

ORIGINAL

**AGREEMENT FOR COLEMAN SOCCER FIELDS  
MANAGEMENT, OPERATION, AND MAINTENANCE  
BETWEEN THE CITY OF SAN JOSE AND  
SAN JOSE EARTHQUAKES MANGEMENT, LLC**

This Agreement is made and entered into this 17th day of April, 2012, by and between the City of San José, a municipal corporation of the State of California (hereinafter "City"), and San Jose Earthquakes Management, LLC a Delaware limited liability company ("Contractor") authorized to do business in the State of California.

**RECITALS**

- A. City has issued a Request for Proposal ("RFP") for COLEMAN SOCCER FIELDS MANAGEMENT, OPERATION AND MAINTENANCE, which facility will include soccer fields, a concession stand, parking lot and access roadways located at 1125 Coleman Avenue as further described on Exhibit A-1 ("Facility") including such Furniture, Fixtures and Equipment specified in Exhibit A-2 ("FF&E"); and
- B. The City's intent is that the Facility that is the subject of this Agreement be used to its full capacity to serve the community for youth and adult recreational/competitive tournaments, clinics, leagues and practices primarily for soccer; and
- C. The City is constructing the Facility and the obligations under this agreement are intended to commence upon completion of the Facility, and contractor agrees and understands that completion dates for the Facility improvements are estimated only. The City will have no liability to the contractor if they are not completed by the estimated date; and
- D. The Facility is not a public park and is not subject to the limitations of Article XVII of the San Jose City Charter; and
- E. Contractor represents that it has the necessary expertise and skill to perform such services and that Contractor's proposal can best meet City's needs; and
- F. City and the Contractor now wish to enter into this Agreement in order to set forth the rights and obligations of the Parties with respect to the provision of operations and maintenance services by the Contractor for the Facility.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**SECTION 1 TERM**

Effective Date of Agreement. This Agreement shall be for an initial term of five (5) years (the "Term"). Regardless of the date of execution of this Agreement, the Term of this Agreement shall commence thirty (30) days from the date City notifies Contractor in writing that City has completed the Facility and the installation to fully operational status of all FF&E ("Effective Date") and shall terminate five (5) calendar years from the Effective Date, unless sooner terminated as set forth in SECTION 6. The Parties anticipate that construction shall be completed and the Facility shall commence operation August 1, 2013. However, in no event shall City be liable to Contractor for any delay in completion of the facility for any reason.

Contractor shall provide the City with written notice, no less than twelve (12) months prior to the expiration of the Term of this Agreement or any extensions thereto, that Contractor does not desire to extend the Term of this Agreement. If no such notice is delivered to City by

Contractor, the City may extend this Agreement for an additional term of five (5) years upon the same terms and conditions of this Agreement by providing written notice to the Contractor no less than six (6) months prior to the then current expiration of the Agreement. City shall not extend the term of this Agreement for more than two terms of five (5) years.

## **SECTION 2 REPRESENTATIONS AND RESPONSIBILITIES OF THE CONTRACTOR**

- 2.1 **Full Power and Authority.** Contractor warrants and represents that it has full power and authority to enter into this Agreement and perform its obligations hereunder, and it is not relying on any representation (other than as expressly set forth herein) of the City in connection with its execution of this Agreement. Contractor warrants and represents that it is authorized to transact business in the State of California to the extent necessary to discharge its obligations hereunder, and that all Facility staff employed by Contractor will be properly licensed and trained for their respective positions and responsibilities during the period that they work at the Facility.
- 2.2 **Contractor Review of Facility Plans.** Following the execution of this Agreement, and receiving a detailed set of plans and specifications ("Plans"), City shall timely provide Contractor with the Plans for Contractor's review and comment. Contractor shall submit any comments and proposed changes to the Plans within fifteen (15) days following receipt of the Plans. City agrees to consider in good faith any and all Contractor comments and/or proposed changes and to respond accordingly. City shall timely notify Contractor whether or not it shall incorporate Contractor's comments and proposed changes to the Plans. Contractor acknowledges and agrees that City has no duty to accept and incorporate Contractor's comments or changes into the Plans so, therefore, Contractor shall have no financial responsibility or obligations related to the Plans to conform to Contractor's comments and proposed changes nor shall Contractor have any financial responsibility or obligation related to any construction or design defect of the Facility. Unless otherwise agreed to by the Parties, the Contractor and the City shall meet at least once each month following the execution of this Agreement until the Operational Date, as defined in Section 3.1 of this Agreement, for updates and plan review pertaining to the construction of the Facility. At each meeting, the City shall present an updated timeline, if available for the completion of the Facility.
- 2.3 **General Responsibilities of the Contractor.** Except as provided herein, Contractor shall be solely responsible for payment of all costs of Contractor's operation and maintenance of the Facility (within the budgets developed by Contractor and which are approved by the City) and, subject to any reasonable specific direction by the City consistent with the provisions hereof, including to provide the services set forth in **Exhibit B-1**, "Scope of Services" attached hereto. Contractor is expected to use its Management Fee toward such costs and expenses; however if the Management Fee is insufficient to cover such costs and expenses, City has no obligation to provide further compensation to Contractor.
- 2.4 **Professional Manner.** Contractor shall fulfill its responsibilities hereunder in a professional and diligent manner within the reasonable budgetary and operating

policy limitations established from time to time by the City and in compliance in all material respects with all applicable federal, state and local laws, regulations, ordinances, orders, contracts and leases governing the operation of the Facility.

- 2.5 Insurance. Contractor shall procure and maintain in full force and effect, during the Term of this Agreement, the insurance coverage described in **Exhibit C** attached hereto and incorporated by reference herein. In the event Contractor fails to maintain the full Insurance coverage required by this Agreement, City may (but shall be under no obligation to) procure the required policies of insurance which have not been maintained by Contractor and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefore by City shall be reimbursed by Contractor. The insurance coverage shall be with insurers reasonably acceptable to the City and in form and substance satisfactory to City and shall name the City as an additional insured, or loss payee, as applicable.
- 2.6 Limitation of Contracts. Notwithstanding any provision to the contrary contained in this Agreement, Contractor shall not enter into any agreement on behalf of the City related to the use and operation of the Facility which shall not be in compliance with Internal Revenue Service Revenue Procedure 97-13, or any successor Internal Revenue Service regulation or procedure which may be applicable in the future, unless otherwise expressly approved in writing by the City. In addition, Contractor shall not enter into any agreement on behalf of the City related to the use of the Facility which would result in use by the user of the Facility which is on a basis other than as a member of the general public within the meaning of Section 141 of the Internal Revenue Code of 1986.

Agreements entered into by Contractor with Facility users which provide repeated use, preferential use or reserved use are also restricted by the IRS. The underlying presumption of the IRS is that a Facility should be available for reservation by members of the general public on a first come, first served basis. City has determined that the Contractor may not enter into any agreements allowing more than 100 days per calendar year of pre-reserved use or other preferential use of the Facility. This restriction applies to any agreements with individuals, soccer clubs, and soccer tournament organizers and other users of the Facility. Agreements with respect to advertising, including signage, must be approved by the City. This restriction applies regardless of whether the Facility user is a for-profit or non-profit entity.

Unless otherwise provided herein or expressly approved by City, which approval shall not be unreasonably withheld, Contractor shall not enter into a contract relating to the operation of the Facility obligating the Contractor for a term (including any renewals or extensions) of more than one (1) year or, if earlier, past the termination date of this Agreement. No portion of the compensation under any such contract may be based upon net profits from all or part of the operations of the Facility, and all compensation under any such contract must be reasonable for the services rendered and shall be subject to termination at the option of the City upon termination of this Agreement. Notwithstanding the foregoing, Contractor may negotiate and enter into a collective bargaining agreement with any union representing the Contractor's employees and/or

establish the terms of employment of such employees without the need for any approval of the City.

Contractor agrees to take all actions necessary to evidence all contracts entered into and to enforce those contracts to carry out the purposes of this Agreement.

Contractor shall promptly and without charge, provide the City with copies of all contracts and agreements to the City related to the use, operation and maintenance of the Facility.

- 2.7 Bank Accounts and Disbursements. Contractor shall establish appropriate bank accounts, at a financial institution or institutions acceptable to the City, for the deposit of gross receipts generated by the operations and maintenance of the Facility. Contractor shall deposit all gross receipts in the accounts designated for such purpose and such deposits are to be made as frequently as reasonably prudent.
- 2.8 Collection of Revenues and Payment of Expenses. Contractor is authorized for and on behalf of the City to receive all cash receipts and other revenues, belonging to the City, from the Facility.
- 2.9 Financial Responsibility of City. Except for the Management Fee referred to in Section 3.1 below, and except as otherwise expressly provided for herein, no payment or disbursement shall be made by the City to the Contractor for compensation and employee benefit expenses (and any overhead expense) incidental to provision of operations and maintenance services under this Agreement, or otherwise relating to the management, maintenance or operation of the Facility.
- 2.10 Cooperation. Contractor shall cooperate fully with and assist the City in attempting to achieve the City's goals and objectives with respect to the Facility. The City's intent is that the Facility be used to its full capacity to serve the community for youth and adult recreational/competitive tournaments, clinics, leagues and practices primarily for soccer, but may include other sports subject to City approval and the provision of additional items to be specified by amendment in writing to Exhibit (B) as may be required for such other sports.
- 2.11 Fees/Charges and Reservation Policies. Contractor shall comply with PRNS Fee Structure and Reservation Policies or, in the alternative may provide PRNS with its proposed fees and policies for PRNS approval prior to acceptance of any reservations.
- 2.12 Transition of Management and Operation of the Facility. Upon the termination of this Agreement, the Contractor agrees and covenants to cooperate fully with the City in the smooth and businesslike transition of the management, maintenance, and operation of the Facility. The Contractor shall provide any prospective Contractor identified in writing by the City with access to all activities at the Facility, and shall allow any employee of the Contractor whose primary duties are related to the Facility to become an employee of the entity designated by the City to be the successor Contractor of the Facility on such terms and conditions as shall be agreed to by each

employee and such new Contractor. The City shall in no way be responsible for any severance or termination compensation to any employee of the Contractor.

Contractor shall, upon the date of termination of this Agreement:

- (i) transfer all licenses, permits and agreements of the Contractor that relate to the Facility to the new Contractor;
- (ii) transfer possession of any and all furniture, fixtures, equipment, supplies and materials purchased for the Facility to such new Contractor or as otherwise directed in writing by the City; and
- (iii) vacate the Facility site.
- (iv) reimburse the City on a pro rata basis any portion of the monthly Management Fee advanced by City but unearned due to early termination.

2.13 Alterations and Liens. Contractor shall not make, or suffer to be made, any material alterations to any facility at the Facility without the prior written consent of the City. Contractor shall not permit the assets of the City to become subject to any lien.

2.14 No Discrimination. In the performance of this Agreement including, without limitation, the programs and services provided at the Facility, Contractor shall not discriminate against any employee, applicant for employment, participant, or member of the public because of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

2.15 Promotion of San José. Contractor shall include references to the City of San José in marketing and promotional materials related to the Facility. Contractor shall not market or promote on the Facility any vendor or any other person or entity other than the San Jose Earthquakes without the prior written consent of the City.

2.16 Signs. Contractor shall not erect or place or permit any sign to be erected or placed on the Facility property or on any Facility equipment without prior written approval of the City which approval shall not be unreasonably withheld.

2.17 Wage Policy. Contractor and its subcontractors shall pay those employees performing work related to this Agreement that is subject to the City's prevailing wage policy, those specified wage rates as set forth in **Exhibit D** (Wage Policy) and shall meet the documentation and reporting requirements set forth therein.

2.18 Hazardous Materials. Contractor agrees that it shall comply with the provisions of this Section 2.16 and **Exhibit E** regarding Hazardous Materials at the Facility. For the purpose of this AGREEMENT, the terms "Hazardous Materials" and "Environmental Laws" shall have the definitions set forth in **Exhibit E** attached hereto and incorporated by reference herein. Disposal of any Hazardous Material on the Facility is strictly prohibited.

2.18.1 AS-IS Agreement. Except as otherwise provided herein, Contractor agrees that access to the Facility will be provided in an as-is condition.

- 2.18.2 FMC Disclosure Requirements. City acquired the Facility pursuant to that certain purchase agreement by and between the City and FMC Corporation ("FMC") dated as of September 9, 2004, and all attachments and exhibits thereto (the "FMC Agreement"). Contractor further acknowledges that it has received a copy of the FMC Agreement and that City has provided notice regarding those disclosures required to be made by the City in connection with that certain right of entry agreement (the "FMC Right of Entry Agreement") , and a memorandum recorded against the property underlying the Facility Site, including, but not limited to, notice environmental contamination and remediation work, and the scope of FMC's indemnity obligations, all as further described in the FMC Right of Entry Agreement (all attached hereto collectively as **Exhibit H**). Contractor agrees to comply with and be subject to such of the obligations in the FMC Right of Entry Agreement as are applicable to the Facility upon the effective date of this Agreement. In no event shall Contractor have a financial responsibility or obligation to cure or remediate any Hazardous Material or environmental matter at the Facility which is determined to exist prior to the effective date of this Agreement or which has not been caused or contributed to by Contractor.
- 2.18.3 Coordination with FMC and DTSC. Contractor and the City shall coordinate with FMC and DTSC (as defined below) as to any actions taken on the Facility during the Term, which actions might (a) trigger obligations by the City or FMC under the FMC Agreement or (b) be subject to restrictions set forth in the Covenant (as defined below). The Parties acknowledge that the Facility is subject to that certain Covenant to Restrict Use of Property (the "Covenant") by and between the City and the Department of Toxic Substances Control (the "DTSC"), and recorded on February 21, 2002 in the Official Records of the County of Santa Clara (also attached hereto collectively as **Exhibit H**) including such other agreements as may be entered into between City and DTSC. The Covenant contains use restrictions applicable to the Facility. Contractor agrees to execute any documents reasonably requested by City, FMC or DTSC which may have an impact on the FMC Agreement or Covenants as a result of the development of the Facility.
- 2.19 Emergency Services. Contractor shall provide City with names, telephone numbers, and pager numbers of the Facility Representative and two (2) qualified employees for Facility who will be available to contact on a twenty-four (24) basis to address emergency conditions that may occur during hours when Contractor's normal work force is not present.
- 2.20 Disqualification of Former Employees. Contractor is familiar with Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance") relating to the disqualification of City's former officers and employees in matters which are connected with their former duties or official responsibilities. Contractor shall not utilize, either directly or indirectly, any officer, employee, or agent of Contractor to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

- 2.21 Gift Prohibition. Contractor acknowledges that Chapter 12.08 of the San José Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08.
- 2.21.1 Contractor agrees not to offer any City officer or designated employee any gift prohibited by Chapter 12.08.
- 2.21.2 Contractor's offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 6.1 of this Agreement.
- 2.22 Taxes and Charges. Contractor shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of Contractor's business.
- 2.23 Conflict of Interest. Contractor shall avoid all conflict of interest or the appearance of conflict of interest in performance of this Agreement.
- 2.24 Complimentary Tickets. Contractor agrees to provide to the community complimentary tickets each calendar year at face value not to exceed equal to \$78,000. The value of the complimentary tickets each year shall be based on an accrual of \$6,500 each month of the Agreement, provided, that the total revenue in that calendar month exceeds the Management Fee. In the event that the total revenue in a certain calendar month does not exceed the Management Fee, there shall be no accrual of complimentary tickets for that month. The Contractor will provide the City with these complimentary tickets for regular season game(s) designated solely by the Contractor based on availability. The Contractor will provide the City with a minimum of sixty (60) days prior notice before the designated game(s) so the City can work with the Contractor to properly allocate the free tickets to the community. Contractor and Director shall work together to develop a ticket distribution program and process that provides priority to youth participants in PRNS programs. Contractor shall provide the marketing and shall implement the ticket giveaways described under this program and shall provide City with an annual report describing the number of complimentary tickets distributed by Contractor under this provision.
- 2.25 Shared Use. Contractor and City shall schedule two (2) full days annually for City use at no cost to the City.

### **SECTION 3 MANAGEMENT FEE**

- 3.1 Operational Date. Contractor shall have the entire Facility fully operational for public use and events scheduling within thirty (30) calendar days of the Effective Date ("Operational Date").
- 3.2 Management Fee. Upon the Operational Date, Contractor shall be entitled to receive a management fee ("Management Fee") consisting of the following:

- 3.2.1 Fixed monthly fee of \$27,733.58 equalling \$332,803 per year increasing in accordance with section 3.1.2 from the Operational Date of this Agreement. With the prior written consent of the City, the amount of the fixed monthly fee may be taken as a credit against revenue to be remitted to City. An annual increase will be applied to the fixed monthly calculation beginning on July 1<sup>st</sup> of each year. The annual increase will be based on the San Jose-San Francisco-Oakland average annual Consumer Price Index ("CPI") percentage change for all urban consumers, but in no event shall exceed 3%.; and
- 3.2.2 In addition to the fixed monthly fee, the City will pay an annual incentive fee equal to the percentage set forth below of the portion of the gross revenues that exceed both the Management Fee due for that same period and the minimum gross revenues to trigger the incentive fee payment commencing with the Operational Date and ending on June 30 and annually thereafter. The incentive fee shall be prorated for partial years of operation during the first and last year of operation. An annual increase will be applied to the incentive fee calculation beginning on July 1 of each year. The annual increase will be based on the San Jose-San Francisco-Oakland average annual Consumer Price Index ("CPI") percentage change for all urban consumers, but in no event shall exceed 3%.

Examples of the Performance Increases are listed in the table below with four (4) Incentive Ranges from 25% to 100%. For example, if the Contractor meets or exceeds the Annual Gross Revenue Target of \$1,145,969 (in 2011-2012 dollars) by 25% this will trigger a 25% Performance Increase to be added to the Fixed Management Fee increasing in 25% increments up to 100%. The maximum amount the Contractor is eligible for is an additional 100% of the annual Management Fee.

- Coleman Avenue Soccer Field Performance Fee Increases
- Annual Gross Revenue Target for the facility is \$1,145,969;
- No performance fee increase unless Annual Gross Revenue exceeds Annual Gross Revenue Target by at least 25%, which equates to \$1,432,461.25 in 2011-2012 dollars.
- If Annual Gross Revenue exceeds Annual Gross Revenue Target by at least 25%, then the following table should be used to determine the associated Performance Fee;

**Incentive Range 1 – 25% Performance Increase**

If Gross Revenue is at least \$1,432,461.25 but less than \$1,718,853.5

Then...

Fixed Management Fee	\$332,803.00
25% Performance Increase	\$83,200.75
Total Fee	\$416,003.75

**Incentive Range 2 – 50% Performance Increase**

If Gross Revenue is at least \$1,718,853.5 but less than \$2,005,445.75

Then...

Fixed Management Fee	\$332,803.00
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50% Performance Increase	\$166,401.50
Total Fee	\$499,204.50

**Incentive Range 3 – 75% Performance Increase**

If Gross Revenue is at least \$2,005,445.75 but less than \$2,291,938.00

Then...	
Fixed Management Fee	\$332,803.00
75% Performance Increase	\$249,602.25
Total	\$582,405.25

**Incentive Range 4 – 100% Performance Increase**

If Gross Revenue is at least \$2,291,938.00

Then...	
Fixed Management Fee	\$332,803.00
100% Performance Increase	\$332,803.00
Total	\$665,606.00

Incentive fees paid by the City shall be paid annually, once per year, and shall not exceed the fixed monthly fee paid by the City for the same 12-month period. Not later than sixty (60) days after the receipt and acceptance by the City of the annual audited financial statement for the preceding fiscal year of Facility operation, and no earlier than September 1 of each year, the City shall pay Contractor the incentive fee set forth above for the prior year.

- 3.3 Management Fee Reasonable. City and Contractor acknowledge and agree that the amount of the Management Fee is reasonable in relation to the services to be performed by the Contractor hereunder.
- 3.4 Facility Out of Operation. In the event that the Facility is unusable for any reason, for more than thirty (30) calendar days including but not limited to acts of nature or vandalism, City may declare that an emergency condition exists and that the Facility is out of operation. City shall pay to the Contractor within thirty (30) calendar days after such declaration of emergency condition and after deducting any amounts owed by the Contractor to the City, any compensation due and unpaid under Section 3.2 herein in a pro-rata amount for the time the Facility was in operation prior to the declaration of emergency condition. Contractor and City will jointly determine what changes in the normal level of maintenance, if any, may be necessary, including additional hours of labor and/or materials to return the Facility to operation. Contractor and City agree to use best efforts to come to mutual agreement in writing as to reasonable and appropriate adjustments to the Management Fee to reflect both decreases and increases in operation and maintenance. Contractor and/or City may terminate this Agreement in accordance with Section 6.2 herein if the parties are unable to agree to adjustments to maintenance, labor and/or materials, or any other matter related to returning the Facility to normal operation after the declaration of emergency condition.

## **SECTION 4 ANNUAL BUDGETS AND REPORTS**

- 4.1 Operating Budget. Contractor shall prepare its proposed initial operating budget for the period of one year attached hereto as **Exhibit G**. The Contractor shall revise its proposed initial operating budget to include the period between the Effective Date through the following June 30, and to include any other needed revisions upon receipt of notice of commencement of the Effective Date pursuant to Section 1 of this Agreement. Contractor shall provide the City with its initial operating budget revisions prior to the Effective Date. Contractor shall prepare its operating programs and a budget for the Facility for each succeeding operating year based on the fiscal year of July 1 to June 30, by March 1 and shall submit such programs and budgets to the City by such date. Such budgets shall set forth the Contractor's general strategy for minimizing expenses and maximizing revenues and shall include detailed line items for all of the following:
- (i) projected soccer games and soccer players served (and similar data for other types of sports activities projected for the Facility);
  - (ii) revenues (including expected prices and/or pricing policies for youth and adults, tournaments, practice, concessions and merchandise)
  - (iii) expenses; and,
  - (iv) contract obligations.
- 4.2 Capital Budget. By March 1 of each year during the Term of this Agreement, Contractor shall submit to the City, an annual capital expenditure request and cash flow projection as well as a projected capital and operating reserves report. (The reports due on each March 1 shall include a summary five-year capital improvement plan for the Facility.)
- 4.3 Other Planning Documents. Contractor shall deliver to City, in addition to the other budgets and reports required under this Section 4, by each March 1 during the Term of this Agreement:
- (i) the marketing plan referred to in **Exhibit B-1**;
  - (ii) a maintenance plan for the Facility consistent with **Exhibit B-2**;
  - (iii) a security plan approved by City including both emergency and non-emergency protocols to be followed by Contractor employees; and
  - (iv) a list of insurance maintained for the Facility consistent with this Agreement .
- 4.4 City Review and Approval. Upon timely receipt from Contractor of all documents, records, and disclosures required to be submitted to City pursuant to this Section 4, City shall notify Contractor of its approval (which shall not be unreasonably withheld) or disapproval of any budgets or reports submitted to it pursuant to this Section 4 prior to the date such report or budget is to become effective. If the City disapproves a portion of any report or budget, Contractor may act under the portions thereof not so disapproved, and shall revise the portion that was disapproved to the reasonable satisfaction of the City. With respect to any portion thereof not approved or deemed approved by the City, the prior period's budget or report shall remain in effect with respect to such portion until a new budget or report with respect thereto shall have

been so approved. Contractor shall revise reports from time to time to reflect City comments or concerns, and material changes in the operations of the Facility.

- 4.5 Disclosure. Contractor shall assist the City and promptly provide any information reasonably requested by the City to complete or affirm the matters to be provided to the City required by this Section.
- 4.6 Budget Changes. Contractor agrees to promptly notify City, if at any time during the Term of this Agreement, any total reduction of ten percent (10%) or more of projected revenues for any calendar year, with a detailed explanation of the cause of the decrease in revenues and how the Contractor proposes to address the anticipated deviation from projected revenues in the Budget. Approval of these deviations shall be in the sole discretion of the City.
- 4.7 Definitions. The following definitions shall be applicable to this Agreement:
- 4.7.1 "Revenues" means all revenues received from Facility fees, parking, lessons, rentals, food and beverage sales, advertising, sponsorships, and all other streams of revenue which Contractor may generate from Facility management.
- 4.7.2 "Direct Costs" means those costs that are directly related to operations and maintenance of the Facility and which are identified in the Annual Operating Budget approved by the City.
- 4.7.3 "Capital Expenditures" means those expenditures for improvements to the existing Facility which cost in excess of Ten Thousand Dollars (\$10,000). Any expenditures totaling more than Ten Thousand Dollars (\$10,000), shall be the responsibility of the City.

If contractor oversees capital expenditures such capital expenditures shall be identified in the Annual Capital Budget prepared by Contractor and approved by the City, unless it is an emergency expense, which expense shall require City's approval. Any emergency expense(s) shall be incorporated into an adjustment in the respective year's Capital Budget prior to the year-end close. In Contractor's Annual Capital Budget, Contractor will recommend capital expenditures, in priority order, based on Contractor's knowledge of the property, knowledge of Facility, related construction and its costs, knowledge of revenue-enhancing strategies, and Contractor's role of maintaining the quality of the asset. Capital expenditures identified in the approved Annual Capital Budget may require submission of plans and specifications for review and approval by the City's Department of Public Works ("DPW") depending on the scope of the project, DPW's inspection of the work, and DPW's acceptance of the project, once completed. For all capital expenditures, three competitive and responsive proposals shall be obtained from reputable and responsible firms that have not been debarred from doing business with the City of San José and/or the State of California and the lowest bid shall be selected.

- 4.7.4 "Maintenance, Repair, and Alterations" includes work, materials, and supplies that are required to keep the Facility in clean and properly-working order and can be classified as routine or ongoing maintenance of the buildings and grounds, Any expenditures totaling less than Ten Thousand Dollars (\$10,000) shall be the responsibility of the Contractor, generally, these types of repairs would be under \$10,000. This includes Facility maintenance, grounds maintenance, janitorial services, and routine repairs of the Facility and equipment as needed. Maintenance, repair, and alteration expenditures costing more than \$10,000 shall be submitted as part of the monthly maintenance report and for review as a Capital Expenditure. For the avoidance of doubt, during each year of the Term, expenditures of the same type shall be aggregated and treated as the same type of expenditure.
- 4.7.5 Intent of the Parties Regarding Allocation of Expenses. It is the intent of Sections 4.7.3 and 4.7.4 that the City will be responsible for replacement of items over \$10,000 in value at the end of their useful life and that the Contractor shall be responsible for unscheduled repair and replacement activities under \$10,000 in cost as these items are typically aligned with maintenance and repair as opposed to capital replacement.
- 4.8 Unless otherwise agreed to by the Parties, if the Contractor in good faith has a material disagreement over: (a) changes mandated by the City to budgets previously approved by the City hereunder; or (b) the City's operating policies with respect to the Facility, upon no less than thirty (30) days written notice from the Contractor to the City as to the substance of such disagreement, Contractor and City shall meet to attempt to resolve the disagreement. The Parties shall meet and discuss the disagreement in a good faith effort to resolve the dispute, the Parties may agree to meet upon more than one occasion, and such meeting(s) shall occur prior to any declaration of material breach pursuant to Section 6.1 of this Agreement.

## **SECTION 5 RECORDS; ACCOUNTS AND MONTHLY REPORTS**

- 5.1 Maintenance of Records. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, charges for services, all other documents evidencing or relating to performance under this Agreement, and all records of expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement.
- 5.1.1 All documents required to be maintained pursuant to this Agreement shall be available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, Director of Parks Recreation and Neighborhood Services, or a designated representative of any of these officers. Contractor shall provide copies of such documents to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be

available at Contractor's address indicated for receipt of notices in this Agreement.

- 5.2 Contractor shall prepare a monthly maintenance report for the Facility which specifies all work performed during the previous month. Contractor shall submit the completed maintenance reports for the previous month to the City's Director or authorized representative no later than the 10<sup>th</sup> day of each month. In addition to these reports covering normal maintenance functions, an approved extra work order shall be submitted that contains a description, including labor-hours, equipment, and material breakdowns and costs, used to accomplish any additional work performed deemed necessary and beyond the scope of the Maintenance Standards specified in Exhibit B-2.

In addition, Contractor shall prepare and submit a written annual maintenance schedule for Facility to City's Director on March 1 of each year. Each maintenance schedule shall clearly indicate all of the major maintenance tasks required by this Agreement and shall specify the weeks of the year that each task is scheduled to be performed. These maintenance schedules shall be prepared in coordination with the Facility tournament and event calendar as well as proper Facility maintenance management practices.

- 5.3 Accounting Method; Availability. All books, accounts, and records shall be maintained using the accrual basis of accounting in accordance with generally accepted accounting principles (GAAP) and practices or any other standard acceptable to the City and shall be available for inspection by the City through its Auditor and/or Attorney and each of their respective agents and employees.
- 5.4 Financial Statements, Payments, and Information. Contractor shall provide the City with a monthly income and expense statement, in a form reasonably acceptable to the Director of Finance of the City, respecting the operations of the Facility, no later than twenty (20) days following the end of each month. Contractor shall pay to the City each month all revenues, except for any credit for monthly fixed management fee, concurrent with the submission of the income and expense statement. Contractor shall provide City with annual audited financial statements including a balance sheet, cash flow report, statement of operations, budget variance to date, and other pertinent financial data reasonably requested by the City, within sixty (60) days of the close of each fiscal year (July 1–June 30). The cost of any audit of documentation pursuant to this section is an operating expense of the Facility paid by Contractor. In addition, the Contractor shall cause to be prepared such other management and financial reports concerning the Facility as the City may reasonably request from time to time.
- 5.5 Right to Inspect and Audit. City has the right to inspect and to audit all books and records, regardless of form, relating to the management, maintenance, operation, and financial performance of the Facility, which rights shall remain in effect for the term of this Agreement and all extensions thereto, and for five (5) years thereafter.

Contractor agrees that the City's Manager, Auditor, or Attorney, or any of their duly authorized representatives, shall have access to and the right to examine upon reasonable notice to Contractor, all facilities and activities of Contractor related to

Contractor's performance of this Agreement, including the right to audit, conduct further financial review, examine and make excerpts or transcripts of all contracts, subcontracts, invoices, payroll records, personnel records, and all other data or financial records relating to matters covered by this Agreement at any time during the Term of this Agreement and all extensions thereto. Contractor shall fully cooperate with City in such audit, examination, further review and shall provide City with access to Contractor' staff and to all relevant records, documents, and data, including but not limited to management letters, board minutes, and payroll.

In the event any audit conducted by City discloses that Contractor has made any misrepresentation with respect to the services provided hereunder or in the compensation due to Contractor hereunder then, in addition to any other remedy available to City, City may demand that Contractor reimburse City for City's costs incurred in the performance of the audit and shall pay all outstanding fees and late penalties due to City. Furthermore, City may require Contractor to pay for the audit costs when Contractor cannot properly account for or otherwise provide satisfactory documentation of charges made to the City greater than two and a half percent (2.5%) of the amounts payable to Contractor during the period covered by the audit. Such reimbursement shall be paid by Contractor within thirty (30) days of the date City notifies Contractor in writing of City's demand for payment and the amount of City's costs.

## **SECTION 6 TERMINATION**

### **6.1 Default.**

6.1.1 Monetary Default. Failure by either Party hereto to pay or deposit sums due by one Party to the other in the manner required by this Agreement within five (5) business days after receipt of written notice by the other of such failure shall be a default hereunder, provided that if the default is of a nature that it cannot be cured within five (5) business days, then the defaulting Party shall not be deemed in default if it takes reasonable steps to commence to cure the default within such five-day period and proceeds with due diligence thereafter to cure its default within ten (10) business days of notice of default.

6.1.2 Violation of Laws. Violation by the Contractor of any laws, ordinances, rules, and regulations or orders of any public authority having jurisdiction over the Facility and failure by the Contractor to cure the applicable violation within the time required in the notice of violation thereof from the City, any officer thereof or the applicable governmental agency. Such a failure to cure shall be a default by the Contractor hereunder; provided, however, that the Contractor shall not be in default hereunder if such cure cannot be reasonably accomplished within such period so long as the Contractor:

(i) obtains the written consent of the regulatory agency issuing the notice of violation to an extension of time to cure the violation; and

(ii) commences and proceeds with due diligence to cure the violation within the period specified in the notice or consent.

In the event there is no time to cure the violation specified in the notice, the Contractor shall cure the violation within ten (10) business days following the violation or as may otherwise be mutually agreed to by the parties in writing, unless a shorter period to cure the default is required for health and safety reasons.

6.1.3 Other Material Default. Either Party shall be deemed in default of this Agreement in the event of an uncured material breach of any provision of this Agreement not otherwise referred to in Sections 6.1.1 or 6.1.2. The nondefaulting Party must give written notice to the defaulting Party specifying the full particulars of the breach alleged. The defaulting Party shall have thirty (30) calendar days from the date of the notice to cure the breach or as may otherwise be mutually agreed to by the parties in writing, unless a shorter period to cure the default is required for health and safety reasons.

6.1.4 Meeting Among Parties. The parties agree to promptly meet and confer in good faith to determine a reasonable plan of action to correct an alleged breach of this agreement when timely requested to do so by either party. With the exception of any violation of the law pursuant to Section 6.1.2 herein or any threat to health and safety that requires immediate correction, the parties may agree in writing to reasonably extend the period to cure the default based upon an agreed upon plan to remedy the default.

6.2 Earlier Termination. Notwithstanding the provisions of SECTION 1 hereof, this Agreement shall be terminated sooner:

- (i) at any time by mutual written agreement of the Parties;
- (ii) at the option of either Party hereto, upon substantial destruction or taking by eminent domain of such portions of the Facility so as to make the operation of the Facility, in the opinion of the City, economically infeasible;
- (iii) upon no less than 14 calendar days at the option of either Party, if the gross revenues from the Facility have not at least equaled the Management Fee due to Contractor over any 180 day period following the Operational Date; or
- (iv) after the third anniversary of the Effective Date, at the option of either party with at least thirty (30) days' prior written notice to the other party.

6.3 Proration of Management Fee Upon Termination. If this Agreement is terminated prior to the end of its Term, the City shall pay to the Contractor, within thirty (30) days after such termination and after deducting any amounts owed by the Contractor to the City hereunder, any compensation due under Section 3.2.1, and a pro rata amount to be agreed upon by the City and the Contractor in respect of Section 3.2.2 based upon the operations of the Facility to the date of termination as compared to the immediately preceding two years; provided that no such incentive fee compensation shall be owing in the event of a termination by the City by reason of a default by the Contractor of the character described in Section 6.1.

6.4 Liquidated Damages.

- (i) In the event of Contractor's breach of any of the terms and conditions of this Agreement which results in the termination of this Agreement and the City taking possession of the Facility, the Parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the breach by Contractor to comply with the obligations for the Facility operations and maintenance as set forth in this Agreement. The Parties hereto further agree that if the City does take possession of the Facility as a result of Contractor's breach or default, the City does not have the expertise or resources to keep the Facility open to the public. Therefore, the Parties hereby agree that a reasonable estimate of damages shall be the sum of \$250.00 per day that the Facility remains closed to the public and Contractor agrees to pay that amount as liquidated damages. The liquidated damages shall continue to accrue from the date the City takes possession of the Facility and shall continue to accrue until the City reopens the Facility for full operation for public use and play, or upon the expiration of forty-five (45) days, whichever occurs earlier.
- (ii) The Parties agree that City's acceptance of any liquidated damages as a result of closure of the Facility shall not prevent City from exercising any other right or remedy for breach or default available to the City under this Agreement.

**SECTION 7 INDEMNIFICATION**

- 7.1. Contractor shall protect, defend, indemnify, and hold harmless City, its officers, employees and agents against any claim, loss or liability to the extent arising out of or resulting in any way from work performed under this Agreement due to the willful or negligent acts (active or passive) or omissions by Contractor's officers, employees, agents, subcontractors, or volunteers. The acceptance of Contractor's services by City shall not operate as a waiver of such right of indemnification.
- 7.2 City shall protect, defend, indemnify and hold harmless Contractor, its officers, employees and agents against any claim, loss or liability to the extent arising out of or resulting in any way from the failure of City to perform its obligations under this agreement or from the willful or negligent acts (active or passive) or omissions by City's officers, employees or agents or subcontractors.
- 7.3 The provisions of this Section shall survive termination of this Agreement.

**SECTION 8 FORCE MAJEURE**

- 8.1 Obligations Suspended. If Contractor or City is unable by reason of Force Majeure (as herein defined) to carry out any obligation under this Agreement, such obligation shall be suspended only so far as it is physically affected by such Force Majeure during the continuance thereof. The Party unable to perform shall give the other Party prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing such obligation. The Party unable to perform shall use all possible diligence to remove such Force Majeure as quickly as possible.

- 8.2 Removal of Force Majeure. The requirement that any Force Majeure shall be removed with all possible diligence shall not require the settlement by the Party unable to perform because of strikes, lockouts or other labor disputes or the meeting of any claims of or demands by any supplier or government entity which reasonably may be harmful to the best interests of the City or the Contractor.
- 8.3 Definition. For the purpose of paragraphs 8.1 and 8.2 hereof, "Force Majeure" shall mean an act of nature, act of a public enemy, war, blockade, public riot, lightning, fire, storm, earthquake, flood, explosion, governmental restraint, breakage, or accidents to equipment and any other cause whether of the kind specifically enumerated above or otherwise, which shall not reasonably be within the control of the Party claiming suspension.

## SECTION 9 EMPLOYEES/VOLUNTEERS

- 9.1 Any and all personnel employed or retained by Contractor in performance of this Agreement shall be qualified to perform the duties assigned to them by Contractor.
- 9.2 Contractor shall not hire personnel or volunteers to operate the Facility who have supervisory or disciplinary authority over minors, who have been convicted of any offense identified in California Public Resources Code Sections 5164. Contractor shall notify City in writing of any violation of this provision as soon as is reasonably practicable.
- 9.3 Contractor shall also not employ any person, paid or unpaid, who is permitted to provide services requiring contact with children or providing food concessionaire services or any other concessionaire services required by law to conduct TB testing unless Contractor has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code.
- 9.4 Regardless of whether services have been provided prior to full execution of this Agreement, Contractor certifies to City that all services were provided in full compliance with the terms and provisions of this Agreement.
- 9.5 To give effect to California Public Resources Code Sections 5164, Contractor shall follow the procedures contained in **Exhibit G** attached hereto. In the event Contractor chooses a different national criminal database for complying with the FBI requirement for background checks, then such alternative database shall be approved in writing by the Contractor's liability insurance provider.
- 9.6 All personnel who perform Contractor's Services or who operate at the Facility will wear clothing or a name tag which bears the Contractor's company name. The clothing worn by Contractor's personnel shall be appropriate for the work assigned and shall give Contractor's staff a neat and professional appearance. Contractor's vehicles shall have appropriate identification as approved by the Director.
- 9.7 Contractor's obligations under this Section 9 shall be performed by Contractor using reasonable efforts and reasonable due diligence.

## **SECTION 10 ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY**

10.1 Contractor agrees that, in the performance of this Agreement, Contractor shall perform its obligations under the agreement with due diligence and in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the Policy can be found on the City's website at the following link: <http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>.

Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:

- (i) Use of recycled and/or recyclable products in daily operations (i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.)
- (ii) Use of Energy Star Compliant equipment.
- (iii) Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)
- (iv) Internal waste reduction and reuse protocol(s).
- (v) Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

## **SECTION 11 MISCELLANEOUS**

11.1 No Private Business Use. The Contractor shall take all necessary steps in connection with this Agreement to ensure that the Facility is not deemed to be used for a private business use within the meaning of Section 141(b) of the Internal Revenue Code of 1986 and applicable filings, procedures and regulations of the Internal Revenue Service.

11.2 No Waiver. No delay or failure on the part of any Party in exercising any right hereunder shall impair any such right or any remedy of the Party so delaying or failing, nor shall it be construed to be a waiver of any continuing breach or default hereunder or any acquiescence therein or of any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default hereunder be deemed a waiver of any other breach or default theretofore or thereafter occurring.

11.3 Good Faith Obligation of Parties. The Parties shall act in good faith and reasonably in performing their respective obligations under this Agreement. Without limiting the generality of the foregoing, each Party shall act reasonably in granting the requests of the other Party authorized by this Agreement.

11.4 Amendments. This Agreement may be amended, modified, waived, released or discharged only by a written amendment executed by the Parties hereto.

11.5 Severability. If any court of competent jurisdiction holds that any provision of this Agreement is void, voidable, illegal or unenforceable, or that this Agreement would be

void, voidable, illegal or unenforceable unless any provision hereof were severed herefrom, that provision shall be severable from and shall not affect the continued operation of the rest of this Agreement; provided that if the provision to be severed is a material part of this Agreement, the foregoing shall not apply, and the Parties shall in good faith renegotiate such provision.

11.6 Successors and Assigns. This Agreement shall be binding on all Parties hereto and their respective successors and permitted assigns. A Party may not assign its rights or be released from its obligations in, to or under, this Agreement except as may expressly be approved in writing by the other Party hereto in its sole and absolute discretion; provided that the City may at any time assign this Agreement to the Authority or another agency of either the City or the Authority which has the use and possession of the Facility. The experience and capabilities of the Contractor were of primary importance to the City in entering into this Agreement, and the City shall be under no obligation whatsoever to approve any prospective assignee of the Contractor hereunder.

11.7 Counterparts. This Agreement may be executed in counterparts, each of which, when so executed, shall be deemed to be an original and all of which, when taken together, shall constitute one agreement.

11.8 City Designee: Unless otherwise specified in this Agreement or required by law, the City's Director of Parks, Recreation and Neighborhood Services is authorized to administer this Agreement on behalf of the City.

11.9 Notices. Any notice, document or other item to be given, delivered, furnished or received under this Agreement shall be deemed given, delivered, furnished or received when given in writing and personally delivered to an officer of the applicable Party or, after the same is deposited with the United States Postal Service, postage prepaid, registered or certified first class mail, return receipt requested, addressed to such applicable Party at the address or addresses indicated herein therefore or at such other address or addresses as such Party may from time to time designate by written notice to the other, at the time of delivery shown on such return receipt:

If to the City:

City of San José  
Department of Parks, Recreation and Neighborhood Services  
200 East Santa Clara Street, 9<sup>th</sup> Floor  
San José, CA 95113  
Attn: Director of Parks, Recreation and Neighborhood Services

with a copy to:

City Attorney  
City of San José  
200 East Santa Clara Street, 16<sup>th</sup> Floor  
San José, CA 95113

If to the Contractor:  
San Jose Earthquakes Management, LLC  
451 El Camino Real, Suite 220  
Santa Clara, CA 95050  
Attn: \_\_\_\_\_

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11.10 Independent Contractor. The relationship between the Contractor and the City is that of an independent contractor and, except as herein expressly provided, neither Party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other or to bind the other in any manner or thing whatsoever.

11.11 Entire Agreement. The documents forming the entire Agreement between City and Contractor shall consist of this Agreement including:

- Exhibit A-1 - Coleman Avenue Soccer Facility
- Exhibit A-2 - Furniture, Fixtures and Equipment
- Exhibit B-1 - Scope of Services
- Exhibit B-2 - Maintenance Standards
- Exhibit B-3 - Irrigation Inspection Form
- Exhibit C - Insurance Requirements
- Exhibit D - Labor Compliance Addendum
- Exhibit E - Hazardous Materials
- Exhibit F - Proposed Operating Budget
- Exhibit G - Employee/Volunteer Clearance
- Exhibit H - FMC Right-of-Entry, Covenant and Associated Environmental Documents

This Agreement and the Exhibits set forth above, contain all of the agreements, representations and understandings of the Parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written.

11.12 Language Construction. The language of each and all paragraphs, terms and/or provisions of this Agreement, shall, in all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any Party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this Agreement.

11.13 Venue. The Parties hereby consent to the jurisdiction and venue of the federal courts located in the Northern District of the State of California and state courts located in Santa Clara County, California in the event of any legal proceedings with respect to this Agreement.

- 11.14 Remedies Not Exclusive. The remedies provided herein for breach of this Agreement are not exclusive, and in event of breach, the Parties hereto shall have all the remedies provided by law.
- 11.15 No Third Party Beneficiaries. This Agreement is not intended to and does not create any rights or interests in any person not a Party hereto.
- 11.16 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in such State.
- 11.17 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

**IN WITNESS WHEREOF** the Parties have executed this Agreement effective as of the date first above written.

"City"

APPROVED AS TO FORM:

City of San Jose, a municipal corporation

  
 \_\_\_\_\_  
 VERA TODOROV  
 Senior Deputy City Attorney

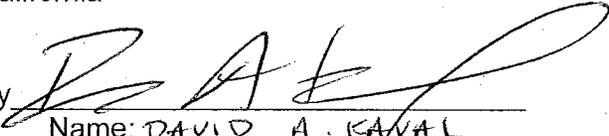
4/5/2012

By   
 \_\_\_\_\_  
 NORBERTO DUENAS  
 Deputy City Manager

4/17/12

"Contractor"

San Jose Earthquakes Management, LLC  
a Delaware limited liability company  
authorized to do business in the State of  
California

By   
 \_\_\_\_\_  
 Name: DAVID A. KAVAL  
 Title: President  
 Date: 3/29/12

CONTRACT TRANSMITTAL TO CITY MANAGER

4/13/12

CONTRACTOR: ~~SAN JOSE EARTHQUAKES MANAGEMENT, LLC~~

CONTRACTOR: Business Tax License# 0260755315

CONTRACTOR CONTACT: DAVID KAVAL

CONTRACTOR ADDRESS: 451 EL CAMINO REAL, STE 220  
SANTA CLARA, CA 95050

NEW CONTRACT  AMENDMENT  IF AMENDMENT, LIST NUMBER

TERM OF THIS AGREEMENT: EFFECTIVE DATE OF THE AGREEMENT (\*SEE ATTACHED LANGUAGE AT THE BOTTOM) TO (5) FIVE CALANDER YEARS FROM THE EFFECTIVE DATE  
AMOUNT OF THIS CONTRACT: \$

TERM OF ORIGINAL AGREEMENT: TO AMOUNT OF ORIGINAL AGREEMENT:

COUNCIL DATE: 3-27-12

COUNCIL AGENDA ITEM NUMBER: N/A  
Council Resolution Number: N/A

BUDGET REFERENCE:

BUDGET:

APPROPRIATION: TBD

DEPT.: PRNS

CONTACT: JASON CONDIT

PHONE: 793-4198

TYPE OF CONTRACT: Qualified Management Agreement

CEQA STATUS: Mitigated Negative Declaration, PP 10-155, November 2011

**DESCRIPTION OF CONTRACT:**

Operation and Maintenance of the Coleman Soccer Fields

**CONTRACTOR SELECTION PROCESS (CHECK ONE): RFP  RFQ  Date Conducted:**

RFP over \$100,000

**INFLUENCE OF LOCAL PREFERENCE:**

- (Y) Local Business – At least one employee in Santa Clara County
- (N) Small Business – 35 or fewer employees companywide
- (N) Award influence by Local Preference Policy
- (\$ Value) Closest non-Local bid

**ISSUES: (Please list any issues of importance.)**

At this time the funding has not been appropriated for the operations agreement because it is dependent on the completion of the construction

**COORDINATION:**

Department Head Signature

Date 3/19/12

Office  
Asst. to the City Mgr. Signature

Date 4/13/12

1 of 2

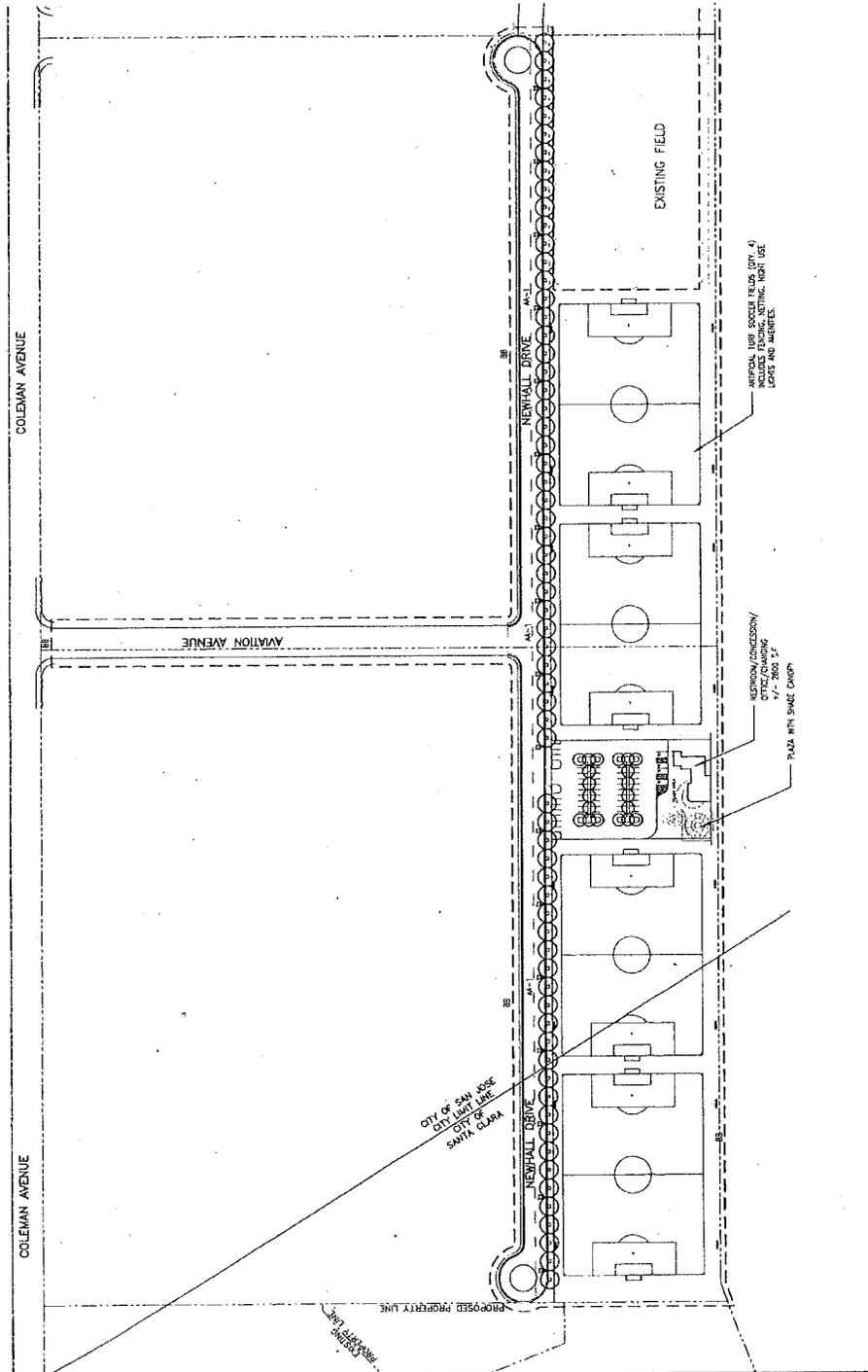
**Attachment**

**\*Effective Date of Agreement.** This Agreement shall be for an initial term of five (5) years (the "Term"). Regardless of the date of execution of this Agreement, the Term of this Agreement shall commence thirty (30) days from the date City notifies Contractor in writing that City has completed the Facility and the installation to fully operational status of all FF&E ("Effective Date") and shall terminate five (5) calendar years from the Effective Date, unless sooner terminated as set forth in SECTION 6. The Parties anticipate that construction shall be completed and the Facility shall commence operation August 1, 2013. However, in no event shall City be liable to Contractor for any delay in completion of the facility for any reason.

Contractor shall provide the City with written notice, no less than twelve (12) months prior to the expiration of the Term of this Agreement or any extensions thereto, that Contractor does not desire to extend the Term of this Agreement. If no such notice is delivered to City by Contractor, the City may extend this Agreement for an additional term of five (5) years upon the same terms and conditions of this Agreement by providing written notice to the Contractor no less than six (6) months prior to the then current expiration of the Agreement. City shall not extend the term of this Agreement for more than two terms of five (5) years.

2 of 2

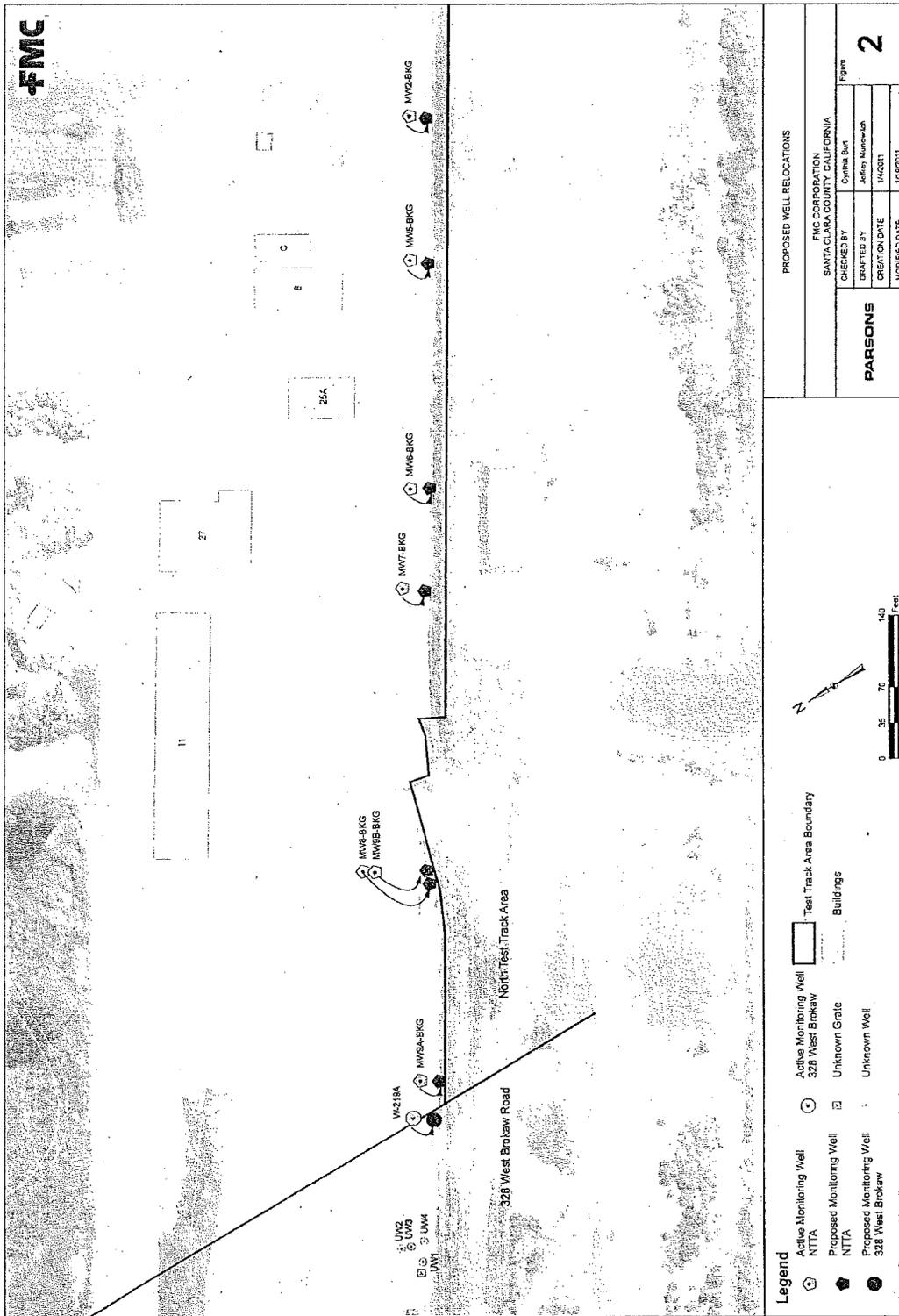
### EXHIBIT A-1 COLEMAN AVENUE SOCCER FACILITY AND MONITORING WELL LOCATIONS



Soccer Facility

COLEMAN SOCCER FIELDS, MANAGEMENT,

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**



Monitoring Well Locations

**Exhibit A-2**  
**Furniture, Fixtures and Equipment provided by City at the Facility**

Items listed below will be provided once by the City. Contractor shall maintain and replace items and shall be in servicable condition for the remaining Term of this Agreement as part of the facility, Exhibit B-1 (i). Replacement items shall be at actual cost at the time that there is a need. Costs listed below are in 2011 dollars.

**Utility Vehicle**

- Manufacturer: John Deere
- Model: Gator XT
- Price: \$8,000
- Total: \$8,000

**Field Sweeper**

- Manufacturer: AgriFab
- Model: Model 45-0456
- Price: \$400
- Total: \$400

**Field Groomer**

- Manufacturer: Groomright
- Model: Per field turf manufactures specification
- Price: \$5,000
- Total: \$5,000

**40 Corner Flags**

- Manufacturer: Kwik Goal
- Model: 6B1504
- Price: \$100 / set of 4 flags
- Total: \$1,000

**6 Sets of Large Goals & Nets**—Kwik Goal type with the tires on the sides for easy movement

- Manufacturer: Kwik Goal

- Model: 2B3806W
- Price: \$3,650 / goal (wheels included)
- Total: \$21,900

**8 Sets of Smaller Goals & Nets**— These are about the size of Futsal Goals. These are great for youth and small sided leagues that will play on the field crosswise and also come with wheels on the side for easy movement).

- Manufacturer: Kwik Goal
- Model: 2B3002 – 4.5' x 9.5'
- Price: \$1,500 / goal (wheels not included:10B407 - \$163 / wheels for 1 goal)
- Model: 2B3003 – 6.5' x 12'
- Price: \$1,780 / goal (wheels not included:10B407 - \$163 / wheels for 1 goal)
- Total: \$13,120

#### **Chains & Locks**

- Manufacturer: Home Depot
- Price: \$500
- Total: \$500

#### **8-16 sets of Benches**

- Manufacturer: Kwik Goal
- Model: 9B22 – 15'
- Price: \$465 / bench
- Total: \$7440

#### **1 Referee Bench**

- Manufacturer: Kwik Goal
- Model: 9B21 – 6'
- Price: \$285 / bench
- Total: \$285

**2 Bench Shields** (for every Bench shield that were purchased you would need one less Bench)

- Manufacturer: Kwik Goal

- Model: 9B401 – 15' Bench
- Price: \$9,500 / shield
- Total: \$19,000

**1 Referee Bench Shields** (for every Referee Bench shield that is purchased you would need one less Bench)

- Manufacturer: Kwik Goal
- Model: 9B701 – 6' Bench
- Price: \$2,775 / shield
- Total: \$2,775

**500 Disc Cones**

- Manufacturer: Kwik Goal
- Model: 6A12 – Pack of 25
- Price: \$8.75 / pack of 25
- Total: \$175

**4 sets of Lacrosse Goals & Nets**

- Manufacturer: Kwik Goal
- Model: 2E501
- Price: \$500 / goal
- Total: \$2,000

**4 sets of Field Hockey Goals & Nets**

- Manufacturer: Kwik Goal
- Model: 2F501
- Price: \$1,870 / goal
- Total: \$7480

**100 Soccer Balls**

- Manufacturer: Kwik Goal
- Model: 1B22 – Size 5
- Price: \$10 / ball

- Total: \$1,000

**10 Soccer Ball / Equipment Bags**

- Manufacturer: Kwik Goal
- Model: 5B5
- Price: \$7.50 / bag

Total: \$75

**40-50 Lacrosse Balls**

- Manufacturer: Sports Authority
- Model: Voit NCAA Spec Lacrosse Balls - Set of 12
- Price: \$29.99 / 12 balls

Total: \$125

**Flag Football Equipment – belts, flags, 12 footballs**

**Footballs**

- Manufacturer: Sports Authority
- Model: Nike Spiral-Tech Official NFHS Football
- Price: \$20.00 / ball
- Total: \$240.00

**Belts / Flags**

- Manufacturer: Sports Authority
- Model: Flag-a-Tag Sonic Flag Football Belts – Set of 12
- Price: \$64.99 / 12 belts and flags
- Total: \$65

**Total \$90,580**

**EXHIBIT B-1**  
**SCOPE OF SERVICES**

The City's intent is that the Facility be used to its full capacity to serve the community for youth and adult recreational/competitive tournaments, clinics, leagues and practices primarily for soccer but may include other sports subject to City approval.

The Contractor will be responsible for management, marketing, operation, security, parking, all labor, equipment, signage and maintenance, of building and grounds of the Facility including full scheduling of training and tournaments, and concession/retail sales including the following:

- (i) the maintenance and repair of all facilities in accordance with the City approved Maintenance Standards, without limitation, all utilities, including, but not limited to, water, electricity, sewer and gas, landscaping and vegetation at the Facility, all paved/hardscape areas to the curblin, elements of the electrical and mechanical systems, all furniture, fixtures and equipment, interior plumbing systems, building exteriors, drains, roofs, exterior lighting, and walkways (such maintenance shall include custodial cleaning services, pest control and trash removal, repairs, routine preventative maintenance, and any other activities necessary to maintain all facilities consistent with comparable soccer facilities in northern California and usable on all occasions as a soccer facility). The schedule for maintenance activities shall be approved by City and shall govern Contractor's performance under this, unless City's PRNS Director has approved a change to the schedule in writing in advance of the date the activity would otherwise be scheduled to occur. The decision to approve schedule changes shall be at the reasonable discretion of City.
- (ii) the organization and management of all admissions, merchandising, security systems and parking facilities at the Facility in a manner consistent with this Agreement.
- (iii) the organization and management of all advertising and public relations programs relating to the Facility, including the preparation and submission to the City of a marketing plan for the Facility to be submitted no later than March 1 annually, which shall set forth in detail the Contractor's strategy for marketing and promoting the Facility, including attendance goals and other relevant information.
- (iv) preparation and submission of draft operating budgets, operating policies, including fees and hours of operation of the Facility, and capital budgets for the Facility as specified in Section 4 hereof and in the Agreement.
- (v) establishing cash flow management and control systems and financial reporting systems for the Facility in conjunction with the City's representatives and the City-approved auditor.
- (vi) employment and management of all Facility personnel in accordance with the employment standards and practices provided by Contractor to City in response to City's Request for Qualifications/Proposals for operations and maintenance of the Facility.
- (vii) procurement and replacement of all furniture, fixtures, equipment and other items (following the original procurement by the City of the items listed in Exhibit A-2) new, unless otherwise designated by the City, and of quality comparable to the original procurement by the City of the of the items listed in Exhibit A-2.
- (viii) procurement of all necessary supplies, materials and retail inventory of good quality and in the amounts necessary to fulfill this Agreement and to accomplish an acceptable

and professional level of maintenance, concessions and retail operations involving at least three (3) quotes.

- (ix) monitoring water consumption to insure adequate, but not excessive water use.
- (x) parking & traffic coordination with Earthquakes Stadium
  - (a) Participate in collaborative event planning with the management team for the Earthquakes Stadium to ensure traffic management plans and overflow parking strategies are coordinated.
- (xi) monitoring well access and coordination with the City and its representatives.

In discharging its responsibilities described above, Contractor shall have full authority to act within the operating and capital budgets approved by City, and otherwise consistent with the marketing, maintenance and security plans approved by the City.

- A. Contractor shall perform each duty and obligation as posed herein in full compliance with all local, county, state and federal laws, including applicable rules and regulations, including a City of San José business license. Contractor and the City shall cause any governmental licenses held by City pertaining to the Facility to be transferred to and maintained in the Contractor's name, or, if the City shall request in writing, in the name of the City.
- B. Contractor shall meet and confer with the City Director, the Director of Finance and any other duly authorized representative of the City as soon as reasonably practicable following delivery to Contractor of a request for such a meeting.
- C. Contractor shall have sole discretion as to all decisions relating to hiring of employees, the employment of employees and the direction of the work force. Contractor shall set all terms and conditions of employment for all personnel the Contractor will employ to operate the Facility, and shall ensure that any approved subcontractors set terms and conditions of employment at least equivalent to the terms and conditions of employment provided by Contractor to City in response to City's Request for Qualifications/Proposals for operation of the Facility. Contractor shall respond within thirty (30) days to any City notice regarding any employee or subcontractor who, in the opinion of the City, is not complying with the terms of this Agreement or sooner as may be specified in the notice for health and safety reasons.
- D. All personnel employed by Contractor or any approved subcontractor to perform services for the Facility shall be neat and clean at all times, and wear appropriate clothing in accordance with standards approved by City.
- E. Contractor shall at all times during the Term of this Agreement meet a City representative monthly or as often as necessary at the direction of the City to review the Contractor's performance under this Agreement. In addition, the Representative will meet weekly with the City's representative to survey the entire Facility to review the field conditions and maintenance schedules.
- F. Contractor will coordinate and facilitate a parking plan with the Earthquakes Stadium during events to ensure no parking or traffic issues. Contractor will also coordinate with City regarding access to mitigation and monitoring wells found on site.

## EXHIBIT B-2 MAINTENANCE STANDARDS

### 1, GENERAL DESCRIPTION OF MAINTENANCE SERVICES

The following is a general description of the types of maintenance services to be provided by Contractor.

- Maintain the irrigation, lighting, plumbing, and sewer systems.
- Provide litter and debris removal, including graffiti removal.
- Trim and clearance prune trees, shrubs and ground cover, including palm trees and grape vines. Trees shall have an 8 foot clearance above footpaths, and turf areas. 14 feet or higher above streets. All interior park lighting must have minimum 2 foot clearance away from trees.
- Mow, edge, aerate and remove thatch in turf areas
- Prepare and properly apply pest control materials and report on type and quantity of materials applied, target pest and location(s)
- Fertilize plant material
- Staking and guying of trees – monitoring, replacing, repairing or removing
- Replace landscape materials, including, Pro-chip or mulch, as needed and as determined by the manufactures recommendation
- Maintain all Facility features, including but not limited to playgrounds, landscape furniture, fences, gates, barricades, pavers, synthetic turf, goal posts, field striping, flag posts and flags, lighting, walkways and curbs, signage, buildings, and parking lots to the curbline.
- Provide erosion control/mediation and pollution prevention
- Weed, disease and pest control, including vertebrate pests
- Provide project supervision and coordinate activities with City staff

#### 1.2 WORK AREAS

Work will be performed in the areas in the City property listed on Exhibit A.

### 2. MAINTENANCE OF LANDSCAPE AREAS

#### 2.1 GENERAL TRIMMING AND PRUNING

- 2.1.1 Experienced professional personnel shall perform all pruning services.

- 2.1.2 Only recognized and approved methods, techniques and standards shall be used. As described in this Exhibit B-2, Exhibit B-1 Scope of Services (or as methods described in natural pruning guidelines from U.C. Extension publications, Arboriculture, Harris, Matheny & Clark, etc.), or as described in the Sunset Western Garden book, Sunset Publishing, January 2007, pages 726-736.
- 2.1.3 Plants pruned improperly or damaged will be replaced by the Contractor with plants of the same appropriate size as determined by the City of San José Project Manager.
- 2.1.4 Excessive pruning or stubbing back will not be permitted.
- 2.1.5 All dead or damaged branches shall be removed.
- 2.1.6 Pruning cuts shall be made cleanly, in one plane, and with no tearing of the bark.
- 2.1.7 All brush is to be removed from the site. No stockpiling of debris will be allowed on this project.
- 2.1.8 Pruning of plant material shall be done for the following conditions:
  - To maintain clearance from other plants, facilities, pedestrian or maintenance vehicular traffic
  - To correct shape, particularly to correct for wind disfigurations
  - To provide visibility of pedestrians and motorists
  - To maintain walkways free from obstructions
  - To eliminate or reduce potentially unsafe situations or spread of diseases

## **2.2 SHRUB & VINE PRUNING**

- 2.2.1 All shrubs shall be pruned to correspond to and enhance the natural form and flowering habit. Shrubs shall be pruned according to guidelines in Sunset Western Garden book, Sunset Publishing, January 2007, pages 722-724 or Arboriculture, Harris, Clark and Matheny, 3<sup>rd</sup> Edition 1999, pp. 462-464.
- 2.2.2 Shrubs shall be pruned using selective cuts to lateral branches, or to the point of origin (thinning cuts). Shrubs shall not be sheared or hedged unless specifically required by the City of San José Project Manager.
- 2.2.3 Shrubs shall be pruned often enough to maintain the optimum size and conformation, and to provide adequate clearance, visibility and maintain walkways free from obstructions.
- 2.2.4 All grape vines shall be pruned and maintained per the direction of a US Certified Crop Adviser (H8 – Viticulture) or other approved credentialed equal who shall be retained by the Contractor at no additional cost to the City.

## **2.3 STAKING AND GUYING**

- 2.3.1 On a monthly basis, Contractor shall check and perform staking and guying of all trees if required.

2.3.2 Trees that are injured by stakes and/or girdled by ties will be replaced by the Contractor as required by the City of San José Project Manager.

2.3.3 Stakes and staking ties shall be checked and adjusted to ensure bark is not injured. The tree is to be tied at only one level below the lowest branches.

2.3.4 The top of the stakes must extend no more than 2 inches above the top tie. Stakes may not extend into the tree canopy where injury to branches could occur.

2.3.5 The nursery stake shall be removed, if present. Stakes/guys shall be removed from trees planted for more than 2 years at no additional cost to the City. Removal of stakes shall be completed during the first year of the service agreement.

2.3.6 Trees that are blown over will be evaluated on a case by case basis by the City. Replanting of trees planted by the Contractor shall be at the Contractor's expense. Removal and replacement of trees planted prior to the Contractor's maintenance period shall be directed by the City at the Contractor's expense.

#### **2.4 REPLACEMENT OF MATERIALS**

2.4.1 Replacement trees shall be of a size, condition and variety acceptable to the City of San José Project Manager. All plants shall be healthy, vigorous stock, free of insects and disease. Specifications for acceptance of nursery stock should follow guidelines in the most recent ANSI Z60.1-2004 standards and Guideline Specifications for Nursery Tree Quality found at <http://www.urbantree.org/newspeccs.asp>.

2.4.2 All replacement plants shall be nursery grown stock and shall have been grown in the specified container for less than twelve (12) months, and shall not have been overgrown in the container so as to become root-bound.

2.4.3 Contractor shall remove all bare, dead or unhealthy turf that results from Contractor negligence or direct damage at no cost to the City. Turf shall be replaced in kind through seeding or sod installation.

2.4.4 Contractor, at no cost to the City will replace any plant material that dies or appears in poor health.

#### **2.5 FERTILIZATION AND SOIL ANALYSES**

2.5.1 All fertilizers and applications must be approved by the City of San José Project Manager.

2.5.2 All woody plant material will be fertilized with 10 lb. IBDU (31-0-0) per 1000 ft. two (2) times per year, in March and October. Fertilizer is to be evenly broadcast over the soil surface.

2.5.3 The Contractor will provide four soil analyses annually prior to the growing season (March - April) to determine fertilization requirements for the season. Samples shall be collected to represent the range in plant performance and soils present. Soils shall be submitted to an approved laboratory and tested for pH, salinity, N, P, K, Ca, Mg, B, Na, Cl, and SAR. Any soil amendments or fertilizers (in addition to IBDU) required to mitigate fertility imbalances or deficiencies indicated by the soil analyses will be furnished by the Contractor and at their sole expense. Sample locations shall be approved by the City of San José Project Manager.

## **2.6 SYNTHETIC TURF MAINTNENANCE**

2.6.1 Contractor shall provide all preventative and scheduled synthetic turf maintenance as described by the synthetic turf manufacturer's specifications.

2.6.2 Contractor shall provide all labor, equipment, supplies and materials to maintain the synthetic turf to the manufacturer's specifications in addition to items provided in Exhibit A-2.

## **2.7 NATURAL TURF MAINTENANCE**

2.7.1 **General.** The Contractor shall maintain all turf areas in a green vigorous condition throughout the year without holes, brown patches or rutting as a result of maintenance activities.

2.7.2 **Mowing.** Turf shall be mowed once a week at minimum or as directed by the City of San José Project Manager to maintain a neat, trim appearance. The cutting edges of all mowing equipment shall be kept in a sharp condition. If reel type mowers are used, they shall be kept in proper adjustment. Bruising, scalping or rough cutting of lawn will not be permitted. All debris shall be removed by the Contractor prior to mowing. All visible clumps of grass clippings shall be gathered and removed from site. Lawns shall be cut to a height of 1-1/2 inches from November through February and two (2) inches from March through October.

2.7.3 **Trimming.** All edges shall be trimmed after each cutting or as necessary to maintain a neat, trim appearance. This trimming shall include cutting all grasses along walls, fences, poles, guy wires and edging all grasses along curbs, sidewalks, mowing strips or any other objects within or immediately adjacent to lawn areas.

- Grasses shall be cut back and a tree buffer zone maintained at a minimum of 24 inches from the base of any tree throughout the life of the tree. This buffer zone shall be kept weed and grass free and the bare soil covered by a two inch layer of mulch. Care shall be taken to avoid damage to tree trunks, shrubs, sprinklers and other structures when trimming. All damages shall be reported to the City of San José Project Manager, and the Contractor shall promptly make the necessary repairs at his own expense.

2.7.4 **Watering.** Turf shall be deeply watered, as weather conditions require, to provide moisture for optimum growth. Irrigation of hard fescue and tall fescue shall be set to maintain a minimum 12-inch rooting depth of moisture. Water usage shall be based on eighty percent (80%) of the evapotranspiration (ETo) requirements for the region. The ETo requirements can be found at <http://www.cimis.water.ca.gov/cimis/welcome.jsp>. Cycling of the irrigation system may be required to provide adequate deep moisture while avoiding any run off or ponding of irrigation water.

- Turf shall at no time show a lack of fresh green color or a loss of resilience due to lack of water. Watering shall be done in such a manner as to avoid erosion, excessive run-off, ponding or creation of a waterlogged soil condition. Hoses and sprinklers shall be used to supplement the sprinkler system where necessary to insure complete coverage.
- If the permanently installed sprinkler system is not working properly, or adequately covering the areas, the Contractor shall provide means for adequately and uniformly addressing the watering areas. This may include, but not limited to raising heads, cleaning heads, adjusting nozzle, etc.

2.7.5 **Fertilizer Application.** Turf shall be fertilized a minimum of four (4) times per year. Applications shall be limited to two formulations of fertilizer, 37-0-0 (Sulfur Coated Urea) and 16-8-8. Fertilizers shall be applied at a rate of one to two (1-2) pounds of Nitrogen per thousand (1000 ft<sup>2</sup>) square feet dependent on the formulation used. Total annual Nitrogen shall not exceed six (6) pounds per thousand (1000 ft<sup>2</sup>) square feet. Formulation 46-0-0 shall be applied from spring to early fall and 16-8-8 shall be applied from late fall to early spring. When specific nutrient deficiencies are noted, additional fertilization may be required as directed by the City of San José Project Manager. Any and all damage due to improper fertilization shall be corrected at the Contractors expense. All fertilizers and applications must be approved by the City of San José Project Manager.

2.7.6 **Aeration and Thatch Removal.** Turf shall be aerated at least twice per year to achieve a minimum depth of three (3) inches. Once aeration has been completed, lawns shall be fertilized as previously specified. The Contractor at no cost to the City shall repair any and all damage to the adjacent irrigation heads, wires, or system as a result of aeration.

- Thatch removal must be done with enough frequency to allow no more than one-half inch of accumulated thatch when compressed. Cost for thatch removal is a separate payment based on the quoted square footage price.

2.7.7 **Replacing/Repairing Turf.** All bare, dead, or unhealthy turf areas caused by Contractor negligence, poor maintenance, faulty equipment, programmed or un-programmed use, etc. shall be re-seeded or removed and sod installed at no additional cost to the City

## 2.8 GRAFFITI ABATEMENT

2.8.1 Graffiti shall be eradicated within 24 hours of being observed or reported.

- 2.8.2 Graffiti removal shall be accomplished by the use of American Protective Coatings SK-1 Graffiti Remover or approved equal, properly applied. American Protective Coatings SK-1 Graffiti Shield or approved equal shall then be applied per manufacturers' specifications.
- 2.8.3 Signs within serviced areas shall be kept in proper and readable condition at all times. Contractor shall be responsible for repair and/or replacement of vandalized, damaged, or illegible signage within one (1) week of notification of damage or wear.
- 2.8.4 Contractor shall report all graffiti that is eradicated at the Facility to the City of San Jose's Anti-Graffiti Program.
- Graffiti eradication reports shall be submitted electronically to [antigrffiti@sanjoseca.gov](mailto:antigrffiti@sanjoseca.gov), or by other means approved by City of San José Project Manager.
  - Graffiti eradication reports shall include graffiti location and description, date and time of first observing graffiti, time of graffiti eradication, amount of time spend on eradication, and amount of graffiti square feet eradicated.
  - Contractor shall maintain graffiti eradication records for the purpose of supporting police prosecution and court restitution of graffiti crimes.

## **2.9 PROPERTY FENCE LINES**

- 2.9.1 All planted material shall be kept one (1) foot from a good neighbor fence, or as directed by the City of San José Program Manager.

## **2.10 PEST AND DISEASE CONTROL - TURF, TREE, SHRUB AND GROUND COVER**

- 2.10.1 A copy of the Contractor's State Pesticide Report must be furnished each month.
- 2.10.2 It is the Contractor's responsibility to monitor pest population(s) and develop an appropriate pest management program for control. The Contractor shall maintain pest populations and disease infestations below the level at which they cause a reduction in plant health, vigor and aesthetics. Cultural practices shall be employed to minimize pest populations. Least toxic, effective chemicals shall be used, with emphasis on biological controls, when available.
- 2.10.3 Contractor shall treat all landscape areas for insects and diseases at the request of the City. Insects and diseases shall be controlled by the use of approved insecticides and fungicides with specific recommendations by a licensed Pest Control Advisor provided by the Contractor.

## **2.11 VERTEBRATE PEST [RODENT] CONTROL**

- 2.11.1 Contractor is advised that all landscape areas are adjacent to native open space. Rodent pest infiltration will affect landscaped areas.
- 2.11.2 Contractor agrees to monitor and eradicate, as needed, all gophers, voles, moles and other related pests from all landscaped areas as described in this Scope of Services.

- 2.11.3 Moles, voles, squirrels, and gophers shall be controlled by approved methods with specific recommendations by a licensed Pest Control Advisor. At this time, surface bait broad casting is not permitted.
- 2.11.4 In the event of visible evidence of pest(s) infestation, Contractor will restore the area to its proper condition.
- 2.11.5 Contractor agrees to provide material safety data sheets on any and all pesticides used on the site prior to their application. Poison baits or traps must be placed so as not to create a hazard to children or pets.

## **2.12 INTEGRATED PEST MANAGEMENT (IPM)**

- 2.12.1 Integrated pest management is a decision making process for managing pests that uses monitoring to determine pest injury levels and combines biological, cultural, physical and chemical tools to minimize health, environmental and financial risks.
- 2.12.2 IPM emphasizes the use of extensive knowledge about the target pests, such as infestation thresholds, life histories, environmental requirements and natural enemies to compliment and facilitate biological and other natural control measures of pests.
- 2.12.3 IPM uses the least toxic pesticides only as a last resort for controlling pests. Please reference
- 2.12.4 Compliance with City IPM Policy
  - Contractor shall obtain and comply with all requirements of the City of San José's Integrated Pest Management (IPM) policy which shall be provided to Contractor by City in its entirety.
  - Contractor shall apply all pesticides with extreme care and caution to avoid any hazard to persons, pets, property and environment.
- 2.12.5 Best Management Practices (BMPs) and Standard Operating Procedures (SOPs)
  - Contractor shall obtain and comply with pest specific City BMPs and SOPs. If contractors wish to propose the use of other BMPs and SOPs, the Contractor must submit a copy of the proposed BMPs and SOPs in writing to the City of San Jose Project Manager for review and approval. City of San José Project Manager approval of BMPs and SOPs will be based upon degree of conformance with the City IPM Policy, BMPs and SOPs.

## **2.13 USE OF PESTICIDES**

Contractor shall comply with all federal, state and local rules and regulations that govern the use of pesticides, including the City of San José's IPM Policy. Pesticides utilized for control of pests on City property shall have current EPA registration and be applied in strict accordance with label directions. All pesticide use on City property shall be subject to advance approval by the City of San José Project Manager

## 2.14 PESTICIDE APPROVAL AND APPLICATION

- 2.14.1 As required by law, each person performing pest control activities shall be certified by the State of California. All recommendations for pest control must be in compliance with the current Integrated Pest Management policies and guidelines of City of San José. All pesticide applications shall receive advance approval from the City of San José Project Manager.
- 2.14.2 The Contractor shall provide written recommendations from a licensed California Pest Control Advisor (PCA) for any pesticides approved for use on City of San José property. Any Contractor employee who applies Class I pesticides shall possess a qualified applicator certificate (QAC) from the State. This certification (silver card) and written pesticide recommendations shall be with the employee while applying any pesticides.
- 2.14.3 Any Contractor personnel who oversee the application of pesticides shall possess a qualified application license (QAL) from the State. This license (brown card) and written pesticide recommendations shall be with the employee while supervising any pesticide application on City property.

## 2.15 PESTICIDE USE REPORTING

Contractor shall submit monthly pest management reports to the City of San José Project Manager. Reports shall be supplied in Microsoft Excel using approved pesticide report form. The report shall contain the following information:

- 2.15.1 Date and time of pesticide application or service\*
- 2.15.2 Site of the pesticide application\* (and Project ID/Purchase order, if applicable)
- 2.15.3 Manufacturer and name/formulation of product applied\*
- 2.15.4 Pesticide EPA registration number\*
- 2.15.5 Targeted Pest\*
- 2.15.6 Amount of product applied\*
- 2.15.7 Name of applicator
- Indicates required field for Stormwater tracking purposes

## 2.16 RESTRICTED PESTICIDES

- 2.16.1 Before Contractor can apply a California Restricted Material on a City of San José site, the Contractor must first obtain a copy of the City of San José's Restricted Use Materials Permit that will be provided by the Project Manager. Before the application can be made, the operator must notify the City of San José Project Manager 24 hours in advance of the application. The Contractor must provide the City of San José Project Manager with a copy of the notice of intent per site. This should correlate to the monthly usage report also provided by the Contractor.

2.16.2 All undeveloped frontages shall be kept free of weeds in the 12-foot strip of land measured from the face of curb. (Includes curb, gutter, sidewalk and regional trail)

2.16.3 All areas shall be serviced weekly. No weeds taller or wider than four inches are allowed in any service area.

## **2.17 WEED CONTROL**

2.17.1 Extreme cautionary measures shall be observed if applying selective weed killers, as not to damage any other plants.

2.17.2 Landscape (including mulch areas) and hardscape shall be kept free of weeds. Weeding may be done manually or by the use of selective weed killers with specific recommendations by a licensed Pest Control Advisor.

2.17.3 Turf shall be kept weed free. This may require the use of pre-emergent to prevent crab grass.

2.17.4 All areas shall be serviced weekly. No weeds taller or wider than four inches are allowed in any service area.

## **2.18 DEBRIS AND LITTER CONTROL**

2.18.1 All litter and debris will be removed from the serviced areas including all planted areas, slopes, creek trails, native areas, curb and gutter pan, hardscape areas and illegal signage on sign, signal and light poles promptly.

2.18.2 All trash receptacles will have its content removed a minimum of two times per week at no additional cost to the City. Overflowing trash receptacles shall not be permitted. Contractor shall program garbage removal so as to eliminate overflowing trash receptacles over weekends/holidays.

2.18.3 Contractor shall dispose of litter/debris/garbage at their sole cost.

2.18.4 All areas shall be serviced weekly, or as directed by City of San José Project Manager, to maintain a clean and groomed appearance.

2.18.5 Contractor shall submit a monthly report to City of San José Project Manager detailing amount of trash, green waste, and recycled material removed from the Complex.

## **3. MAINTENANCE OF IRRIGATION SYSTEM**

The irrigation system consists of automatic controllers, low voltage wires, remote control valves, irrigation laterals, risers, low volume drip bubblers, filters, pressure regulators, pressure relief stations and all other incidentals associated with standard City irrigation systems, and any irrigation system improvements.

Maintenance of the system shall include, but not be limited to, all expenses related to the following items:

- 3.1.1 Annual blowing out of lateral lines to remove debris by removing the last irrigation head and flushing lines
- 3.1.2 Monthly exercising of controllers and valves,
- 3.1.3 Monthly checking of mains, laterals, risers and heads for leaks,
- 3.1.4 All repairs/replacements from down stream of each station valve.
- 3.1.5 Checking drip bubblers for correct flow, cleaning filters, adjusting pressure reducing valves, and cleaning and adjusting valves,
- 3.1.6 Raising and/or straightening of heads that are sunken and/or tipped as necessary or as directed,
- 3.1.7 Cleaning and adjusting valves, emitters, bubblers and sprinkler heads for optimum performance,
- 3.1.8 Annual cleaning of all Y-strainers,
- 3.1.9 Monthly irrigation reports.
- 3.1.10 In the event of a drought, the Contractor shall cooperate in the enforcement of mandated water allocations.
- 3.1.11 Contractor shall be responsible for all repairs to the irrigation system at their cost for all components down stream of the water meter.
- 3.1.12 Contractor shall assign a Certified Landscape Technician (CLT) who has passed the irrigation section of the California Landscape Contractors' Association certification exam to perform all monthly system checks and any repairs to the irrigation system as needed or per Contractor's management plan.
- 3.1.13 The CLT will receive training from the irrigation controller representative for use of the irrigation controllers. The CLT shall keep all irrigation controllers functioning properly and at less than 80% of the calculated ETo for each irrigation controller.
- 3.1.14 A complete irrigation system check must be completed monthly.
- 3.1.15 Contractor shall respond and make necessary repairs within forty eight hours.

### **3.2 IRRIGATION REPORTS**

- 3.2.1 A complete irrigation system review and written report shall be done every thirty (30) days after the initial inspection period has ended. The written report shall list each controller and valve station condition, date and time checked, irrigation schedule and maintenance performed (i.e., adjusting, cleaning, etc.), please reference Exhibit B-3 for Irrigation Inspection Form.
- 3.2.2 Damage reports or problems not resulting from the Contractor's activities or negligence shall list the approximate cost of the repair or modification in addition to the date checked, controller, valve number and type of problem.
- 3.2.3 The irrigation report shall be submitted along with the monthly billings and must be approved by the City of San José Project Manager prior to any payment.

### **3.3 IRRIGATION REPAIRS**

- 3.3.1 Irrigation repairs shall be completed within forty-eight (48) hours at the cost of the Contractor. Installation of replacement parts must be as per original design intent.
- 3.3.2 The same exact parts (i.e., same drip bubbler with same G.P.H. rating) must be used for replacements unless otherwise specified by the City of San José Project Manager.

### **3.4 IRRIGATION SYSTEM SCHEDULING**

- 3.4.1 Irrigation shall be scheduled with appropriate frequency and duration to meet the water requirements of the plants served by the valve.
- 3.4.2 Irrigation frequency shall be based on evapotranspiration (ET<sub>o</sub>). The target range for water usage in all areas shall be 60% to 80% of the ET<sub>o</sub> reported for the region on CIMIS. CIMIS data can be obtained at the State of California website [www.cimis.water.ca.gov](http://www.cimis.water.ca.gov).
- 3.4.3 Irrigation duration shall be adjusted for each valve to apply the appropriate amount of water required to uniformly wet the root zone of the plants within that irrigation zone. Irrigation duration shall consider the following:
- Precipitation rate (inches per hour) of the specific sprinkler operated by that valve.
  - Infiltration rate of the soil.
  - Water holding capacity of the soil (inches of available water per foot of soil).
  - Rooting depth of plant material:
    - Turf 8"
    - Ground cover 12"
    - Shrubs 24"
    - Trees 36"
- 3.4.4 Irrigation shall be applied in a manner to avoid erosion, excessive run-off, ponding, or creation of a waterlogged soil condition. Irrigation cycling may be required to maintain proper soil moisture levels.
- 3.4.5 Controller:
- Irrigation controllers shall be programmed as much as necessary, and as climate conditions dictate or as directed by the City of San José Project Manager.
  - Controller programming shall adhere to the scheduling requirements set forth by the City of San José Project Manager, if any.
  - Controller programs shall be designed to conserve water and encourage deep rooting of all trees and ground cover.
  - Controllers shall be set to irrigate between the hours of 9:00 p.m. and 5:00 a.m.

- Contractor is responsible for supplying replacement batteries in the controllers at no additional cost to the City.

#### **4. MAINTENANCE OF FURINTURE, FIXTURES AND EQUIPMENT (FF&E)**

FF&E inspection shall occur based on manufacturer's recommendation. If manufacturer's recommendations are not available the service provider shall provide a schedule for inspection to the City Contract manager for approval.

Unsafe shall be removed, locked, caution taped, barricaded or otherwise isolated from use. Contractor shall document inspections. Notification of needed FF&E replacement shall be submitted to the Contract Manager before the next business day. The Contractor shall continue to lock, caution tape, barricade or otherwise isolate from use unsafe FF&E until repaired.

#### **5. MAINTENANCE OF HARDSCAPE AREAS**

- 5.1 Contractor is responsible for maintenance of all hardscape areas, including parking lot (including diagonal parking space along frontage road), sidewalks, walkways, curbs and gutters, and plaza area.
- 5.2 Contractor shall provide a schedule of maintenance for all hardscape areas, which shall include striping of parking areas, resurfacing of parking areas, cleaning and pressure washing, and removing surface hazards, for example replacing lifted sidewalks caused by tree roots.

#### **6. MAINTENANCE OF DRINKING FOUNTAINS**

- 6.1 Drinking fountains shall be wiped clean, sanitized, polished and free of spots, grease and smudges and fully functional.
- 6.2 Clean and polish all drinking fountains attached to restroom building with the proper cleaner that is certified by the USDA to be non-toxic. Remove graffiti.
- 6.3 Spot clean and remove gum.
- 6.4 Use spotter and stiff brush on dirt and grease spots

#### **7 JANITORIAL SERVICES**

##### **7.1 GENERAL**

- 7.1.1 Performance Standards: Where a specific performance standard has been specified that standard shall apply. Where none has been specified, the services shall be performed to a commercially reasonable standard.

7.1.2 Contractor shall cooperate with any representative authorized by the City to determine Contractor's conformity with the specifications and the adequacy of the work performed.

7.1.3 Contractor will provide trained and qualified janitorial personnel.

## 7.2 SUPPLIES, MATERIALS, AND EQUIPMENT

7.2.1 Contractor shall furnish all supplies, materials, consumables including but not limited to toilet paper, hand towels, seat cover paper products as well as all equipment necessary to perform the work specified under these Maintenance Standards at their own expense.

7.2.2 Contractor shall stock consumables in Restrooms as products are consumed.

7.2.3 Contractor shall use Approved Certified Green Cleaning Chemicals, unless otherwise approved by City. Contractor will supply the City with a list of Approved Certified Green Cleaning Chemicals that will be used to clean Park Restrooms, including a material safety data sheet (MSDS) for each substance. Contractor shall use paper products and plastic liners that contain a percentage of recycled material that meets EPA guidelines for post consumer waste content.

## 7.3 BUILDING CLEANING TASKS

### 7.3.1 Trash stations

Empty all trash bins at each restroom and replace liners when existing liner becomes dirty. Place all collected trash in appropriate containers as directed by City's Contract manager. Wash trash container and remove graffiti.

### 7.3.2 Toilets

Clean all toilet bowls with a toilet bowl brush and disinfectant cleaner. Damp wipe all sides and undersides of toilet. Clean and dry all chrome fixtures. Remove graffiti. Eliminate urine, fecal, and other unacceptable odors.

### 7.3.3 Urinals

Clean all urinals with a toilet bowl brush and disinfectant cleaner. Damp wipe all sides and undersides of urinals. Clean and dry all chrome fixtures. Remove graffiti. Eliminate urine, fecal, and other unacceptable odors.

### 7.3.4 Diaper Changing Stations

Sanitize and disinfect diaper changing stations. Remove all marks, smudges, graffiti and fingerprints. Dry diaper changing stations after cleaning.

7.3.5 Sinks

Clean all sinks with a cloth and appropriate cleaner. Make sure all sides and undersides of sinks are cleaned. Clean and dry all chrome fixtures. Remove graffiti.

7.3.6 Mirrors and Windows

Clean all mirrors with a soft cloth and glass cleaner. Remove graffiti.

7.3.7 Handrails

Clean all handrails with proper cleaning solution of all dust, smudges, handprints and fingerprints. Remove graffiti.

7.3.8 Counters

- Clean all counters with a sponge and appropriate cleaner areas to remove any stains, spots, grime and graffiti.
- Clean all soap dispensers with a damp cloth, and dry unit after cleaning. Make sure that units are in proper working order. If not working, notify City's Building staff or Contract Manager as appropriate.
- Clean all paper towel dispensers with a damp cloth, and dry unit after cleaning.

7.3.9 Restock paper towel dispensers

Ensure there are sufficient paper towels in all dispensers to last unit until the next service. Extra supplies needed shall be kept in the custodial closet if available. Remove graffiti.

7.3.10 Restock toilet paper dispensers

Ensure there is sufficient toilet paper in all dispensers to last until the next service. Extra supplies needed shall be kept in the custodial closet if available. Remove graffiti.

7.3.11 Restock toilet seat covers

Ensure there are sufficient toilet seat covers in all dispensers to last until the next service. Extra supplies needed shall be kept in the custodial closet if available. Remove graffiti.

7.3.12 Replenish Hand Soap Dispensers

Ensure there is sufficient hand soap in all dispensers to last until the next service. Extra supplies needed shall be kept in the custodial closet if available.

7.3.13 Clean all vertical surfaces

Damp wipe all toilet partitions and wall areas showing any stains, spots, grime and remove all graffiti. Dust the tops of all partitions and ledges. Disinfect surfaces.

7.3.14 Floors

- Sweep entire interior floor area including all edges.

- Sweep entire exterior restroom entrance area including all edges.
- Damp mop entire interior floor area including all edges with the proper disinfectant solution that will not dull the floor.
- Remove all chewing gum from all floor surfaces. Remove graffiti. Eliminate urine, fecal, and other unacceptable odors.

#### 7.3.15 Ceilings

Wipe and dust all ceiling areas showing any stains, cob webs, spots, debris, grime and remove all graffiti.

#### 7.3.16 Lights

Replace burned out lights, ensuring to use the correct color, type, and wattage lamp. Clean light fixture and diffuser (if any) when replacing any bulb or tube

#### 7.3.17 Restroom Opening Services

Contractor shall be responsible for unlocking restroom doors and open restrooms for public use no sooner than 5:00 a.m. and no later than 8 a.m. Any change in opening and/or closing schedule as deemed necessary by City shall be promptly reported to the Contractor.

#### 7.3.18 Office/Changing Room Building Public and Private Access

- Contractor shall be responsible for all public and private access to the Office/Changing Room Building. Contractor shall be responsible for all security, monitoring, programming, and operations of the Office/Changing Room Building.

#### 7.3.19 Restroom Closing Services

- Contractor shall lock restroom doors and close restroom to public use no sooner than the posted park closure time and no later than 1 hour after sunset as posted by the San José Mercury News.
- Contractor shall ensure restrooms are vacated of all occupants prior to locking doors.
- In the event of an emergency or difficulty clearing restroom of all occupants call SJ Police Dept Dispatch @ 408-277-8956.
- Locking of restrooms following a specific Facility scheduled activity shall occur no later that one hour after the end of the specific Facility scheduled activity.

### 7.4 SUBCONTRACTING WORK TO BE REIMBURSED BY CITY

Whenever Contractor shall subcontract for maintenance services at the Facility which services will be reimbursed in full or in part by City, the following provisions shall apply:

- 7.4.1 Contractor may subcontract with a City approved specialist to provide the maintenance services set out in this Exhibit B. It is the responsibility of the Contractor to maintain a daily log of man-hours, equipment and supplies provided by the subcontractor. The daily log of man-hours worked by the subcontractor must be provided to the City of San Jose Project Manager, along with the list of supplies and equipment provide by such subcontractor, shall be provided with the final invoice at the end of the subcontracted work, unless otherwise requested by the City of San José Project Manager.
- 7.4.2 Records: The Contractor shall maintain all records related to maintenance services by subcontractors in such a manner as to provide a clear distinction between the direct costs of Capital Expenditures (4.7.3) ('CE') and Maintenance, Repair, and Alterations (4.74) ('MRA').
- 7.4.3 From the above records, to the extent such records apply to work that goes above and beyond normal maintenance functions and is therefore considered to be an extra work order as referenced in Section 5.2 of the Agreement, the Contractor shall furnish the City of San José Project Manager completed reports, for all CE & MRA related thereto. The CE & MRA reports shall be submitted not later than fourteen (14) days following the performance of said work. The CE & MRA reports shall list all work completed. The reports shall provide names or identifications of workmen, the hourly rate of pay and hours worked, and also the size type and identification number of equipment, and hours operated. Before presenting the CE & MRA reports to the City of San José Project Manager for payment, the Contractor shall compile the cost of the CE & MRA to be paid for and attach a copy of the written cost estimate.
- 7.4.4 Material charges shall be substantiated by valid copies of Contractor's invoices. Such invoices shall be submitted with the CE & MRA reports, or if not available, they shall be submitted subsequently.
- 7.4.5 Should said Contractor's invoices not be submitted within sixty (60) days after the date of delivery of the material, the City of San José Project Manager reserves the right to establish the cost of such materials at the lowest current wholesale prices at which said materials are available in the quantities concerned delivered to the location of the work, less any discounts. Said CE & MRA reports shall be signed by the Contractor or Contractor's authorized representative.
- 7.4.6 The City of San José Project Manager shall compare Contractor's records with the completed CE & MRA reports furnished by the Contractor and make any adjustments. When these reports are agreed upon and signed by both Parties, said reports shall not preclude subsequent adjustment based on later audit by the City. The cost records pertaining to work paid for on a CE & MRA account basis shall be open to inspection or audit by representatives of the City during the life of the Contract and for a period of not less than three (3) years after the expiration thereof, and the Contractor shall retain such records for that period.

7.5 GENERAL REQUIREMENTS:

7.5.1 LAWS TO BE OBSERVED

Contractor shall be responsible for being fully informed of all existing and future state and federal laws, including O.S.H.A. standards, Santa Clara County regulations, and all municipal ordinances and regulations of the City of San José which in any manner affect those engaged or employed in the provision of the services or the equipment and materials used, or which in any way affect the conduct of the services and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

7.5.2 PERMITS AND LICENSES

The Contractor shall procure all permits and licenses, pay all charges and fees, give all notices necessary and incidental to the due and lawful prosecution of the provision of services.

7.5.3 PATENTS

Contractor shall assume all responsibilities arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the provision of services.

7.5.4 PUBLIC CONVENIENCE AND SAFETY

7.5.4.1 Traffic control procedures stated herein and traffic control standard plans shall be the minimum accepted by the City. Any variations shall be approved by the City of San José Project Manager prior to use. In no way shall compliance with these requirements and standards relieve the Contractor of any liability for claims or damages arising from Contractor's work.

7.5.4.2 Adequate traffic warning and control devices (appropriate size arrow board, cones, etc.) shall be provided and maintained by the Contractor during maintenance activities in accordance with the "U.S Department of Transportation's Manual on Uniform Traffic Control Devices (MUTCD)" latest edition which can be viewed at the following link:  
<http://www.dot.ca.gov/hq/traffops/signtech/signdel/trafficmanual-current.html>

7.5.4.3 A lighted arrow board will be required for all lane closures. When inadequate traffic warning and control devices have been installed, the City shall either provide whatever facilities are deemed necessary as provided in Chapter 11.16, Traffic Control Services, of the City of San José Municipal Code or stop work until adequate devices are installed. Costs for the provision of such facilities will be charged to the Contractor.

7.5.4.4 Flag persons are mandatory at locations where equipment is intermittently blocking a traffic lane or where only one lane is available for two-direction traffic.

7.5.4.5 All the work specified herein shall be considered to be the Contractor's expense, except as otherwise provided for in the Agreement.

7.6 RESPONSIBILITY FOR CONTRACTOR'S WORK REQUIRING CITY ACCEPTANCE

7.6.1 Except as provided above, until the formal acceptance of the services by the City, the Contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part thereof by execution or from the non-execution of the services.

7.6.2 Contractor shall rebuild, repair and restore, and make good all injuries or damages to any portion of the services occasioned by any of the above causes before final acceptance and shall bear the expense thereof.

7.6.3 Contractor shall be responsible for the care or protection of any material or portion of the work, except as expressly provided for in these requirements.

7.7 PRESERVATION OF PROPERTY

Due care shall be exercised to avoid injury to existing improvements or facilities, adjacent property and real or personal property that is not to be removed.

7.8 COOPERATION

7.8.1 Should work be performed by other firms within or adjacent to the limits of the services specified, or should work of any other nature be underway by other firms within or adjacent to said limits, Contractor shall cooperate with all such other firms so that any delay or hindrance to their work will be avoided. The right is reserved to the City to perform other services as additional work at or near the site (including material sources) at any time, by the use of other firms.

7.8.2 When two or more firms are employed on related or adjacent work, each shall conduct their operations in such a manner as to not cause any unnecessary delay or hindrance to the other.

7.8.3 Each firm shall be responsible to the other for all damage to work, to persons or property caused to the other by their operations and for loss caused the other due to Contractor's unnecessary delays or failure to finish the services within the time specified for completion.

7.9 CARE AND PROTECTION

Contractor shall be entirely responsible for any damage to the City's or adjacent property due to Contractor's hauling materials or other causes attributable to the conduct of the Contractor's work, and all such damage will be repaired by the Contractor when and as directed by the City's representative, and as required to place the property in as good condition as before the commencement of the work

7.10 WORKER SAFETY

Contractor shall observe applicable O.S.H.A. and Cal-O.S.H.A. requirements.

7.11 IDENTIFICATION

7.11.1 All personnel who work on this project shall wear clothing or identification, which clearly bears the Contractor's company name or that of an authorized subcontractor. A company photo ID of the employee shall be displayed or displayed upon request.

- 7.11.2 All equipment used in performance of the work shall be clearly marked with the Contractor's name, insignia, or other identifying emblem, or that of an authorized subcontractor. Such markings shall be provided at the Contractor's or subcontractor's sole expense.

**7.12 STORAGE AREAS**

The Contractor is responsible for Contractor's Facility storage for equipment and material, etc. Stockpiling material on the streets or in the public right-of-way is not allowed at any time. Materials and debris will be removed from the job sites by the end of the working day or as soon as is reasonably possible.

**7.13 WATER POLLUTION CONTROL REQUIREMENTS**

- 7.13.1 Water pollution control is intended to provide prevention, control, and abatement of water pollution to storm drain systems, streams, waterways, groundwater, and other bodies of water. The provisions included herein are pursuant to the City of San José's Pollution Prevention Policy (Policy # 4-5), and City Ordinance 15.14.515, "It shall be unlawful to discharge any sewage, industrial waste or other polluted waters into any storm drain or natural outlet or channel without a valid National Pollutant Discharge Elimination System (NPDES) permit."
- 7.13.2 The Contractor shall at all times observe and comply with, and shall cause all the Contractor's agents, employees, and subcontractors to observe and comply with, all existing and future Federal, State, and local laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work.
- 7.13.3 The Contractor shall exercise every reasonable precaution to protect storm drain systems, streams, lakes, reservoirs, bays, and coastal waters from pollution with sediments, fuels, oils, bitumen, pesticides, and other harmful materials and shall conduct and schedule their operations so as to avoid or minimize muddying and silting of said storm drain systems, streams, lakes, reservoirs, bays and coastal waters.
- 7.13.4 The Contractor shall maintain a neat appearance to the work site. The Contractor shall not sweep construction and/or other material into the storm drain system and shall prevent such materials from entering the storm drains. The Contractor is advised that disposal of dirt and/or other debris into the public storm drain system is prohibited under the San José Municipal Code and under California Department of Fish & Game Code.
- 7.13.5 In order to provide effective and continuous control of water pollution, the Contractor shall provide temporary water pollution control measures, including but not limited to, dikes, basins, ditches, tarps, and applying straw and seed, which become necessary as a result of their operations. The Contractor shall provide proper storage and disposal of all materials used in their operations. If the measures being taken by the Contractor are inadequate to control water pollution effectively, the City of San José Project Manager may direct the Contractor to revise their operations and their water pollution control measures. No further work shall be performed on said items until the water pollution control measures are adequate. The City will not be liable to the Contractor for any delays to the work due to the Contractor's failure to provide adequate water pollution control measures.

7.13.6 Any fines or penalties levied against the Contractor for violation of the above and related regulations are the sole responsibility of the Contractor.

## **8 SPECIAL PROVISIONS**

### **8.1 MAINTENANCE EXPECTATIONS**

8.1.1 Contractor to provide proper staffing and procedures throughout the term of the agreement. The management plan includes the staffing to be provided, weekly personnel hours for each staff classification and working days that will be available routinely for maintenance of this contract on a year round basis.

8.1.2 Maintenance expectations for the areas serviced include a specific awareness and working knowledge of the following:

- Landscape maintenance and installation
- Erosion Control
- Seasonal Color
- Weed Control
- Concrete, asphalt and retaining wall maintenance
- Irrigation Systems
- Vertebrate pest control
- Insect and disease pest control
- Graffiti removal
- Recycled water and soil management
- Lighting
- Building maintenance
- Janitorial maintenance

### **8.2 FAILURE TO PERFORM MAINTENANCE**

8.2.1 The Contractor shall be expected to perform maintenance of City-owned properties, as specified, without notice or instructions from the City of San José Project Manager, unless otherwise expressly provide for herein. However, in case of negligence on the part of the Contractor in performing maintenance services, the City of San José Project Manager shall notify the Contractor in writing to perform the specified maintenance.

8.2.2 Failure to respond to said written notice, and to perform said specified maintenance within forty-eight (48) hours, or such other reasonable period of time as may be approved by the City, after receipt of said written notice, will result in the City causing the maintenance work to be done and deducting the cost thereof from the payments due the Contractor.

### **8.3 SUPERVISION**

- 8.3.1 It is the Contractor's responsibility to furnish proper supervision of the project consisting of one employee who oversees and coordinates the maintenance activities. Work under this item includes:
- 8.3.2 Maintaining daily maintenance records indicating inter alia, the amount of the various maintenance activities performed, the hours during which they were performed, employees who performed the work, location and equipment used
- 8.3.3 Preparing monthly reports
- 8.3.4 Summary report of daily maintenance records
- 8.3.5 Landscape areas updates
- 8.3.6 Irrigation report updates
- 8.3.7 Pesticide Reports
- 8.3.8 Providing field supervision and verifying daily assignments of the various maintenance activities
- 8.3.9 Reporting visually obvious deficiencies of any items to the responsible Party, e.g., damaged traffic signs to the City's Signs and Marking Division, etc;
- 8.3.10 Coordinating the efforts of the different maintenance activities to obtain the maximum quality project appearance as well as coordinating with other contractor's
- 8.3.11 Receiving direction from the City of San José Project Manager and, where appropriate, adjusting schedules and the amount of various activities to be performed

### **8.4 AUTHORIZED REPRESENTATIVES**

- 8.4.1 Contractor's authorized representative (Project Manager) shall be supplied, at all times with the names and telephone numbers of at least two (2) persons in charge of or responsible for maintenance services, who can be reached for emergency work twenty-four (24) hours a day, seven (7) days a week.

### **8.5 INSPECTION**

The Contractor's Project Manager, Superintendent or responsible designee shall be available for bi-weekly inspection tours with the City of San José Project Manager (or designated representative) to review the services performed.

### **8.6 CONTRACTOR'S INITIAL INSPECTION PERIOD AND LANDSCAPE AREAS INITIAL REPORTS**

- 8.6.1 During the first thirty (30) days of maintenance, the Contractor shall familiarize himself with the project plans and specifications and inspect all landscape architectural improvements.

8.6.2 At the conclusion of the first thirty (30) days the Contractor shall submit reports describing all plant material (see 7.7) , the irrigation system (see 7.8), the lighting (see 6.9) and associated hard surfaces (see 7.10) within the areas to be serviced.

- The Contractor's initial report, including subsections for plant material, irrigation, lighting and hard surfaces, will be required in order to receive any payments.

8.6.3 Additional Landscape Improvements Initial Reports

- Initial inspection reports will be required for any new area(s) added to service (as described in section 1.5). These supplemental reports shall be submitted at the end of the first thirty (30) days of maintenance.

## **8.7 PLANT MATERIAL INITIAL REPORT**

8.7.1 The Contractor shall review each plant in the landscaped areas. The Contractor's report to the City of San José Project Manager shall address compliance with the construction specifications, missing or dead plant material, the general health and vigor of each species, and potential problems. Any plant material abnormalities and/or deficiencies shall be fully described and documented (may include photographs) and located by irrigation controller and valve station.

## **8.8 IRRIGATION SYSTEM INITIAL REPORT**

8.8.1 After reviewing each controller, remote control valve, irrigation head and water meter, the Contractor's report to the City of San José Project Manager shall address compliance with the construction specifications, and accepted practices of the irrigation, plumbing and electrical disciplines. Also, the report will list any design problems, missing heads, damaged valves or any other items, which in the Contractor's opinion, could hamper the functioning of the system.

8.8.2 The report shall list each irrigation controller and valve by station and zone.

## **8.9 BUILDINGS INITIAL REPORT**

8.9.1 After reviewing all of the building interiors, and exteriors, the Contractor shall report to the City of San José Project Manager any problems of immediate or future consequence. Examples: cracked foundations, leaking roofs, displaced surface, failing / damaged plumbing and or fixtures.

## **8.10 HARD SURFACES INITIAL REPORT**

8.10.1 After reviewing all of the hardscape walkways, paths, surfaces and retaining walls, the Contractor shall report to the City of San José Project Manager any known or suspected problems of immediate or future consequence. Examples: surface undermining, displaced surface, failing / damaged retaining walls.

## **9. REPORTING SUMMARY**

### **9.1 INITIAL REPORTING**

9.1.1 Conduct an initial inspection as described in section 7.6

### **9.2 MONTHLY REPORT REQUIREMENTS**

9.2.1 Summary of landscape maintenance activities performed on a monthly basis for:

- 9.2.1.1 Maintenance of landscape areas as described in section 2 (includes reports on plant material, signage, and fences throughout the serviced areas)
- 9.2.1.2 Irrigation system maintenance as described in section 3.
- 9.2.1.3 Repair and renovation work as described in section 5.

9.2.2 A work schedule describing planned maintenance for the following month (See Exhibit 3 for sample schedules)

9.2.3 Pesticide use reports as described in section 2.15



## EXHIBIT C INSURANCE REQUIREMENTS

CONTRACTOR, at CONTRACTOR'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by the CONTRACTOR, its agents, representatives, employees or suppliers.

### I. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage "occurrence" form CG 0001; and
2. The coverage provided by Insurance Services Office form number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
  4. Professional Liability Errors and Omissions insurance for all professional services.
  5. Comprehensive crime policy

There shall be no endorsements reducing the scope of coverage required above unless approved by the City's Risk Manager.

### II. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
  4. Professional Liability Errors and Omissions \$1,000,000 Aggregate Limit.
  5. A Combination Crime policy with a minimum limits not less than \$250,000 for the following:
    - Form A: Employee Dishonesty
    - Form B: Forgery or Alteration
    - Form C: Theft, Disappearance, Destruction Inside / Outside Premises
    - Form D: Robbery and Safe Burglary Inside / Outside Premises

### III. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles

or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

#### **IV. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
  - a. The City, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors.
  - b. The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents or contractors shall be excess of the contractor's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or contractors.
  - d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors.
2. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, agents and contractors.

#### **3. All coverages**

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

#### **V. Acceptability of Insurance**

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

#### **VI. Verification of Coverage**

Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Contractor's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: [Riskmgmt@sanjoseca.gov](mailto:Riskmgmt@sanjoseca.gov), or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Finance Department  
Risk & Insurance  
200 East Santa Clara St., 14<sup>th</sup> Floor  
San Jose, CA 95113-1905

#### **VII. Subcontractors**

Contractor shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

#### **VIII. Review of Coverage**

These insurance requirements shall be subject to review by the City's Risk Manager. Should the Risk Manager require any changes in coverage, any such change shall be noticed in writing by the City. Contractor shall comply with the change within thirty (30) days of the date of receipt of the notice.



**EXHIBIT D**  
**LABOR COMPLIANCE ADDENDUM**

**SAN JOSÉ LIVING WAGE AND PREVAILING WAGE POLICIES**

<b>Agreement TITLE:</b>	<i>INSERT EITHER: "Name of Agreement" or "Service Order No. ____"</i>
<b>Contractor Name and Address:</b>	

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Service Order is subject to all applicable provisions.

**Payment of Minimum Compensation to Employees.** Contractor shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the attached Exhibit(s) titled **Work Classification and/or Living Wage Determination**.

**A. Prevailing Wage Requirements.** California Labor Code and/ or Resolutions of the San José City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the Term of this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

**B. Living Wage Requirements.** Any person employed by Contractor or subcontractor or City financial recipient or any subrecipient whose compensation is attributable to the City's financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City [4 hours a day or 20 hours a week]; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.

**C. Reports.** Contractor shall file a completed and executed copy of this Addendum with the Department of Finance. Upon award the Department of Finance shall provide the Contractor with compliance documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. **These documents must be returned within 10 days of receipt.** Contractor shall not perform on site work on this contract until labor compliance documents are filed. Contractor shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.

**D. Coexistence with Any Other Employee Rights.** These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

**E. Audit Rights.** All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Contractor or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

**F. Enforcement.**

**1. General.** Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement ("Documentation Provision"). Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively "Goals"):

- a. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
- c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San José because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San José.
- d. It increases competition by promoting a more level playing field among Contractors with regard to the wages paid to workers.

**2. Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions.**

- a. **WITHHOLDING OF PAYMENT:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. **THE City IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS PROVISION MEANS THAT City CAN WITHHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED.** Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be

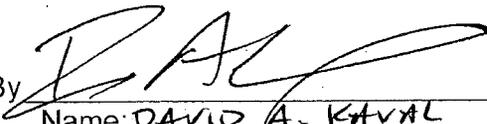
a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.

- b. **RESTITUTION:** Contractor agrees, that in the event of a breach of its obligations, it will pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE City AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**
- d. **ADDITIONAL REMEDIES:** Contractor agrees that in addition to the remedies set forth above City retains the right to suspend or terminate the Agreement for cause and to debar Contractor or subcontractors from future City contracts and/or deem the recipient ineligible for future financial assistance.

CITY

CONTRACTOR

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

By   
Name: DAVID A. KAVAL  
Title: President

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

Date: 4/3/12

## ATTACHMENT I WAGE REQUIREMENTS AND INFORMATION

Pursuant to City of San Jose Prevailing Wage and Living Wage Policies, Contractor and any subcontractor shall be obligated to pay not less than the prevailing wage or living wage in accordance with the requirements of this policy document, and the Wage Determination as indicated in **Exhibit 1** to this attachment.

### I. CITY COUNCIL WAGE POLICIES

#### A. Living Wage Policy

Under City Council Resolution No. 68900, contractors who are awarded certain City service and labor contracts are required to pay a minimum level of compensation to covered employees who work on these projects.

Living wages shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing employees who will perform services pursuant to the Agreement.

If the wage rates set forth in the collective bargaining agreement fall below the then current Living Wage Rate set by the City of San Jose, the required rate of pay shall be the City's Living Wage Rate unless the collective bargaining agreement expressly provides that the agreement shall supersede the requirements of the Living Wage Policy.

If there is no collective bargaining agreement as described above, not less than the following Living Wage Rate must be paid to covered employees performing work identified in the applicable wage determination issued by the City of San Jose's Office of Equality Assurance.

1. If health insurance benefits are provided, a wage of not less than **Thirteen Dollars and Fifty-Nine Cents (\$13.59)** per hour.
2. If health insurance benefits are not provided, a wage of not less than **Fourteen Dollars and Eighty-Four Cents (\$14.84)** per hour.

Please see **Exhibit 1** for Wage Determination

#### B. Prevailing Wage Policy

California Labor Code and/or Resolutions of the City of San Jose require the payment of not less than the general rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations.

Prevailing Wages established by the California Department of Industrial Relations shall be the General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement.

Prevailing Wages established by the City of San Jose shall mean the wages paid under a collective bargaining agreement between the Contractor and a

recognized union representing workers who perform services pursuant to this agreement; or

If there is no collective bargaining agreement as described above, not less than the prevailing rate of per diem wages for the employee craft/classification as determined by the City of San Jose's Office of Equality Assurance.

The City's Prevailing Wage will be subject to annual adjustment on the anniversary date of the agreement. Adjustment will be based on the U.S. Department of Labor/Bureau of Labor Statistics Consumer Price Index, All Items, for all Urban Consumers [CPI-U] for San Francisco-Oakland-San Jose.

#### C. Reports

The Office of Equality Assurance will monitor the payment of prevailing and living wages by requiring the awarded Contractor and all Subcontractors to file a LABOR COMPLIANCE WORKFORCE STATEMENT and LABOR COMPLIANCE FRINGE BENEFIT STATEMENT with supporting documentation.

The awarded Contractor and Subcontractors shall also report such other additional information, including certified payrolls, as requested by the Director of Equality Assurance to ensure adherence to the Policies.

Labor compliance statements must be filed in the Office of Equality Assurance within 10 days of execution of this Agreement at the address below.

City of San Jose  
Office of Equality Assurance  
200 East Santa Clara Street  
Fifth Floor  
San Jose, CA 95113  
Phone: 408-535-8430

**NOTE:** EXHIBITS 2 and 3 ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. PLEASE DO NOT SUBMIT THESE FORMS WITH YOUR PROPOSAL.

## II. LIVING WAGE POLICY PROVISIONS

On November 17, 1989, by Resolution No. 68554 and amended on June 8, 1999 by Resolution No. 68900, the San Jose City Council adopted its Living Wage Policy to meet the employment and economic development needs of low wage workers by mandating:

1. A minimum level of compensation for workers employed by contractors and subcontractors who are awarded certain City of San Jose service and labor contracts with an expenditure in excess of \$20,000 and recipients who receive direct monetary financial assistance from the City in the amount of \$100,000 or more in any twelve month period, excluding non-profit corporations;
2. The provision of health insurance benefits or the ability to afford health insurance;

3. Retention of employees when certain new contractors take over a continuing City service;
4. An environment of labor peace; and
5. Employee Work Environment Evaluation (Third Tier Review)

#### A. WAGE REQUIREMENTS

##### 1. Covered Employees Defined:

For the purpose of this provision, Covered Employees means any person employed by the Contractor or Subcontractor who meets the following conditions:

- a) The person does not provide volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;
- b) The person expends at least half of his/her time on work for the City;
- c) The person is at least eighteen (18) years of age; and
- d) The person is not in training for the period of training specified under training standards approved by the City of San Jose.

#### B. EMPLOYEE RETENTION REQUIREMENTS

One of the provisions of the Living Wage Policy is a requirement that on certain agreements over \$50,000, the new Contractor must retain the workers who have been performing the services under the previous contractor. Employee retention is applicable to the Contractor and all Subcontractors under the Agreement in two respects: (1) the Contractor will be obligated to adhere to these requirements in hiring; and (2) the Contractor will also be obligated to cooperate with the City in transitioning to a new contractor at the end of the term of the Agreement.

The following provisions are applicable to this RFP and will become a part of the Agreement:

##### 1. Qualified Retention Employee Defined

Qualified Retention Employee means any person employed by the predecessor contractor or any subcontractor to the predecessor contractor who meets the following requirements:

- a) The person provides direct labor or service on the Agreement;
- b) The person is not an "exempt" employee under the Fair Labor Standards Act (FLSA); and
- c) The person has been employed on the City contract by the predecessor service contractor or subcontractor for at least six months prior to the date of the new Agreement.

##### 2. Current Eligible Retention Employee Defined

Current Eligible Retention Employee means a current employee of the new Contractor who meets the following requirements:

- a) The person has been employed by the Contractor for at least six months prior to the date of the new service or labor agreement;
- b) The person would otherwise need to be terminated as a result of the implementation of the City of San Jose Living Wage Policy; and
- c) The Contractor chooses to designate the person as a Current Eligible Retention Employee.

The Contractor must establish requirements i. and ii. above by submitting payroll records or other reliable evidence satisfactory to the Director of Equality Assurance. If the Contractor cannot submit such evidence, the employee cannot be designated a Current Eligible Retention Employee.

#### C. EMPLOYMENT OF QUALIFIED RETENTION EMPLOYEES

The new Contractor shall offer continued employment to all Qualified Retention Employees who are interested in such continued employment.

The City's Office of Equality Assurance will provide the new Contractor with information regarding which employees of the predecessor contractor are Qualified Retention Employees to the extent such information is available to the City of San Jose.

Notwithstanding anything to the contrary in this provision, the new Contractor may deem an employee not to be a Qualified Retention Employee if, and only if:

1. The employee has been convicted of a crime that is related to the job or to his/her job performance; or
2. The Contractor can demonstrate to the City that the employee presents a significant danger to customers, co-workers or City staff.

In the event that the new Contractor does not have enough positions available to hire all Qualified Retention Employees desiring continued employment and to retain its Current Eligible Retention Employees, the new Contractor shall hire Qualified Retention Employees and retain Current Eligible Retention Employees by seniority within each employment classification. For any positions that become available during the initial ninety (90) day period of the contract, the new Contractor shall hire Qualified Retention Employees and rehire its Current Eligible Retention Employees by seniority within each employment classification.

##### 1. Retention Requirements

- a) Qualified Retention Employees hired by the new Contractor may not be discharged without cause during the initial ninety (90) day period of their employment.
- b) The new Contractor shall offer continued employment to each Qualified Retention Employee who received a satisfactory performance evaluation at the end of the initial ninety (90) day period of employment.

Such employment shall be offered under the same terms and conditions established by the new Contractor for all of its employees.

2. Third Part Beneficiary

Qualified Retention Employees are third Party beneficiaries of this Agreement which means that the employee has the right to enforce the provisions of the Agreement independent of the City's right to enforce the provisions of the Agreement. The third Party rights will become effective only when the Agreement becomes effective. No third Party rights are intended to apply to any employee regarding the RFP process.

3. Obligations Upon Termination

Upon termination of this Agreement, Contractor shall fully cooperate with all City requests regarding contacts with Contractor's employees to enable a transition in the workforce to a new Contractor.

D. EMPLOYEE WORK ENVIRONMENT EVALUATION (Third Tier Review)

All service or labor agreements are required to undergo an Employee Work Environment Evaluation, commonly referred to as "Third Tier Review." This Review looks into a proposer's history as an employer and work condition commitments. Each proposer is required to complete an Employee Work Environment Questionnaire and return it with the proposal.

If the Questionnaire is incomplete or inadvertently omitted from your proposal, it will not result in immediate disqualification of your proposal. However, failure to submit these forms with your proposal or incomplete submittals, may result in a lower overall score.

E. ENFORCEMENT

1. General

Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or living wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

- a) It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- b) It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.

- c) Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
- d) It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions

- a) **Withholding Of Payment:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. The City is not obligated to make any payment due the Contractor until Contractor has performed all of its obligations under these Provisions. This Provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.
- b) **Restitution:** Contractor agrees that in the event of a breach of its obligations it will pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c) **Liquidated Damages For Breach Of Wage Provision:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing/living wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage

Requirement would be impractical and/or extremely difficult. Therefore, the Parties agree that, in the event of such a breach, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

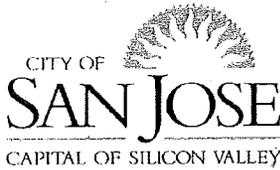
- d) **Additional Remedies:** Contractor agrees that in addition to the remedies set forth above City retains the right to suspend or terminate the Agreement for cause and to debar Contractor or subcontractors from future City contracts and/or deem the recipient ineligible for future financial assistance.

#### F. AUDIT RIGHTS

All records or documents required to be kept pursuant to this Contract to verify compliance with the Wage Provision shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

#### G. COEXISTENCE WITH ANY OTHER EMPLOYEE RIGHTS

These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.



OFFICE OF EQUALITY ASSURANCE  
*Department of Public Works*

**ATTACHMENT I  
EXHIBIT 1**

**COLEMEN SOCCER FIELDS MANAGEMENT, OPERATION AND MAINTENANCE CRAFT  
CLASSIFICATIONS AND WAGE RATES FOR THE  
PERIOD NOVEMBER 1, 2011 THROUGH OCTOBER 31, 2012**

Following are craft classifications and wage rates applicable for the management, operations and maintenance of the Coleman Soccer Facility. The following rates should be paid to employees in each identified classification for work performed from November 1, 2011 through October 31, 2012. Please be aware that the rates contained in the General Prevailing Wage Determination made by the Director of Industrial Relations (DIR) are subject to change as noted under the Classification column shown below. City of San Jose established wage rates are adjusted on the anniversary date of the contract.

**DIR PREVALING WAGE CLASSIFICATIONS & RATES (WAGE INDEX 2011-2)**

Type of Work	Classification	Base Pay	Benefits	Total Pay
<b>Fields &amp; Grounds Maintenance</b>				
Landscape Work, Pruning, Planting, Irrigation System Maintenance	Tradesman: Plumber – Landscape Tradesman II <small>Page 145a/DIR Wage Deter. Exp. 6/30/12**</small>	\$10.40	\$10.20	\$20.60
Ride-on Mower/Synthetic Field Fluffer	Laborer Group 4 <small>Page 49/DIR Wage Deter. Exp. 6/30/12*</small>	\$20.58	\$17.04	\$37.62
<b>Horticultural Maintenance</b>				
Tree Trimming	Laborer Construction Specialist <small>Page 49/DIR Wage Deter. Exp. 6/30/12*</small>	\$27.84	\$17.04	44.88
<b>Turf Maintenance/Fertilizer &amp; Chemical Application</b>				
Repair Synthetic Turf	Carpet Linoleum: Soft Floor Layer <small>Page 145/DIR Wage Deter. Exp 12/31/11**</small>	\$44.82	\$17.50	\$62.32
Fertilizer Application	Tradesman: Plumber – Landscape Tradesman II	\$10.40	\$10.20	\$20.60

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3/21/2012

	Page 145a/DIR Wage Deter. Exp. 6/30/12**			
Pesticides/Herbicides (Licensed Spray Technician)	Laborer Group 3 Page 49/DIR Wage Deter. Exp. 6/30/12*	\$26.89	\$17.04	\$43.93
Pesticide/Herbicide Laborer	Laborer Group 4 Page 49/DIR Wage Deter. Exp. 6/30/12*	\$20.58	\$17.04	\$37.62

**COLEMEN SOCCER FIELDS MANAGEMENT, OPERATION AND MAINTENANCE CRAFT CLASSIFICATIONS AND WAGE RATES FOR THE PERIOD NOVEMBER 1, 2011 THROUGH OCTOBER 31, 2012**

Page Two

Type of Work	Classification	Base Pay	Benefits	Total Pay
<b>Irrigation System Infrastructure</b>				
Maintain/Repair All System Components	Tradesman: Plumber – Landscape Tradesman II Page 145a/DIR Wage Deter. Exp. 6/30/12**	\$10.40	\$10.20	\$20.60
<b>Utility Maintenance</b>				
Sanitary Sewer Maintenance	Laborer Group 1B Page 49/DIR Wage Deter. Exp. 6/30/12*	\$27.14	\$17.04	\$44.18
Water & Natural Gas Systems	Plumber: Underground Utility Pipefitter Page 145a/DIR Wage Deter. Exp. 6/30/12**	\$26.20	\$10.25	\$36.45
Electrical & Lighting Systems	Light Fixture Maintenance – Fixture Washer Page 46/DIR Wage Deter. Exp. 6/30/12**	\$18.03	\$9.01	\$27.04
	Light Fixture Maintenance – Serviceman Page 46/DIR Wage Deter. Exp. 6/30/12**	\$23.10	\$9.34	\$32.44
<b>Building Infrastructure Maintenance &amp; Repair</b>				
Roofing Systems	Rofer Page 145a/DIR Wage Deter. Exp. 7/31/12**	\$32.43	\$15.70	\$47.52
HVAC Systems	Laborer Group 3 Page 49/DIR Wage Deter. Exp. 6/30/12*	\$26.89	\$17.14	\$44.03
Plumbing Systems	Plumber, Steamfitter Page 145a/DIR Wage Deter. Exp. 12/31/11**	\$53.66	\$26.68	\$80.34
Fire Prevention & Suppression	Electrician, Comm & System Tech Page 145/DIR Wage Deter. Exp. 11/20/11*	\$34.01	\$14.35	\$48.36
Telephone Systems & Computer Lines	Telecommunications Tech Page 2B/DIR Wage Deter.	\$28.50	\$7.00	\$35.50

JC:CH:VMT  
3/21/2012

	Exp. 6/1/04*			
Incidental Repairs (doors, windows, benches)	Laborer Group 3 Page 49/DIR Wage Deter. Exp. 6/30/12*	\$26.89	\$17.14	\$44.03
Fencing	Laborer Group 3 Page 49/DIR Wage Deter. Exp. 6/30/12*	\$26.89	\$17.14	\$44.03
Mechanic	Laborer Group 3 Page 49/DIR Wage Deter. Exp. 6/30/12*	\$26.89	\$17.14	\$44.03
Painter	Painter Brush & Spray Page 145/DIR Wage Deter. Exp. 12/31/11**	\$32.66	\$19.59	\$52.55

**COLEMAN SOCCER FIELDS MANAGEMENT, OPERATION AND MAINTENANCE CRAFT  
CLASSIFICATIONS AND WAGE RATES FOR THE PERIOD NOVEMBER 1, 2011  
THROUGH OCTOBER 31, 2012**

Type of Work	Classification	Base Pay	Benefits	Total Pay
<b>Parking Area/Surface Infrastructure/Sweeping</b>				
Parking Lot Sweeping	Operating Engineer Group 8 Page 39/DIR Wage Deter. Exp. 6/24/12**	\$28.51	\$24.85	\$53.36
<b>Parking Area/Surface Infrastructure/Sweeping</b>				
Parking Lot Striping	Parking & Highway Improvement Painter, Striper Page 52/DIR Wage Deter. Exp. 6/30/12*	\$31.35	\$11.65	\$43.00
Parking Lot Resurfacing	Parking & Highway Improvement Painter, Resurfacing Page 52/DIR Wage Deter. Exp. 6/30/12*	\$26.96	\$11.65	\$38.61

**CITY OF SAN JOSE ESTABLISHED CLASSIFICATIONS & PREVAILING WAGE RATES**

Classification	Base Pay	Benefits	Total Pay
Parking Cashier	\$11.88	\$4.36	\$16.24
Traffic Director	\$13.80	\$4.47	\$18.27
Supervisor (Kitchen, Food & Beverage, Catering, Steward etc)	\$16.71	\$3.41	\$20.12
Pastry Chef	\$15.61	\$3.36	\$18.97
First Cook	\$14.93	\$3.34	\$18.27
Cook	\$14.16	\$3.31	\$17.47
Bartender/Banquet Bartender	\$12.08	\$3.21	\$15.29

**CITY OF SAN JOSE LIVING WAGE CLASSIFICATIONS & RATES**

<b>Classification</b>	<b>Living Wage Rate With Benefits</b>	<b>Living Wage Rate Without Benefits</b>
Custodial/Janitorial	\$13.59	\$14.84
Security	\$13.59	\$14.84
Pantry Person/Deli Worker/Café Attendant	\$13.59	\$14.84
Store Room Clerk Shipping/Receiving	\$13.59	\$14.84
Bar Back/Bar Attendant	\$13.59	\$14.84
Host/Hostess/Cashier/Stand Worker	\$13.59	\$14.84
Steward/Porter	\$13.59	\$14.84

**COLEMEN SOCCER FIELDS MANAGEMENT, OPERATION AND MAINTENANCE CRAFT  
CLASSIFICATIONS AND WAGE RATES FOR THE PERIOD NOVEMBER 1, 2011  
THROUGH OCTOBER 31, 2012**

1

<b>Classification</b>	<b>Living Wage Rate With Benefits</b>	<b>Living Wage Rate Without Benefits</b>
Dishwasher	\$13.59	\$14.84
Cocktail Server	\$13.59	\$14.84
Busperson	\$13.59	\$14.84
Food Server	\$13.59	\$14.84

The City of San Jose Living Wage Policy states that if wages set forth in a collective bargaining agreement fall below the current Living Wage rate set by the City, the required rate of pay shall be the Living Wage Rate unless the collective bargaining agreement expressly provides that the Agreement shall supersede the requirements of the Living Wage Policy.

**2 Hours and Days of Work**

**3 (Industrial Welfare Commission Order No. 16-2001)**

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours

in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7<sup>th</sup>) consecutive day of work in a workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh (7<sup>th</sup>) consecutive day of work in a workweek.



ATTACHMENT I  
Exhibit 3



LABOR COMPLIANCE  
FRINGE BENEFIT STATEMENT

CONTRACTOR NAME: San Jose Earthquakes Management, LLC  
CONTRACT: \_\_\_\_\_

I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds, or programs as listed below:

Classification	Fringe Benefit Hourly Amount	Name of the Plan or Fund (Attach Premium Transmittal)
1. <u>Documentation of Plan contribution must be returned with this statement</u> Please attach a copy of your most recent transmission into each medical, pension, or profit sharing plan account indicating worker name and amount of contribution.	Vacation \$ Health & Welfare \$ Pension \$ Apprentice \$ Other (specify) \$	
2. _____	Vacation \$ Health & Welfare \$ Pension \$ Apprentice \$ Other (specify) \$	
3. _____	Vacation \$ Health & Welfare \$ Pension \$ Apprentice \$ Other (specify) \$	

All (or some) fringes are paid in cash by adding the amount to the employee's basic hourly rate.  
San Jose Earthquakes Management, LLC DAVID KAVAL President

Company Name (Please Print) Name and Title (Please Print)

DAVID KAVAL 4/4/12  
Date Signature

ATTACHMENT I  
Exhibit 4  
LABOR COMPLIANCE ADDENDUM



**LABOR COMPLIANCE ADDENDUM**

<b>AGREEMENT TITLE:</b>	<b>Landscape Maintenance Services for Small Parks and Civic Grounds</b>
<b>CONTRACTOR Name and Address:</b>	

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Service Order is subject to all applicable provisions.

**Payment of Minimum Compensation to Employees.** Contractor shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the attached Exhibit(s) titled **Work Classification and/or Living Wage Determination**.

**G. Prevailing Wage Requirements.** California Labor Code and/ or Resolutions of the San Jose City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

**H. Living Wage Requirements.** Any person employed by Contractor or subcontractor or City financial recipient or any sub recipient whose compensation is attributable to the City's financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City [4 hours a day or 20 hours a week]; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.

**I. Reports.** Contractor shall file a completed and executed copy of this Addendum with the Finance Department. Upon award the Finance Department/Purchasing Division shall provide the contractor with compliance documents to be completed and returned (with

supporting documentation) to the Office of Equality Assurance. **These documents must be returned within 10 days of receipt.** Contractor shall not perform on site work on this contract until labor compliance documents are filed. Contractor shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.

**J. Coexistence with Any Other Employee Rights.** These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

**K. Audit Rights.** All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

**L. Enforcement.**

**1. General. Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively "Goals"):**

- e. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- f. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
- g. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
- h. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

**2. Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions.**

- e. **WITHHOLDING OF PAYMENT:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional

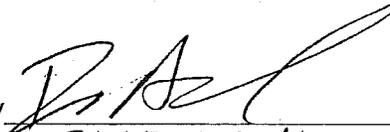
enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS PROVISION MEANS THAT CITY CAN WITHHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED.** Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.

- f. **RESTITUTION:** Require the employer to pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- g. **SUSPENSION OR TERMINATION:** Suspend and/or terminate Agreement for cause;
- h. **DEBARMENT:** Debar Contractor or subcontractor from future City contracts and/or deem the recipient ineligible for future financial assistance.
- i. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**

City

Contractor

By \_\_\_\_\_  
Name: Mark Giovannetti  
Title: Chief Purchasing Officer  
Date: \_\_\_\_\_

By  \_\_\_\_\_  
Name: DAVID KAVAL  
Title: President  
Date: 4/4/12

**ATTACHMENT I**  
**Exhibit 5**  
**EMPLOYEE WORK ENVIRONMENT QUESTIONNAIRE**

**SECTION I: CONTRACTOR INFORMATION**

Contractor Name: San Jose Earthquakes Management LLL Date: 4/14/12  
Address: 451 EL Camino Real Suite 220 Santa Clara CA 95050  
Phone: 408-556-7700 FAX: 408-556-7701  
Prepared by: \_\_\_\_\_ Title: \_\_\_\_\_

**SECTION II: EMPLOYEE HEALTH BENEFITS**

1. Does your company provide a health insurance plan or program for employees?

NO,  do not provide a health insurance plan or program for employees.

YES,  we do provide a health insurance plan or program for employees.

The answer is no, does your company provide benefits in lieu of a health insurance plan? (Be specific. Describe on a separate sheet and attach.)

2. If the answer to Question 1 above is yes, please provide the following information:

2a. Please list the health insurance plan(s) or program(s) offered to your employees (use additional sheets if necessary)

Blue shield, Kaiser, Delta Dental, Vision Service Plan

2b. What is the contribution by the employee per pay period to this plan?

<u>\$ 35</u> for single coverage, no dependents	<u>Kaiser</u>
<u>\$ 158</u> for family coverage, with dependents	<u>\$ 24</u>
	<u>\$ 100</u>

Pay period is (check one):  Weekly  Bi-weekly  Semi-monthly  Monthly

2c. What is the contribution by the company, per employee, per pay period, to this plan?

<u>\$ 289</u> for single coverage, no dependents	<u>Kaiser</u>
<u>\$ 1272</u> for family coverage, with dependents	<u>\$ 199</u>
	<u>\$ 857</u>

2d. How long must the employee be employed by your company before they are eligible for health insurance coverage?

1 Days  Month  Year

2e. What job classifications of your employees are covered by the insurance program outlined above? (Use additional sheets if necessary.)

Full-time front office staff

2f. Does your health insurance coverage pertain to part-time and full-time employees?

Yes  No  If no, please explain. Full-time only

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ATTACHMENT 1  
EXHIBIT-5  
PAGE 1

**SECTION III: EMPLOYEE BASIC BENEFITS**

1. Indicate the basic benefits your workers receive.

Years of Service	# of Vacation Days	# of Sick Days	# of Personal Days
After 1 year	10	10	0
After 5 years	15	10	0
After 10 years	20	10	0

Other: (Explain.)

2. Indicate the paid holidays your workers receive by placing check mark to the left of each.

<input checked="" type="checkbox"/> New Year's Day	<input checked="" type="checkbox"/> Independence Day	<input checked="" type="checkbox"/> Christmas
<input checked="" type="checkbox"/> Martin Luther King Jr. Day	<input checked="" type="checkbox"/> Labor Day	Floating Holiday
<input checked="" type="checkbox"/> Washington's Birthday	Veterans' Day	Other:
<input checked="" type="checkbox"/> Memorial Day	<input checked="" type="checkbox"/> Thanksgiving Day	Other:

3. Do you allow for unpaid leave?  Yes, please explain policy.  No

**SECTION IV: EMPLOYEE COMPLAINT PROCEDURE**

1. Does your company have an employee complaint resolution procedure?

YES (Attach a copy of our company's employee complaint resolution procedure.)  
 NO,  company does not have an employee complaint resolution procedure.

*Employees on state disability FMLA or unaccrued vacation.*

**SECTION V: COMPLIANCE WITH STATE AND FEDERAL WORKPLACE STANDARDS**

Have any of the following State or Federal Regulatory agencies obtained final orders or final judgments finding a violation by your company of State or Federal law relating to the treatment of your employees? If your answer is yes to any of the questions below, please provide the date of entry of the final judgment or order, the agency which obtained the order, and a brief description of the nature of the violation on a separate sheet of paper.

i. California Department of Fair Employment and Housing Department (DFEH).

NO, our company has not had any final judgment or administrative order.  
 YES, our company has had final judgment(s) or administrative order(s).

ii. California Department of Industrial Relations (Cal OSHA).

NO, our company has not had any final judgment(s) or administrative order(s)  
 YES, our company has had final judgment(s) or administrative order(s).

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ATTACHMENT 1  
 EXHIBIT-5  
 PAGE 2

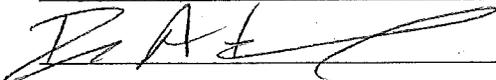
iii. California Department of Industrial Relations (Minimum Wage, hours or working conditions) Labor Board

- NO, our company has not had any final judgment(s) or administrative order(s).  
 YES, our company has had final judgment(s) or administrative order(s).

**SECTION V WARRANTY AND REPRESENTATION**

By signing below, proposer warrants and represents that if proposer is successful, the above listed benefits and complaint procedure will be maintained for the term of the agreement, and proposer declares that, to the best of its ability, it intends to ensure that essential services and labor for which it has been contracted will be provided efficiently and without interruption.

Company: San Jose Earthquakes Management, LLC

Signature: 

Name: DAVID KAVAL

Title: President

Date: 4/4/12

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ATTACHMENT 1  
EXHIBIT-5  
PAGE 3

**EXHIBIT E**  
**HAZARDOUS MATERIALS**

**“Hazardous Materials”** shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

**“Environmental Laws”** shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions; interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

In addition to complying with the provisions set forth earlier in this Agreement, Contractor agrees to the following provisions:

1. **Notification of Release.** Contractor shall be solely and fully responsible for notifying the appropriate public agencies of any Hazardous Material release which occurs on the Facility and is caused by or results from the activities of Contractor, Contractor's officers, agents, employees, contractors, permittees or invitees. Contractor shall, immediately after learning thereof, notify City of any Hazardous Material release which occurs on the Facility, regardless of whether the release was caused by or results from Contractor's activities or is in a quantity that would otherwise be reportable to a public agency, or which occurs on the Facility and is caused by or results from the activities of Contractor. Contractor's officers, agents, employees, contractors, permittees or invitees, regardless of whether the release is in a quantity that would otherwise be reportable to a public agency.
  
2. **Liability.** Contractor shall be solely and fully responsible and liable for:  
  
any Hazardous Material Release which is caused by or results from the activities of Contractor, Contractor's officers, agents, employees, contractors, or subcontractors on the Facility.

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3. Prevention of Release. Contractor shall take all reasonably necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Facility, including, but not limited to any release into soil, groundwater, or the City's sewage or storm drainage system.
4. Obligation to Investigate and Remediate. Contractor, at Contractor's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws:
  - (a) any release or danger of release of Hazardous Material on the Facility, including, but not limited to, into soil or groundwater, or the City's sewage or storm drainage system, which was caused, or results, in whole or in part from the activities of Contractor, Contractor's officers, agents, employees, contractors, and subcontractors.

The failure to commence remediation immediately upon becoming aware of the release and the failure to provide City with a schedule for diligent completion of the remediation which thirty (30) days or such longer periods as may be reasonably required under the circumstances after discover of such release, or danger of release, of Hazardous Material (or such additional time period of time that is reasonably necessary under the circumstances) shall constitute prima facie evidence of failure to promptly commence remediation. In addition to all other rights and remedies of City hereunder, if Contractor does not promptly commence, and diligently pursue to remediate, any such release, or danger of release, of Hazardous Materials, City, in its discretion, may pay to have same remediated and Contractor shall reimburse City within fifteen (15) business days of City's demand for payment. The reasonable payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Contractor. If it is determined that the detection of Hazardous Materials is a condition preceding the effective date of this Agreement or otherwise not the responsibility of Contractor, the City shall reimburse Contractor for all costs and expenses to investigate and remediate the Hazardous Material.

5. Indemnification. Contractor shall defend, indemnify and hold City harmless from and against all loss, damage, liability (but not consequential damages) and expense (including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which City may sustain as a result of:
  - (a) any Hazardous Material release on the Facility, including, but not limited to any release into soil or groundwater, or the City's sewage or storm drainage system, to the extent caused by or results directly from the activities of Contractor, Contractor's officers, agents, employees, contractors, and subcontractors,

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- (b) any Hazardous Material release which is caused by or results from the activities of permittees or invitees on the Facility to the extent caused by the negligent or intentional misconduct of Contractor.

Notwithstanding anything to the contrary contained in this Agreement, Contractor shall not be responsible to notify of, remediate or indemnify for any release or matter for which FMC has assumed responsibility under the FMC Right of Entry Agreement or any other agreement to which FMC is Party.

6. Release of Claims Against City. Contractor releases, acquits and forever discharges City from any and all claims, actions, causes of action, demands, rights, damages, costs, including but not limited to loss of use, lost profits, or expenses, which Contractor may now have, or which may hereafter accrue on account of or in any way growing out of all known or unknown, foreseen and unforeseen bodily and personal injuries and property damage, and the consequences thereof resulting or arising out of the presence or cleanup of any Hazardous Material on the Facility. This release shall not apply to any claims for contribution that Contractor may have against City in the event that Contractor incurs any cost in undertaking any cleanup of Hazardous Material from the Facility ordered by a governmental agency, to the extent that the cleanup order and costs result from a release of Hazardous Material for which Contractor is not responsible and liable under this Agreement. Contractor understands and agrees that Contractor is hereby waiving all such rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States. Said section reads as follows:

"1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

- 7. (a) Cessation of Activities. Contractor shall cease its activities on the Facility to the extent reasonably requested by City, if City determines, in its reasonable opinion, that such cessation is necessary to investigate, cure or remediate any release of Hazardous Materials. Contractor shall not recommence its activities on the Facility until notified by City that such release or danger of release of Hazardous Material has been investigated, cured, and remediated in a manner satisfactory to the City.

8. Records and Inspections.

- (a) Contractor shall maintain, during the Term of this Agreement and for a period of not less than four (4) years after the expiration or termination of this Agreement, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate daily records pertaining to the use, handling and disposal of any Hazardous Material(s) by Contractor, Contractor's officers, agents, employees, contractors, permittees or invitees on or from the Facility.
- (b) Upon request by City, Contractor shall furnish City with such daily records, and such other documentation or reports as Director, from time to time, and at any

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time during the Term of this Agreement, may reasonably require pertaining to the use, handling and disposal of any Hazardous Material(s) by Contractor, Contractor's officers, agents, employees, contractors, permittees or invitees on or from the Facility.

- © After the expiration of four (4) years following the termination of this Agreement, Contractor may destroy the records pertaining to the use, handling and disposal of any Hazardous Material(s) by Contractor, Contractor's officers, agents, employees, contractors, permittees or invitees on or from the Facility, provided, however, that Contractor shall notify City no later than sixty (60) days prior to any proposed destruction of any of said records and shall upon request by City within thirty (30) days after such notice is received.
9. No Third Party Beneficiaries. Nothing contained in this Exhibit shall be construed as conferring any benefit on any person not a Party to this Agreement, nor as creating any right in any person not a Party to this Agreement to enforcement of any obligations created under this Agreement.
  10. Survival of Obligations. Each Party's obligations under this Agreement shall survive the expiration or earlier revocation or suspension of this Agreement.

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DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.

**EXHIBIT F**  
**Proposed Operating Budget**

Period	Year 1		Year 2		Year 3		Year 4		Year 5	
<b>Revenue (Sales)</b>	Dollars	%								
Field Rentals - Weekend										
a) Youth Play	51,300	4.5%	52,839	4.5%	54,424	4.5%	56,057	4.5%	57,739	4.5%
b) Adult Play	185,250	16.2%	190,808	16.2%	196,532	16.2%	202,428	16.2%	208,501	16.2%
<b>Total Weekend Revenue</b>	<b>236,550</b>	<b>20.6%</b>	<b>243,647</b>	<b>20.6%</b>	<b>250,956</b>	<b>20.6%</b>	<b>258,485</b>	<b>20.6%</b>	<b>266,239</b>	<b>20.6%</b>
Field Rentals - Weekday										
a) Youth Play	170,550	14.9%	175,667	14.9%	180,936	14.9%	186,365	14.9%	191,956	14.9%
b) Adult Play	298,500	26.0%	307,455	26.0%	316,679	26.0%	326,179	26.0%	335,964	26.0%
<b>Total Weekday Revenue</b>	<b>469,050</b>	<b>40.9%</b>	<b>483,122</b>	<b>40.9%</b>	<b>497,615</b>	<b>40.9%</b>	<b>512,544</b>	<b>40.9%</b>	<b>527,920</b>	<b>40.9%</b>
Tournament Field Revenue	140,000	12.2%	144,200	12.2%	148,526	12.2%	152,982	12.2%	157,571	12.2%
Tournament Parking	75,600	6.6%	77,868	6.6%	80,204	6.6%	82,610	6.6%	85,088	6.6%
Lighting	88,740	7.7%	91,402	7.7%	94,144	7.7%	96,969	7.7%	99,878	7.7%
Corporate Sponsorship Revenue	72,000	6.3%	74,160	6.3%	76,385	6.3%	78,676	6.3%	81,037	6.3%
Net Concession Revenue (Subtract 30% COGS)	64,029	5.6%	65,950	5.6%	67,928	5.6%	69,966	5.6%	72,065	5.6%
<b>Total Revenue (Sales)</b>	<b>1,145,969</b>	<b>100%</b>	<b>1,180,348</b>	<b>100%</b>	<b>1,215,759</b>	<b>100%</b>	<b>1,252,231</b>	<b>100%</b>	<b>1,289,798</b>	<b>100%</b>

Expenses	Dollars	%								
Full-Time Wages (\$50,000; \$35,000)	85,000	7.4%	87,550	7.4%	90,177	7.4%	92,882	7.4%	95,668	7.4%
Full-Time Wage Benefits (15%)	12,750	1.1%	13,133	1.1%	13,526	1.1%	13,932	1.1%	14,350	1.1%
Part-Time Wages & Benefits (\$15 per hour)	45,735	4.0%	47,107	4.0%	48,520	4.0%	49,976	4.0%	51,475	4.0%
Janitorial	4,200	0.4%	4,326	0.4%	4,456	0.4%	4,589	0.4%	4,727	0.4%
Website & Internet Marketing	4,500	0.4%	4,635	0.4%	4,774	0.4%	4,917	0.4%	5,065	0.4%
Complex Management Software	4,800	0.4%	4,944	0.4%	5,092	0.4%	5,245	0.4%	5,402	0.4%
Fixed Management Fee	78,000	6.8%	80,340	6.8%	82,750	6.8%	85,233	6.8%	87,790	6.8%
Utilities	36,622	3.2%	37,721	3.2%	38,852	3.2%	40,018	3.2%	41,218	3.2%
Field Repairs & Maintenance	12,000	1.0%	12,360	1.0%	12,731	1.0%	13,113	1.0%	13,506	1.0%
Insurance	2,000	0.2%	2,060	0.2%	2,122	0.2%	2,185	0.2%	2,251	0.2%
Telephone	1,200	0.1%	1,236	0.1%	1,273	0.1%	1,311	0.1%	1,351	0.1%
Equipment Purchase	6,000	0.5%	6,180	0.5%	6,365	0.5%	6,556	0.5%	6,753	0.5%
Office Supplies	3,996	0.3%	4,116	0.3%	4,239	0.3%	4,367	0.3%	4,498	0.3%
Marketing	12,000	1.0%	12,360	1.0%	12,731	1.0%	13,113	1.0%	13,506	1.0%
Miscellaneous Expenses	4,000	0.3%	4,120	0.3%	4,244	0.3%	4,371	0.3%	4,502	0.3%

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Capital Reserve Fund	20,000	1.7%	20,600	1.7%	21,218	1.7%	21,855	1.7%	22,510	1.7%
<b>Total Expenses</b>	<b>332,803</b>	<b>29.0%</b>	<b>342,787</b>	<b>29.0%</b>	<b>353,071</b>	<b>29.0%</b>	<b>363,663</b>	<b>29.0%</b>	<b>374,573</b>	<b>29.0%</b>

<b>Soccer Complex Net Income</b>	<b>813,166</b>	<b>71.0%</b>	<b>837,561</b>	<b>71.0%</b>	<b>862,688</b>	<b>71.0%</b>	<b>888,568</b>	<b>71.0%</b>	<b>915,225</b>	<b>71.0%</b>
MLS Ticket Value Provided to the City	78,000	6.8%	80,340	6.8%	82,750	6.8%	85,233	6.8%	87,790	6.8%
<b>Income Plus Community Ticket Value</b>	<b>891,166</b>	<b>77.8%</b>	<b>917,901</b>	<b>77.8%</b>	<b>945,438</b>	<b>77.8%</b>	<b>973,801</b>	<b>77.8%</b>	<b>1,003,015</b>	<b>77.8%</b>

Annual CPI Revenue & Expense Adjustment: 3.0%

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## EXHIBIT G

### EMPLOYEE/VOLUNTEER CLEARANCE VERIFICATION AND COMPLIANCE WITH THE CHILD ABUSE AND NEGLECT AND REPORTING ACT

If Contractor provides services involving minors, Contractor shall conduct a criminal background check through the database of the California Department of Justice as well as an FBI criminal database, or equivalent national database background check approved by City, on each of its employees and volunteers who have supervisory or disciplinary authority over minors.

Contractor shall also comply with the provisions of the Child Abuse and Neglect Reporting Act, California Penal Code Section 11164 *et. seq.* Additionally, Contractor certifies the following:

1. Any and all personnel employed or retained by Contractor in conducting the operations of Contractor's program shall be qualified to perform the duties assigned to them by Contractor. Contractor agrees that Contractor shall not at any time allow its employees or volunteers to be in any position with supervisory or disciplinary authority over minors, if they have been convicted of any offense identified in California Public Resources Code Section 5164 (copy attached).

City and Contractor understand that results of background checks on minors may be confidential under state law. Therefore, all employees or volunteers must be at least 18 years of age if they are to be in a position having supervisory or disciplinary authority over any minor.

If Contractor intends to have employees or volunteers under the age of 18 providing services under this Agreement, Contractor must obtain City's prior consent, and Contractor shall ensure that none of its employees or volunteers under 18 years of age have any supervisory or disciplinary authority over any minor, as such term is used in California Public Resources Code Section 5164.

2. Contractor shall be responsible for ensuring that no person whether paid or not paid by Contractor shall be permitted to provide services unless appropriate background checks, including fingerprints, have been performed no more than two (2) years prior to the beginning of services under this Agreement and are updated on a biannual basis, and the person meets the standards set forth above. If requested by City, and to the extent allowed by law, Contractor shall promptly provide documentation listing each person that has provided or is providing services hereunder, and certifying that the Contractor has conducted the proper background check on such person or persons, and each of the named persons is legally permitted to perform the services described in this Agreement. Regardless of whether such documentation is requested or delivered by Contractor, Contractor shall be solely responsible for compliance with the provisions of this Section.

3. That no person whether paid or not paid by Contractor shall be permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area, unless Contractor has complied with the TB

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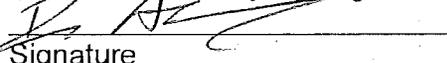
testing requirements set forth in Section 5163 of the California Public Resources Code, verifying that the person or persons has provided evidence/verification of a negative TB skin test reading less than 2 (two) years old (if newly hired) or within 4 (four) years (if current employee) of the date of execution of this Agreement and every 4 years thereafter, if the Term of this Agreement exceeds 4 years. For persons with a positive TB skin test reading, a physician's medical clearance must be obtained prior to services being provided as specified above. Contractor shall keep on file each "Certificate" of clearance for the persons described above, and shall also provide a copy of each Certificate to City. "Certificate" means a document signed by a licensed examining physician and surgeon or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

To the extent Contractor is prohibited from providing the City with a copy of a Certificate, please specify the reasons below. Notwithstanding the foregoing, Contractor certifies that it has the Certificates on file.

4. Contractor understands that if services are rendered on a school site, there may be additional requirements that may apply including without limitation, requirements under the California Education Code. Contractor acknowledges that it is Contractor's sole responsibility to comply with all applicable laws, regulations and licensing requirements in Contractor's provision of services hereunder.

5. Without limitation of any other provision contained in this Agreement or in this **EXHIBIT G**, Contractor shall obtain the FBI criminal database or equivalent national database background check pursuant to the provisions contained in this Exhibit. In no event, however, shall Contractor hire employees or volunteers for supervisory or disciplinary authority over minors who have been convicted of any offense identified in California Public Resources Code Sections 5164. Contractor shall fully indemnify, defend and hold harmless City for any such hiring.

I, the Contractor by signing below verify that I have read and agree to the above:

 \_\_\_\_\_  
Signature Date  
*San Jose Earthquakes Management LLC*  
\_\_\_\_\_  
(Please print or type name of organization)

Reasons for not providing TB Certificates: \_\_\_\_\_  
\_\_\_\_\_

## CALIFORNIA PUBLIC RESOURCES CODE SECTION 5164

**5164.** (a) (1) A county or city or city and county or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county or city or city and county or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over any minor, if that person has been convicted of any offense specified in paragraph (2).

(2) (A) Violations or attempted violations of Section 220, 261.5, 262, 273a, 273d, or 273.5 of the Penal Code, or any sex offense listed in Section 290 of the Penal Code, except for the offense specified in subdivision (d) of Section 243.4 of the Penal Code.

(B) Any felony or misdemeanor conviction specified in subparagraph (C) within ten (10) years of the date of the employer's request.

(C) Any felony conviction that is over ten (10) years old, if the subject of the request was incarcerated within ten (10) years of the employer's request, for a violation or attempted violation of any of the offenses specified in Chapter 3 (commencing with Section 207) of Title 8 of Part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, any of the offenses specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or any of the offenses specified in subdivision (c) of Section 667.5 of the Penal Code, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three (3) or more misdemeanor convictions, or a combined total of three (3) or more misdemeanor and felony convictions, for violations listed in this Section within the ten (10) year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding ten (10) years.

(b) (1) To give effect to this Section, a county or city or city and county or special district shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a). The county or city or city and county or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over any minor, for that person's criminal background.

(2) Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. No fee shall be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.

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### CALIFORNIA PUBLIC RESOURCES CODE SECTION 5163

**5163.** (a) No person shall initially be employed in connection with a park, playground, recreational center, or beach used for recreational purposes by a city or county in a position requiring contact with children, or as a food concessionaire or other licensed concessionaire in that area, unless the person produces or has on file with the city or county a certificate showing that within the last two (2) years the person has been examined and has been found to be free of communicable tuberculosis.

(b) Thereafter, those employees who are skin test negative shall be required to undergo the foregoing examination at least once each four (4) years for so long as the employee remains skin test negative. Once an employee has a documented positive skin test which has been followed by an X-ray, the foregoing examination is no longer required and a referral shall be made within thirty (30) days of the examination to the local health officer to determine the need for follow-up care.

“Certificate” means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with SECTION 2000) of Division 2 of the Business and Professions Code, or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

**5163.1.** The examination shall consist of an approved intradermal tuberculosis test, which, if positive, shall be followed by an X-ray of the lungs.

Nothing in Sections 5163 to 5163.2, inclusive, shall prevent the governing body of any city or county, upon recommendation of the local health officer, from establishing a rule requiring a more extensive or more frequent examination than required by Section 5163 and this Section.

**5163.2.** The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a licensed physician and surgeon.

**5163.3.** The city or county shall maintain a file containing an up-to-date certificate for each person covered by Section 5163.

**5163.4.** Nothing in Sections 5163 to 5163.3, inclusive, shall prevent the city or county from requiring more extensive or more frequent examinations.

[NEED TO ATTACH ATTACHMENT 1]

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DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.

## EXHIBIT H

### FMC RIGHT-OF-ENTRY AGREEMENT, COVENANT AND ASSOCIATED ENVIRONMENTAL DOCUMENTS

**\*NOTE: Contractor acknowledges that they have received an electronic copy of the documents summarized below.**

#### **Environmental Reports and Other Documents, FMC Test Track Area**

February 2012

**Source: Environmental Services Files, Department of Toxic Substances Control  
Envirostor web-site, Regional Water Quality Control Board Geotracker Web-site**

#### **Summary of Documents**

Soil Management Plan, Test Track Area, April 2011 (multiple files)  
Project Status Meeting, Results to Date and Conceptual Project Meeting for the Test Track Area, FMC, August 5, 1997 (multiple files)  
1995 FMC Corrective Action Agreement (two files)  
2002 FMC Corrective Action Agreement (multiple files)  
Current Conditions Report, United Defense LP Ground Systems Division, 1125 Coleman Avenue, San Jose, March 1996  
Risk Evaluation for VOC Infiltration into Buildings, Test Track Area, FMC San Jose Facility, San Jose, CA. July 13, 2001  
Authorization to Discharge Treated Groundwater under the Requirements of Order R2-2004-0055, September 8, 2004  
FMC Test Track Discharge e-mail, April 13, 2006  
Attachment 10 - Analytical Results for Asbestos and Map, 2010  
NTTA Soil Sampling Locations, February 2010  
Test Track VOC Results, 2010  
Draft Notice of Intent Application Form to Receive Authorization or Reauthorization to discharge and/or reuse extracted and treated groundwater resulting from the cleanup of groundwater polluted by Volatile Organic Compounds... No Date  
Approval of Corrective Measures Study (CMS) Report, Test Track Area, November 9, 2001  
Test Track Area Corrective Measures Report, October 2001  
Notice of Determination, Certificate of Fee Exemption, December 24, 2001  
Covenant to Restrict Use of Property, Environmental Restriction, February 22, 2002  
Approval of the Final RCRA Corrective Action Remedy For Test Track Area, December 18, 2001  
Approval of RCRA Facility Investigation Report for Test Track Area, October 23, 2001  
Indoor Air Health Risk Assessment, Test Track Area, January 11, 2002  
Indoor Air Health Risk Assessment Memorandum, September 18, 2002  
Approval of the Revised Operation and Maintenance Groundwater Compliance Monitoring Plan, Test Track Area, October 8, 2002  
Test Track Area RCRA Facility Investigation, October 2001  
Concrete Testing Correspondences (multiple files)

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### **Quarterly Progress Reports**

Quarterly Progress Report No. 38, April 1 through June 30, 2005, Test Track Area  
Quarterly Progress Report No. 39, July 1 through September 30, 2005, Test Track Area  
Quarterly Progress Report No. 40, October 1 through December 31, 2005, Test Track Area  
Quarterly Progress Report No. 44, October 1 through December 31, 2006, Test Track Area

### **Annual Groundwater Monitoring Reports**

2003 Annual Groundwater Compliance Monitoring Report, Test Track Area  
2004 Annual Groundwater Compliance Monitoring Report, Test Track Area  
2005 Annual Groundwater Compliance Monitoring Report, Test Track Area  
2008 Annual Groundwater Compliance Monitoring Report, Test Track Area  
2009 Annual Groundwater Compliance Monitoring Report, Test Track Area  
2010 Annual Groundwater Compliance Monitoring Report, Test Track Area

### **NPDES Self Monitoring Reports**

NPDES Self Monitoring Report Third Quarter 2004, Test Track Area Northern Boundary Groundwater Treatment System  
NPDES Self Monitoring Report First Quarter 2005, Test Track Area Northern Boundary Groundwater Treatment System  
NPDES Self Monitoring Report Second Quarter 2005, Test Track Area Northern Boundary Groundwater Treatment System  
NPDES Self Monitoring Report Third Quarter 2005, Test Track Area Northern Boundary Groundwater Treatment System  
NPDES Self Monitoring Report Fourth Quarter 2005, Test Track Area Northern Boundary Groundwater Treatment System  
NPDES Self Monitoring Report First Quarter 2006, Test Track Area Northern Boundary Groundwater Treatment System  
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