

Recording Requested by
City of San Diego
Parks and Recreation Department
Mail Station 35

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City Clerk
Mail Station 2A

(Space Above for Recorder's Use)

PARK DEVELOPMENT STANDARD TERMS AND CONDITIONS

The developer and its officers, employees, agents, successors, assigns, any party in possession or occupancy of the park or recreational facilities or portion thereof, including without limitation any subsequent homeowners association formed for the housing development and its contractors (Developer) shall comply with the following Park Development Standard Terms and Conditions (Terms and Conditions):

ARTICLE I. SUBJECT OF THESE TERMS AND CONDITIONS

- 1.1 **Developer to Provide Park Facilities.** City of San Diego (City) requires population-based park facilities to accommodate the development and Developer agrees to fulfill the obligations per these Terms and Conditions. City agrees to accept performance of Developer's obligations per these Terms and Conditions as satisfaction of Developer's obligations relating to the provision of population-based park facilities per the applicable discretionary development permit granted by the City (Discretionary Permit) and the Parks and Recreation permit conditions governing this Discretionary Permit. These Terms and Conditions do not apply to development of park facilities satisfying population-based park requirements for park credit processed under a ministerial permit.

- 1.2 **Developer Obligations.** Developer shall design and construct all improvements needed to develop the population-based park project as defined on the approved development plans on file in the Records Section of the Development Services Department (Project) consistent with the Discretionary Permit, the General Development Plan (GDP), all City standard drawings and specifications, including the current version of the City's Parks and Recreation Department's Consultant's Guide to Park Design and Development available on the Parks and Recreation Department webpage (Consultant's Guide), and City Council Policy 600-33 COMMUNITY NOTIFICATION AND INPUT FOR CITY-WIDE PARK DEVELOPMENT PROJECTS (Council Policy 600-33). Developer

shall also comply with all Disability Access Laws, all federal, state, and local accessibility, laws regulations and standards, including but not limited to the applicable version of the American with Disabilities Act (ADA), Title II Regulations 28 CFR Part 35 and 35.151, including the 2010 ADA Standards for Accessible Design, (Appendix A of 28 CFR PART 36) (ADAS); The State of California Code of Regulations (CCR), including the current California Building Code (CBC) and the current California Access Compliance reference Manual; and City of San Diego Access Memos. When a conflict exists between the ADAS and CBC, Developer shall comply with the most restrictive requirement (i.e., that which provides the most access). Developer also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Agreement by reference. Developer certifies that any subcontract agreement for this Agreement contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations. Developer shall design and construct the Project, with the Project operational and suited to the purpose for which is was designed, and achieve Final Completion as defined in Section 13.2 in accordance with these Terms and Conditions and the Discretionary Permit.

- 1.3 **Responsible Parties.** The City's Parks and Recreation Department (P&R) will designate a Park Designer who shall be the P&R representative for the Project (P&R Representative). The Developer shall be responsible for the development of the Project and fulfilling the functions of the "Project Manager" as described in City Council Policy 600-33. The Developer is solely responsible for obtaining all permits and approvals including but not limited to any required Development Services Department (DSD) permits. Developer is responsible for complying with all laws, codes, permits, or regulations. Developer and P&R Representative will complete Exhibit D, Responsible Party Project Contacts.
- 1.4 **Cost Reimbursement.** Developer shall only be reimbursed for Project costs to the extent provided for pursuant to the terms of a separate reimbursement agreement approved by the City Council and executed by the Parties (Reimbursement Agreement). Where these Terms and Conditions and the Reimbursement Agreement conflict, the more stringent requirements shall apply. Developer is not entitled to any reimbursement for the Project unless and until the Reimbursement Agreement is approved by the City Council and executed by the Parties, and the terms of the Reimbursement Agreement have been satisfied.
- 1.5 **General Development Plan Public Input Process.** Developer agrees to design the Project in accordance with Council Policy 600-33, which requires that the public is given the opportunity to participate and provide input on the GDP design process which includes recommendation for approval from, at a minimum, the applicable Community Recreation Group and the City of San Diego Park & Recreation Board with written approval of the GDP by the P&R Director or appointing authority. Meetings with the Developer, P&R Representative and P&R Operations and Maintenance staff shall occur at regular intervals during the GDP process. Park design and GDP graphic standards shall be consistent with the Consultant's Guide. Developer shall submit GDP Plans for Public Project Assessment per DSD Information Bulletin 510.
- 1.6 **P&R Administration.** Prior to the start of the park design, Developer shall establish a deposit account using City Form DS-3242 with an initial deposit of \$10,000 for the design through the construction administration phase for the Project. Developer shall provide subsequent

deposits in \$5,000 minimum increments as determined necessary by the P&R Representative to fund P&R's costs associated with P&R's administration.

- 1.7 **Park Credit.** In accordance with the Discretionary Permit, the Developer is satisfying all or a portion of their population-based park requirements as identified in the City of San Diego General Plan Recreation Element by constructing the Project (Park Credit). In order to obtain Park Credit, the Developer shall design and construct the Project at no cost to the City. Developer shall provide the Project in accordance with the Discretionary Permit and the approved GDP. The Discretionary Permit shall stipulate how the Developer will provide the Project. The Discretionary Permit may describe that the Project will remain in private ownership with private maintenance with recordation of an easement that allows for public access and use of the area for park and recreational purposes in perpetuity (Recreation Easement) or the Project will be constructed by the Developer and conveyed to the City in fee title, or other means as described in the Discretionary Permit to the satisfaction of the P&R Director or appointing authority. In the event that the Discretionary Permit does not stipulate how the Developer will provide the Project, the terms of Project conveyance must be determined and agreed to before the GDP is approved by the P&R Director or appointing authority.

- 1.8 **Recreation Easement Vacation.** Should the required Recreation Easement = for the Project be vacated at any time at the request of the Developer or its successor, Developer or its successor shall pay the City the applicable Citywide Park Development Impact Fee in place at the time of the easement vacation.

ARTICLE II. CONSULTANTS AND PROJECT MANAGEMENT

- 2.1 **Selection of Consultant.** Developer shall hire a State licensed consultant(s) who will design the Project and prepare the GDP, construction documents, specifications, and cost estimates for the Project. Developer's consultants shall be subject to all State and City laws, including regulations and policies applicable to consultants retained directly by City. Developer's hiring of a consultant(s). Developer shall cause the provisions in **Exhibit A, Consultant Provisions**, to be included in its consultant contract(s) for the Project.

- 2.2 **Equal Benefits and Non-discrimination.** The requirements of the City's Equal Benefits Ordinance apply to Developer's consultant contracts. The City's non-discrimination requirements apply to Developer's consultant contracts.

ARTICLE III. EQUAL OPPORTUNITY, AND EQUAL BENEFITS

- 3.1 **Compliance.** Developer shall comply with the equal opportunity and equal benefits requirements set forth in Exhibit A, Consultant Provisions.

- 3.2 **Nondiscrimination Requirements.**
 - 3.2.1 **Compliance with the City's Equal Opportunity Contracting Program.** Developer shall comply with City's Equal Opportunity Contracting Program. Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices. Developer shall ensure its consultants, contractors, and their subcontractors

comply with the City's Equal Opportunity Contracting Program. Nothing in this Section shall be interpreted to hold the Developer liable for any discriminatory practice of its consultants, contractors or their subcontractors.

3.2.2 **Nondiscrimination Ordinance.** Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of consultants, contractors, subcontractors, vendors or suppliers. Developer shall provide equal opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions. This language shall be in contracts between the Developer and any consultants, contractors, subcontractors, vendors and suppliers.

3.2.3 **Compliance Investigations.** Upon City's request, Developer agrees to provide to City, within sixty (60) calendar days, a truthful and complete list of the names of all consultants, contractors, subcontractors, vendors and suppliers Developer used in the past five (5) years on any of its contracts undertaken within San Diego County, including the total dollar amount paid by Developer for each contract, subcontract or supply contract. The Developer further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance (Municipal Code sections 22.3501-22.3517) for claims under this Agreement. Developer understands and agrees that violation of this clause as to this Agreement shall be considered a material breach of the Agreement and may result in remedies being ordered against Developer up to and including Agreement termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Developer further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination in Contracting Ordinance apply only to violations of said Nondiscrimination in Contracting Ordinance.

3.3 **Equal Benefits.** The Equal Benefits Ordinance is applicable to contracts that Developer enters into with respect to the Project. Therefore, Developer shall ensure that its contractor(s) and consultant(s) comply with the Equal Benefits Ordinance. Developer shall include in each of its contracts with its contractor(s) and consultant(s) provisions: (i) stating that the contractor(s) and/or consultant(s) must comply with the Equal Benefits Ordinance; (ii) stating that failure to maintain equal benefits is a material breach of those agreements; and (iii) requiring the contractor(s) and/or consultant(s) to certify that they will maintain equal benefits for the duration of the contract pursuant to Municipal Code § 22.4304(e)-(f). In addition, Developer's contractor(s) and/or consultant(s) must comply with the requirement that they not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, and that they must notify employees of the equal benefits policy at the time of hire and during open enrollment periods during the performance of the contract pursuant to Municipal Code § 22.4304(a)-(b). Developer's contractor(s) and/or consultant(s) must also provide the City with access to documents and records sufficient for the City to verify compliance with the Equal Benefits Ordinance requirements pursuant to Municipal Code § 22.4304(c). Additionally, Developer's contractor(s) and/or consultant(s) may not use a

separate entity to evade the requirements of the Equal Benefits Ordinance as stated in Municipal Code § 22.4304(d).

ARTICLE IV. PREVAILING WAGE

- 4.1 **Prevailing Wages Apply to the Project.** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under these Terms and Conditions is subject to State prevailing wage laws. For construction work performed under these Terms and Conditions cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under these Terms and Conditions cumulatively exceeding \$15,000, the Developer and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.
- 4.2 **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, the Developer and its contractors and subcontractors shall ensure that all workers who perform work under these Terms and Conditions are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
- 4.2.1 Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Developer and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
- 4.2.2 The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of these Terms and Conditions. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to these Terms and Conditions in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of these Terms and Conditions, each successive predetermined wage rate shall apply to these Terms and Conditions on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of these Terms and Conditions, such wage rate shall apply to the balance of the Terms and Conditions.
- 4.4 **Penalties for Violations.** Developer and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage

rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

- 4.5 **Payroll Records.** Developer and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Developer shall require its contractors and subcontractors to also comply with section 1776. Developer and its contractors and subcontractors shall submit weekly certified payroll records online via the City’s web-based Labor Compliance Program. Developer is responsible for ensuring its subcontractors submit certified payroll records to the City. Developer and its contractors and subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.
- 4.6 **Apprentices.** Developer and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Developer shall be held responsible for the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 4.7 **Working Hours.** Developer and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- 4.8 **Required Provisions for Subcontracts.** Developer shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- 4.9 **Labor Code Section 1861 Certification.** Developer in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing the Terms and Conditions, Developer certifies that “I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of these Terms and Conditions.”
- 4.10 **Labor Compliance Program.** The City has its own Labor Compliance Program as authorized by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego’s Equal Opportunity Contracting Department at 619-236-6000.
- 4.11 **Contractor and Subcontractor Registration Requirements.** This Project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not engage in the performance of any contract for public work as defined in this chapter of the

Labor Code unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By performing services detailed in these Terms and Conditions, Developer is certifying that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Developer shall provide proof of registration to the City upon request.

4.11.1 A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.

4.11.2 Developer certifies that Developer has verified that all contractors or subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Developer shall provide proof of registration to the City upon request.

ARTICLE V. PLANS AND SPECIFICATIONS

- 5.1 **Conformance with GDP.** Project construction drawings and contract specifications (Plans and Specifications) shall be prepared based on the approved GDP. Any modifications to the approved GDP design shall be submitted in writing to the P&R Representative. If the modifications are determined by P&R to be inconsistent with the approved GDP, the Developer will be required to obtain a GDP Amendment per Council Policy 600-33.
- 5.2 **City Approval of Plans and Specifications.** Developer shall obtain written approval from the City's P&R Director or appointing authority of the Plans and Specifications prior to the solicitation of bids for construction of the Project. If modifications are requested by P&R, Developer shall modify and resubmit Plans and Specifications to the satisfaction of the P&R Director or appointing authority. Developer shall also submit Plans and Specifications at the following milestones for P&R review:
- 5.2.1 **Sixty Percent (60%) and Ninety Percent (90%) Documents.** Developer shall submit 60% and 90% complete Documents to the P&R Representative for review. Documents will be submitted in PDF format and Developer shall set up a Bluebeam Review session for P&R to provide Design Review Comments. P&R Representative may route the Documents to P&R operational staff, Citywide Maintenance Services, Facilities, and Storm Water Division as applicable. P&R review will confirm compliance with the GDP, Consultant's Guide to Park Design and Development, and P&R operational and maintenance needs. Developer shall prepare written responses to each P&R Design Review Comment and submit Response to Comments (RTC's) to the P&R Representative. After P&R has received 60% RTC's and 90% RTC's, the Developer shall schedule a meeting with P&R to review the RTC's and address any outstanding items (Design Review Meeting) to the satisfaction of the Parks and Recreation Representative prior to submitting plans to DSD.

- 5.2.2 Ninety-Five Percent (95%) Documents. Developer shall submit 95% complete Documents to the DSD and obtain all required permits. The Developer shall address all comments as required.

ARTICLE VI. DESIGN AND CONSTRUCTION STANDARDS

- 6.1 **Standard of Care.** Developer shall use reasonable efforts to ensure that the professional services its contractors and subcontractors provide shall be performed in accordance with the standards customarily adhered to by licensed, experienced, and competent professionals (e.g., architectural, engineering, landscape architectural, and construction firms) using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.
- 6.2 **Compliance with all Laws.** Developer shall comply with all laws, including but not limited to:
- 6.2.1 All applicable local, city, county, state, and federal laws, codes and regulations, ordinances, and policies, including but not limited to, DSD permits, hazardous material permits, site safety, state and local building codes, storm water regulations, etc.
- 6.2.2 The ADA and Title 24 of the California Building Code. It is Developer's sole responsibility to comply with all ADA and Title 24 regulations. Developer shall provide P&R with a signed Certification for Title 24/ADA Compliance per the attached template in **Exhibit B** "Developers Certificate for Title 24/ADA Compliance."
- 6.2.3 The Clean Air Act of 1970, the Clean Water Act (33 USC 1368)-Executive Order 11738, and the Storm Water Management and Discharge Control-Ordinance No. 0-17988.
- 6.2.4 The Essential Services Building Seismic Safety Act, SB 239 & 132.
- 6.2.5 All directives issued by City's Mayor or Chief Operating Officer under authority of any laws, statutes, ordinances, rules, or regulations.
- 6.3 **Compliance with Design and Construction Standards.** Developer shall comply with the most recent edition of the current editions of the following design and construction standards available on the City's website.
- 6.3.1 Standard Specifications. Developer shall comply with the most recent edition of the following reference specifications when designing and constructing the Project, including:
- 6.3.1.1 The Standard Specifications for Public Works Construction (Greenbook), current edition, and the City of San Diego Supplement to the Standard Specifications for Public Works Construction (Whitebook), current edition.

6.3.1.2 California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.

6.3.2 City Standards. Developer's professional services shall be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the current editions of the following (City Standards):

1. Consultant's Guide to Park Design and Development
2. Facilities Maintenance New Construction Standards and Specifications; City of San Diego Standard Drawings including all Regional Standard Drawings
3. Land Development Code and Land Development Manual
4. Drainage Design Manual
5. Low Impact Development Design Manual
6. Storm Water Standards
7. Sewer Design Guidelines
8. Water Design Guidelines
9. Clean Water Program Guidelines
10. Street Design Manual
11. Manual of Preparation of Land Development and Public Improvement Plans
12. Technical Guidelines for Geotechnical Reports
13. Data Standards for Improvement Plans
14. Stormwater Pollution Prevention Regulations

6.3.3 Green Building. The Project design and construction shall comply with City Council Policy 900-14, "SUSTAINABLE BUILDING POLICY." Any building over 5,000 square feet included in the Project shall be designed and constructed to achieve fifteen percent (15%) less total building energy consumption than the minimally code compliant building as modeled following the Title 24 requirements. An average pay-back period of less than ten (10) years shall be used as a guide for the aggregate of all energy efficiency measures. Developer shall submit and obtain LEED Silver Rating Certification from the United States Green Building Council for any building over 5,000 square feet included in the Project. Notwithstanding any of the above, Developer shall not be required to exceed any of the green building or energy conservation standards contained within the Permit.

6.3.4 Energy Conservation Standards. Technological advances in energy conservation devices such as lighting and Heating Ventilation and Air Conditioning [HVAC] enable additional energy savings over that required by the State of California Title 24 Energy Standards. If requested by City, Developer shall be responsible for preparing a cost savings comparison of such devices for City review for any building over 5,000 square feet included in the Project. The purpose of the comparison would be to identify the additional initial cost of such devices, versus their long-term energy savings. If requested by City, Developer shall prepare a cost savings matrix for any building over 5,000 square feet that lists each device being considered and 1, 3, 5 and 10-year projected savings. The comparison shall include, but not be limited to lighting, HVAC, water, heating, and motors.

- 6.3.5 **Materials Standards.** Developer acknowledges that the Project is for public use and shall use industrial grade, not residential grade, equipment and accessories for all facets of design and construction. Developer shall follow City standards for approved materials as identified on the City of San Diego Engineering and Capital projects Department Engineering references and documents web site <https://www.sandiego.gov/ecp/edocref>.
- 6.4 **Imputed Knowledge.** Developer shall be responsible for all amendments or updates to standards and knowledge of all amendments or updates to standards, whether local, state, or federal, and such knowledge will be imputed to Developer to the extent allowed by law.
- 6.5 **City Approval Not a Waiver of Obligations.** Where approval by City, City's Mayor or Chief Operating Officer is required, it is understood to be general approval only and does not relieve Developer of responsibility for complying with all applicable laws, codes, and good consulting, design, or construction practices.

ARTICLE VII. CONSTRUCTION

- 7.1 **Construction Manager.** Developer shall work with a City Engineering Capital Projects Department Field Engineering Division Resident Engineer (RE) who will act as the construction manager throughout the duration of construction because the Project will be open to the public as a City Parks and Recreation facility (City Asset).
- 7.2 **Preconstruction Meeting.** Developer shall coordinate with the RE to conduct a preconstruction meeting with its officers, agents, and employees, City's Building inspector, P&R Representative, and other applicable City Departments. The purpose of this meeting is to discuss: (i) conditions of these Terms and Conditions, (ii) scope of work clarifications, and (iii) City policies, inspection requirements, and procedures.
- 7.2.1 **Attendance.** Developer shall ensure that Developer's design team, Developer's construction contractor, Developer's superintendent, all Developer's major subcontractors, RE, City's Building Inspector, P&R Representative and any other persons necessary as determined by City, attend the preconstruction meeting.
- 7.2.2 **Agenda.** The Developer will be responsible for the preparation and distribution of the pre-construction meeting agenda.
- 7.2.3 **Minutes.** The Developer will be responsible for the preparation and distribution of pre-construction meeting minutes.
- 7.3 **Progress Meetings.** Developer shall coordinate with the RE for holding progress meetings at standing dates and times scheduled at the preconstruction meeting with the following necessary parties: Developer's design team, Developer's construction contractor, Developer's superintendent, all Developer's major subcontractors, City's Building Inspector, P&R Representative and any other persons necessary as determined by City.
- 7.3.1 **Agenda.** The agenda shall include items as defined during the preconstruction meeting.

- 7.3.2 As-Builts. Developer shall bring updated As-Builts and verify that the latest changes have been made. As-Builts include the Construction Documents, which are the Plans and Specifications, modified from the original design to reflect the actual product built.
- 7.3.3 Special Meetings. Meetings to address issues which are not progress related shall occur as needed.
- 7.3.4 Rescheduling. Progress and special meetings may be rescheduled if meeting times are convenient for all necessary parties, and Developer has given no less than five (5) calendar days prior written notice of the rescheduled meeting.

7.4 **Inspections.**

- 7.4.1 The Developer is responsible for scheduling any and all inspections required as a condition of the building and grading permits.
- 7.4.2 The Developer is responsible for any and all Special Inspections required by the building and grading permits.
- 7.4.3 The Developer is responsible for scheduling and completing a National Playground Safety Institute (NPSI) Certified Playground Safety Inspector (CPSI) audit in accordance with the Consultant’s Guide prior to Final Completion.
- 7.4.4 The Developer will coordinate Parks and Recreation Site Observations described in Article XI.
- 7.4.5 The Developer is responsible for completing a third-party Certified Accessibility Specialist (CASp) full review of the Project and address all comments to the satisfaction of the P&R Director or appointing authority prior to Final Completion.

- 7.5 **Access to Site.** In addition to the P&R Representative and RE, City officers, agents and employees with Project-related business shall have the right to enter the Project site with reasonable notice to Developer, not less than forty-eight (48) hours, except where necessitated by a bona-fide emergency, or if the nature of their work requires unannounced notice, in which case, they shall be accompanied by an employee of Developer while at the Project site. The P&R Representative, RE and any City employee invited by the P&R Representative or RE shall have the right to access the site at any time for Project-related purposes provided they comply with all safety standards adopted by Developer.

ARTICLE VIII. PRODUCTS

- 8.1 **Submittals.** . Developer shall distribute all submittals to Design Consultant of Record, RE, and P&R Representative simultaneously. Final recommendation shall come from the Design Consultant of Record. City review in no way relieves Developer of its sole responsibilities addressed in these Terms and Conditions or any and all laws, codes, permits, or regulations.
- 8.2 **Substitutions.** Developer shall submit all requests for product substitutions to Design Consultant of Record, RE and P&R Representative in writing within thirty (30) calendar

days after the date of award of the construction contract. City has the right, in its sole and absolute discretion to reject any substitutions that the City determines are not equal. All substitutions must be equivalent to or exceed the Project quality established by the GDP, the Plans and Specifications, and the Consultant’s Guide.

ARTICLE IX. CHANGE ORDERS

- 9.1 **Process for Approval of Change Orders.** All change orders must be approved or rejected by City in writing as provided in Section 9.1.1. Developer shall notify the RE and P&R Representative in writing of the need for a change order. The change order must indicate whether the change will affect, in any way, the Project quality established by the GDP and the Plans and Specifications.
- 9.1.1 P&R Representative Approval. If the requested change affects in any way, the Project quality established by the GDP and Final Plans and Specifications, the RE shall solicit input from the P&R Representative. The P&R Representative shall either recommend approval or rejection of the change order request in writing within ten (10) Working Days. If the P&R Representative fails to respond to RE’s request for input within the ten (10) Working Days, the change order request shall be approved or denied by the RE. Any change must be in substantial conformance with the GDP, Plans and Specifications and City Standards.
- 9.2 **GDP Amendment.** If the change is not in substantial conformance with the approved GDP as determined by the P&R Director or appointing authority, the Developer shall be required to obtain a GDP Amendment in accordance with Council Policy 600-33 prior to proceeding with the change order.

ARTICLE X. PRIORITY OF DOCUMENTS

- 10.1 **Conflict, Priority, and Precedence of Documents.** If there is a conflict between Construction Documents, the document highest in precedence shall control. Precedence of Documents shall be per Section 3-7.2 of the Whitebook.

ARTICLE XI . INSPECTION

- 11.1 **Inspection Team.** Developer is responsible for scheduling the P&R Inspection stages identified in Section 11.2 with a team composed of representatives from the following groups: (Inspection Team)

Developer’s Representative
Contractor’s Representative
RE
P&R Representative
Consultant
Parks and Recreation District Manager

11.2 **Inspection Stages.** The Project shall be inspected by the Inspection Team at the following minimum stages:

1. Preconstruction meeting
2. Demolition Mark out (if applicable)
3. Rough grading and drainage
4. Irrigation Mainline pressure test
5. Irrigation lateral line pressure tests
6. Wiring prior to backfilling trenches
7. Hardscape at time of finished staking and layout
8. Topsoil review, acceptance and placement
9. Finish grading and soil preparation
10. Irrigation coverage test
11. Plant material (when delivered) and plant placement approval
12. 3rd Party certified Playground inspection, if applicable
13. Project construction 90 percent complete (develop punchlist and submit red-line As-Builts)
14. 90-Day Plant Maintenance Period (this inspection is to be held when the punchlist items are complete. If turf area is planted from seed or stolons the plant maintenance period shall be 120 days)
15. Final walk-through, acceptance by the City (Contractor to submit final approved as-built drawings to City).

ARTICLE XII. PROJECT COMPLETION

12.1 **Notice to City.** When RE determines the Project is substantially complete, Developer shall notify P&R Representative in writing of that status within seven (7) calendar days of the RE's determination. The notice shall certify to City that the Project has been completed in accordance with the Plans and Specifications, all applicable building codes and regulations, all permits, licenses, and certificates of inspection, use and occupancy, and ordinances relating to the Project.(Substantial Completion)

12.2 **P&R Walk-Through Inspection.** A preliminary Walk-Through Inspection shall be conducted by P&R Representative within ten (10) business days following Developer's notice to City of completion.

12.2.1 **P&R Punch List.** Developer shall comply with the Punch List prepared by P&R Representative during the Walk-Through Inspection. The P&R Punch List shall be presented to Developer by the City within three (3) business days of the Walk-Through Inspection. Developer shall correct the items listed on the P&R Punch List within thirty (30) calendar days of receipt of the P&R Punch List and prior to the Final Inspection.

12.2.2 **Failure to Identify Items.** As to any items not included on the Punch List or later discovered, nothing in this section is intended to limit Developer's obligations under these Terms and Conditions and City will maintain all remedies available under these Terms and Conditions and the law.

- 12.3 **Equipment Demonstration.** Prior to Final Inspection as defined in Section 12.4, Developer shall demonstrate to P&R the operation of each system in the Project, and instruct P&R personnel in operation, adjustment, and maintenance of equipment and systems, using the operation and maintenance data.
- 12.4 **Final Inspection.** Provided Developer has corrected the P&R Punch List items to the satisfaction of the P&R Director or appointing authority and notified P&R of the correction (Notice of Correction) and the Plant Establishment Period as specified in the Whitebook is complete, the Final Inspection for the Project shall be scheduled and conducted (Final Inspection).

ARTICLE XIII. PROJECT ACCEPTANCE AND FINAL COMPLETION

- 13.1 **Acceptance.** Upon approval by the Inspection Team during the Final Inspection that the Project is complete and that work required on the Punch List has been finished, and the P&R Representative provides written notice that the Project is satisfactory, City shall accept the Project (Acceptance). After Acceptance, the following shall occur:
- 13.1.1 **Notice of Completion.** Developer shall execute and file a Notice of Completion with the County Recorder of San Diego County and shall provide the RE and P&R Representative with a certified copy of the recorded Notice of Completion. (Notice of Completion.)
- 13.1.2 **Lien and Material Releases.** Developer shall ensure all contractors and subcontractors provide lien and material releases as to the Project and provide copies of such lien and material releases to the RE and P&R Representative.
- 13.2 **Final Completion.** Final Completion of the Project shall be deemed to occur on the last date of the following events: (a) recordation of the Notice of Completion with a certified copy to City; (b) submission of all documents required to be supplied by Developer to City pursuant to these Terms and Conditions, including warranties and operating and maintenance manuals; and (c) recordation of the Recreation Easement Deed or Acceptance and conveyance of the Project to the City Parks and Recreation Department via dedication in fee title. (Final Completion)
- 13.2.1 **As-Built Drawings.** Developer shall submit As-Built Drawings signed by the consultant team to City within two (2) Months of Final Completion. City, including but not limited to, P&R, will evaluate the submitted As-Built Drawings for accuracy and completeness and may return them to Developer with comments. Developer shall meet with P&R until all issues are resolved. Upon issue resolution in accordance with disputed work procedures set forth in Section 17.5, Developer shall submit a mylar set and three (3) final sets of As-Built Drawings stamped by the architect/engineer of record as required by law within thirty (30) calendar days. Developer shall include an electronic version of the completed As-Built Drawings in PDF format with the submittal.

ARTICLE XIV. WARRANTIES

- 14.1 **Warranties Required.** Developer shall provide and require its agents to provide the warranties listed below. This warranty requirement is not intended to exclude, and shall not exclude, other implicit or explicit warranties or guarantees required or implied by law.
- 14.1.1 **Materials and Workmanship.** Developer shall warrant and guarantee, and shall require its agents to warrant and guarantee, all work on the Project against defective workmanship and materials furnished by Developer for a period of one (1) year from the date of the Project's Final Completion. Developer's construction contractor shall replace or repair, or require its agents to replace or repair, any such Defective Work (as defined in Section 15.1) or materials in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice.
- 14.1.2 **Replacement or Repair.** Provided that Developer has received written notice of defective workmanship or materials within one (1) year of the date of the City's Acceptance of the Project, Developer shall replace or repair any such Defective Work (as defined in Section 15.1) in a manner satisfactory to the City, after notice to do so from the City, and within the time specified in the notice.
- 14.1.3 **New Materials and Equipment.** Developer shall warrant and guarantee, and shall require its agents to warrant and guarantee, to City that all materials and equipment incorporated into the Project are new unless otherwise specified.
- 14.1.4 **Design, Construction, and Other Defects.** Developer shall warrant and guarantee, and shall require its agents to warrant and guarantee to City that all work is in accordance with the Final Plans and Specifications and is not defective in any way in design, construction, or otherwise.
- 14.2 **Form and Content.** Except manufacturer's standard printed warranties, all warranties shall be on Developer's and Developer's agent's material supplier's, installer's or manufacturer's own letterhead, signed, dated, and addressed to City. All warranties shall be submitted in the format specified in this section, modified as approved by City to suit the conditions pertaining to the warranty.
- 14.2.1 **Warranty Format.** All warranty information shall be provided to the City in digital format (in a form acceptable to the City) including warranties from Developer, Developer's agents, installers, and manufacturers, and should include a Table of Contents. All warranties shall be listed in the sequence of the Table of Contents of the Project manual, with each item identified with the number and title of the specification section in which specified, and the name of the product or work item. Full information shall be provided, using separate sheets, as necessary, listing the Developer's agents, installers, and manufacturers, with name, address, and telephone number of each responsible principal.
- 14.2.2 **Warranty Start Date.** Except for items put into use with Developer's permission with date mutually agreed upon in writing, the date of the beginning of the time of warranty shall be the date of Acceptance.
- 14.2.3 **Signature and Notarization.** All warranties shall be signed and notarized. Signatures shall be required from Developer's construction contractor and where appropriate, the responsible subcontractor.

- 14.3 **Term of Warranties.** Unless otherwise specified by law, warranties shall extend for a term of one (1) year from the date of Acceptance.
- 14.4 **Meetings.** During the one (1) year warranty period described in Section 14.3, Developer shall meet, and shall require its design consultant, construction contractor, and key subcontractors to meet with City representatives, including the P&R Representative, as applicable as determined by City, if requested by City. This meeting shall be held to discuss and resolve any problems that City discovers in design, construction, or furnishing, fixtures, and equipment of the Project during the one (1) year warranty period.

ARTICLE XV. DEFECTIVE WORK & DEFAULT

- 15.1 **Correction, Removal, or Replacement.** All work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the approved Construction Documents is defective work (Defective Work). If within the designated warranty period, or such additional period as may be required by law or regulation, the Project is discovered to contain Defective Work, Developer shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.
- 15.2 **City's Right to Correct.** If circumstances warrant, including but not limited to an emergency or Developer's failure to adhere to Section 15.1, City may correct, remove, or replace the Defective Work. In such circumstances, Developer shall reimburse City for all of City's costs, whether direct or indirect, associated with the correction or removal and replacement.
- 15.3 **Extension of Warranty.** When Defective Work, or damage therefrom, has been corrected, removed, or replaced during the warranty period, the one (1) year or relevant warranty period will be extended for an additional one (1) year from the date of the satisfactory completion of the correction, removal, or replacement.
- 15.4 **No Limitation on other Remedies.** Exercise of the remedies for Defective Work pursuant to this Article shall not limit the remedies City may pursue under these Terms and Conditions, at law, or in equity.
- 15.5 **Disputes.** If Developer and City are unable to reach agreement on disputed work, City may direct Developer to proceed with the disputed work. Reimbursement to City of disputed amounts expended by City pursuant to Section 15.2, or resolution of any other dispute, shall be as later determined by mediation pursuant to Article XXIV, or as subsequently fixed in a court of law. Developer shall maintain and keep all records relating to disputed work for a period of five (5) years.

ARTICLE XVI – MAINTENANCE OF PROJECT PRIOR TO FINAL COMPLETION

- 16.1 **Maintenance of Project Prior to Final Completion.** Developer shall maintain and be responsible for the Project, including without limitation erosion control measures, until Final Completion.

- 16.2 **Maintenance Period.** Developer shall provide a maintenance period to begin on the first day after all landscape and irrigation work on the Project is complete, check, approved by the City and the City has given written approval to begin the maintenance period, and shall continue per the time period listed in the Project Specifications but no less than ninety (90) calendar days after the date that the Project is accepted.
- 16.3 **Maintenance Area.** Development shall maintain all areas of the Project, including areas impacted and disturbed by the Project until Final Completion.
- 16.4 **Maintenance Required.** Developer shall conduct regular planting maintenance operations immediately after each plant is planted. Plants shall be kept in a healthy growing condition and in a visually pleasing appearance by watering, pruning, mowing, rolling, trimming, edging, fertilizing, re-staking, pest and disease controlling, spraying, weeding, cleaning up and any other necessary operation of maintenance. Landscape areas shall be kept free of weeds, noxious grass and all other undesired vegetative growth and debris. Developer shall replace all plants found to be dead or in an impaired condition within fourteen (14) calendar days from the date the condition is first detected. Maintenance shall also include the following: (i) filling and replanting of any low areas that may cause standing water, (ii) adjusting of sprinkler head height and watering pattern, (iii) filling and re-compaction of eroded areas, (iv) daily removal of trash, litter, clippings and foreign debris, (v) inspecting plants and irrigation at least twice per week, and (vi) protecting all planting areas against traffic or other potential causes of damage.
- 16.5 **Landscape and Irrigation Inspections.** At the conclusion of the maintenance period, City shall inspect the landscaping and irrigation to determine acceptability of the work, including maintenance. This inspection shall be scheduled with fourteen (14) calendar days-notice, a minimum of thirty (30) calendar days before the end of the plant maintenance period t, or when Developer notifies City they are ready for final inspections, whichever comes last. The City will notify the Developer of all deficiencies revealed by the inspection.
- 16.6 **Extension of Maintenance Period.** Developer shall extend completion of the maintenance period when in the City's opinion improper maintenance and/or possible poor or unhealthy condition of plant material is evident at the termination of the specified maintenance period. Developer shall accept responsibility for additional maintenance of the work until all the work is complete and acceptable.
- 16.7 **Replacement.** Plants found to be dead or not in a vigorous condition, or if root balls have been damage, within the installation, maintenance and warranty periods, shall be replaced with fourteen (14) calendar days of notification by the City. Developer shall include, at their expense, a timely written diagnosis of plant and tree health by a certified professional arborist, agronomist and/or horticulturist as applicable, should a dispute arise. The Certified Professional's report shall indicate the reason for lack of vigor, potential remedies, if any, and an estimate of the time required to regain vigor and specified size. Plants and trees used for replacement shall be of the same kind and size as specified in the Contractor Documents and shall be furnished, planted and fertilized as originally specified, unless otherwise directed by the Certified Professional or by the City. Developer shall bear the cost of all repair work to existing improvements damaged during replacements.

**ARTICLE XVII – MAINTENANCE OF PROJECT
AFTER CITY ACCEPTANCE**

- 17.1 **Park Maintenance Agreement.** If the Project will remain in private ownership with private maintenance with a Recreation Easement per the terms of the Permit, prior to final completion and acceptance by the City, the Developer shall enter into a Park Maintenance Agreement assigning responsibility to the Developer in perpetuity for the maintenance of the Project to the satisfaction of the P&R Director or appointing authority.

ARTICLE XVIII. PUBLIC RELATIONS

- 18.1 **Presentation.** Developer's and Developer's agents' shall be available for all presentations required to be made to City Council, Council Committees, Park and Recreation Board, the local Community Recreation Group, and citizen groups to provide them with information about the Project, as well as presentations to any governing or regulatory body or agency for other approvals as may be required.
- 18.2 **Primary Contact.** City is the primary contact with the media regarding the Project and Developer shall forward all questions regarding the Project status to the P&R Representative. However, Developer may respond to questions directed to Developer so long as Developer specifies that such response is solely from the Developer and does not necessarily represent the views, opinions, or policies of the City.
- 18.3 **Advertising.** Developer acknowledges that advertising referring to City as a user of a product, material, or service by Developer and/or Developer's agents, material suppliers, vendors or manufacturers is expressly prohibited without City's prior written approval. City agrees not to advertise or publicize the Project prior to Acceptance without first obtaining Developer's written consent. Any advertising referencing the Project name shall be consistent with City policy and shall require written City approval.
- 18.4 **Recognition.** Developer shall place a sign, placard, or other similar monument on the Project during construction in accordance with Whitebook Section 3-11.2, which shall acknowledge Developer's and City's joint efforts in designing and constructing the Project. Developer shall properly recognize City and include City's logo on permanent and temporary signs, invitations, flyers, or other correspondence. Any recognition of City shall be reviewed and approved by the P&R Representative. For assistance with proper recognition, or if Developer is contemplating a dedication or ground-breaking ceremony, Developer shall consult with the P&R Representative.
- 18.4.1 Project construction signage shall include a Developer point of contact during construction.
- 18.5 **Dedication Ceremony.** City or Developer or both shall have the opportunity to conduct and host a public dedication ceremony, ground-breaking, or similar ceremony on the Project site at any reasonable time following the Acceptance of the Project, provided Developer receives prior approval from City for the ceremony and provides an opportunity for appearances by the Mayor, Council members and other appropriate City officials. Developer shall contact the P&R Representative to arrange a mutually acceptable date and time for any ceremony.

Invitations shall not be sent out or a date set until the P&R Representative has approved the time and date for the ceremony.

- 18.6 **Cleanup.** Developer, or City as applicable, shall be responsible for the cleanup of the Project site and the restoration and repair of any damage to the Project attributable to a Developer-sponsored, or City-sponsored, as applicable, dedication or ground-breaking ceremony under Section 18.5 of these Terms and Conditions.

ARTICLE XIX. BONDS AND SECURITY

- 19.1 **Performance Bond.** Developer shall provide or require its construction contractor to provide City with a bond, LOC, cash, or other acceptable security guaranteeing the performance in favor of City for one hundred percent (100%) of the proposed construction costs. (Performance Bond).
- 19.2 **Payment Bond.** Developer shall provide City with a payment bond, letter of credit (LOC), cash or other acceptable security for material and labor in favor of City for one hundred percent (100%) of the proposed construction costs (Payment Bond).
- 19.3 **Term.** The Payment Bond shall remain in full force and effect until Final Completion to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation. Thereafter, the City shall fully cooperate in the release and exoneration of the Payment Bond, including execution of any documents required by the surety in order to release the Payment Bond. The Performance Bond shall remain in full force and effect until Acceptance of the Project by City. Upon Acceptance, City shall follow the procedures outlined in California Government Code section 66499.7 and release the Performance Bond.
- 19.4 **Certificate of Agency.** All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- 19.5 **Licensing and Rating.** The bonds shall be duly executed by responsible surety companies admitted to do business in the State of California, licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits required by these Terms and Conditions, secured through an authorized agent with an office in California, and have a minimum AM Best rating of "A-" to an amount not to exceed ten percent (10%) of its capital and surplus.
- 19.6 **Insolvency or Bankruptcy.** If the surety on any bond furnished by the construction contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, Developer shall within fifteen (15) calendar days thereafter substitute or require the substitution of another bond or other security, acceptable to City.

ARTICLE XX. INDEMNITY & DUTY TO DEFEND

- 20.1 **Indemnification and Hold Harmless Agreement.** Other than in the performance of design professional services which shall be solely as addressed in Sections 20.2 and 20.3 below, to the fullest extent permitted by law, Developer shall defend, indemnify and hold harmless

City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Developer or Developer's agents), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any performance under these Terms and Conditions by Developer or Developer's agents, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Developer's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

- 20.2 **Indemnification for Design Professional Services.** To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Developer shall require its design professional to indemnify and hold harmless City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Developer's design professional or design professional's officers or employees. Developer shall also include in its contract with its design professional an obligation that the design professional, to the fullest extent permitted by law, agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Section.
- 20.3 **Design Professional Services Defense.** The Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of design professional or design professional's officers or employees.
- 20.4 **Insurance.** The provisions of this Article are not limited by the requirements of Article XXI related to insurance.
- 20.5 **Enforcement Costs.** Other than in enforcing the indemnity and defense provisions against the design professional which is solely as addressed in Section 20.2 above, Developer shall pay any and all costs City incurs to enforce the indemnity and defense provisions set forth in this Article.
- 20.6 **Indemnification for Liens and Stop Notices.** Developer shall keep the Project and underlying property free of any mechanic's liens and immediately take all reasonable steps to secure the release of any stop notices. Developer shall defend, indemnify, protect, and hold harmless, City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, arising from or attributable to a failure to pay claimants. Developer shall be responsible for payment of all persons entitled to assert liens and stop notices.

ARTICLE XXI. INSURANCE

- 21.1 **General.** Developer shall not begin work on Project until it has: (i) obtained, and upon City's request provided to City, insurance certificates reflecting evidence of all insurance

required in this Article; (ii) obtained City approval of each company or companies; and (iii) confirmed that all policies contain specific provisions required by City pursuant to this Article.

- 21.2 **Type and Amount of Insurance.** Prior to the commencement of construction, Developer shall obtain insurance in the form (including all endorsements, specific clauses, and types of coverage) and in dollar amounts as set forth in **Exhibit C** “City Standard Insurance Provisions” (Required Insurance).
- 21.3 **Written Notice.** Except as provided for under California law, the Required Insurance shall not be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Developer to City by certified mail, except for non-payment of premium, in which case ten (10) calendar days’ notice shall be provided.
- 21.3.1 Where the words “will endeavor” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives” are present on a certificate, they shall be deleted.
- 21.4 **Rating Requirements.** Except for the State Compensation Insurance Fund, all insurance required by express provision of these Terms and Conditions shall be carried only by responsible insurance companies that have been given at least an “A” or “A-” and “VI” rating by AM BEST, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.
- 21.5 **Non-Admitted Carriers.** City will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers.
- 21.6 **Additional Insurance.** Developer may obtain additional insurance not required by these Terms and Conditions.
- 21.7 **Obligation to Provide Documents.** Prior to performing any work on the Project, Developer shall provide copies of certificates of insurance and endorsements, and shall furnish renewal documentation prior to expiration of insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. City reserves the right to require complete, certified copies of all insurance policies required herein.
- 21.8 **Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy shall be the responsibility of Developer. Deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance is provided.
- 21.9 **Policy Changes.** Developer shall not modify any policy or endorsement thereto which increases City’s exposure to loss.
- 21.10 **Reservation of Rights.** City reserves the right, from time to time, to review the Developer’s insurance coverage, limits, deductible, and self-insured retentions to determine if they are acceptable to City. City will reimburse the Developer for the cost of the

additional premium for any coverage-requested by City in excess of that required by these Terms and Conditions without overhead, profit, or any other markup.

- 21.11 **Not a Limitation of Other Obligations.** Insurance provisions under this Article shall not be construed to limit Developer's obligations under these Terms and Conditions, including indemnity.
- 21.12 **Insurance Maintenance.** Developer shall maintain, renew, or provide evidence of renewal of required insurance for a period of ten (10) years following Conveyance of the Project.

ARTICLE XXII. RECORDS AND AUDITS

- 22.1 **Retention of Records.** Developer, consultants, contractors, and subcontractors shall maintain data and records related to Project and these Terms and Conditions for a period of not less than five (5) years following filing the Notice of Completion with the County Recorder of San Diego County per Section 13.1.1.
- 22.2 **Audit of Records.** At any time during normal business hours and as often as City reasonably deems necessary, Developer and all contractors or subcontractors shall make available to City for examination at reasonable locations within the City or County of San Diego all of the data and records with respect to all matters covered by these Terms and Conditions. Developer and all contractors or subcontractors will permit City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters addressed in these Terms and Conditions. If records are not made available within the County of San Diego, then Developer shall pay all City's travel related costs to audit the records associated with these Terms and Conditions at the location where the records are maintained.

ARTICLE XXIII. NOTICES

- 23.1 **Writing.** Formal notices, demands and communications between City and Developer shall be in writing and shall be deemed sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the addresses of City as designated below or Developer as designated in the Discretionary Permit, and shall be deemed delivered on the third business day after deposit into the United States mail. Such written notices, demands and communications may be sent in the same manner to other addressees as either party may from time to time designate by mail as provided in this Paragraph.

To City:
Parks and Recreation Director
City of San Diego
202 C Street, MS 9B
San Diego, California 92101

To Developer:
{Developer to provide noticing information here}

- 23.2 **Effective Date of Notice.** Except in relation to change orders as provided for in Article IX or as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective: (a) on personal delivery, (b) on the succeeding business day after mailing by certified or registered U.S. Mail, return receipt requested, (c) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, or (d) upon successful transmission of facsimile.
- 23.3 **Change of Address(es).** If any Party to this Agreement changes its address for service of process or for mailing, or both, it will provide 5 business days written notice of the new address to all other Parties to this Agreement.

ARTICLE XXIV. MEDIATION

- 24.1 **Mandatory Mediation.** If dispute arises out of, or relates to the Project or these Terms and Conditions, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association (AAA) or any other neutral organization agreed upon before having recourse in a court of law.
- 24.2 **Mandatory Mediation Costs.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator (Mediator), and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.
- 24.3 **Selection of Mediator.** A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.
- 24.3.1 If AAA is selected to coordinate the mediation (Administrator), within fourteen calendar days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.
- 24.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

24.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

24.3.4 If the Parties do not agree on a Mediator(s) or the selection process for a Mediator, the Parties shall use the selection Process outlined by AAA for selection of a Mediator.

24.4 **Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

24.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

24.4.2 Any agreements resulting from mediation shall be documented in writing and a final resolution of the dispute shall be in writing. All mediation results and documentation, by themselves, shall be “non-binding” and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

24.4.3 If the dispute is not resolved in mediation, the parties to the dispute may pursue all remedies in law and equity that are available.

ARTICLE XXV. MISCELLANEOUS PROVISIONS

25.1 **Headings.** All article headings are for convenience only and shall not affect the interpretation of these Terms and Conditions.

25.2 **Covenants and Conditions.** All provisions of these Terms and Conditions expressed as either covenants or conditions on the part of City or Developer shall be deemed to be both covenants and conditions.

25.3 **Severability.** The unenforceability, invalidity, or illegality of any provision of these Terms and Conditions shall not render any other provision of these Terms and Conditions unenforceable, invalid, or illegal.

25.4 **Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of these Terms and Conditions and the Exhibits, the main body of these Terms and Conditions shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and these Terms and Conditions, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of these Terms and Conditions, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning these Terms and Conditions.

- 25.5 **Prompt Performance.** Time is of the essence of each covenant and condition set forth in these Terms and Conditions.
- 25.6 **Good Faith Performance.** The Parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of these Terms and Conditions.
- 25.7 **Further Assurances.** City and Developer shall execute and deliver such additional documents as may be required to effectuate the purposes of these Terms and Conditions.
- 25.8 **Exhibits.** Each of the following Exhibits is attached hereto and incorporated herein by this reference:
- | | |
|-----------|---|
| Exhibit A | Consultant Provisions |
| Exhibit B | Developer Certification for Title 24/ADA Compliance |
| Exhibit C | City Standard Insurance Provisions |
| Exhibit D | Responsible Party Project Contacts |
- 25.9 **Compliance with Controlling Law.** Developer shall require its consultants, contractors, subcontractors, agents, and employees to comply with all laws, ordinances, regulations, and policies of the federal, state, and local government applicable to these Terms and Conditions, including California Labor Code section 1720 through 1861. In addition, Developer shall require its consultants, contractors, subcontractors, agents, and employees to comply immediately with all directives related to these Terms and Conditions that are reasonably issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
- 25.10 **Hazardous Materials.** Hazardous materials constitute any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Project site, including, without limitation: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code section 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). “Hazardous Materials” shall also include asbestos or asbestos containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as hazardous waste or hazardous substance in any such statute, ordinance, rule or regulation. Developer shall comply with all applicable state, federal, and local laws and regulations pertaining to hazardous materials.
- 25.11 **Jurisdiction, Venue, and Choice of Law.** The venue for any suit or proceeding concerning these Terms and Conditions, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The laws of the State of California shall govern and control these Terms and Conditions.
- 25.12 **Municipal Powers.** Nothing contained in these Terms and Conditions shall be construed as a limitation upon the powers of City as a chartered city of the State of California.

- 25.13 **Third Party Relationships.** Nothing in these Terms and Conditions shall create a contractual relationship between City and any third party; however, the Parties understand and agree that City, to the extent permitted by law, is an intended third party beneficiary of all Developer's contracts, purchase orders and other contracts between Developer and third party services. Developer shall incorporate this provision into its contracts, supply agreements and purchase orders.
- 25.14 **Independent Contractors.** Developer, any consultants, contractors, subcontractors, and any other individuals employed by Developer shall be independent contractors and not agents of City. Any provisions of these Terms and Conditions that may appear to give City any right to direct Developer concerning the details of performing the services under these Terms and Conditions, or to exercise any control over such performance, shall mean only that Developer shall follow the direction of City concerning the end results of the performance.
- 25.15 **Approval.** Where the consent or approval of a Party is required or necessary under these Terms and Conditions, the consent or approval shall not be unreasonably withheld; however, nothing in this Section shall in any way bind or limit any future action of the City Council pertaining to these Terms and Conditions or Project.
- 25.16 **No Waiver.** No failure of either City or Developer to insist upon the strict performance by the other of any covenant, term or condition of these Terms and Conditions, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of these Terms and Conditions, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter these Terms and Conditions, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

SIGNATURE PAGE

**TO
STANDARD TERMS AND CONDITIONS FOR PARK DEVELOPMENT**

IN WITNESS WHEREOF, the Parties have signed and entered into these Standard Terms and Conditions for Park Development by and through the signatures of their respective authorized representative(s) set forth below.

DEVELOPER:

CITY:
The City of San Diego,
a California municipal corporation

By: _____
Title:

By: _____
Kristina Peralta
Title: Deputy Chief Operating Officer

Date: _____

Date: _____

Approved as to form by:

MARA W. ELLIOTT
City Attorney

By: _____
Title: Deputy City Attorney

Date: _____

**EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP) DEVELOPER AGREEMENT
REQUIREMENTS**

ARTICLE I. TABLE OF CONTENTS

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- I. City’s Equal Opportunity Commitment.** The City of San Diego (City) is strongly committed to equal opportunity for employees and subcontractors and subconsultants of developers doing business with the City. The City encourages its developers to share this commitment. Prime developers are encouraged to take positive steps to diversify and expand their subcontractor and subconsultant solicitation base and to offer consulting opportunities to all eligible subcontractors and subconsultants.
- II. Nondiscrimination in Contracting Ordinance.** All developers and professional service providers doing business with the City, and their subcontractors and Subconsultants, must comply with requirements of the City’s Nondiscrimination in Contracting Ordinance San Diego Municipal Code Sections 22.3501 through 22.3517.
- A. Proposal Documents to include Disclosure of Discrimination Complaints.** As part of its bid or proposal, Proposer shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Proposer in a legal or administrative proceeding alleging that Proposer discriminated against its employees, subcontractors, subconsultants, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
- B. Contract Language.** The following language shall be included in contracts for City projects between the developer and any subcontractors, subconsultants, vendors, and suppliers:
 Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors, or suppliers. Developer shall provide equal opportunity for subcontractors and subconsultants to participate in subcontracting and subconsulting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

- C. Compliance Investigations. Upon the City's request, Developer agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, subconsultants, vendors, and suppliers that Developer has used in the past five years and any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Developer for each subcontract or supply contract. Developer further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance, Municipal Code Sections 22.3501 through 22.3517. Developer understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Developer up to and including contract termination, debarment and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Developer further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination in Contracting Ordinance apply only to violations of the Ordinance.

III. Equal Employment Opportunity. Developers shall comply with requirements of San Diego Ordinance No. 18173, Section 22.2701 through 22.2707, Equal Employment Opportunity Outreach Program. Developers shall submit a Work Force Report or an Equal Employment Opportunity (EEO) Plan to the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP) for approval.

- A. Work Force Report. If a Work Force Report (Attachment AA) is submitted, and an EOCP staff Work Force Analysis determines there are under representations when compared to County Labor Force Availability data, Developer will be required to submit an Equal Employment Opportunity Plan.
- B. Equal Employment Opportunity Plan. If an Equal Employment Opportunity Plan is submitted, it must include at least the following assurances that:

1. The Developer will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites, and in all facilities at which the Developer's employees are assigned to work;
2. A responsible official is designated to monitor all employment related activity to ensure the Developer's EEO Policy is being carried out and to submit reports relating to EEO provisions;
3. The Developer disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination, review and posting with a written record to identify the time, place, employees presents, subject matter, and disposition of meetings;
4. The Developer reviews at least annually, all supervisors' adherence to and performance under the EEO Policy and maintains written documentation of these reviews;
5. The Developer discusses its EEO Policy Statement with subcontractors and subconsultants with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;
6. The Developer documents and maintains a record of all bid solicitations and outreach efforts to and from subcontractors and subconsultants, consultant associations and other business associations;

7. The Developer disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;
8. The Developer disseminates its EEO Policy to union and community organizations;
9. The Developer provides immediate written notification to the City when any union referral process has impeded the Developer's efforts to maintain its EEO Policy.
10. The Developer maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;
11. The Developer maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;
12. The Developer encourages all present employees, including people of color and women employees, to recruit others;
13. The Developer maintains all employment selection process information with records of all tests and other selection criteria;
14. The Developer develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Developer's employment needs;
15. The Developer conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;
16. The Developer ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to ensure privacy between the sexes;
17. The Developer establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and
18. The Developer is encouraged to participate in voluntary associations which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a consultant association, consultant/community professional association, foundation or other similar group of which the Developer is a member will be considered as being part of fulfilling these obligations, provided the Developer actively participates.

IV. Equal Opportunity Contracting. Prime developers are encouraged to take positive steps to diversify and expand their subcontractor and subconsultant solicitation base and to offer contracting opportunities to all eligible subcontractors and consultants. To support its Equal Opportunity Contracting commitment, the City has established voluntary participation levels.

A. Participation Level

1. Projects valued at \$25,000 or more have a voluntary Subcontractor Participation Level of 20% and a voluntary Subconsultant Participation level goal of 15%. Goals are achieved by contracting with any combination of Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE), or Other Business Enterprise (OBE) level.
2. Attainment of the participation level goal is strongly encouraged but strictly voluntary.

B. Contract Activity Reports – To permit monitoring of the successful Developer’s commitment to achieving compliance, Contract Activity Reports (Attachment BB) reflecting work performed by subcontractors and subconsultants shall be submitted quarterly for any work covered under an executed contract.

V. List of Subcontractors and Subconsultants. – Developers are required to submit a Subcontractors and Subconsultants List with their proposal.

VI. Definitions.

Certified “**Minority Business Enterprise**” (MBE) means a business which is at least fifty one (51%) owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.

Certified “**Women Business Enterprise**” (WBE) means a business which is at least fifty-one percent (51%) owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more women.

Certified “**Disadvantaged Business Enterprise**” (DBE) means a business which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

Certified “**Disabled Veteran Business Enterprise**” (DVBE) means a business which is at least fifty-one percent (51%) owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies).

“**Other Business Enterprise**” (OBE) means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

VII Certification

- A. The City of San Diego is a signatory to a Memorandum of Agreement (MOA) in the statewide California Unified Certification Program, and therefore has adopted a policy regarding certification of DBE firms. Pursuant to the MOA, a DBE can be certified by any participating government agency in the State of California.
- B. The City will accept a current certification by the State of California Department of Transportation (CALTRANS) or any other participating government agency in the State of California as an MBE or WBE: or

IX. List of Attachments

- AA – Work Force Report
- BB – Contract Activity Report
- CC – Subcontractors List
- DD – Subconsultants List



City of San Diego.

ATTACHMENT AA

EQUAL OPPORTUNITY CONTRACTING (EOC)

1010 Second Avenue • Suite 500 • San Diego, CA 92101

Phone: (619) 533-4464 • Fax: (619) 533-4474

WORK FORCE REPORT

ADMINISTRATIVE

The objective of the Equal Employment Opportunity Outreach Program, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed Work Force Report (WFR).

CONTRACTOR IDENTIFICATION

Type of Contractor: G Construction G Vendor/Supplier G Financial Institution G Lessee/Lessor
 G Consultant G Grant Recipient G Insurance Company G Other

Name of Company: _____

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): _____

City _____ County _____ State _____ Zip _____

Telephone Number: () _____ FAX Number: () _____

Name of Company CEO: _____

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City _____ County _____ State _____

Zip

Telephone Number: () _____ FAX Number: () _____

Type of Business: _____ Type of License: _____

The Company has appointed: _____

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: _____

Telephone Number: () _____ FAX Number: () _____

-
- G One San Diego County (or Most Local County) Work Force - Mandatory
 - G Branch Work Force *
 - G Managing Office Work Force

Check the box above that applies to this WFR.

*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.

I, the undersigned representative of _____
 _____ (Firm Name)

_____, _____ hereby certify that information provided
 _____ (County) _____ (State)

herein is true and correct. This document was executed on this _____ day of _____, 200

 _____ (Authorized Signature) _____ (Print Authorized Signature)

WORK FORCE REPORT – NAME OF FIRM: _____ DATE: _____

OFFICE(S) or BRANCH(ES): _____ COUNTY: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
	Management & Financial													
Professional														
A&E, Science, Computer														
Technical														
Sales														
Administrative Support														
Services														

Crafts													
Operative Workers													
Transportation													
Laborers*													

*Construction laborers and other field employees are not to be included on this page

Totals Each Column													
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled

Disabled													
----------	--	--	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors													
Volunteers													
Artists													



HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm’s work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2000 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm’s work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.¹ By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.² For example, if participation in a San Diego project is by work forces from San Diego County, Los Angeles County and Sacramento County, we will ask for separate Work Force Reports representing the work forces of

your firm from each of the three counties.^{1,2} On the other hand, if the project will be accomplished completely outside of San Diego, we ask for a Work Force Report from the county or counties where the work will be accomplished.²

MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.^{1,3} In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.³

TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one ¹, two ² & three ³. These numbers coincide with the types of work force report required in the example. See below:

- ¹ One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- ² Branch Work Force *
- ³ Managing Office Work Force

*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county

Exhibit: Work Force Report Job categories

Refer to this table when completing your firm’s Work Force Report form(s).

Management & Financial

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

Professional

Art and Design Workers
Counselors, Social Workers, and Other Community and Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners

Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

Architecture & Engineering, Science, Computer

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

Technical

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

Sales

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

Administrative Support

Financial Clerks
Information and Record Clerks
Legal Support Workers
Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

Services

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers

Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

Crafts

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics, Installers, and Repairers
Woodworkers

Operative Workers

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

Transportation

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material Moving Workers
Water Transportation Workers

Laborers

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry Workers



SUBCONTRACTORS LIST

INFORMATION REGARDING SUBCONTRACTORS PARTICIPATION:

1. **Subcontractor’s List shall include name and complete address of all Subcontractors who will receive more than one half of one percent (0.5%) of the Prime Consultant’s fee.**
2. **Proposer shall also submit Subcontractor commitment letters on Subcontractor’s letterhead, no more than one page each, from Subcontractors listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.**
3. **Subcontractors shall be used for scope of work listed. No changes to this Subcontractors List will be allowed without prior written City approval.**

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	*MBE/WBE/ DBE/DVBE/ OBE	**WHERE CERTIFIED
ARTICLE I					

*For information only. As appropriate, Proposer shall identify Subcontractors as:

Certified Minority Business Enterprise	MBE
Certified Woman Business Enterprise	WBE
Certified Disadvantaged Business Enterprise	DBE
Certified Disabled Veteran Business Enterprise	DVBE
Other Business Enterprise	OBE

**For information only. As appropriate, Proposer shall indicate if Subcontractor is certified by:

City of San Diego	CITY
State of California Department of Transportation	CALTRANS

CONTRACT ACTIVITY REPORT

Consultants are required by contract to report subcontractor activity in this format. Reports shall be submitted via the Project Manager to the Equal Opportunity Contracting Program (EOCP) no later than thirty (30) days after the close of each quarter.

ARTICLE II.

ARTICLE III. PROJECT: _____
CONTRACTOR: _____

PRIME

CONTRACT AMOUNT: _____ INVOICE PERIOD: _____
 DATE: _____

Include Additional Services Not-To-Exceed Amount

Subcontractor	Indicate MBE, WBE, DBE, DVBE or OBE	Current Period		Paid to Date		Original	
		Dollar Amount	% of Contract	Dollar Amount	% of Contract	Dollar Amount	% of Contract
Prime Contractor Total:							
Contract Total:							

Completed by _____

SUBCONSULTANTS LIST

INFORMATION REGARDING SUBCONSULTANTS PARTICIPATION:

4. **Subconsultants List shall include name and complete address of all Subconsultants who will receive more than one half of one percent (0.5%) of the Prime Consultant’s fee.**
5. **Proposer shall also submit Subconsultants commitment letters on Subconsultant’s letterhead, no more than one page each, from Subconsultants listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.**
6. **Subconsultants shall be used for scope of work listed. No changes to this Subconsultants List will be allowed without prior written City approval.**

NAME AND ADDRESS SUBCONSULTANTS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	*MBE/WBE/ DBE/DVBE/ OBE	**WHERE CERTIFIED

*For information only. As appropriate, Proposer shall identify Subconsultants as:

- | | |
|--|------|
| Certified Minority Business Enterprise | MBE |
| Certified Woman Business Enterprise | WBE |
| Certified Disadvantaged Business Enterprise | DBE |
| Certified Disabled Veteran Business Enterprise | DVBE |
| Other Business Enterprise | OBE |

**For information only. As appropriate, Proposer shall indicate if Subconsultants is certified by:

- | | |
|--|----------|
| City of San Diego | CITY |
| State of California Department of Transportation | CALTRANS |

Exhibit B Developer Certification for Title 24/ADA Compliance

**CONSULTANT CERTIFICATION FOR
TITLE 24/ADA COMPLIANCE**

Project Name:

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for [*insert name of Project*] by [*insert name of Consultant*] shall meet all current California Building Standards Code, California Code of Regulations, Title 24 and Americans with Disabilities Act Accessibility Guidelines requirements, and shall be in compliance with The Americans with Disabilities Act of 1990.

Dated: _____

By: _____
Authorized Engineer of Record

Print Name and Title

Exhibit C City Standard Insurance Provisions

- 24.1 **General.** Developer shall not begin work under this Agreement until it has: (i) obtained, and upon the City's request provided to the City, insurance certificates reflecting evidence of all insurance required in section 24.2; (ii) obtained the City approval of each company or companies; and (iii) confirmed that all policies contain the specific provisions required by section 24.4.
- 24.2 **Types of Insurance.** At all times during the term of this Agreement, Developer shall maintain insurance coverage as follows:
- 24.2.1 Commercial General Liability. Contractor shall provide at its expense a policy or policies of Commercial General Liability [CGL] Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad and which shall cover liability arising from premises and operations, XCU (explosions, underground, and collapse) independent contractors, products/completed operations, personal injury and advertising injury, bodily injury, property damage, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Contractor shall maintain the same or equivalent CGL Insurance as described herein for at least ten (10) years following substantial completion of the work. All costs of defense shall be outside the policy limits. The Policy shall provide for coverage in amounts not less than the following: (i) General Annual Aggregate Limit (other than Products/Completed Operations) of two million dollars (\$2,000,000); (ii) Products/Completed Operations Aggregate Limit of two million dollars (\$2,000,000); (iii) Personal Injury Limit one million dollars (\$1,000,000); and (iv) Each Occurrence one million dollars (\$1,000,000).
- 24.2.2 Commercial Automobile Liability. For all of Developer automobiles used in conjunction with the Park Improvements including owned, hired and non-owned automobiles, Developer shall keep in full force and effect, a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad in the amount of one million dollars (\$1,000,000) combined single limit per occurrence, covering bodily injury and property damage for owned, non-owned and hired automobiles ("Any Auto"). All costs of defense shall be outside the policy.
- 24.2.3 Architects and Engineers Professional Liability. For all of Developer employees who are subject to this Agreement, Developer shall keep in full force and effect, or Developer shall require that its architect/engineer(s) of record keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per

claim and two million dollars (\$2,000,000) annual aggregate. Developer shall ensure both that: (i) this policy retroactive date is on or before the date of commencement of the Park Improvements; and (ii) this policy has a reporting period of three (3) years after the date of completion or termination of this Agreement. Developer agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.

24.2.4 Worker's Compensation. For all of Developer employees who are subject to this Agreement and to the extent required by the State of California, Developer shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Developer against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Developer to comply with the requirements of this section. That policy shall provide at least the Statutory minimums of one million dollars (\$1,000,000) for Bodily Injury by Accident for each accident, one million dollars (\$1,000,000) for Bodily Injury by Disease each employee, and a one million dollars (\$1,000,000) for Bodily Injury by Disease policy limit. Developer shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

24.2.4.1 Prior to the execution of the Agreement by the City, Developer shall file the following signed certification:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance, in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Contract."

24.2.5 Builder's Risk. To the extent commercially available, Developer shall provide a policy of "all risk" Builders Risk Insurance and shall add the City and its respective elected officials, officers, employees, agents, and representatives to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. Developer shall also add its Construction Contractor, and the Construction Contractor's subcontractors to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. The insurance may provide for a deductible which shall not exceed fifty thousand dollars (\$50,000). It shall Developer be responsibility to bear the expense of this deductible. The Builders Risk coverage shall expire at the time such insured property is conveyed to the City, or a Notice of Completion is filed, whichever occurs first.

24.3 **Rating Requirements.** Except for State Compensation Insurance Fund, all insurance required by express provision of this Agreement shall be carried only by responsible

insurance companies that have been given at least an “A” or “A-” and “VI” rating by AM BEST, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

24.3.1 Non-Admitted Carriers. The City will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers [LESLI list].

24.4 **Endorsements Required.** Each policy required under section 24.2 of this Agreement shall expressly provide, and an endorsement shall be submitted to the City, that:

24.4.1 Additional Insureds. Except as to Architects and/or Engineers professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds.

24.4.1.1 Commercial General Liability. The policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives. The coverage for projects for which the engineer’s estimate is two million dollars (\$2,000,000) or more shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, (iii) Your work, including but not limited to your completed operations performed by you or on your behalf, or (iv) premises owned, leased, controlled, or used by you; the coverage for projects for which the engineer’s estimate is less than two million dollars (\$2,000,000) shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, or (iii) premises owned, leased, controlled, or used by you; Except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, these endorsements shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

24.4.1.2 Commercial Automobile Liability Insurance. Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; Except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

24.4.2 Primary and Non-Contributory. The policies are primary and non-contributing to any insurance or self-insurance that may be carried by the City of San Diego, its elected officials, officers, employees, agents, and representatives with respect to operations, including the completed operations if appropriate, of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of Garden Communities' insurance and shall not contribute to it.

24.4.3 Project General Aggregate Limit. The CGL policy or policies must be endorsed to provide a Designated Construction Project General Aggregate Limit that will apply only to the Work performed under this Agreement. Claims payments not arising from the Work shall not reduce the Designated Construction Project General Aggregate Limit. The Designated Construction Project General Aggregate Limit shall be in addition to the aggregate limit provided for the products-completed operations hazard.

24.4.3 Written Notice. Except as provided for under California law, the policies cannot be canceled, non-renewed or materially changed except after thirty (30) Calendar Days prior written notice by Garden Communities to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-

payment of premium, in which case ten (10) Calendar Days notice shall be provided.

24.4.3.1 The words “will endeavor” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives” shall be deleted from all certificates.

24.4.4 **Additional Insurance.** Developer may obtain additional insurance not required by this Agreement.

24.4.5 **Prior to Starting Work.** Before performing any work, Developer shall provide the City with all Certificates of Insurance accompanied by all endorsements.

24.5 **Obligation to Provide Documents.** Developer shall provide copies of documents including but not limited to certificates of insurance and endorsements, and shall furnish renewal documentation prior to expiration of insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all insurance policies required herein.

24.6 **Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy shall be the responsibility of Developer. Deductibles and self-insurance retentions shall be disclosed to the City at the time the evidence of insurance is provided.

24.7 **Policy Changes.** Developer shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

24.8 **Reservation of Rights.** The City reserves the right, from time to time, to review the Contractor's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Contractor for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

24.9 **Not a Limitation of Other Obligations.** Insurance provisions under this article shall not be construed to limit Developer obligations under this Agreement, including Indemnity.

24.10 **Material Breach.** Failure to maintain, renew, or provide evidence of renewal during the term of this Agreement may be treated by the City as a material breach of contract.

Exhibit D Responsible Party Project Contacts

Developer
Address
Facsimile No.:
Attention:

Consultant of Record
Address
Facsimile No.:
Attention:

Developer Rep/ Construction Manager
Address
Facsimile No.:
Attention:

Contractor
Address
Facsimile No.:
Attention:

Deputy Director, CP I or II
Parks and Recreation Department
202 C Street, M.S. #39
San Diego, CA 92101
Facsimile No.: (619) 235-1110

District Manager, CP I or II
Parks and Recreation Department
Address
Facsimile No.:
Attention:

P&R Representative Park Designer, Administrative Division
Parks and Recreation Department
Address
Facsimile No.:
Attention:

Deputy Director, Field Engineering Division
Public Works/Engineering & Capital Projects Department
City of San Diego
202 "C" Street, M.S. #18

San Diego, CA 92101
Facsimile No.: (619) 627-3297

Resident Engineer, Field Engineering Division
Public Works/Engineering & Capital Projects Department
Address
Facsimile No.:
Attention:

Program Manager, Facilities Financing Section
Planning Department
City of San Diego
9485 Aero Drive, M.S. #413
San Diego, CA 92123
Facsimile No.: (619) 533-3687