISTORY

Added by Ord. No. 172,336, Eff. 1-14-99.  
Amended by: Ord. No. 173,747, Eff. 2-24-01; In Entirety, Ord. No. 184,318, Eff. 7-7-16; In Entirety, Ord. No. 185,321, Eff. 1-20-18; In Entirety, Ord. No. 185,745, Eff. 10-15-18.

#### Sec. 10.37.14. Contracts, Employers and Employees Not Subject to this Article.

The following contracts are not subject to the Living Wage Ordinance. An Awarding Authority, after consulting with the DAA, may determine whether contracts and/or Employers are not subject to the Living Wage Ordinance due to the following:

(a) a contract where an employee is covered under the prevailing wage requirements of Division 2, Part 7, of the California Labor Code unless the total of the basic hourly rate and hourly health and welfare payments specified in the Director of Industrial Relations' General Prevailing Wage Determinations are less than the minimum hourly rate as required by Section 10.37.2(a) of this article.

(b) a contract with a governmental entity, including a public educational institution or a public hospital.

(c) a contract for work done directly by a utility company pursuant to an order of the Public Utilities Commission.

#### SECTION HISTORY

Added by Ord. No. 184,318, Eff. 7-7-16.  
Amended by: In Entirety, Ord. No. 185,321, Eff. 1-20-18.

#### Sec. 10.37.15. Exemptions.

Upon the request of an Employer, the DAA may exempt compliance with this article. An Employer seeking an exemption must submit the required documentation to the DAA for approval before the exemption takes effect.

(a) A Public Lessee or Licensee, that employs no more than seven people total on and off City property shall be exempted. A lessee or licensee shall be deemed to employ no more than seven people if the

company's entire workforce worked an average of no more than 1,214 hours per month for at least three-fourths of the previous calendar year. If a Public Lease or License has a term of more than two years, the exemption granted pursuant to this section shall expire after two years, but shall be renewable in two-year increments.

(b) Non-Profit Organizations. Corporations organized under Section 501(c)(3) of the United States Internal Revenue Code of 1954, 26 U.S.C. § 501(c)(3), whose chief executive officer earns a salary which, when calculated on an hourly basis, is less than eight times the lowest wage paid by the corporation, shall be exempted as to all Employees other than child care workers.

(c) Students. High school and college students employed in a work study or employment program lasting less than three months shall be exempt. Other students participating in a work-study program shall be exempt if the Employer can verify to the DAA that:

(1) The program involves work/training for class or college credit and student participation in the work-study program is for a limited duration, with definite start and end dates; or

(2) The student mutually agrees with the Employer to accept a wage below this article's requirements based on a training component desired by the student.

(d) Nothing in this article shall limit the right of the Council to waive the provisions herein.

(e) Nothing in this article shall limit the right of the DAA to waive the provisions herein with respect to and at the request of an individual Employee who is eligible for benefits under Medicare, a health plan through the U.S. Department of Veteran Affairs or a health plan in which the Employee's spouse, domestic partner or parent is a participant or subscriber to another health plan. An Employee who receives this waiver shall only be entitled to the hourly wage pursuant to Section 10.37.2(a)(2)(i).

#### SECTION HISTORY

Added by Ord. No. 184,318, Eff. 7-7-16.  
Amended by: In Entirety, Ord. No. 185,321, Eff. 1-20-18.

**Sec. 10.37.16. Severability.**

If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION HISTORY**

Added by Ord. No. 172,336, Eff. 1-14-99.

Amended by: In Entirety, Ord. No. 184,318, Eff. 7-7-16; In  
Entirety, Ord. No. 185,321, Eff. 1-20-18.

# EXHIBIT S-4

Contractor Responsibility Program



# **LOS ANGELES WORLD AIRPORTS**



## **CONTRACTOR RESPONSIBILITY PROGRAM**

### **RULES AND REGULATIONS FOR LEASES**

**Effective date: July 1, 2012**

Procurement Services Division  
7301 World Way West, 4<sup>th</sup> Floor  
Los Angeles, CA 900145  
(424) 646-5380  
(424) 646-9262 (Fax)

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These Rules and Regulations are promulgated pursuant to Board Resolution #21601, the Los Angeles World Airports Contractor Responsibility Program (CRP). Each Requesting LAWA Division shall cooperate to the fullest extent with the Executive Director in the administration of the CRP. The Executive Director may amend these Rules and Regulations from time to time as required for the implementation of the CRP.

#### **A. DEFINITIONS**

- (a) **"Awarding Authority"** means either the Executive Director or the Board or the Board's designee.
- (b) **"Bid"** means an application submitted by a bidder in response to an Invitation for Bid, Request for Proposal or Request for Qualifications or other procurement process.
- (c) **"Bidder"** means any person or entity that applies for any contract whether or not the application process is through an Invitation for Bid, Request for Proposal, Request for Qualifications or other procurement process.
- (d) **"Board"** means the City of Los Angeles Board of Airport Commissioners.
- (e) **"Contract"** means any agreement for the performance of any work or service, the provisions of any goods, equipment, materials or supplies, or the rendition of any service to LAWA or to the public or the grant of a Public Lease, which is awarded or entered into by or on behalf of LAWA. The provisions of these Rules and Regulations shall apply to all leases that require Board approval.
- (f) **"Contractor"** means any person, firm, corporation, partnership, association or any combination thereof, which enters into a Contract with LAWA and includes a Public Lessee.
- (g) **"CRP Pledge of Compliance"** means the CRP Pledge of Compliance developed by PSD. The CRP Pledge of Compliance shall require Public Lessees and Public Sublessees to sign under penalty of perjury that the Public Lessees and Public Sublessees will:
  - (1) Comply with all applicable Federal, State, and local laws and regulations during the performance of the lease, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees.
  - (2) Notify LAWA within 30 calendar days after receiving notification that any government agency has initiated an investigation that may result in a finding that

the tenant or did not comply with subparagraph (g)(1) above in the performance of the contract.

- (3) Notify LAWA within 30 calendar days of all findings by a government agency or court of competent jurisdiction that the Public Lessee or Public Sublessee has violated subparagraph (g)(1) above in the performance of the Public Lease.
- (4) Provide LAWA within 30 calendar days updated responses to the CRP Questionnaire if any change occurs which would change any response contained within the completed CRP Questionnaire. Note: This provision does not apply to amendments of Public Leases not subject to the CRP and to Public Sublessees not required to submit a CRP Questionnaire.
- (5) Ensure that Public Lessees and Public Sublessees with LAWA leases shall complete, sign and submit a CRP Pledge of Compliance attesting under penalty of perjury to compliance with subparagraphs (u)(1) through (4).
- (6) Notify LAWA within 30 days of becoming aware of an investigation, violation or finding of any applicable Federal, State, or local law involving Public Sublessees in the performance of a LAWA contract.
- (7) Cooperate fully with LAWA during an investigation and to respond to request(s) for information within ten (10) working days from the date of the Notice to Respond.
- (h) **"CRP Questionnaire"** means the set of questions developed by PSD that will assist LAWA in determining a bidder, proposer's or contractor's responsibility. Information solicited from the CRP Questionnaire may include but is not limited to: ownership and name changes, financial resources and responsibility, satisfactory performance of other contracts, satisfactory record of compliance with relevant laws and regulations, and satisfactory record of business integrity. PSD may amend the CRP Questionnaire from time to time.
- (i) **"Executive Director"** means the Executive Director of the City of Los Angeles Department of Airports.
- (j) **"Invitation for Bid" ("IFB")** means the process through which the City solicits Bids including Request for Proposals (**"RFP"**) and Requests for Qualifications (**"RFQ"**).
- (k) **"Los Angeles World Airports"** means the City of Los Angeles Department of Airports.
- (l) **"PSD"** means LAWA's Procurement Services Division.
- (m) **"Public Lease"** means a lease of LAWA property.
- (n) **"Public Lessee"** means a Contractor that leases LAWA property under a Public Lease.

- (o) **"Public Sublessee"** means a Subcontractor that subleases LAWA property from a Public Lessee.
- (p) **"PSD"** means LAWA's Procurement Services Division.
- (q) **"Subcontractor"** means any person not an employee who enters into a contract with a Contractor to assist the Contractor in performing a Contract, including a Contractor or subcontractor of a Public Lessee or Public Sublessee, to perform or assist in performing services on the leased premises.
- (r) **"Prospective Lessee"** means any person, firm, corporation, partnership, association or any combination thereof that currently does not have a Public Lease.
- (s) **"Prospective Sublessee"** means any person, firm, corporation, partnership, association or any combination thereof that currently does not sublease LAWA property from a Public Lessee.
- (t) **"Requesting LAWA Division"** means the LAWA division(s) which issued the RFB, RFP or RFQ.
- (u) **"Responsibility"** means possessing the necessary "trustworthiness" and "quality, fitness and capacity" to perform the work set forth in the contract.

## **B. SUBMISSION OF CRP QUESTIONNAIRES**

1. **Prospective Lessees** are required to submit a completed and signed CRP Questionnaire for determination of responsibility prior to award of a Public Lease.
2. **Public Lessees, Prospective Sublessees and Public Sublessees** are not required to submit a completed and signed CRP Questionnaire.

## **C. LAWA REVIEW OF SUBMITTED CRP QUESTIONNAIRES (APPLICABLE TO PROSPECTIVE LESSEES ONLY)**

### **1. Posting of CRP Questionnaires and Sublessee Lists:**

The Requesting LAWA Division will forward to PSD the completed CRP Questionnaires and sublessee list(s), if any, submitted by the Prospective Lessees to make available for public review and comment for a minimum of fourteen (14) calendar days prior to the award of the Public Lease.

### **2. Departmental Review of CRP Questionnaires**

- a. PSD will determine Contractor Responsibility from the completeness and accuracy of the information in the submitted CRP Questionnaire; information from various

compliance and regulatory agencies; accuracy and completeness of the information received from the public; and through PSD's own reviews and investigations.

- b. PSD may submit written requests to the Prospective Lessee for clarification or additional documentation. Failure to respond to these requests within the specified time may render the Prospective Lessee non-responsible and disqualified.
- c. PSD will report its findings and determination to the Requesting LAWA Division.
- d. No award of a Public Lease will be made by LAWA until after the CRP Questionnaire review and Contractor Responsibility determination has been made.
- e. The CRP Questionnaire of the Prospective Lessee that is awarded a Public Lease will be retained by PSD. The CRP Questionnaires of the Prospective Lessees that are not awarded a Public Lease will also be retained by PSD.

### **3. Claims Resulting from Public Review and Comments**

#### **Prospective Lessees:**

- a. Claims regarding a Prospective Lessee's responsibility must be submitted to PSD in writing. However, PSD may investigate a claim regarding a Prospective Lessee's responsibility, whether or not it is submitted in writing.
- b. If PSD receives information which calls into question a Prospective Lessee's responsibility, and the information was received **before** LAWA awards a Public Lease to the Prospective Lessee, PSD shall:
  - (1) Notify the Requesting LAWA Division in writing that LAWA will not award a Public Lease, until PSD has completed investigation into the matter.
  - (2) Investigate the complaint, collect necessary documentation, and determine the complaint's validity.
  - (3) Upon completion of the investigation, notify the Requesting LAWA Division in writing of the results of the investigation.
  - (4) Findings from the PSD investigation received by the Requesting LAWA Division will be considered by the Awarding Authority as part of the determination of the Prospective Lessee's responsibility.

#### **Public Lessee:**

- a. Claims regarding a Public Lessee's responsibility must be submitted to PSD in writing. However, PSD may investigate a claim regarding a Public Lessee's responsibility, whether or not it is submitted in writing.



- b. If PSD receives written information that calls into question a Public Lessee's responsibility, PSD shall investigate the matter as required in Section G, LAWA Investigation.

## **D. AWARD AND EXECUTION OF PUBLIC LEASES**

### **1. Determination of Responsibility and Award of Public Lease**

- a. PSD shall determine whether a Prospective Lessee is a responsible lessee with the necessary trustworthiness, quality, fitness and capacity to comply with the terms of the Public Lease by considering the following:
  - (1) Completeness and accuracy of the information contained in the CRP Questionnaire;
  - (2) Completeness and accuracy of the information received from the public;
  - (3) Information and documentation from PSD's own investigation; and
  - (4) Information that may be available from any compliance or regulatory governmental agency.
- b. The Awarding Authority may award and execute a Public Lease to a Prospective Lessee only if:
  - (1) The Prospective Lessee's CRP Questionnaire, and sublessee's list(s), if any, has been made available for public review for at least fourteen (14) calendar days unless otherwise exempted from the posting requirement by the CRP;
  - (2) The Prospective Lessee is not being investigated pursuant to the CRP;
  - (3) The Prospective Lessee has not been found to be a non-responsible lessee pursuant to the CRP;
  - (4) The Prospective Lessee does not appear on any City list of debarred bidders or contractors; and
  - (5) The Prospective Lessee has met all other applicable City requirements.

### **2. Submission of Pledge of Compliance**

#### **Prospective Lessees/Prospective Sublessees:**

- a. Unless otherwise exempt from the CRP, all Prospective Lessees and Prospective Sublessees are required to submit a CRP Pledge of Compliance signed under penalty of perjury. Failure to submit a CRP Pledge of Compliance as required may render the Prospective Lessees or Prospective Sublessees, as applicable, non-compliant with the terms of the Public Lease or a consent to sublease, as applicable, and subject to sanctions.

#### **Public Sublessees:**

- b. Prior to LAWA's execution of a consent to sublease with a Prospective Sublessee, the Public Lessee shall submit to LAWA a signed CRP Pledge of Compliance from each Public Sublessee listed as occupying space on the leasehold premises.

### **3. Public Sublessee Responsibility**

- a. Public Lessees shall ensure that their sublessees meet the criteria for responsibility set forth in the CRP and these Rules and Regulations.
- b. Public Lessees shall ensure that sublessees occupying space on the LAWA leasehold premises shall complete and submit a signed CRP Pledge of Compliance.
- c. Public Lessees shall not sublease to any sublessee that has been determined or found to be a non-responsible contractor by LAWA or the City.
- d. Subject to approval by the Awarding Authority, Public Lessees may substitute a non-responsible sublessee with another sublessee.

### **4. Execution of Public Leases/Consent to Subleases**

#### **Prospective Lessees:**

- a. Unless exempt from the CRP, all Public Leases subject to the CRP shall contain language obligating the Public Lessee to comply with the CRP.
- b. No Public Lease may be awarded unless:
  - (1) The Prospective Lessee's CRP Questionnaire, unless otherwise exempt, has been made available for public review for at least fourteen (14) calendar days
  - (2) The Prospective Lessee has submitted a signed CRP Pledge of Compliance.
  - (3) The Prospective Lessee's sublessee list, if any, has been made available for public review for at least fourteen (14) calendar days.
  - (4) The Prospective Lessee is determined by LAWA to be a Responsible Contractor.

#### **Prospective Sublessee:**

- a. Unless exempt from the CRP, all subleases subject to the CRP shall contain language obligating the Public Sublessee to comply with the CRP.
- b. No consent to sublease will be executed by LAWA unless the Public Lessee has submitted a signed CRP Pledge of Compliance by the Prospective Sublessee.

## **E. LEASE AMENDMENTS**

Compliance with the CRP is required in any amendment to a Public Lease if the initial lease was not subject to the CRP, but the total term and amount of the lease, inclusive of all amendments, would make the lease subject to the CRP.

- a. A Public Lessee subject to the CRP because of an amendment to the Public Lease shall submit a CRP Pledge of Compliance to LAWA before the amendment can be executed by LAWA.
- b. Unless exempt from the CRP, all Public Lease amendments shall contain contract language obligating the Public Lessee to comply with the CRP.

## **F. NOTIFICATION OF INVESTIGATIONS AND UPDATE OF INFORMATION**

### **1. Notification of Investigations**

**Public Lessees shall:**

- a. Notify LAWA within 30 calendar days after receiving notification that any government agency has initiated an investigation that may result in a finding that the Public Lessees is not in compliance with any applicable Federal, State, or local law that apply to the Public Lease or City lease agreement, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees.
- b. Notify LAWA within 30 calendar days of receiving notice of any findings by a government agency or court of competent jurisdiction that the Public Lessee violated any applicable Federal, State, or local law that apply to the Public Lease or City lease agreement, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees.

### **2. Public Sublessee Notification of Investigations**

Public Lessees shall ensure that Public Sublessees occupying the LAWA leasehold premises abide by these same updating requirements, including the requirement to:

- a. Notify LAWA within 30 calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the Public Sublessee did not comply with any applicable Federal, State, or local law that apply to the Public Lease or City lease agreement, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees.

- b. Notify LAWA within 30 calendar days of all findings by a government agency or court of competent jurisdiction that the Public Sublessee violated any applicable Federal, State, or local law that apply to the Public Lease or City lease agreement, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees.

**3. Update of CRP Questionnaire Information – applies to Public Lessees only.**

- a. Updates of information contained in the Public Lessee's responses to the CRP Questionnaire shall be submitted to LAWA within thirty (30) days of any changes to the responses if the change would affect the Public Lessee's fitness and ability to comply with the terms of the Public Lease.
- b. PSD, or the Requesting LAWA Division, shall determine whether a Public Lessee in a specific situation should have provided updated information.
  - (1) If PSD, or the Requesting LAWA Division, becomes aware of new information concerning a Public Lessee and determines that the Public Lessee should have provided information or updated LAWA of such information, but the Public Lessee has not done so, PSD shall issue a written notice to the Public Lessee requiring the Public Lessee to submit the required information within (ten) 10 calendar days.
  - (2) If PSD or the Requesting LAWA Division becomes aware of new information concerning a Public Sublessee and determines that the Public Sublessee should have provided information or updated LAWA of such information, but the Public Sublessee has not done so, PSD shall issue a written notice to the Public Lessee requiring the Public Sublessee to submit the required information within (ten) 10 calendar days of receipt of the written notice.
- c. The Public Lessee's failure to provide information or updated information when required by LAWA, the CRP or these Rules and Regulations, may be considered a material breach of the Public Lease, and LAWA may initiate a "Non-Responsibility Hearing" pursuant to the procedures set forth in Section I of these Rules and Regulations.

- 4. Submission of CRP Questionnaire and Updates of CRP Questionnaire Responses Not Applicable to Sublessees:** The requirement that Public Lessees submit to LAWA CRP Questionnaires and updates to the CRP Questionnaire responses does not apply to Public Sublessees.

**G. LAWA INVESTIGATION**

- 1. Reporting of Alleged Violations:** Allegations of violations of the CRP or these Rules and Regulations shall be reported to PSD. Complaints regarding a Prospective

Lessee's or Public Lessee's responsibility should be submitted to PSD in writing. However, PSD may investigate any claim or complaint regarding a Prospective Lessee's or Public Lessee's responsibility, whether or not it is submitted in writing. Whether based on a written complaint or otherwise, PSD shall be responsible for investigating such alleged violations.

## **2. Process:**

- a. Upon receipt of a complaint or upon initiation of an investigation, PSD shall notify the Requesting LAWA Division, the Awarding Authority, and the Prospective Lessee or Public Lessee, as applicable, in writing that an investigation has been initiated.
- b. The Prospective Lessee or Public Lessee, as applicable, shall cooperate fully with PSD in providing information. If the Prospective Lessee or Public Lessee, as applicable, fails to cooperate with PSD's investigation or fails to timely respond to PSD's requests for information, LAWA may initiate a non-responsibility hearing as set forth in Section I of these Rules and Regulations. A failure to cooperate by a Public Lessee may be deemed a material breach of the Public Lease, and the City may pursue all available remedies.
- c. To the extent permissible, PSD shall maintain the identity of the complainant, if any, confidential.
- d. Upon completion of the investigation, PSD shall prepare a written report of the findings and notify the Requesting LAWA Division, the Awarding Authority, and the Prospective Lessee or Public Lessee, as applicable, of the results.

## **3. Results of Investigation**

### **Prospective Lessee**

- a. When an investigation is completed before a Public Lease is awarded, PSD shall notify the Requesting LAWA Division and the Awarding Authority of the results, and the Requesting LAWA Division and the Awarding Authority will consider the information as part of the determination of a Prospective Lessee's responsibility during the bid/proposal review process.

### **Public Lessees**

- b. When an investigation is completed after the execution of a Public Lease:
  - (1) If violations of the CRP are found, PSD shall notify the Requesting LAWA Division and the Public Lessee of the violation and require the Public Lessee to make corrections or take reasonable measures within 10 calendar days.
  - (2) If the Public Lessee fails to make corrections as required, PSD shall notify the

Requesting LAWA Division and the Awarding Authority and may recommend that the Awarding Authority:

- (i) Terminate the Public Lease.
- (ii) Initiate a hearing to declare the Public Lessee a non-responsible lessee.

#### **H. VIOLATIONS OF THE CRP OR ITS RULES AND REGULATIONS**

1. Violations of the CRP or of these Rules and Regulations may be considered a material breach of the Public Lease and may entitle LAWA or the City to terminate the Public Lease.
2. Alleged violations of the CRP or of these Rules and Regulations shall be reported to the PSD which will investigate all such complaints.
3. When a violation of the CRP or of these Rules and Regulations is found, PSD shall notify the Public Lessee and the Awarding Authority of the violation. PSD shall require the Public Lessee to correct the violation within 10 calendar days. Failure to correct violations or take reasonable measures to correct violations within 10 calendar days may result in PSD:
  - a. Recommending that the Awarding Authority declare a material breach of the Public Lease and that the Awarding Authority exercise all contractual and legal remedies available, including but not limited to termination of the Public Lease.
  - b. Recommending that the Awarding Authority declare the Public Lessee a non-responsible lessee by initiating, within 30 calendar days or as soon as practicable, a non-responsibility hearing in accordance with Section I of these Rules and Regulations.

#### **I. NON-RESPONSIBILITY HEARING**

1. The process of declaring a Prospective Lessee or a Public Lessee a non-responsible lessee shall be initiated by the Awarding Authority after consultation with the City Attorney's Office.
2. Before a Prospective Lessee or a Public Lessee may be declared non-responsible, the Prospective Lessee or a Public Lessee shall be notified of the proposed determination of non-responsibility and provided with an opportunity for a hearing.
3. The Awarding Authority or the Executive Director's designee shall preside over the non-responsibility hearing and shall provide the Prospective Lessee or Public Lessee with the following:



- a. The Prospective Lessee or Public Lessee shall be provided with written Notice of intent to declare the Prospective Lessee or Public Lessee non-responsible ("Notice") which shall state that the Awarding Authority intends to declare the Prospective Lessee or Public Lessee a non-responsible bidder, proposer or lessee.
- b. The Notice shall provide the Prospective Lessee or Public Lessee with the following information:
  - (1) That the Awarding Authority intends to declare the Prospective Lessee or Public Lessee a non-responsible bidder, proposer or lessee.
  - (2) A summary of the information upon which the Awarding Authority is relying.
  - (3) That the Prospective Lessee or Public Lessee has a right to respond to the information by requesting a hearing to rebut adverse information and to present evidence of its necessary trustworthiness, quality, fitness and capacity to comply with the terms of the Public Lease or proposed Public Lease.
  - (4) That the Prospective Lessee or Public Lessee must exercise the right to a hearing by submitting to the Awarding Authority a **written request** for a hearing **within 10 working days** of the date of the Notice.
  - (5) That failure to submit a written request for hearing within 10 working days of the date of the Notice shall be considered a waiver of the right to a hearing that allows the Awarding Authority to proceed with the determination of non-responsibility.
- c. If the Prospective Lessee or Public Lessee submits a written request for a hearing, the hearing may be held by the Awarding Authority for recommendation to the Board, which shall make the final decision.
- d. The hearing must allow the Prospective Lessee or Public Lessee an opportunity to address the issues contained in the Notice of Intent to declare the Prospective Lessee or a Public Lessee non-responsible.
- e. The Awarding Authority may determine that the Prospective Lessee or Public Lessee:
  - (1) Does not possess the necessary trustworthiness, quality, fitness, or capacity to comply with the terms of the Public Lease or proposed Public Lease, should be declared a non-responsible bidder, proposer or lessee, and recommend to the Board invocation of the remedies set forth in Section J of these Rules and Regulations.
  - (2) Should not be declared a non-responsible bidder, proposer or lessee.
- f. The Board's determination shall be final and constitute exhaustion of administrative remedies.
- g. The Board's final decision shall be in writing and shall be provided to the Prospective Lessee or Public Lessee, the LAWA Requesting Division and to PSD. If the Prospective Lessee or Public Lessee is declared to be non-responsible, a copy of the final decision shall also be provided to the CAO.

## J. NON-RESPONSIBILITY SANCTIONS

### Sanctions for Airline Tenants:

Airline lessees that do not comply with the CRP requirements or are determined non-responsible by LAWA will be declared to have a material breach of the Public Lease. LAWA may exercise its legal remedies thereunder, which are to include, but are not limited to:

1. Non-issuance of a successor air carrier operating permit, resulting in the payment of higher landing fees as a non-permitted carrier.
2. Termination of the Public Lease, which may result in the loss of exclusive or preferential gate assignments.

### Sanctions for Non-Airline Tenants:

1. **Prospective Lessees** that do not comply with CRP requirements and/or are determined non-responsible by LAWA will be disqualified and will not be awarded a Public Lease.
2. **Public Lessees** that do not comply with CRP requirements and/or are determined non-responsible will be declared to have a material breach of the Public Lease. LAWA may exercise its legal remedies thereunder, which are to include, but not limited to the termination of the Public Lease.

Such lessee shall not occupy any leasehold premises in the proposed Public Lease, whether as a master lessee, a sublessee, a partner in a partnership, a participant in a joint venture, a member of a consortium, or in any other capacity.

3. Upon final determination of a Prospective Lessee or Public Lessee as a non-responsible lessee, PSD shall provide the LAWA Requesting Division and the Prospective Lessee or Public Lessee, as applicable, with a written notice summarizing the findings and applicable sanctions.
4. PSD shall maintain a listing of Prospective Lessees/Public Lessees who have been found non-responsible by LAWA pursuant to the CRP.

## K. EXEMPTIONS

1. **Categorical Exemption:** The following types of Public Leases are categorically exempt from the CRP and these Rules and Regulations:

Public Leases with a governmental entity such as the United States of America, the State of California, a county, city or public agency of such entities, or a public or quasi-public corporation located therein and declared by law to have such public status.

2. **Board approval required for CRP Exemptions:** The following types of Public Leases are exempt from the requirement to submit a Questionnaire but remain subject to the

requirement that the Public Lessee submit a Pledge of Compliance and notify the Awarding Authority within 30 days of any information regarding investigations of the results of investigations by any governmental agency into the Public Lessee's compliance with applicable laws.

- a. Public Leases awarded on the basis of exigent circumstances when the Board finds that LAWA would suffer a financial loss or that LAWA operations would be adversely impacted.
  - (1) The Awarding Authority shall submit a request to PSD for waiver along with written certification that the required conditions exist.
  - (2) No contract may be exempted under this provision unless PSD has granted written approval of the waiver.
- b. Public Leases entered into based on Charter Section 371(e)(6). The Awarding Authority must certify in writing that the Public Lease is entered into in accordance with Charter Section 371(e)(6).

#### **L. EFFECTIVE DATE OF RULES AND REGULATIONS**

1. These Rules and Regulations apply to RFBs and RFPs issued after the Executive Director has approved these Rules and Regulations.
2. These Rules and Regulations apply to Public Leases entered into by LAWA after the Executive Director has approved these Rules and Regulations.
3. Public Leases amended after these Rules and Regulations are approved by the Executive Director will become subject to CRP and these Rules and Regulations if they meet definitions contained in the CRP and these Rules and Regulations.

#### **M. CONSISTENCY WITH FEDERAL AND STATE LAW**

The CRP and these Rules and Regulations do not apply in instances where application would be prohibited by Federal and State law or where the application would violate or be inconsistent with the terms and conditions or a grant or contract with the Federal or State agency.

#### **N. SEVERABILITY**

If any provision of the CRP or these Rules and Regulations are declared legally invalid by any court of competent jurisdiction, the remaining provisions remain in full force and effect.

# EXHIBIT S-5

Worker Retention Ordinance

## CHAPTER 1, ARTICLE 10

### WORKER RETENTION

(Title amended, Ord. No. 185,356, Eff. 1-26-18.)

Section	
10.36	Findings and Statement of Policy.
10.36.1	Definitions.
10.36.2	Transition Employment Period.
10.36.3	Enforcement.
10.36.4	Exemption for Contractor or Contractor's Prior Employees.
10.36.5	Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.
10.36.6	Expenditures Covered by this Article.
10.36.7	Promulgation of Implementing Rules.
10.36.8	Severability.

#### Sec. 10.36. Findings and Statement of Policy.

The City awards many contracts to private firms to provide services to the public and to City government. The City also leases its property or grants licenses to enter onto its property and these lessees and licensees often perform services that affect the proprietary interests of City government in that their performance impacts the success of City operations. The City also provides financial assistance and funding to other firms for the purpose of economic development or job growth. At the conclusion of the term of a service contract, lease or license with the City or with those receiving financial assistance from the City, a different firm often receives the successor contract to perform the same City services or to lease or license the same City property.

The City obtains benefits achieved through the competitive process of entering into new contracts. It is the experience of the City that reasons for change do not necessarily include a need to replace workers presently performing services who already have useful knowledge about the workplace where the services are performed.

The City has a proprietary interest in the work performed by employees of City contractors, lessees and licensees and by the employees of firms receiving City financial assistance. The success or failure of City operations may turn on the success or failure of these firms, and the City has a genuine stake in how the public perceives

the services rendered by these firms. Replacement of existing employees can adversely impact the performance by these firms and thereby hinders the opportunity for success of City operations.

Incumbent workers have invaluable existing knowledge and experience with the work schedules, practices and clients. Replacing these workers with workers without these experiences decreases efficiency and results in a disservice to the City and City financed or assisted projects.

Retaining existing workers when a change in firm occurs reduces the likelihood of labor disputes and disruptions. The reduction of the likelihood of labor disputes and disruptions results in the assured continuity of services to City constituents and visitors who receive services provided by the City, the City's lessees or licensees, or by City financed or assisted projects.

Contracting decisions involving the expenditure of City funds should avoid a potential effect of creating unemployment and the consequential need for social services. The City, as a principal provider of social support services, has an interest in the stability of employment under contracts, leases and licenses with the City and by those receiving financial assistance from the City. The retention of existing workers benefits that interest.

#### SECTION HISTORY

Article and Section Added by Ord. No. 170,784, Eff. 1-13-96.  
Amended by: Article and Section, Ord. No. 171,004, Eff. 5-18-96;  
In Entirety, Ord. No. 184,293, Eff. 6-27-16; In Entirety,  
Ord. No. 185,356, Eff. 1-26-18.

#### Sec. 10.36.1. Definitions.

The following definitions shall apply throughout this article:

(a) "Awarding Authority" means the governing body, board, officer or employee of the City or City Financial Assistance Recipient authorized to award a Contract and shall include a department which

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has control of its own funds if the department adopts policies consonant with the provisions of this article.

(b) “City” means the City of Los Angeles and all Awarding Authorities thereof.

(c) “City Financial Assistance Recipient” means any person who receives from the City in any 12-month period discrete financial assistance for economic development or job growth expressly articulated and identified by the City totaling at least \$100,000; provided, however, that corporations organized under Section 501(c)(3) of the United States Internal Revenue Code of 1954, 26 U.S.C. § 501(c)(3), with annual operating budgets of less than \$5,000,000, or that regularly employ homeless persons, persons who are chronically unemployed, or persons receiving public assistance, shall be exempt.

Categories of such assistance include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan at market rate shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. §§ 1274(d) and 7872(f). A recipient shall not be deemed to include lessees and sublessees. Contracts for economic development or job growth shall be deemed providing such assistance once the \$100,000 threshold is reached.

(d) “Contract” means:

(1) a contract let to a Contractor by the City or a City Financial Assistance Recipient primarily for the furnishing of services to or for the City or City Financial Assistance Recipient (as opposed to the purchase of goods or other property) and that involves an expenditure or receipt in excess of \$25,000 and a contract term of at least three months; or

(2) a Public Lease or License as those terms are defined in Los Angeles Administrative Code Section 10.37.1(k) but only if the lessee or

licensee is subject to the Living Wage Ordinance and not otherwise exempt from its provisions.

(e) “Contractor” means any person that enters into a Contract with the City or a City Financial Assistance Recipient. Governmental entities, including public educational institutions and public hospitals, are not Contractors and are not subject to this article.

(f) “Designated Administrative Agency (DAA)” means the Department of Public Works, Bureau of Contract Administration, which shall bear administrative responsibilities under this article.

(g) “Employee” means any person employed as an employee of a Contractor or Subcontractor earning no more than twice the hourly wage without health benefits available under the Living Wage Ordinance, Los Angeles Administrative Code Section 10.37 et seq., whose primary place of employment is in the City on or under the authority of a Contract. Examples of Employee includes: hotel Employees; restaurant, food service or banquet Employees; janitorial Employees; security guards; parking attendants; nonprofessional health care Employees; gardeners; waste management Employees; and clerical Employees. Employee does not include a person who is a managerial, supervisory or confidential Employee. An Employee must have been employed by a terminated Contractor for the preceding 12 months or longer.

(h) “Person” means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association or other entity that may employ individuals or enter into contracts.

(i) “Subcontractor” means any person not an Employee who enters into a contract with a Contractor to assist the Contractor in performing a Contract and who employs Employees for such purpose. A Subcontractor includes a sublessee or sublicensee.

(j) “Successor Contract” means a Contract where the service to be performed is substantially similar to the Contract recently terminated. The meaning also includes a Contract that is a Public Lease or License substantially similar to a Public Lease or License recently terminated. Termination includes, but is not limited to: (1) the completion of the Contract; (2) early termination of the Contract in whole or in part; or (3) an amendment that reduces

## EXHIBIT S-5

services provided under the Contract, in whole or in part.

#### SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96.

Amended by: Ord. No. 171,004, Eff. 5-18-96; Subsec. (c), Ord. No. 172,843, Eff. 11-4-99; Subsec. (j) added, Ord. No. 176,155, Eff. 9-22-04; Subsec. (j), Ord. No. 176,283, Eff. 12-25-04, Oper. 9-22-04; In Entirety, Ord. No. 184,293, Eff. 6-27-16; In Entirety, Ord. No. 185,356, Eff. 1-26-18.

#### Sec. 10.36.2. Transition Employment Period.

(a) Within ten days of learning that a Contract is to be terminated, the Contractor shall provide to the Successor Contractor, the Awarding Authority and the DAA, the name, address, date of hire, and employment occupation classification of each Employee of the terminated Contractor and Subcontractor working pursuant to the Contract. If the terminated Contractor has not learned the identity of the Successor Contractor, the Contractor shall request the identity from the Awarding Authority. If a Successor Contract has not been awarded by the end of the ten-day period, the Contractor shall provide the employment information referred to earlier in this subsection to the Awarding Authority and the DAA. Where only a subcontract of a Contract has been terminated, the terminated Subcontractor shall for purposes of this Article be deemed a terminated Contractor.

(1) If multiple Contracts providing similar services are terminated, the Awarding Authority shall consult with the DAA to determine whether to pool the Employees, ordered by seniority within job classification and provide a pool list to the Successor Contractor. The Successor Contractor shall provide written notice to the Awarding Authority and the DAA that the Awarding Authority's pool list will be used. The notice must include the following:

(A) the total number of Employees required under the Successor Contract;

(B) a breakdown of the number of Employees required within each job classification and seniority within each class; and

(C) an indication as to which Employees within each job classification shall be offered employment under this article.

The written notice must be provided no later than ten days after the Successor Contractor receives the listing of the terminated Contractor's Employees.

(2) Where the use of Subcontractors has occurred under the terminated Contract or where the use of Subcontractors is to be permitted under the Successor Contract, or where both circumstances arise, the Awarding Authority shall pool, when applicable, the Employees, ordered by seniority within job classification, under such prior Contracts or subcontracts where required by, and in accordance with, rules promulgated by the DAA. The Successor Contractor or Subcontractor shall provide written notice to the Awarding Authority and the DAA that the Awarding Authority's pool list will be used.

(b) If work-related requirements for a particular job classification under the Successor Contract differ from the terminated Contract, the Successor Contractor (or Subcontractor, where applicable) shall give notice to the Awarding Authority and the DAA and provide an explanation including:

(1) the different work-related requirements needed; and

(2) the reason why the different work-related requirements are necessary for the Successor Contract.

(c) Within ten days of receipt of the list of Employees from the terminated Contractor, the Successor Contractor shall make written offers for a 90-day transition employment period to the eligible Employees by letters sent certified mail. The letters shall ask an Employee to return the offers to the Successor Contractor with the Employee's signature indicating acceptance or rejection of the offer of employment. The letters shall state that if an Employee fails to return a written acceptance of the offer within ten days of the date of mailing of the Successor Contractor's certified letter, then the Employee will be presumed to have declined the offer.

The Successor Contractor shall provide copies of the letters offering employment to the Awarding Authority and proof of mailing.

(d) A Successor Contractor shall retain Employees for a 90-day transition employment period. Where pooling of Employees has occurred, the Successor Contractor shall draw from the pools in accordance with rules promulgated by the DAA. During such 90-day period, Employees so hired shall be employed under the terms and conditions established by the Successor Contractor (or Subcontractor) or as required by law.

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(e) If at any time the Successor Contractor determines that fewer Employees are required to perform the new Contract than were required by the terminated Contractor (and Subcontractors, if any), the Successor Contractor shall retain Employees by seniority within job classification. The Successor Contractor shall give notice to the Awarding Authority and the DAA and provide an explanation including:

- (1) the reason that fewer Employees will be needed;
- (2) the total number of Employees required under the Successor Contract;
- (3) a breakdown of the number of Employees required within each job classification;
- (4) a listing of the terminated Contractor's Employees by job classification and seniority within each class; and
- (5) an indication as to which Employees within each job classification will be offered employment under this article.

The notice must be provided no later than ten days after the Successor Contractor receives the list of the terminated Contractor's Employees pursuant to Section 10.36.2(a).

Letters offering employment shall be made by seniority within each job classification. If an Employee in a job classification declines an offer of employment or fails to respond within ten days pursuant to Section 10.36.2(a), the Successor Contractor shall issue a letter offering employment to the next Employee in that job classification. The Successor Contractor shall continue to offer employment in this manner until all required positions are filled for the Successor Contract or until all Employees have been offered employment.

(f) During the 90-day transition employment period, the Successor Contractor (or Subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered Employees not retained by the Successor Contractor (or Subcontractor) from which the successor Contractor (or Subcontractor) shall hire additional Employees, if needed.

(g) During the 90-day transition employment period, the Successor Contractor (or Subcontractor, where applicable) shall not discharge without cause an Employee retained pursuant to this article. "Cause" for this purpose

shall mean fair and honest reasons, regulated by good faith on the part of the Contractor or Subcontractor, that are not trivial, arbitrary or capricious, unrelated to business needs or goals, or pretextual.

(h) At the end of the 90-day transition employment period, the Successor Contractor (or Subcontractor, where applicable) shall perform a written performance evaluation for each Employee retained pursuant to this article. If the Employee's performance during the 90-day period is satisfactory, the Successor Contractor (or Subcontractor) shall offer the Employee continued employment under terms and conditions established by the Successor Contractor (or Subcontractor) or as required by law.

(i) If the City or a City Financial Assistance Recipient enters into a Contract for the performance of work that prior to the Contract was performed by the City's or the City Financial Assistance Recipient's own Employees, the City or the City Financial Assistance Recipient shall be deemed to be a terminated Contractor within the meaning of this article and the Contractor shall be deemed to be a Contractor with a Successor Contract within the meaning of this article.

#### SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96.

Amended by: Ord. No. 171,004, Eff. 5-18-96; Subsec. (g) added, Ord. No. 172,349, Eff. 1-29-99; In Entirety, Ord. No. 184,293, Eff. 6-27-16; In Entirety, Ord. No. 185,356, Eff. 1-26-18.

#### Sec. 10.36.3. Enforcement.

(a) An Employee who has been discharged in violation of this article by a Successor Contractor or its Subcontractor may bring an action in the Superior Court of the State of California against the Successor Contractor and, where applicable, its Subcontractor, and may be awarded:

(1) Back pay for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

(A) The average regular rate of pay received by the Employee from the terminated Contractor during the last three years of the Employee's employment in the same occupation classification; or

(B) The final regular rate paid by the terminated Contractor to the Employee.

(2) Costs of benefits the Successor Contractor would have incurred for the Employee under the successor Contractor's (or Subcontractor's, where applicable) benefit plan.

(b) If the Employee is the prevailing party in any such legal action, the court shall award reasonable attorney's fees and costs as part of the costs recoverable.

(c) Compliance with this article shall be required in all Contracts and shall provide that violation of this article shall entitle the City to terminate the Contract and pursue all legal remedies.

(d) If the DAA determines that a Contractor or Subcontractor violated this article, the DAA may recommend that the Awarding Authority take any or all of the following actions:

(1) Document the determination in the Awarding Authority's Contractor Evaluation required under Los Angeles Administrative Code Section 10.39, et seq.;

(2) Require that the Contractor or Subcontractor document the determination in each of the Contractor's or Subcontractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Section 10.40, et seq.;

(3) Terminate the Contract;

(4) Recommend to the Awarding Authority to withhold payments due to the Contractor or Subcontractor.

(e) Notwithstanding any provision of this Code or any other law to the contrary, no criminal penalties shall attach for any violation of this article.

#### SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96.  
Amended by: Ord. No. 171,004, Eff. 5-18-96; In Entirety, Ord. No. 184,293, Eff. 6-27-16; In Entirety, Ord. No. 185,356, Eff. 1-26-18.

#### Sec. 10.36.4. Exemption for Contractor or Contractor's Prior Employees.

(a) An Awarding Authority may allow a Successor Contractor or Subcontractor to fill a position under a Contractor with a person who has been employed by the Contractor or Subcontractor continuously for at least 12 months prior to the commencement of the Successor

Contract working in a position similar to the position to be filled in the Successor Contract. The Successor Contractor or Subcontractor shall first obtain written approval of the Awarding Authority by demonstrating that: (a) the person would otherwise be laid off work; and (b) his or her retention would be helpful to the Contractor or Subcontractor in performing the Successor Contract.

(b) Nothing in this article shall limit the right of the DAA to waive the provisions herein with respect to a Contractor if it finds it is not in the best interest of the City.

#### SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96.  
Amended by: Ord. No. 171,004, Eff. 5-18-96; In Entirety, Ord. No. 184,293, Eff. 6-27-16; In Entirety, Ord. No. 185,356, Eff. 1-26-18.

#### Sec. 10.36.5. Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.

This article shall not be construed to limit an Employee's right to bring legal action for wrongful termination.

#### SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96.  
Amended by: Ord. No. 171,004, Eff. 5-18-96; In Entirety, Ord. No. 184,293, Eff. 6-27-16; In Entirety, Ord. No. 185,356, Eff. 1-26-18.

#### Sec. 10.36.6. Expenditures Covered by this Article.

This article shall apply to the expenditure, whether through Contracts let by the City or by City Financial Assistance Recipients, of funds entirely within the City's control and to other funds, such as federal or state grant funds, where the application of this article is consonant with the laws authorizing the City to expend such other funds. City Financial Assistance Recipients shall apply this article to the expenditure of non-City funds for Contracts to be performed in the City by complying with Section 10.36.2(i) and by contractually requiring their Contractors with Contracts to comply with this article. Such requirement shall be imposed by the recipient until the City financial assistance has been fully expended.

#### SECTION HISTORY

Added by Ord. No. 171,004, Eff. 5-18-96.  
Amended by: Ord. No. 172,337, Eff. 1-14-99; Ord. No. 172,843, Eff. 11-4-99; In Entirety, Ord. No. 184,293, Eff. 6-27-16; In Entirety, Ord. No. 185,356, Eff. 1-26-18.

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**Sec. 10.36.7. Promulgation of Implementing Rules.**

The DAA shall promulgate rules for implementation of this article and otherwise coordinate administration of the requirements of this article.

**SECTION HISTORY**

Added by Ord. No. 171,004, Eff. 5-18-96.

Amended by: Ord. No. 176,155, Eff. 9-22-04; Ord. No. 176,283, Eff. 12-25-04, Oper. 9-22-04; In Entirety, Ord. No. 184,293, Eff. 6-27-16; In Entirety, Ord. No. 185,356, Eff. 1-26-18.

**Sec. 10.36.8. Severability.**

If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION HISTORY**

Added by Ord. No. 171,004, Eff. 5-18-96.

Amended by: In Entirety, Ord. No. 184,293, Eff. 6-27-16; In Entirety, Ord. No. 185,356, Eff. 1-26-18.

**CONTRACTS**

Division 10

**EXHIBIT S-5**

# EXHIBIT S-6

Child Support Orders

# LOS ANGELES ADMINISTRATIVE CODE

## Div. 10, Ch. 1, Art. 1

### CHILD SUPPORT

#### Sec. 10.10. Child Support Assignment Orders.

##### a. Definitions.

1. **Awarding Authority** means a subordinate or component entity or person of the City (such as a City department or Board of Commissioners) that has the authority to enter into a contract or agreement for the provision of goods or services on behalf of the City of Los Angeles.

2. **Contract** means any agreement, franchise, lease or concession including an agreement for any occasional professional or technical personal services, the performance of any work or service, the provision of any materials or supplies, or the rendering of any service to the City of Los Angeles or to the public which is let, awarded or entered into with, or on behalf of, the City of Los Angeles or any awarding authority thereof.

3. **Contractor** means any person, firm, corporation, partnership or any combination thereof which submits a bid or proposal or enters into a contract with any awarding authority of the City of Los Angeles.

4. **Subcontractor** means any person, firm, corporation, partnership or any combination thereof who enters into a contract with a contractor to perform or provide a portion of any contract with the City.

5. **Principal Owner** means any person who owns an interest of 10 percent or more in a contractor or subcontractor as defined herein.

##### b. Mandatory Contract Provisions.

Every contract that is let, awarded or entered into with or on behalf of the City of Los Angeles shall contain a provision obligating the contractor or subcontractor to fully comply with all applicable State and Federal employment reporting requirements for the contractor or subcontractor's employees. The contractor or subcontractor will also be required to certify that the principal owner(s) thereof are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally, that the contractor or subcontractor will

fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with California Family Code §§ 5230 *et seq.* and that the contractor or subcontractor will maintain such compliance throughout the term of the contract.

Failure of a contractor or subcontractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owner(s) to comply with any Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute a default under the contract. Failure of the contractor or subcontractor or principal owner thereof to cure the default within 90 days of notice of such default by the City shall subject the contract to termination.

##### c. Notice to Bidders.

Each awarding authority shall be responsible for giving notice of the provisions of this ordinance to those who bid on, or submit proposals for, prospective contracts with the City.

##### d. Current Contractor Compliance.

Within 30 days of the operative date of this ordinance, the City, through its operating departments, shall serve upon existing contractors a written request that they and their subcontractors (if any) comply with all applicable State and Federal employment reporting requirements for the contractor and subcontractor's employees, that they certify that the principal owner(s) of the contractor and any subcontractor are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally, that the contractor and subcontractor will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with California Family Code § 5230 *et seq.* and that the contractor and subcontractor will maintain such compliance throughout the term of the contract.

##### e. City's Compliance with California Family Code.

The City shall maintain its compliance with the provisions of California Family Code §§ 5230 *et*

*seq.* and all other applicable law regarding its obligations as an employer to implement lawfully served Wage and Earnings Assignments and Notices of Assignment.

f. Report of Employees' Names to District Attorney.

1. The City shall maintain its current practice of assisting the District Attorney's support enforcement activities by annually reporting to the Los Angeles County District Attorney the names of all of its employees and retirees so that the District Attorney may identify those employees and retirees subject to Wage and Earnings Assignment Orders and Notices of Assignment and may establish court orders for support, where appropriate. Should the District Attorney so request it, the City will provide such information on a more frequent basis.

2. All applicants for employment with the City of Los Angeles will be asked to acknowledge their responsibility to comply with any court ordered support obligations and will be advised of the City's practice of assisting the District Attorney as described in the provisions of Subsection f.1., above.

**SECTION HISTORY**

*Added by Ord. No. 172,401, Eff. 2-13-99.*