COUNTY OF LOS ANGELES
DEPARTMENT OF PARKS AND RECREATION
"Parks Make Life Better!"

Russ Guiney, Director
John Wicker, Chief Deputy Director

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May 21, 2013

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

APPROVAL OF AN OPERATING AGREEMENT BETWEEN THE SOUTH COAST BOTANIC GARDEN FOUNDATION, INC. AND THE COUNTY OF LOS ANGELES FOR THE SOUTH COAST BOTANIC GARDEN (SUPERVISORIAL DISTRICT 4) (3 VOTES)

SUBJECT

Approval of a 20 year Agreement, with one five-year extension option, for a maximum of 25 years, between the South Coast Botanic Garden Foundation, Inc. and the County of Los Angeles for the operation of the South Coast Botanic Garden.

IT IS RECOMMENDED THAT THE BOARD:

1. Find the proposed Operating Agreement categorically exempt from the California Environmental Quality Act because the Agreement consists of operation and licensing of an existing facility for the reasons stated herein and the reasons reflected in the record of the Agreement.

2. Authorize the Director of Parks and Recreation to execute a twenty year Operating Agreement between the South Coast Botanic Garden Foundation and the County of Los Angeles for the operation of the South Coast Botanic Garden, effective July 1, 2013.

3. Authorize the Director of Parks and Recreation to exercise the one five-year renewal option, if in the opinion of the Director of Parks and Recreation the South Coast Botanic Garden Foundation has performed successfully during the initial agreement term.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the recommended actions will approve an Operating Agreement between the South Coast Botanic Garden Foundation (Foundation) and the County of Los Angeles (County) for the operation of the South Coast Botanic Garden (Garden) by the Foundation.

On September 20, 2001, the Director of the Department of Parks and Recreation (Department) approved a one year Support Agreement with the Foundation, with automatic annual renewals. Since that time, the County and Foundation have co-funded and co-governed the Garden. The Foundation and County desire to assure the continued operation of the Garden as a botanic garden through an Operating Agreement for the operation of the Garden by the Foundation.

Implementation of Strategic Plan Goals

The recommended Operating Agreement will further the County's Strategic Plan Goals of Operational Effectiveness (Goal 1), by creating partnerships with external agencies to efficiently improve the delivery and quality of services.

FISCAL IMPACT/FINANCING

The County shall pay the Foundation an annual management fee in the amount of $144,000. Said management fee shall be collected by the Foundation from the revenues generated through admission, rental, filming, and tram fees at the Garden. Fees paid to the Foundation by the Department shall be offset by the elimination of vacant permanent and recurrent County employee items to be replaced by new Foundation employees at the expense of the Foundation. In addition, any revenues in excess of the $144,000 management fee, but less than $226,000 will be transferred to the County. Revenues in excess of $226,000 will be divided between the Foundation and the County, with County receiving 50 percent of admission and Foundation receiving all remaining revenues.

OPERATING BUDGET IMPACT

The Department does not anticipate additional operating costs or revenue. The Operating Agreement was designed specifically to have a no net County cost impact and also includes a "revenue-sharing" feature to possibly experience an increase in revenue. However, the amount of this revenue cannot be reasonably estimated at this time due to several factors: 1) this revenue is new to the County; 2) lack of historical data; and 3) revenue to the County is based on a collections threshold and surpassing that threshold. Should the revenue become material or significant, the Department will address this in the appropriate year's Operating Budget request.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Board is authorized by the provision of Government Code Section 25907 to enter into leases for concessions and services that are consistent with public park and recreation purposes.

The initial term of the Operating Agreement with the Foundation is for twenty years and includes a provision whereby the Director may extend the Operating Agreement for one five-year option for a maximum contract term of 25 years. Under this Agreement, the Foundation will take over functions such as: cashiering; receiving; handling and accounting for admission, tram, filming, and event rental fees; greeting and orienting visitors; answering telephones; responding to visitor and phone inquiries for the Garden; permitting, coordinating and monitoring events and filming rentals.

Admission, tram, and filming fees charged by the Foundation shall comply with fees adopted by the Board, but event fees will be set by the Foundation; similar to arrangements for operations at Descanso Gardens.

The Foundation will be responsible for hiring staff to perform such duties and for all salaries, benefits, and insurance requirements. The Department shall remain responsible for facility and ground maintenance and administrative operations, limited to Department policies and procedures, such as, but not limited to patron complaints, incident reports.

The Operating Agreement contains terms and conditions supporting your Board's ordinances, policies, and programs, including but not limited to: Reporting of Improper Solicitations, Board Policy No. 5.060; Notice to Contract Employees of Newborn Abandonment Law (Safely Surrendered Baby Law), Board Policy No. 5.135; Contractor Responsibility and Debarment, Los Angeles County Code, Chapter 2.200; the Defaulted Property Tax Reduction Program, Los Angeles County Code 2.206; compliance with the County's smoking ban ordinance, Los Angeles County Code Title 17, Sections 170.04.185 through 17.04.650; compliance with the County's policy on restricting its purchase and use of Expanded Polystyrene containers; participation in the County's Artificial Trans Fat Reduction Program; and the standard Board-directed clauses that provide for contract termination or renegotiation.

Indemnification: The County has indemnified the Foundation for the past 11 years without incurring settlement cost arising from Foundation activities. Elimination of such indemnification would cause prohibitively expensive insurance costs and inhibit further growth for the Foundation. Therefore, it is recommended that the County continue to indemnify the Foundation, as to continue the productive partnership and growth of the Garden.

County Counsel has approved the Agreement as to form.

ENVIRONMENTAL DOCUMENTATION

The proposed Operating Agreement is categorically exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15301 of the State CEQA Guidelines and Class 1 of the Environmental Document Reporting Procedures and Guidelines, Appendix G, because the Agreement consists of operation and leasing of an existing facility.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The approval of this new Operating Agreement will ensure ongoing financial and operational commitment from the County and the Foundation to benefit the Garden and its patrons.

CONCLUSION

It is requested that three adopted copies of the action taken by your Board be forwarded to the Department of Parks and Recreation. Should you have any questions, please contact Sandra Salazar at (626) 821-4660 or ssalazar@parks.lacounty.gov; Vanessa Paniagua at (213) 738-2986 or vpaniagua@parks.lacounty.gov; or Kaye Michelson at (213) 738-2955 or kmichelson@parks.lacounty.gov

Respectfully submitted,

RUSS GUINEY

Director

RG:JW:RAM
KEH:SS

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

OPERATING AGREEMENT BY AND BETWEEN

COUNTY OF LOS ANGELES

DEPARTMENT OF PARKS AND RECREATION

AND

SOUTH COAST BOTANIC GARDEN FOUNDATION, INC.

FOR

THE OPERATION OF THE

SOUTH COAST BOTANIC GARDEN

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OPERATING AGREEMENT BETWEEN THE COUNTY OF LOS ANGELES AND THE SOUTH COAST BOTANIC GARDEN FOUNDATION, INC. FOR THE OPERATION AND MANAGEMENT OF THE SOUTH COAST BOTANIC GARDEN

This Agreement and Exhibits made and entered into this ___ day of _____, 2013 by and between the County of Los Angeles, hereinafter referred to as COUNTY, and the South Coast Botanic Garden Foundation, Inc., hereinafter referred to as FOUNDATION.

RECITALS

WHEREAS, County owns and operates the South Coast Botanic Garden located in the County of Los Angeles as a botanic garden and related facilities maintained for the use and enjoyment of the public; and

WHEREAS, Foundation has for many years raised and contributed its own private funds for the Garden's operation and for construction of improvements to benefit the Garden and its public programs; and

WHEREAS, since 2001, pursuant to a Joint Operating Agreement, the County and Foundation have provided management and funding for the operation of the Garden; and

WHEREAS, Section 5400 et. Seq. of the California Public Resources Code mandates the preservation of public park lands and facilities; and

WHEREAS, County and Foundation desire to assure continued operation of the Garden as a botanic garden in a manner consistent with the highest standards for public use and enjoyment for the public benefit in accordance with such standards; and

WHEREAS, in the interest of efficiency and the ability to attract support from the community, County and Foundation desire that functions now performed by County be taken over and performed by Foundation; and

WHEREAS, Foundation and County desire that Foundation have the authority to make improvements to the Garden; and

WHEREAS, County and Foundation wish to affirm Foundation's ability to continue and expand its range of programs, activities, events and other activities intended to educate the public, attract attendance to and use and enjoy the Garden, to attract membership and to raise funds to support the Garden; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:

1.0 APPLICABLE DOCUMENTS

1.01 Exhibits A, B, C, D, E, F, G, H, I, and J are attached to and form a part of this Agreement. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between this Agreement and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Agreement and then to the Exhibits in descending alphabetical order.

1.02 This Agreement and the Exhibits hereto constitute the complete and exclusive understanding between the parties, and supersedes all previous Agreements, written and oral, and all previous communications between the parties relating to the subject matter of this Agreement. No change to this Agreement shall be valid unless prepared pursuant to Section 20.1 - Amendments and signed by both parties.

2.0 DEFINITIONS

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

2.01 **Agreement:** This agreement executed between County and Foundation.

2.02 **Foundation:** South Coast Botanic Garden Foundation, Inc.

2.04 **Director:** The Director of the Department of Parks and Recreation, County of Los Angeles, or his authorized representative(s).

2.05 **Day(s):** Calendar day(s) unless otherwise specified.

2.06 **Fiscal Year:** The twelve (12) month period beginning July 1st and ending the following June 30th.

2.07 **Garden:** South Coast Botanic Garden.

2.08 **Garden Property**: The South Botanic Garden grounds, buildings, structures, and all other improvements, and its equipment owned by the County.

2.09 **Department:** The County of Los Angeles Department of Parks and Recreation

2.10 **County:** The County of Los Angeles

2.11 **PDA:** Planning and Development Agency of the Department of Parks and Recreation.

2.12 **Management Fee**: $144,000

2.13 **Baseline**: $226,000

3.0 AGREEMENT TO OPERATE GARDEN

County and Foundation agree to mutually and cooperatively manage and operate the Garden as a first class botanic garden for the benefit of the public. County and Foundation agree that all revenues generated by, for, or at the Garden shall be used exclusively to provide direct improvements to the Garden and to advance its mission, to the extent possible.

4.0 INTEGRATION OF EFFORT, MUTUAL ASSISTANCE AND COOPERATION

4.01 The functions of Foundation and County shall be integrated in the management and operation of the Garden. Foundation and County recognize that the activities of their respective staff must be carried out in a cooperative and mutually supportive manner. Each party pledges to do so.

5.0 GARDEN PROPERTY

5.01 County shall retain title to the County property and assets including grounds, buildings, structures and all other improvements, and its equipment. Foundation shall retain title to its equipment, assets and investments (Foundation Property).

5.02 Foundation and County agree that both parties shall continue joint use of the grounds, buildings, equipment and other improvements at the Garden. The Director shall determine the most effective use of Garden Property, which shall not unreasonably restrict the Foundation's revenue producing activities.

6.0 BUDGET AND FUNDING

6.01 Foundation and County recognize that diminished public funding has impacted Garden programs and reduced maintenance and housekeeping levels, and that it is unlikely that public funding for the Garden will be restored to previous levels. Foundation and County agree that private sector funding and increased revenues must be developed and agree to cooperatively pursue additional resources. Foundation and County recognize that a stable financial base is essential to attracting additional support to the Garden and to assure prospective donors and supporters of Garden's viability and that their support will not be dissipated.

6.03 Foundation and County agree to commit resources to the extent feasible to operate the Garden and its programs at a first class level and to increase attendance, revenue and private support for the Garden to enhance programs, and Garden Property.

6.04 Foundation and County agree that funds established from bequests and donations for the Garden, held by either party, are subject to any binding restrictions placed on their use by the donor, for the purpose of enhancing Garden programs and Garden Property, and that these funds are not to be used to offset reductions in funding by either Foundation or County, unless

otherwise instructed by the donor. However, any such bequests or donations to the Garden shall be for the benefit of the Garden.

7.0 INTENTIONALLY OMMITED

8.0 TRANSFER OF FUNCTIONS TO FOUNDATION

8.01 Pursuant to the provisions of this Agreement, Foundation shall perform certain functions as follows: cashiering; receiving, handling and accounting for admissions, tram services, events, filming, and rental fees; greeting and orienting visitors; answering telephones, responding to visitor and phone inquiries, permitting, coordinating and monitoring events and filming. Foundation shall perform those functions in accordance with the terms of this Agreement and all applicable County ordinances, rules and regulations and state and federal laws. To perform these duties, Foundation shall hire appropriate employees as determined by the Foundation. Foundation is responsible for all salaries, benefits, and insurance requirements for said Foundation employees.

8.02 Foundation agrees that the Garden Property shall be used and Foundation functions shall be managed only as described in this Agreement.

8.03 Service to the public is of prime concern to County and Foundation and is a part of the consideration for this Agreement. Therefore, with respect to its activities under Section 8, Foundation agrees to use its best efforts to manage the services and facilities of the Garden in conjunction with County in a first-class manner, comparable to other first-class businesses of a similar nature providing public services and facilities and Foundation shall furnish and dispense quality goods and services, shall maintain fair and reasonable prices for all such goods and services and shall maintain high standards of service at least equal to that generally found at other substantially similar arboreta and botanic gardens open to the public in California. Foundation, following receipt of written notification therefor, shall immediately withdraw or

remove from sale any goods or services which the Director finds harmful to the public welfare.

8.04 Foundation shall ensure throughout the term of this Agreement that the Garden and Garden Property are open or available to the public on such days and during the hours specified on Exhibit A, attached hereto and incorporated herein by reference. Foundation shall not alter or adjust the days or hours the Garden Property are open or available to the public, as specified in Exhibit A, without the prior written approval of the Director.

8.05 Foundation shall continue to have the right to schedule and conduct events, which include, but are not limited to, garden shows, summer concerts and other events.

8.06 The Foundation will develop a schedule of events and provide County with a semiannual schedule of upcoming events. Prices for these events shall be fair and reasonable based upon the following considerations: (1) that the Garden is intended to serve the needs of the public for the goods and/or services supplied at a fair and reasonable cost; (2) that, except in the case of fundraising events, there is comparability with prices charged for similar goods and/or services supplied in the Los Angeles Metropolitan Area; and (3) that profit margins are reasonable in view of the cost of providing same in compliance with the obligations assumed in this Agreement. In the event the Director notifies Foundation that prices being charged are not fair and reasonable, Foundation shall have the right to confer with the Director and justify said prices. For any such event involving the sale and consumption of alcoholic beverages, Foundation shall complete, and keep copies in its files, the necessary documents in accordance with the Department of Parks and Recreation Rules and Regulations and County Codes. Admission, tram services and filming fee charges shall be in accordance with the rates and rate schedule set forth in Exhibit C. Foundation shall determine other event and rental fees.

8.07 Foundation shall have authority to complete any existing County site rental permits finalized prior to the execution of this Agreement. Foundation shall collect any balance revenue due in these permits.

9.0 TERM OF AGREEMENT

9.01 The term of this Agreement shall be for twenty (20) years commencing July 1, 2013, unless sooner terminated or extended, in whole or in part, as provided in this Agreement.

9.02 County and Foundation shall have the option to mutually extend this Agreement term for up to one (1) additional five (5) year period, for a maximum of twenty-five (25) years. Each such option and extension shall be exercised at the mutual discretion of the Director and Foundation by providing written notice to the other party, at least 30 days prior to the expiration of the term. Both parties shall make best efforts to notify each other when this Agreement is within six (6) months from the expiration of the term as provided for hereinabove.

9.03 Should Foundation continue to perform hereunder after the expiration of the term of this Agreement with the express or implied consent of County, such performance shall be deemed to be from month-to-month, for a maximum of 12 months, subject otherwise to all the terms and conditions of this Agreement. At the expiration or termination of this Agreement, as herein provided, Foundation shall, within thirty (30) days thereafter, remove from the Garden Property, or otherwise dispose of in a manner satisfactory to County, all Foundation Property located on the Garden Property. Should Foundation fail to remove or dispose of such personal property as herein provided, County may at its election consider such property abandoned and may dispose of it at Foundation expense. At the expiration or termination of this Agreement, Foundation shall quit and surrender the Garden Property as provided in this paragraph, including all improvements, in a good state of repair, subject to normal wear and tear.

10.0 REVENUE SHARING

10.01 As consideration for Foundation's performance of activities described in Section 8.0, County shall ensure Foundation a Management Fee in the amount of $144,000 each year during the term of this Agreement. Management Fee shall be budget neutral to the County, with an equivalent amount of County expenses shifted to the Foundation. Said Management Fee shall be paid through revenues collected by the Foundation from admission, tram services, filming, and rental fees collected through this Agreement. At no time will the $144,000 Management Fee paid to Foundation be reduced due to fluctuations in revenue. Should these revenues at the end of any fiscal year fail to meet the $144,000 minimum at the end of the fiscal year, County shall pay Foundation the difference through other County revenues within 120 days of the conclusion of the fiscal year to the extent feasible.

10.02 Except as provided in Section 10.01, Foundation shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by Foundation after the expiration or other termination of this Agreement. Should Foundation receive any such payment to which it is not entitled, it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Agreement shall not constitute a waiver of County's right to recover such payment from Foundation. This provision shall survive the expiration or other termination of this Agreement.

10.03 Within 120 days of the conclusion of each fiscal year, the Foundation shall make payment to the County in an amount equal to all admission, tram services, filming and rental revenues received in the previous fiscal year in excess of the $144,000 Management Fee, but in the amount equal to or below the "Annual Revenue Sharing Baseline" (Baseline) of $226,000.

For revenue above the annual Baseline of $226,000 the County shall receive a revenue share total of 50% admission receipts (County

Revenue Share). The remainder of revenue shall be considered Foundation Revenue Share.

10.04 The Foundation shall track revenue collected through this Agreement under four (4) separate revenue categories: admissions, tram services, filming and rental revenue. The Foundation shall track expenses related to these revenue sources through four (4) separate expense accounts: admission expenses, tram expenses, filming expenses, and rental expenses.

10.05 The Foundation Revenue Share will be deposited in an account set-up by the Foundation and named "South Coast Botanic Garden Operating Account" (Garden Operating Account) and used exclusively for operations of and enhancements to the Garden (projects, programs, staffing, etc.) in accordance with a spending plan or budget approved by the Department's Director. The County Revenue Share shall be paid by the Foundation no later than 120 days after the conclusion of the fiscal year. Total receipts for the year, and the amount of Revenue Share as reflected on the monthly statements, will be reported by the Foundation and agreed upon by the Department's Accounting Section.

10.06 Within 30 days of each statement month, Foundation shall provide County with a monthly financial statement of revenue collections of all admissions, tram services, filming and other rental revenue collected through this agreement. In accordance with County book closing deadlines, the June statement will be submitted to the County no later than July 15th of each year. For the month in which the Baseline revenue is exceeded, the Foundation shall calculate revenues considering all fees and determine the admission fees for any amount in excess of the Baseline. Within 90 days of the end of the fiscal year, Foundation shall: 1) submit to County's accounting section an itemized statement of admissions, tram services, filming revenue and other rental revenues for the fiscal year; 2) provide an annual financial statement of Garden operating expenses for performance of functions listed in Section 8.01; and 3) provide an annual financial statement for

the Garden Operating Account. Foundation shall manage cash receipts and establish accounts, accounting procedures, and audits in compliance with the requirements of the Los Angeles County Auditor Controller.

10.07 Foundation shall obtain the prior written approval of the Director for use of funds from the Garden Operating Account. Notice of proposed use of funds shall be provided to the Director in writing and shall include sufficient detail regarding proposed scope, cost estimate, and time frame for the project. Notice of proposed use may be in the form of an annual budget for use of funds from the Garden Operating Account.

10.08 Within 90 days of the expiration or termination of the Agreement, all remaining funds in the Garden Operating Account shall revert to the County.

10.09 This Agreement acknowledges the Foundation's continued role in raising funds for its mission and operations. The Foundation retains the right to collect funds through programs, events, membership, gift shop and through other fund raising activities. The Foundation shall collect, retain and control said funds. County agrees that Foundation membership benefits may include, but are not limited to annual Garden admission, discounted classes, special member events and programs.

11.0 GARDEN PROPERTY

11.01 County shall have the right to ingress and egress at all times to inspect the Garden Property as deemed necessary by County, and the right to perform any and all work of any nature necessary to assure the preservation, maintenance, and operation of the Garden. Foundation shall be given reasonable notice when such work may become necessary, and the time of such work to commence.

11.02 Foundation hereby acknowledges the title of County in and to the entire Garden Property as described in Section 5.0 of this Agreement, including any real property and improvements existing or added and

erected thereon, and hereby covenants and agrees never to assail, contest, or resist said title.

11.03 Foundation agrees to accept the Garden Property in their existing condition, “as is” and agrees that the County shall not be obligated to make any alterations, additions, repairs or improvements thereto. County to maintain all property as specified in section 18.01.1 However, nothing herein contained shall preclude County from making alterations, additions, repairs or improvements at its own expense and its own discretion. County shall consult and coordinate with Foundation to minimize impact to any of the Foundation’s revenue producing activities when making these alterations, additions, repairs or improvements.

11.04 In the event that the Garden Property or any portion thereof is taken by proceedings in eminent domain, County shall receive the entire award for such taking; provided that Foundation shall be entitled to seek leave to intervene in any such proceedings.

11.05 This Agreement shall not, nor shall any interest hereunder, be assigned, mortgaged, hypothecated, encumbered or transferred by Foundation.

12.0 INTENTIONALLY OMMITED

13.0 BOOKS, RECORDS, ACCOUNTS AND REPORTS

13.01 Foundation shall maintain books, records and accounts concerning its activities hereunder as good business judgment and sound accounting practices shall require for similar enterprises of comparable size and purpose. Such books, records and accounts, including all tax return records and other required reports or returns to state or federal regulatory authorities shall be available to County Auditor-Controller or their designee for inspection at any time on reasonable notice.

13.02 Unless otherwise approved in writing by the County’s Auditor-Controller, Foundation shall establish a special interest-bearing commercial bank account(s) for the purpose of its management, and operation of the Garden pursuant to this Agreement. Such bank

account(s) shall be separate from any other accounts of Foundation, such as endowment, member dues, or other accounts maintained by Foundation, and shall be known and designated as the "South Coast Botanic Garden Operating Account" ("Garden Operating Account"). Foundation may, upon providing written notice to County's Auditor-Controller, utilize multiple accounts in different financial institutions for the Garden Operating Account. Foundation shall establish the Garden Operating Account within thirty (30) days following the commencement of this Agreement.

13.03 The Garden Operating Account and other interest earning depository shall be used solely as depositories for the admission, tram services, filming, and site rental fees and for disbursements attributable to Foundation's activities pursuant to Section 8.0 and shall be the sole depository for all admissions and site rental receipts. Unless otherwise approved in writing by the County's Auditor-Controller, Foundation shall deposit daily all said receipts and revenues. Foundation shall provide to County's Auditor-Controller, upon receipt of a written request therefor, a current listing of all amounts deposited to or withdrawn from the Garden Operating Account to date during any fiscal year (July 1-June 30) or portion thereof during the term of this Agreement.

13.04 Foundation shall submit to the Director and County's Auditor-Controller, within a reasonable period of time, not to exceed one hundred twenty (120) days from the end of each "Fiscal Year" as defined hereinabove in Section 13.03 of this Agreement, an Annual Financial Report for the preceding fiscal year, to be compiled or verified by an independent, licensed accountant in such form as County's Auditor-Controller shall prescribe.

13.05 Foundation shall submit to the Director and Auditor-Controller, at the same time as its Annual Financial Report, an Annual Report pertaining to its activities for the preceding fiscal year.

13.06 Foundation agrees to submit to Director from time to time such other reports as Director may reasonably request subject to reasonable prior notice.

14.0 IMPROVEMENTS

14.01 Any proposed improvement undertaken by Foundation which requires the issuance of a building permit, including but not limited to construction of utilities, landscape planting, replanting or removal, irrigation, site improvements such as paths, walkways, benches, lighting, interpretive exhibits and panels, demolition, relocation or replication of existing buildings, and construction of new buildings, shall be submitted to and have the prior written approval of the Director. Notice of a proposed capital improvement project shall be provided to the Director in writing and shall include reasonable detail regarding proposed scope, cost estimate, time frame and proposed funding for the project. The Director shall make a good effort attempt to provide written approval, or estimated time required to provide such approval to Foundation within thirty (30) days of receipt of all necessary documents.

14.02 Unless otherwise approved by the Director in writing, all funds for the costs of any capital improvement, inclusive of costs of performance and payment bonds and the costs of any permits, shall be solely the responsibility of Foundation. The Director agrees to consult with Foundation, as requested, with regard to the feasibility of public-assisted financing methods in connection with proposed capital improvements.

14.03 Foundation shall ensure that all capital-improvement plans are prepared by qualified professionals such as architects, engineers and landscape architects who are licensed by the State of California and are approved in advance by the Planning and Development Agency of County's Department of Parks and Recreation ("PDA") and, when necessary, have had prior experience working with historic site and structure replication or other appropriate experience. In addition,

Foundation shall be required to utilize the services of an experienced construction management consultant in connection with any project performed hereunder, unless otherwise agreed to in writing by the Director. Foundation shall obtain the written approval of the PDA of the schematic design, design development, construction drawings, bid documents, and cost estimates of any project performed hereunder, unless otherwise agreed to in writing by the Director.

14.04 When reasonably required by the Director, copies of all contracts for projects requiring the issuance of a building permit between Foundation and Foundation's architects, engineers, and contractors shall be furnished to and consented to in writing by the Director.

14.05 Foundation shall coordinate environmental impact issues with the PDA in compliance with the California Environmental Quality Act ("CEQA") and shall receive written approvals and authorizations from PDA, Foundation shall, however, maintain full responsibility for implementing all CEQA and related requirements.

14.06 Foundation and/or its construction manager shall maintain responsibility for conducting regularly scheduled site inspections and job meetings. Documentation of these meetings shall be maintained by Foundation and be available on reasonable request for review by Department staff.

14.07 In connection with any capital improvement project performed hereunder, Foundation shall, at its own cost, obtain or require its contractor to obtain a performance bond from an admitted California surety, in good standing, in an amount equal to one hundred percent of the construction cost of the improvement, unless the Director otherwise agrees in writing. Said performance bond and surety must be reasonably satisfactory to County and shall name County and Foundation as obligees.

14.08 In connection with any project performed hereunder, Foundation shall, at its own cost, obtain or require its contractors to obtain a payment bond from an admitted California surety, in good standing, equal to 100% of the construction cost of the project, unless the Director

otherwise agrees in writing. Said payment bond and surety must be reasonably satisfactory to County and shall name County and Foundation as obligees.

14.09 In connection with any capital project performed hereunder, Foundation shall comply with and shall require all of its contractors to comply with all provisions of the Labor Code of the State of California, including but not limited to, the payment of prevailing wages to all persons providing labor on any such project, as required, by law

14.10 Foundation shall comply with and require its contractors to comply with all applicable laws, including Building Code requirements in connection with any projects performed hereunder.

14.11 It is contemplated that County may, at any time prior to the Director's approval under Section 14.01, impose additional reasonable obligations on Foundation with respect to particular capital improvement projects performed hereunder and such additional requirements may be set forth in a separate writing signed by Foundation and the Director on behalf of County.

15.0 OTHER FOUNDATION ACTIVITIES

County and Foundation affirm Foundation's ability to continue and expand its range of programs, events and other activities intended to educate the public, attract attendance for the use and enjoyment of the Garden, to attract membership and to raise funds to support the Garden. These activities include but are not limited to educational classes, lectures, demonstrations, workshops, field trips, tours and travel, seminars, symposiums, book signings, concerts and entertainments, garden shows and festivals, fundraising events, activities for members and prospective members, maintaining the Garden website, engaging the Garden in social media and collaborating with other organizations as provided in 8.07. Any other activities require Director's prior approval,

16.0 INTENTIONALLY OMMITTED

17.0 MATERIAL ASSETS

An inventory of all material assets of Foundation acquired or utilized for purposes of this Agreement shall be maintained by Foundation in accordance with standard business and accounting practices, and shall be available to County, along with other books, records, and accounts as herein provided. A current inventory of all such property shall be provided to County as part of the Annual Report under Section 13.0 of this Agreement.

18.0 MAINTENANCE

18.01 County Obligations

18.01.1 To the extent feasible County either through its own resources or third party contractors or consultants, shall keep and maintain in good repair and working order and make repairs to and perform maintenance upon the Garden Property as needed.

18.01.2 Nothing in this Section shall require County to make Capital Expenditures, until and unless sufficient funding has been identified to complete the project requiring such Capital Expenditures.

18.02 Foundation Obligations

18.02.1 During the term of this Agreement, Foundation shall provide personnel and services appropriate to enable Foundation or its permitted subcontractors to provide the following services:

a. All event, filming and rental permitting, coordinating and monitoring functions;
b. Admissions and cashiering; and,
c. Collection of tram fees.

18.02.2 Foundation shall at all times faithfully obey and comply with all laws, rules and regulations applicable thereto, adopted by federal, state or other governmental bodies or departments or

officers thereof. This Agreement is expressly subject to reasonable regulations and policies of County's Board of Supervisors relating to the management and operation of the Garden.

18.03 No goods, merchandise or material shall be kept, stored or sold in or on Garden Property which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be conducted in or upon Garden Property. However, nothing in this paragraph shall preclude Foundation from bringing, keeping or using on or about the Garden Property such materials, supplies, equipment and machinery as are appropriate or customary in carrying on the operation of the Garden or from carrying on Foundation business in all respects as is generally usual for the management, operation of the Garden. Gasoline, oils and all other hazardous and toxic substances shall be stored, handled and dispensed as required by present or future regulations and laws.18.04 No offensive matter, or refuse, or substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall be permitted or remain on the Garden Property.

19.0 FOUNDATION EMPLOYEES

All employees used by Foundation in the management, and operation of the Garden pursuant to this Agreement shall be employees of Foundation or its subcontractors and not of County. Foundation shall select the number, function, qualifications, compensation and other terms and conditions relating to such employees.

20.0 STANDARD TERMS AND CONDITIONS

20.01 AMENDMENTS

20.01.1 County’s Board of Supervisors or Chief Executive Officer or designee may require the addition and/or change of certain terms and conditions in the Agreement during the term of this Agreement. County reserves the right to add and/or change such provisions as required by County’s Board of Supervisors or

Chief Executive Officer. To implement such changes, an Amendment to the Agreement shall be prepared and executed by Foundation and by the Director.

20.01.2 Notwithstanding the above, this document may be modified only by further written Agreement between the parties. Any such modification shall not be effective unless and until executed by Foundation and in the case of the County, until approved by the Board of Supervisors.

20.02 SUBLICENSES AND SUBCONTRACTORS

20.02.1 Foundation may enter into agreements, from time to time, with subcontractors. Such agreements and any material amendments thereto are subject to the prior approval of the Director.

20.02.2 Foundation may subcontract the performance of its obligations under this Agreement provided that Foundation shall not subcontract the performances of all or any portion of this agreement (except personnel services) involving an expenditure of more than $150,000 or a contract term in excess of one year, including renewals or extensions, without the prior written consent of the Director.

20.02.3 If Foundation desires to subcontract, Foundation shall provide the following information promptly at County's request:

- A description of the work to be performed by the subcontractor;
- A draft copy of the proposed subcontract; and
- Other pertinent information and/or certifications requested by County.

20.02.4 Foundation shall indemnify and hold County harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were Foundation employees.

20.02.5 Foundation shall remain fully responsible for all duties required of it under this Agreement, including those that Foundation has determined to subcontract, notwithstanding County's approval of Foundation's proposed subcontract.

20.02.6 County's consent to subcontracts shall not waive County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Agreement. Foundation is responsible to notify its subcontractors of this County right.

20.02.7 Director is authorized to act for and on behalf of County with respect to approval of any subcontract and subcontractor employees. After approval of the subcontract by County, Foundation shall forward a fully executed subcontract to County for their files.

20.02.8 Foundation shall be solely liable and responsible for all payments or other compensation to all subcontractor and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding County's consent to subcontract.

20.02.9 Foundation shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by County from each approved subcontractor. Foundation shall ensure delivery of all such documents to: County of Los Angeles, Department of Parks and Recreation, 301 North Baldwin Avenue, Arcadia, CA 91007, Attn: Contracts, before any subcontractor employee may perform any work hereunder.

20.03 ASSIGNMENT AND DELEGATION

20.03.1 The Foundation shall not assign its rights or delegate its duties under this Agreement, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and

any attempted assignment or delegation without such consent shall be null and void. For purposes of this sub-paragraph, County consent shall require a written amendment to the Agreement, which is formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under this Agreement shall be deductible, at County's sole discretion, against the claims, which the Foundation may have against the County.

20.03.2 Any assumption, assignment, delegation, or takeover of any of the Foundation's duties, responsibilities, obligations, or performance of same by any entity other than the Foundation, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Agreement which may result in the termination of this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Foundation as it could pursue in the event of default by Foundation.

20.04 AUTHORIZATION WARRANTY

Foundation represents and warrants that the person executing this Agreement for Foundation is an authorized agent who has actual authority to bind Foundation to each and every term, condition, and obligation of this Agreement and that all requirements of Foundation have been fulfilled to provide such actual authority.

20.05 COMPLAINTS

20.05.1 Foundation shall maintain and operate procedures for receiving, investigating and promptly responding to written complaints received by it.

20.05.2 Within 10 business days after effective date of this Agreement, Foundation shall provide County with Foundation's policy for receiving, investigating and responding to user complaints.

20.05.3 County shall review Foundation's policy and provide Foundation with approval of said plan or with requested changes.

20.05.4 If County reasonably requests changes in Foundation's policy, Foundation shall make such changes and resubmit the plan within five (5) business days for County approval.

20.05.5 If, at any time, Foundation wishes to change Foundation's policy, Foundation shall submit proposed changes to County for approval before implementation.

20.05.6 Foundation shall preliminarily investigate all complaints and notify the County of the status of the investigation within five (5) business days of receiving the complaint.

20.05.7 When complaints cannot be resolved informally, a system of follow-through shall be instituted which adheres to formal plans for specific actions and strict time deadlines.

20.05.8 Copies of all written responses shall be sent to the Director within five (5) business days of Foundation's receipt of County's request therefor.

20.06 COMPLIANCE WITH LAW AND INDEMNIFICATION

20.06.1 In the performance of this Agreement, Foundation shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference.

20.06.2 Foundation shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by

Foundation, its officers, employees, agents, contractors or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to Foundation's indemnification obligations under this Paragraph 20.06 shall be conducted by Foundation and performed by counsel selected by Foundation and reasonably approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Foundation fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Foundation for all such costs and expenses incurred by County in doing so. Foundation shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.

20.07 COMPLIANCE WITH CIVIL RIGHTS LAWS

Foundation hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement. Foundation shall comply with *Exhibit E - Foundation's EEO Certification.*

20.08 COMPLIANCE WITH COUNTY'S JURY SERVICE PROGRAM

20.08.1 Jury Service Program:

This Agreement is subject to the provisions of County's ordinance entitled Foundation Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as *Exhibit E* and incorporated by reference into and made a part of this Agreement.

20.08.2 Written Employee Jury Service Policy

a. Unless Foundation has demonstrated to County's satisfaction either that Foundation is not a "Foundation" as defined under the Jury Service Program (Section 2.203.020 of County Code) or that Foundation qualifies for an exception to the Jury Service Program (Section 2.203.070 of County Code), Foundation shall have and adhere to a written policy that provides that its Employees shall receive from Foundation, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with Foundation or that Foundation deduct from the Employee's regular pay the fees received for jury service.

b. For purposes of this sub-paragraph, "Foundation" means a person, partnership, corporation or other entity which has a Agreement with County or a Agreement with a County Foundation and has received or will receive an aggregate sum of $50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of Foundation. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by County, or 2) Foundation has a long-standing practice that defines the

lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Foundation uses any Contractor to perform services for County under the Agreement, Foundation shall also be subject to the provisions of this sub-paragraph. The provisions of this sub-paragraph shall be inserted into any such Agreement and a copy of the Jury Service Program shall be attached to the agreement.

c. If Foundation is not required to comply with the Jury Service Program when the Agreement commences, Foundation shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and Foundation shall immediately notify County if Foundation at any time either comes within the Jury Service Program's definition of "Foundation" or if Foundation no longer qualifies for an exception to the Jury Service Program. In either event, Foundation shall immediately implement a written policy consistent with the Jury Service Program. County may also require, at any time during the Agreement and at its sole discretion, that Foundation demonstrate to County's satisfaction that Foundation either continues to remain outside of the Jury Service Program's definition of "Foundation" and/or that Foundation continues to qualify for an exception to the Program.

d. Foundation's violation of this sub-paragraph of the Agreement may constitute a material breach of the Agreement. In the event of such material breach, County may, in its sole discretion, terminate the Agreement and/or bar Foundation from the award of future County

contracts for a period of time consistent with the seriousness of the breach.

20.09 CONFLICT OF INTEREST

20.09.1 No County employee whose position with County enables such employee to influence the award of this Agreement, or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by Foundation or have any other direct or indirect financial interest in this Agreement. No officer or employee of Foundation who may financially benefit from the performance of work hereunder shall in any way participate in County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence County's approval or ongoing evaluation of such work.

20.09.2 Foundation shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. Foundation warrants that it is not now aware of any facts that create a conflict of interest. If Foundation hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this sub-paragraph shall be a material breach of this Agreement.

20.10 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST

Should Foundation require additional or replacement personnel after the effective date of this Agreement to perform the services set forth herein, Foundation shall give reasonable consideration for such employment openings to qualified, permanent County employees who are targeted for

layoff or qualified, former County employees who are on a re-employment list during the life of this Agreement.

20.11 CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS

20.11.1 Should Foundation require additional or replacement personnel after the effective date of this Agreement, Foundation shall give consideration for any such employment openings to participants in County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet Foundation's minimum qualifications for the open position. For this purpose, consideration shall mean that Foundation will interview qualified candidates. County will refer GAIN/GROW participants by job category to Foundation.

20.11.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

20.12 CONTRACTOR RESPONSIBILITY AND DEBARMENT

20.12.1 Responsible Foundation

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the Agreement. It is County's policy to conduct business only with responsible Contractors.

20.12.2 Chapter 2.202 of County Code

Foundation is hereby notified that, in accordance with Chapter 2.202 of County Code, if County acquires information concerning the performance of Foundation on this or other contracts which indicates that Foundation is not responsible, County may, in addition to other remedies provided in the Agreement, debar Foundation from bidding or proposing on, or

being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing Agreements Foundation may have with County.

20.12.3 Contractor Hearing Board

a. If there is evidence that Foundation may be subject to debarment, the Department will notify Foundation in writing of the evidence which is the basis for the proposed debarment and will advise Foundation of the scheduled date for a debarment hearing before the Contractor Hearing Board.

b. Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. Contractor and/or Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether Contractor should be debarred, and, if so, the appropriate length of time of the debarment. Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.

c. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of Contractor Hearing Board.

d. If Foundation has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of County.

e. Contractor Hearing Board will consider a request for review of a debarment determination only where (1) Foundation has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

f. Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment.

Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of Contractor Hearing Board.

20.12.4 Contractors of Foundation

These terms shall also apply to Contractor and subcontractors of Foundation.

20.13 FOUNDATION'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW

Foundation acknowledges that County places a high priority on the implementation of the Safely Surrendered Baby Law. Foundation understands that it is County's policy to encourage all County Foundations to voluntarily post County's "Safely Surrendered Baby Law" poster in a prominent position at Foundation's place of business. Foundation will also encourage its Contractors and subcontractors, if any, to post this poster in a prominent position in Foundation's or subcontractor's place of business. County's Department of Children and Family Services will supply Foundation with the poster to be used. Information on how to receive the poster can be found on the Internet at www.babysafela.org.

20.14 FOUNDATION'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

20.14.1 Foundation acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through Agreement are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

20.14.2 As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Foundation's duty under this Agreement to comply with all applicable

provisions of law, Foundation warrants that it is now in compliance and shall during the term of this Agreement maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

20.15 FOUNDATION'S WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

20.15.1 Foundation acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through agreement are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

20.15.2 Unless Foundation qualifies for an exemptions or exclusion, Foundation warrants and certifies that to the best of its knowledge it is now in compliance by completing Exhibit F, and during the term of this Agreement will maintain compliance, with Los Angeles County Code Chapter 2.206.

20.16 COUNTY'S QUALITY ASSURANCE PLAN

County or its agent will evaluate Foundation's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing Foundation's compliance with all Agreement terms and conditions and performance standards. Foundation deficiencies which

County determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by County and Foundation. If improvement does not occur consistent with the corrective action measures, County may terminate this Agreement or impose other penalties as specified in this Agreement.

20.17 DAMAGE TO GARDEN PROPERTY

20.17.1 Foundation shall repair, or cause to be repaired, at its own cost, any and all damage to Garden Property caused by Foundation or employees or agents of Foundation. Such repairs shall be made immediately after Foundation has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

20.17.2 If Foundation fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by Foundation by cash payment upon demand.

20.18 EMPLOYMENT ELIGIBILITY VERIFICATION

20.18.1 Foundation warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. Foundation or its agent shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. Foundation shall retain all such

documentation for all covered employees for the period prescribed by law.

20.18.2 Foundation shall indemnify, defend, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Foundation in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

20.19 FACSIMILE REPRESENTATIONS

20.19.1 County and Foundation hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to sub-paragraph 8.1, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments to this Agreement, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

20.20 FAIR LABOR STANDARDS

Foundation shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by Foundation's employees for which County may be found jointly or solely liable.

20.21 FORCE MAJEURE; TIME EXTENSIONS

20.21.1 Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Agreement, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's contractor , freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this sub-paragraph as "force majeure events").

20.21.2 Notwithstanding the foregoing, a default by a contractor shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both Foundation and such contractor, and without any fault or negligence of either of them. In such case, Foundation shall not be liable for failure to perform, unless the goods or services to be furnished by the contractor were obtainable from other sources in sufficient time to permit Foundation to meet the required performance schedule. As used in this sub-paragraph, the term “contractor” and “subcontractors” mean contractors at any tier.

20.21.3 In the event Foundation's failure to perform arises out of a force majeure event, Foundation agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

20.22 501 (c)(3) ORGANIZATION

The Foundation hereby covenants that the Foundation will take all actions required to maintain and the Foundation will not take any actions that would threaten the Foundation’s status as a 501 (c)(3). Failure to maintain status as a 501 (c)(3) will be considered a material

breach of this Agreement and thus subject to cancellation, as set forth in Section 20.46 of this Agreement.

20.23 GOVERNING LAW, JURISDICTION, AND VENUE

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Foundation agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in County of Los Angeles.

20.24 INDEPENDENT STATUS

20.24.1 This Agreement is by and between County and Foundation and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Foundation. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

20.24.2 Foundation shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement all compensation and benefits. County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Foundation.

20.24.3 Foundation understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of Foundation or its subcontractors and not employees of County. Foundation or its subcontractors shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with

any work performed by or on behalf of Foundation pursuant to this Agreement.

20.25 INDEMNIFICATION

a. The Foundation shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with Foundation's negligence, errors and/or omissions relating to this Agreement.

b. The County shall indemnify, defend, and hold harmless the Foundation, its agents, officers and employees, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including reasonable outside attorney fees) arising from or connected with services performed by the County.

20.26 GENERAL INSURANCE REQUIREMENTS

Without limiting Foundation's indemnification of County, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, Foundation shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Section 20.27 of this Agreement. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Foundation pursuant to this Agreement. County in no way warrants that the Required Insurance is sufficient to protect Foundation for liabilities which may arise from or relate to this Agreement.

20.26.1 **Evidence of Coverage and Notice to County**

a. Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under Foundation's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Agreement.

b. Renewal Certificates shall be provided to County not less than 10 days prior to Foundation's policy expiration dates. County reserves the right to obtain complete, certified copies of any required Foundation and/or Sub-Contractor insurance policies at any time.

c. Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of Foundation identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand ($50,000.00) dollars, and list any County required endorsement forms.

d. Neither County's failure to obtain, nor County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by Foundation, its insurance broker(s)

and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

e. Certificates and copies of any required endorsements shall be sent to:

County of Los Angeles, Department of Parks and Recreation

Contracts, Golf and Special Districts

301 North Baldwin Avenue, Arcadia, CA 91007

f. Foundation also shall promptly report to County any injury or property damage accident or incident, including any injury to a Foundation employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Foundation. Foundation also shall promptly notify County of any third party claim or suit filed against Foundation or any of its Sub-Contractors which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against Foundation and/or County.

20.26.2 **Additional Insured Status and Scope of Coverage**

County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Foundation's General Liability policy with respect to liability arising out of Foundation's ongoing and completed operations performed on behalf of County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of Foundation's acts or omissions, whether such liability is attributable to Foundation or to County. The full policy limits and scope of protection also

shall apply to County and its Agents as an additional insured, even if they exceed County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

20.26.3 **Cancellation of/or Changes in Insurance**

Foundation shall provide County with, or Foundation's insurance policies shall contain a provision that County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Agreement, in the sole discretion of County, upon which County may suspend or terminate this Agreement.

20.26.4 **Failure to Maintain Insurance**

Foundation's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Agreement, upon which County immediately may withhold payments due to Foundation, and/or suspend or terminate this Agreement. County, at its sole discretion, may obtain damages from Foundation resulting from said breach. Alternatively, County may purchase the Required Insurance, and without further notice to Foundation, deduct the premium cost from sums due to Foundation or pursue Foundation reimbursement.

20.26.5 **Insurer Financial Ratings**

Coverage shall be placed with insurers acceptable to County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

20.26.6 **Foundation's Insurance Shall Be Primary**

Foundation's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all other sources of coverage available to Foundation. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Foundation coverage.

20.26.7 **Waivers of Subrogation**

To the fullest extent permitted by law, Foundation hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Agreement. Foundation shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

20.26.8 **Sub-Contractor Insurance Coverage Requirements**

Foundation shall include all Sub-Contractors as insured under Foundation's own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage. Foundation shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name County and Foundation as additional insured on the Sub-Contractor's General Liability policy. Foundation shall obtain

County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

20.26.9 **Deductibles and Self-Insured Retentions (SIRs)**

Foundation's policies shall not obligate County to pay any portion of any Foundation deductible or SIR. County retains the right to require Foundation to reduce or eliminate policy deductibles and SIRs as respects County, or to provide a bond guaranteeing Foundation's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

20.26.10 **Claims Made Coverage**

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Agreement. Foundation understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

20.26.11 **Application of Excess Liability Coverage**

Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as the underlying primary policies, to satisfy the Required Insurance provisions.

20.26.12 **Separation of Insured**

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services

Office, Inc.) separation of insured provision with no insured versus insured exclusions or limitations.

20.26.13 **Alternative Risk Financing Programs**

County reserves the right to review, and then approve, Foundation's use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. County and its Agents shall be designated as an Additional Covered Party under any approved program.

20.26.14 **County Review and Approval of Insurance Requirements**

County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

20.27 Insurance COVERAGE

20.27.1 **Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	$2 million
Products/Completed Operations Aggregate:	$1 million
Personal and Advertising Injury:	$1 million
Each Occurrence:	$1 million

20.27.2 **Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than $1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident.

Insurance shall cover liability arising out of Foundation's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable. The Foundation will provide or cause to be provided Garage keeper's Liability insurance (written on ISO form CA 99 37 or its equivalent) with a limit of not less than $500,000 for the County's premises whenever events with valet parking is provided.

20.27.3 **Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than $1 million per accident. If Foundation will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Foundation's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

20.27.4 **Sexual Misconduct Liability**

Insurance covering actual or alleged claims for sexual misconduct and/or molestation with limits of not less than $2 million per claim and $2 million aggregate, and claims for negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities, a person(s)

who committed any act of abuse, molestation, harassment, mistreatment or maltreatment of a sexual nature.

20.27.5 **Property Coverage**

20.26.4.1 Provide coverage for County's property which is operated by the Foundation, currently limited to the Gift Shop and any County equipment used by Foundation. However, Foundation agrees to provide this same coverage for any building or structure that it has exclusive control or occupancy. This coverage shall be at least as broad as that provided by the Causes-of-Loss Special Form (ISO form 10 30), including earthquake (if County deems it reasonable), Ordinance or Law Coverage, flood.

20.26.2 Be written for the full replacement cost of the property, with a deductible no greater than $250,000 or 5% of the property value, whichever is less. Insurance proceeds shall be payable to the Foundation and County as interests may appear and be utilized for repair and restoration of the Premises. Failure to use such insurance proceeds to timely repair and restore the Premises shall constitute a material breach of the Agreement.

20.27.6 **Liquor Liability**

Insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) shall be provided and maintained by the Foundation if and where the manufacturing, distribution or service of alcoholic beverages occurs in the Premises, with limits of not less than $1 million per occurrence and $2 million aggregate. If written on a "claims made" form, the coverage shall also provide an extended two (2) year reporting period commencing upon the expiration or earlier termination of this Agreement or replacement coverage shall be maintained until such time.

20.27.7 **CRIME COVERAGE**

A Fidelity Bond or Crime Insurance policy with limits of not less than $100,000 per occurrence. Such coverage shall protect against all loss of money, securities, or other valuable property entrusted by County to Foundation, and apply to all of Foundation's directors, officers, agents and employees who regularly handle or have responsibility for such money, securities or property. County and its Agents shall be named as an Additional Insured and Loss Payee as its interests may appear. This insurance shall include third party fidelity coverage, include coverage for loss due to theft, mysterious disappearance, and computer fraud/theft, and shall not contain a requirement for an arrest and/or conviction.

20.28 INSURANCE DURING CONTRUCTION

20.28.1 **Construction Insurance.** If major construction work is performed by Foundation during the term of this agreement (i.e. demolition of structures, construction of new structures, renovation or retrofit involving structures frame, foundation or supports, or more than 50% of building, etc.) then Foundation or Foundation's contractor shall provide the following insurance. County shall determine the coverage limits required on a project by project basis:

- **Builder's Risk Course of Construction Insurance**. Such coverage shall insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30). This insurance shall be endorsed to include earthquake, flood, ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, testing, preservation of property,

excavation costs, landscaping, shrubs and plants, and full collapse coverage during construction, without restricting collapse coverage to specified perils. Such insurance shall be extended to include boiler & machinery coverage for air conditioning, heating and other equipment during testing. This insurance shall be written on a completed-value basis and cover the entire value of the construction project, including County furnished materials and equipment, against loss or damage until completion and acceptance by the Foundation and the County if required.

- **General Liability Insurance.** Such coverage shall be written on ISO policy form CG 00 01 or its equivalent, naming County as an additional insured, with limits of not less than $(determined on a project by project basis):

  General Aggregate:
  Products/Completed Operations Aggregate:
  Personal and Advertising Injury:
  Each Occurrence:

20.28.2 **The Projects/Completed Operations** coverage shall continue to be maintained in the amount indicated above for at least two (2) years from the date the Project is completed and accepted by the Foundation and the County if required.

- Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with limits of not less than $(determined on a project by project basis) for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Such insurance shall cover liability arising out of Foundation's or Foundation's contractor use of autos pursuant to this Lease, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

- **Professional Liability**. Such insurance shall cover liability arising from any error, omission, negligent, or wrongful act of the Foundation's contractor and/or licensed professional (i.e. architects, engineers, surveyors, etc.) with limits of not less than $(determined on a project by project basis) per claim and $(double the per claim limit) aggregate. The coverage shall also provide an extended two-year reporting period commencing upon expiration, termination or cancellation of the construction project.

- **Workers Compensation and Employers' Liability Insurance** or qualified self-insurance satisfying statutory requirements. Such coverage shall provide Employers' Liability coverage with limits of not less than $1 million per accident. Such policy shall be endorsed to waive subrogation against the County for injury to the Foundation's or Foundation's contractor employees. If Foundation or Foundation's contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision.
- **Asbestos Liability or Contractors Pollution Liability Insurance** is needed if construction requires remediation of asbestos or pollutants. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal, or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up,

testing, monitoring, and treatment of asbestos in compliance with governmental mandate or requests. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the Foundation's or Foundation's contractor Automobile Liability Insurance. Foundation or Foundation's contractor shall maintain limits of not less than $(determined on a project by project basis) for this project.

- Performance Security Requirements. Prior to the beginning of construction Foundation shall require its contractor to file surety bonds with the Foundation and the County if required in the amounts and for the purposes noted below. All bonds shall be duly executed by a solvent surety company that is authorized by the State of California, is listed in the United States Department of the Treasury's Listing of Approved Sureties Treasury (Circular 570) and is satisfactory to the County, and it shall pay all premiums and costs thereof and incidental thereto (see www.fms.treas.gov/c570/).

Each bond shall be signed by the Foundation's Contractor (as Principal) and the Surety.

The Foundation's contractor shall give two surety bonds with good and sufficient sureties: the first in the sum of not less than 100% of the Project price to assure the payment of claims of material men supplying materials to Foundation's contractor, subcontractors, mechanics, and laborers employed by the Foundation's contractor on the Project, and the second in the sum of not less than 100% of the Project price to assure the faithful performance of the Project Contract.

20.29 LIQUIDATED DAMAGES

20.29.1 If, in the judgment of the Director, or his/her designee, Foundation is deemed to be non-compliant with the terms and

obligations assumed hereby, the Director, or his/her designee, at his/her option, in addition to, or in lieu of, other remedies provided herein, may withhold the entire monthly payment or deduct pro rata from Foundation's invoice for work not performed. A description of the work not performed and the amount to be withheld or deducted from payments to Foundation from County, will be forwarded to Foundation by the Director, or his/her designee, in a written notice describing the reasons for said action.

20.29.2 If the Department Head, or his/her designee, determines that there are deficiencies in the performance of this Agreement that the Department Head, or his/her designee, deems are correctable by Foundation over a certain time span, the Department Head, or his/her designee, will provide a written notice to Foundation to correct the deficiency within specified time frames. Should Foundation fail to correct deficiencies within said time frame, the Department Head, or his/her designee, may: (a) Deduct from Foundation's payment, pro rata, those applicable portions of the Monthly Agreement Sum; and/or (b) Deduct liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of Foundation to correct a deficiency within the specified time frame. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is One Hundred Dollars ($100) (this amount is established by each Department) per day per infraction, or as specified in the Performance Requirements Summary (PRS) Chart, as defined in Appendix C, Technical Exhibit 2, hereunder, and that Foundation shall be liable to County for liquidated damages in said amount. Said amount shall be deducted from County's payment to

Foundation; and/or (c) Upon giving five (5) days notice to Foundation for failure to correct the deficiencies, County may correct any and all deficiencies and the total costs incurred by County for completion of the work by an alternate source, whether it be County forces or separate private contractor, will be deducted and forfeited from the payment to Foundation from County, as determined by County.

20.29.3 The action noted in Section 20.29.2 shall not be construed as a penalty, but as adjustment of payment to Foundation to recover County cost due to the failure of Foundation to complete or comply with the provisions of this Agreement.

20.29.4 This sub-paragraph shall not, in any manner, restrict or limit County's right to damages for any breach of this Agreement provided by law or as specified in the PRS or sub-paragraph 8.26.2, and shall not, in any manner, restrict or limit County's right to terminate this Agreement as agreed to herein.

20.30 MOST FAVORED PUBLIC ENTITY

If Foundation's prices decline, or should Foundation at any time during the term of this Agreement provide the same goods or services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Agreement, then such lower prices shall be immediately extended to County.

20.31 NONDISCRIMINATION AND AFFIRMATIVE ACTION

20.31.1 Foundation certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with

all applicable Federal and State anti-discrimination laws and regulations.

20.31.2 Foundation shall certify to, and comply with, the provisions of Exhibit E - Foundation's EEO Certification.

20.31.3 Foundation shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

20.31.4 Foundation certifies and agrees that it will deal with its Contractors, subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.

20.31.5 Foundation certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement.

20.31.6 Foundation shall allow County representatives access to Foundation's employment records during regular business hours

to verify compliance with the provisions of this sub-paragraph 8.28 when so requested by County.

20.31.7 If County finds that any provisions of this Section 20.31 have been violated, such violation shall constitute a material breach of this Agreement upon which County may terminate or suspend this Agreement. While

County reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Foundation has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by County that Foundation has violated the anti-discrimination provisions of this Agreement

20.31.8 The parties agree that in the event Foundation violates any of the anti-discrimination provisions of this Agreement, County shall, at its sole option, be entitled to the sum of Five Hundred Dollars ($500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Agreement.

20.32 NON EXCLUSIVITY

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with Foundation. This Agreement shall not restrict County from acquiring similar, equal or like goods and/or services from other entities or sources.[1]

20.33 NOTICE OF DELAYS

Except as otherwise provided under this Agreement, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party

shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

20.34 NOTICE OF DISPUTES

Foundation shall bring to the attention of the Director any dispute between County and Foundation regarding the performance of services as stated in this Agreement. The Director, or designee shall resolve it.

20.35 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

Foundation shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015, Exhibit G

20.36 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW

Foundation shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in *Exhibit H* of this Agreement and is also available on the Internet at www.babysafela.org for printing purposes.

20.37 NOTICES

All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in Exhibits I - County's Administration –and Foundation's Administration. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party. The Director shall have the authority to issue all notices or demands required or permitted by County under this Agreement.

20.38 PROHIBITION AGAINST INDUCEMENT OR PERSUASION

Notwithstanding the above, Foundation and County agree that, during the term of this Agreement and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

20.39 PUBLIC RECORDS ACT

20.39.1 Any documents submitted by Foundation; all information obtained in connection with County's right to audit and inspect Foundation's documents, books, and accounting records pursuant to Section 20.41, Record Retention, and Inspection/Audit Settlement of this Agreement shall, become the exclusive property of County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

20.39.2 In the event County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", Foundation agrees to defend and indemnify County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

20.40 PUBLICITY

20.40.1 The Foundation shall not disclose any details in connection with this Agreement to any person or entity except as may be

otherwise provided hereunder or required by law. However, in recognizing the Foundation's need to identify its services and related clients to sustain itself, the County shall not inhibit the Foundation from publishing its role under this Agreement within the following conditions:

- The Foundation shall develop all publicity material in a professional manner; and
- During the term of this Agreement, the Foundation shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the Department. The County shall not unreasonably withhold written consent.

20.40.2 The Foundation may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Agreement with the County of Los Angeles, provided that the requirements of this sub-paragraph 20.40 shall apply.

20.41 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

20.41.1 Foundation shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Foundation shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. Foundation agrees that County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, appropriate documentation for voided transactions (including approval for the void), and proprietary data and information, shall be kept and maintained by

Foundation and shall be made available to County during the term of this Agreement and for a period of five (5) years thereafter unless County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by Foundation at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at County's option, Foundation shall pay County for travel, per diem, and other costs incurred by County to examine, audit, excerpt, copy, or transcribe such material at such other location.

20.41.2 In the event that an audit of the Foundation is conducted specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by Foundation or otherwise, then Foundation shall file a copy of such audit report with County's Auditor-Controller within thirty (30) days of Foundation's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. Subject to applicable law, County shall make a reasonable effort to maintain the confidentiality of such audit report(s).

20.41.3 Failure on the part of Foundation to comply with any of the provisions of this Section 20.41 shall constitute a material breach of this Agreement upon which County may terminate or suspend this Agreement.

20.41.4 If, at any time during the term of this Agreement or within five (5) years after the expiration or termination of this Agreement, representatives of County conduct an audit of Foundation regarding the work performed under this Agreement, and if such audit finds that County's dollar liability for any such work is less than the payments made by County to Foundation, then the difference shall be either: a) repaid by Foundation to County by cash payment upon demand or b) at the sole option of County's Auditor-Controller, deducted from any amounts due to

Foundation from County, whether under this Agreement or otherwise. If such audit finds that County's dollar liability for such work is more than the payments made by County to Foundation, then the difference shall be paid to Foundation by County by cash payment, provided that in no event shall County's maximum obligation for this Agreement exceed the funds appropriated by County for the purpose of this Agreement.

20.41.5 If County notifies Foundation that Foundation did/does not, to the reasonable satisfaction of County (1) adequately maintain the documents required under Section 20.41 of the Agreement, and/or (2) did/does not have adequate internal controls, such that financial records could contain errors and/or omissions that would not be prevented and/or detected in the normal course of business, and/or (3) if County is not able to reasonably determine whether Foundation reported and paid the correct amount due to County under this Agreement, then County will assess penalties specified in this section upon Foundation.

20.41.6 The parties hereby agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of Foundation to meet the requirements of this section of the Agreement, and that a reasonable estimate of such damages shall range from (1) $200 to $500 and/or 10% to 20% of the total gross receipts for the period of time that County determines Foundation did not meet the requirements under this section of the Agreement, and/or (2) termination of this Agreement, determined at the sole discretion of County.

20.41.7 In the event County hires an Independent Certified Public Accounting firm (CPA) to perform an audit of Foundation's gross receipts and/or payments to County, and if the CPA concludes that, due to inadequate records maintained by Foundation, the CPA is unable to issue an unqualified opinion as to gross receipts for Foundation, the CPA may employ alternative

methods to impute rent for the period of inadequate records and calculate rent due. The CPA (or County) may use Foundation's gross receipts last audited (in which an unqualified audit opinion was expressed), inflated by the Consumer Price Index for All Urban Consumers for the Los Angeles, Riverside, and Orange County areas. Interest/late fees may also be separately applied. In addition, County may require Foundation to pay for the cost of the CPA's audit.

20.41.8 In the event County and/or a CPA firm concludes that Foundation under-reported Gross Receipts to County, and that under-reporting is equal to or greater than 5 % of the current or previous year's Gross Receipts reported by Foundation, as determined at the sole discretion of County, Foundation shall pay for the cost of the CPA's audit and/or County's review (including County costs associated with the CPA's audit, such as monitoring the audit, etc.).

20.41.9 The parties hereby agree that Foundation is required to obtain a Performance Bond in the amount of $1,000 and/or a deposit in the amount of $2,000. In the event the contractor does not meet the requirements of this section, County may require Foundation to increase the Performance Bond/deposit in the amount of $2,000.

20.41.10 Foundation shall at all times during Agreement period and for five (5) years after the termination/expiration of the Agreement, keep, or cause to be kept, locally, to the reasonable satisfaction of County true, accurate, and complete records for all accounting years covered by this Agreement. Records will show all transactions relative to the conduct of operations, and be supported by data of original entry. Records shall detail transactions conducted on or from the premises separate and

apart from those in connection with Foundation's other business operations, if any.

20.41.11 All sales and/or services shall be recorded by cash registers or computers which automatically issue a customer's receipt or certify the amount in a sales slip. Cash registers shall have locked in sales totals and transaction counters that constantly accumulate and cannot be reset, and issue a tape (or other equivalent security mechanism) that imprints sequential transaction numbers and sales details. Beginning and ending cash register readings shall be made a matter of daily record. Signs shall be visibly posted near all cash registers requesting the payer to ask the cashier for a receipt and, if possible, the sign should include a sample of the appropriate receipt.

20.42 RECYCLED BOND PAPER

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at County landfills, Foundation agrees to use recycled-content paper to the maximum extent possible in its activities under this Agreement.

20.43 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

Failure of Foundation to maintain compliance with the requirements set forth in sub-paragraph 20.14, Foundation's Warranty of Adherence to County's Child Support Compliance Program, shall constitute default under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure of Foundation to cure such default within ninety (90) calendar days of written notice shall be grounds upon which County may terminate this Agreement pursuant to sub-paragraph 20.46, Termination for Default, and pursue debarment of Foundation, pursuant to County Code Chapter 2.202.

20.44 TERMINATION FOR CONVENIENCE; SUSPENSION; REIMBURSEMENT ON NON-AMORTIZED FUNDS

20.44.1 Termination for Convenience. This Agreement may be terminated, in whole, by County in its sole discretion. Termination of Agreement hereunder shall be effected by delivery to Foundation of a written notice of termination for convenience from the Director specifying the extent to which performance is terminated and the date upon which such termination shall become effective. The date upon which such termination becomes effective shall be no less than one hundred eighty (180) days after notice.

20.44.2 Suspension. County, at its convenience, and without further liability, may suspend Foundation's performance under this Agreement, in whole or in part, by written notice to Foundation from the Director specifying the effective date and extent of the suspension.

a. Foundation shall immediately discontinue all services unless otherwise indicated by Director.

b. In the event the entire Agreement is suspended and the period of suspension exceeds one (1) calendar year, this Agreement may be deemed terminated for convenience at the option of either party, upon written notice to the other party.

20.45 CANCELLATION

20.45.1 Upon the occurrence of any one or more of the events of default hereinafter described in Section 20.46, this Agreement shall be subject to cancellation. As a condition precedent thereto, the Director shall give Foundation ten (10) days notice by registered or certified mail of the date set for cancellation thereof; the grounds therefore; and that an opportunity to be heard thereon will be afforded on or before said date, if request is made therefor.

20.45.2 Upon cancellation, County shall have the right to take possession of Garden Property, including all improvements, equipment, and inventory located thereon, and use same for the purpose of satisfying and/or mitigating all damages arising from a breach of this Agreement.

20.45.3 Action by County to effectuate a cancellation and forfeiture of possession shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

20.45.4 Any trustee, beneficiary, mortgagee or lender (hereinafter: Lender) under a hypothecation or mortgage previously approved by the Director shall have the right at any time during the term of this Agreement to undertake any and all action that may be required in order to prevent a cancellation of this Agreement and a forfeiture of the use granted. Accordingly, the Director shall send a copy of any intended cancellation of this Agreement to any such Lender whose security would be affected thereby, provided that such Lender shall have previously registered with the Director by written notice specifying the name and address of said Lender; and upon request thereof for postponement, extend the date set therefor by such time as the Director finds reasonable in order to allow said parties to correct the grounds therefor or to provide a new Foundation under a power of sale or foreclosure contained in the hypothecation or mortgage, who upon transfer thereto shall become responsible for the correction thereof within such time as may be allowed by the Director.

20.45.5 In the event that, following service of the Notice of Cancellation of this Agreement under the provisions of this clause, County, in its sole discretion, determines for any reason that Foundation was not in default under the

provisions of this clause, that the default was excusable under provisions of this clause, or Foundation has, to the satisfaction of the Director, cured any default, the Director shall issue, within five (5) business days, a rescission of the Notice of Cancellation, and the rights and obligations of the parties shall be the same as if the Notice of Cancellation had not been issued.

20.46 TERMINATION FOR IMPROPER CONSIDERATION

20.46.1 County may, by written notice to Foundation, immediately terminate the right of Foundation to proceed under this Agreement if it is found that consideration, in any form, was offered or given by Foundation, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment, or extension of this Agreement or the making of any determinations with respect to Foundation's performance pursuant to this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Foundation as it could pursue in the event of default by Foundation.

20.46.2 Foundation shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to County manager charged with the supervision of the employee or to County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

20.46.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

20.47 TERMINATION FOR INSOLVENCY

20.47.1 County may terminate this Agreement forth with in the event of the occurrence of any of the following:

a. Insolvency of Foundation. Foundation shall be deemed to

be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not Foundation is insolvent within the meaning of the Federal Bankruptcy Code;

b. The filing of a voluntary or involuntary petition regarding Foundation under the Federal Bankruptcy Code;

c. The appointment of a Receiver or Trustee for Foundation; or

d. The execution by Foundation of a general assignment for the benefit of creditors.

20.47.2 The rights and remedies of County provided in this Section 20.48 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

20.48 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE

Foundation, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by Foundation, shall fully comply with County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of Foundation or any County Lobbyist or County Lobbying firm retained by Foundation to fully comply with County's Lobbyist Ordinance shall constitute a material breach of this Agreement, upon which County may in its sole discretion, immediately terminate or suspend this Agreement.

20.49 TERMINATION FOR NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision of this Agreement, County shall not be obligated for Foundation's performance hereunder or by any provision of this Agreement during any of County's future fiscal years unless and until County's Board of Supervisors appropriates funds for this Agreement in County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this

Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. County shall notify Foundation in writing of any such non-allocation of funds at the earliest possible date.

20.50 VALIDITY

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

20.51 WAIVER

20.51.1 Any waiver by County of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of County to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or estoppels County from enforcing the full provisions thereof.

20.51.2 No delay, failure, or omission of County to re-enter Garden Property or to exercise any right, power, privilege or option, arising from any default, nor any subsequent acceptance of payments then or thereafter accrued shall impair any such right, power, privilege or option, or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right.

20.51.3 No notice to Foundation shall be required to restore or revive "time of the essence" after the waiver by County of any default.

20.51.4 No option, right, power, remedy or privilege of County shall be construed as being exhausted by the exercise thereof in

one or more instances. The rights, powers, options and remedies given County by this Agreement shall be cumulative.

20.52 WARRANTY AGAINST CONTINGENT FEES

20.52.1 Foundation warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Foundation for the purpose of securing business.

20.52.2 For breach of this warranty, County shall have the right to terminate this Agreement and, at its sole discretion, deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

20.53 LOCAL SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE PROGRAM

20.53.1 This Agreement is subject to the provisions of County's ordinance entitled Local Small Business Enterprise Preference Program, as codified in Chapter 2.204 of the Los Angeles County Code.

20.53.2 Foundation shall not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a Local Small Business Enterprise.

20.53.3 Foundation shall not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a Local Small Business Enterprise.

20.53.4 If Foundation has obtained certification as a Local Small Business Enterprise by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this Agreement to which it would not otherwise have been entitled, shall:

a. Pay to County any difference between the Agreement amount and what County's costs would have been if the Agreement had been properly awarded;

b. In addition to the amount described in subdivision (1), be assessed a penalty in an amount of not more than 10 percent of the amount of the Agreement; and

c. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Foundation Non-responsibility and Foundation Debarment).

The above penalties shall also apply to any business that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification, and fails to notify the state and OAAC of this information prior to responding to a solicitation or accepting a Agreement award.

20.54 OWNERSHIP OF MATERIALS, SOFTWARE AND COPYRIGHT

20.54.1 During the term of this Agreement and for five (5) years thereafter, Foundation shall maintain and provide security for all of Foundation's working papers prepared under this Agreement. County shall have the right to inspect, copy and use at any time during and subsequent to the term of this Agreement, any and all such working papers and all information contained therein.

20.54.2 Any and all materials, software and tools which are developed or were originally acquired by Foundation outside the scope of this Agreement, which Foundation desires to use hereunder, and which Foundation considers to be proprietary or confidential, must be specifically identified by Foundation to County's Project Manager as proprietary or confidential, and shall be plainly and prominently marked by Foundation as "Propriety" or "Confidential" on each appropriate page of any document containing such material.

20.54.3 County will use reasonable means to ensure that Foundation's proprietary and/or confidential items are safeguarded and held in confidence. County agrees not to reproduce, distribute or disclose to non-County entities any such proprietary and/or confidential items without the prior written consent of Foundation.

20.54.4 Notwithstanding any other provision of this Agreement, County will not be obligated to Foundation in any way under sub-paragraph 20.55.4 for any of Foundation's proprietary and/or confidential items which are not plainly and prominently marked with restrictive legends as required by sub-paragraph 20.55.3 or for any disclosure which County is required to make under any state or federal law or order of court.

20.54.5 All the rights and obligations of this sub-paragraph 20.54 shall survive the expiration or termination of this Agreement.

20.55 PATENT, COPYRIGHT & TRADE SECRET INDEMNIFICATION

20.55.1 Foundation shall indemnify, hold harmless and defend County from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual or alleged unauthorized trade secret disclosure, arising from or related to the operation and utilization of Foundation's

work under this Agreement. County shall inform Foundation as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure, and shall support Foundation's defense and settlement thereof.

20.55.2 In the event any equipment, part thereof, or software product becomes the subject of any complaint, claim, or proceeding alleging infringement or unauthorized disclosure, such that County's continued use of such item is formally restrained, enjoined, or subjected to a risk of damages, Foundation, at its sole expense, and providing that County's continued use of the system is not materially impeded, shall either:

a. Procure for County all rights to continued use of the questioned equipment, part, or software product; or
b. Replace the questioned equipment, part, or software product with a non-questioned item; or
c. Modify the questioned equipment, part, or software so that it is free of claims.

20.55.3 Foundation shall have no liability if the alleged infringement or unauthorized disclosure is based upon a use of the questioned product, either alone or in combination with other items not supplied by Foundation, in a manner for which the questioned product was not designed nor intended.

20.56 FOUNDATION'S CHARITABLE ACTIVITIES COMPLIANCE

The Supervision of Trustees and Fundraisers for Charitable Purposes Act regulates entities receiving or raising charitable contributions. The "Nonprofit Integrity Act of 2004" (SB 1262, Chapter 919) increased Charitable Purposes Act requirements. By requiring Foundations to complete the Charitable Contributions Certification, Exhibit J, County seeks to ensure that all County Foundations which receive or raise charitable contributions comply with California law in order to protect County and its taxpayers. A Foundation which receives or raises charitable contributions without complying with its obligations under

California law commits a material breach subjecting it to either Agreement termination or debarment proceedings or both. (County Code Chapter 2.202)

20.57 TRANSITIONAL JOB OPPORTUNITIES PREFERENCE PROGRAM

20.57.1 This Agreement is subject to the provisions of County's ordinance entitled Transitional Job Opportunities Preference Program, as codified in Chapter 2.205 of the Los Angeles County Code.

20.57.2 Foundation shall not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a Transitional Job Opportunity vendor.

20.57.3 Foundation shall not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a Transitional Job Opportunity vendor.

20.57.4 If Foundation has obtained County certification as a Transitional Job Opportunity vendor by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this Agreement to which it would not otherwise have been entitled, shall:

a. Pay to County any difference between the Agreement amount and what County's costs would have been if the Agreement had been properly awarded;

b. In addition to the amount described in subdivision (1), be assessed a penalty in an amount of not more than 10 percent (10%) of the amount of the Agreement; and

c. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Foundation Non-responsibility and Foundation Debarment).

The above penalties shall also apply to any entity that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification, and fails to notify the certifying department of this information prior to responding to a solicitation or accepting a Agreement award.

20.58 SURRENDER OF GARDEN PROPERTY

Upon termination, expiration of the term hereof, or cancellation thereof as herein provided, Foundation shall peaceably vacate the Garden Property and any and all improvements located thereon and deliver up the same to County in a reasonably good condition, ordinary wear and tear excepted, subject to the right of County to demand removal thereof to the extent that Section 20.59 hereinbefore may be applicable thereto.

20.59 TAXES AND ASSESSMENTS

20.59.1 The property interest conveyed herein may be subject to real property taxation and/or assessment thereon, and in the event thereof, Foundation shall pay before delinquency all lawful taxes, including but not limited to possessory interest taxes, assessments, fees or charges which at any time may be levied by the State, County, City or any other tax or assessment-levying body upon the Garden Property and any improvements located thereon.

20.59.2 Foundation shall also pay all taxes, assessments, fees and charges on goods, merchandise, fixtures, appliances and equipment owned or used therein.

20.60 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTIONS PROGRAM

Failure of Foundation to maintain compliance with the requirements set for in Paragraph 20.15, Foundation's Warranty of Compliance with County's Defaulted Property Tax Reduction Program, shall constitute default under this Agreement. Without limiting the rights and remedies available to County under any other provisions of this Agreement, failure of contractor to cure such default within 10 days of notice shall be grounds upon which County may terminate this Agreement and/or pursue debarment of Foundation, pursuant to County code chapter 2.206.

20.61 COMPLIANCE WITH COUNTY'S SMOKING BAN ORDINANCE

This Agreement is subject to the provisions of County's ordinance entitled Los Angeles County Code Title 17, Parks, Beaches, and Other Public Places, prohibiting smoking at County Parks ("Smoking Ban Ordinance") as codified in Sections 17.04.185 through 17.04.650 of the Los Angeles County Code.

20.62 USE OF EXPANDED POLYSTYRENE (EPS) FOOD CONTAINERS

The Foundation is required to comply with County's policy on restricting its purchase and use of EPS food containers on County-owned facilities.

20.63 TUBERCULOSIS

Contractor shall not employ as a member of its food and non-alcoholic beverage staff any person who cannot produce a certificate showing that within the last two (2) years, such person has been examined and has been found to be free of communicable tuberculosis. Thereafter, those employees whose skin test is negative shall be required to undergo the foregoing examination at least once every four (4) years for so long at the employee remains skin test negative. Once an employee has documented positive skin test, he or she shall be removed from the position of food and beverage staff. When the skin test has been followed by x-ray, the forgoing examination is no longer required and a

referral shall be made within thirty (30) days of the examination to the county's 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), Division 2 of the California Business Code and or a notice from a public health agency or unit of the Tuberculosis Association that indicates freedom from active tuberculosis.

20.64 ARTIFICIAL TRANS FAT REDUCTION PROGRAM

A. Contractor agrees that is will participate in the County's Artificial Trans Fat Reduction (ATFR) Program, which mandates that no foods containing 0.5 grams or more of artificial trans fat per serving be stored, distributed, held for service, and/or used in the preparation of any menu item or in the Contractor's demised premises, except for food that is being served directly to consumers in a manufacturer's original sealed package. Contractor shall provide the written certification attached hereto as Exhibit K stating that it has reviewed and is familiar with the requirements of the ATFR Program and will promptly obtain approval as a participant from the County's Public Health Department. Further information can be found at www.lapublichealth.org.

B. Within 5 days of the County's execution of this Agreement, Contractor shall submit to the County's Public Health Department all required application materials for participation in the ATFR Program, and shall thereafter diligently pursue approval as an ATFR participant. Contractor's failure to do either of the foregoing shall constitute a material breach of this Agreement and shall be grounds for immediate termination by the County. County shall have the right, in its sole discretion, to extend the time limit for submission of any and all application documents.

C. Upon County's approval of the Contractor's participation in the ATFR Program, Contractor shall have the same rights and obligations as any voluntary member of ATFR Program (e.g., use of

Program decal/logo, status updating, etc.), except for the right to terminate participation and as otherwise set forth herein.

D. In addition to any remedies provided the County by ATFR Program's rules, any failure by Contractor to comply with the ATFR Program standards shall constitute a material breach of this Agreement entitling the County to terminate the Agreement in its entirety or, if the Contractor provided service to multiple demised premises, with respect to the non-compliant facility. Prior to and/or in lieu of termination, the County may also, at its discretion, do any or all of the following;

1. Impose liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from Contractor's breach of this Section 20.65. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is $100 per day per non-compliant facility and that Contractor shall be liable to County for that amount.
2. Require removal of all AFTR Program logo, signage and other advertising materials from the non-compliant Contractor demised premises and from any other location where such materials are used by the Contractor, including without limitation menus, menu boards, and dining table tent cards.
3. Require Contractor to cure its non-compliance with ATFR Program standards

20.65 CONTRACT ALERT REPORTING DATABASE

The County maintains databases that track/monitor Contractor performance history. Information entered into such database may be used for a variety of purposes, including determining whether the County will exercise an agreement term extension option.

IN WITNESS WHEREOF, Foundation has executed this Agreement, or caused it to be duly executed and County of Los Angeles, by order of its Board of Supervisors has caused this Agreement to be executed on its behalf by the Chair of said Board and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, the day and year first above written.

COUNTY OF LOS ANGELES

By_____
Russ Guiney, Director
Department of Parks and Recreation

SOUTH COAST BOTANIC GARDEN FOUNDATION, INC.

By _____
Name

PRESIDENT SCBGF
Title

ATTEST:

APPROVED AS TO FORM:
JOHN KRATTLI
County Counsel

By _____
Christina A. Salseda,
Principal Deputy County Counsel

EXHIBIT A

HOURS OF OPERATION

SOUTH COAST BOTANIC GARDEN

The South Coast Botanic Garden shall be open every day of the year, except for Christmas. Hours of operation shall be 9:00 AM to 5:00 PM.

EXHIBIT B

ADMISSION FEES

SOUTH COAST BOTANIC GARDEN

Admission fees to the South Coast Botanic Garden are:

Adults	$8.00
Students and Seniors	$6.00
Children Ages 5-12	$3.00
Children under 5	free
Members	free
Tram	$4.00

- Visitors under 18 must be accompanied by an adult.
- Admission free on the third Tuesday of the month
- Admission free to Golden State Advantage (EBT) cardholders and their family

EXHIBIT C

FOUNDATION'S EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

South Coast Botanic Garden Foundation
Foundation's Name

_____
Business Address

_____
Internal Revenue Service Employer Identification Number

GENERAL

In accordance with *Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000e through 2000e-17*, Section 504 of the *Rehabilitation Act of 1975*, the *Food Stamp Act of 1977*, the *Welfare and Institutions Code Section 1000, Americans with Disability Act of 1990*, California Department of Social Services Manual of Policies and Procedures Division 21, the Contractor, supplier, or vendor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, creed, color, national origin, political affiliation, marital status, age, disability, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

PROPOSER'S CERTIFICATION

		Check One
1.	The Foundation has a written policy statement prohibiting discrimination in all phases of employment.	[x] Yes [ ] No
2.	The Foundation periodically conducts a self analysis or utilization analysis of its work force.	[x] Yes [ ] No
3.	The Foundation has a system for determining if its employment practices are discriminatory against protected groups.	[x] Yes [ ] No
4.	Where problem areas are identified in employment practices, the Foundation has a system for taking reasonable corrective action which includes the establishment of goals and timetables.	[x] Yes [ ] No

Name (please print or type) Robin Hill

Title of Signer (please print or type) Robin Hill President SCBGF

Signature Robin Hill Date 3/21/13

EXHIBIT D

COUNTY OF LOS ANGELES CONTRACTOR EMPLOYEE JURY SERVICE PROGRAM APPLICATION FOR EXCEPTION AND CERTIFICATION FORM

The County's solicitation for this contract/purchase order (Request for Proposal or Invitation for Bid) is subject to the County of Los Angeles Contractor Employee Jury Service Program (Program) (Los Angles County Code, Chapter 2.203). All bidders or proposers, whether a contractor or subcontractor, must complete this form to either 1) request an exception from the Program requirements or 2) certify compliance. Upon review of the submitted form, the County department will determine, in its sole discretion, whether the bidder or proposer is excepted from the Program.

Company Name: South Coast Botanic Garden Foundation, Inc.		
Company Address: 26300 Crenshaw Blvd.		
City: Palos Verdes Peninsula	**State: CA**	**Zip Code: 90274**
Telephone Number:		
Solicitation For (Type of Goods or Services): Joint Operating Agreement at the South Coast Botanic Garden		

If you believe the Jury Service Program does not apply to your business, check the appropriate box in Part I (attach documentation to support your claim); or, complete Part II to certify compliance with the Program. Whether you complete Part I or Part II, please sign and date this form below.

Part I: Jury Service Is Not Applicable To My Business

☐ My business does not meet the definition of "contractor", as defined in the Program as it has not received an aggregate sum of $50,000 or more in any 12-month period under one or more County contracts or subcontracts (this exception is not available if the contract/purchase order itself will exceed $50,000). I understand that the exception will be lost and I must comply with the Program if my revenues from the County exceed an aggregate sum of $50,000 in any 12-month period.

☐ My business is a small business as defined in the Program. It 1) has ten or fewer employees; and 2) has annual gross revenues in the preceding twelve months which, if added to the annual amount of this contract, are $500,000 or less; and 3) is not an affiliate or subsidiary of a business dominant in its field of operation, as defined below. I understand that the exemption will be lost and I must comply with the Program if the number of employees in my business and my gross annual revenues exceed the above limits.

"**Dominant in its field of operation**" means having more than ten employees, including full-time and part-time employees, and annual gross revenues in the preceding twelve months, which if added to the annual amount of the contract awarded, exceed $500,000.

"**Affiliate or subsidiary of a business dominant in its field of operation**" means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

☐ My business is subject to a Collective Bargaining Agreement (attach agreement) that expressly provides that it supersedes all provisions of the Program.

OR

Part II – Certification of Compliance

☑ My business has and adheres to a written policy that provides, on an annual basis, no less than five days of regular pay for actual jury service for full-time employees of the business who are also California residents, **or** my company will have and adhere to such a policy prior to award of the contract.

I declare under penalty of perjury under the laws of the State of California that the information stated above is true and correct.

Print Name: Robin Hill	Title: PRESIDENT, SCBGF
Signature: Robin Hill	Date: 3/21/13

EXHIBIT E
REQUIRED FORMS

CERTIFICATION OF COMPLIANCE WITH THE COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Company Name: South Coast Botanic Garden Foundation, Inc.		
Company Address: 26300 Crenshaw Blvd.		
City: Palos Verdes Peninsula	State: CA	Zip Code: 90274
Telephone Number: 310-544-1948	Email address:	
Agreement For Operation of the South Coast Botanic Garden		

The Proposer/Bidder/Contractor certifies that:

☑ It is familiar with the terms of the County of Los Angeles Defaulted Property Tax Reduction Program, Los Angeles County Code Chapter 2.206; **AND**

To the best of its knowledge, after a reasonable inquiry, the Proposer/Bidder/Contractor is not in default, as that term is defined in Los Angeles County Code Section 2.206.020.E, on any Los Angeles County property tax obligation; **AND**

The Proposer/Bidder/Contractor agrees to comply with the County's Defaulted Property Tax Reduction Program during the term of any awarded contract.

- OR -

☐ I am exempt from the County of Los Angeles Defaulted Property Tax Reduction Program, pursuant to Los Angeles County Code Section 2.206.060, for the following reason:

_____

_____

I declare under penalty of perjury under the laws of the State of California that the information stated above is true and correct.

Print Name: Robyn Hill	Title: President SCBGF
Signature: Robyn Hill	Date: 3/27/13

Date: _____

EXHIBIT F

IRS Notice 1015

Department of the Treasury
Internal Revenue Service

Notice 1015

(Rev. December 2012)

Have You Told Your Employees About the Earned Income Credit (EIC)?

What is the EIC?

The EIC is a refundable tax credit for certain workers.

Which Employees Must I Notify About the EIC?

You must notify each employee who worked for you at any time during the year and from whom you did not withhold income tax. However, you do not have to notify any employee who claimed exemption from withholding on Form W-4, Employee's Withholding Allowance Certificate.

Note. You are encouraged to notify each employee whose wages for 2012 are less than $50,270 that he or she may be eligible for the EIC.

How and When Must I Notify My Employees?

You must give the employee one of the following:

- The IRS Form W-2, Wage and Tax Statement, which has the required information about the EIC on the back of Copy B.
- A substitute Form W-2 with the same EIC information on the back of the employee's copy that is on Copy B of the IRS Form W-2.
- Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC).
- Your written statement with the same wording as Notice 797.

If you are required to give Form W-2 and do so on time, no further notice is necessary if the Form W-2 has the required information about the EIC on the back of the employee's copy. If a substitute Form W-2 is given on time but does not have the required information, you must notify the employee within 1 week of the date the substitute Form W-2 is given. If Form W-2 is required but is not given on time, you must give the employee Notice 797 or your written statement by the date Form W-2 is required to be given. If Form W-2 is not required, you must notify the employee by February 7, 2013.

You must hand the notice directly to the employee or send it by first-class mail to the employee's last known address. You will not meet the notification requirements by posting Notice 797 on an employee bulletin board or sending it through office mail. However, you may want to post the notice to help inform all employees of the EIC. You can get copies of the notice from IRS.gov or by calling 1-800-829-3676.

How Will My Employees Know If They Can Claim the EIC?

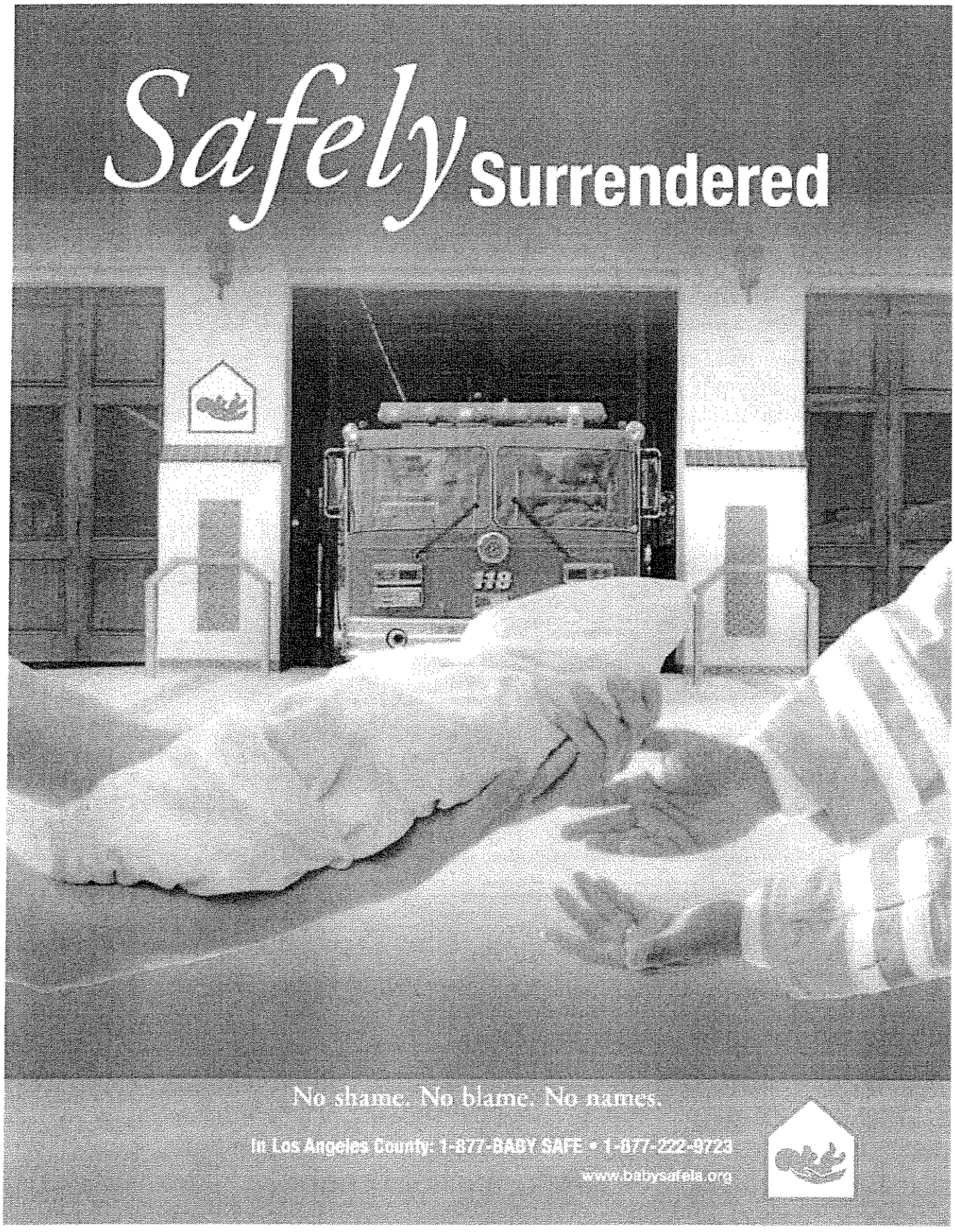
The basic requirements are covered in Notice 797. For more detailed information, the employee needs to see Pub. 596, Earned Income Credit (EIC), or the instructions for Form 1040, 1040A, or 1040EZ.

How Do My Employees Claim the EIC?

Eligible employees claim the EIC on their 2012 tax return. Even employees who have no tax withheld from their pay or owe no tax can claim the EIC and get a refund, but they must file a tax return to do so. For example, if an employee has no tax withheld in 2012 and owes no tax but is eligible for a credit of $800, he or she must file a 2012 tax return to get the $800 refund.

EXHIBIT G

Safely Surrendered Baby Law


Safely surrendered
No shame. No blame. No names.
In Los Angeles County: 1-877-BABY SAFE • 1-877-222-9723
www.babysafela.org

Ley de Entrega de Bebés *Sin Peligro*

Los recién nacidos pueden ser entregados en forma segura al personal de cualquier hospital o cuartel de bomberos del Condado de Los Ángeles

Sin pena. Sin culpa. Sin nombres.

En el Condado de Los Ángeles: 1-877-BABY SAFE • 1-877-222-9723

www.babysafela.org

Exhibit H

County/Foundation Notices

County:

County of Los Angeles Department of Parks and Recreation

Attn: Contracts

301 North Baldwin Avenue

Arcadia, CA 91007

Foundation:

South Coast Botanic Garden Foundation, Inc.

26300 Crenshaw Blvd.

Palos Verdes Peninsula, CA 90274

CHARITABLE CONTRIBUTIONS CERTIFICATION

South Coast Botanic Garden Foundation, Inc.
Company Name

26300 Crenshaw Blvd., Palos Verdes Peninsula, CA 90274
Address

95-6062220
Internal Revenue Service Employer Identification Number

California Registry of Charitable Trusts "CT" number (if applicable)

The Nonprofit Integrity Act (SB 1262, Chapter 919) added requirements to California's Supervision of Trustees and Fundraisers for Charitable Purposes Act which regulates those receiving and raising charitable contributions.

Check the Certification below that is applicable to your company.

- Proposer or Contractor has examined its activities and determined that it does not now receive or raise charitable contributions regulated under California's Supervision of Trustees and Fundraisers for Charitable Purposes Act. If Proposer engages in activities subjecting it to those laws during the term of a County contract, it will timely comply with them and provide County a copy of its initial registration with the California State Attorney General's Registry of Charitable Trusts when filed.

OR

- Proposer or Contractor is registered with the California Registry of Charitable Trusts under the CT number listed above and is in compliance with its registration and reporting requirements under California law. Attached is a copy of its most recent filing with the Registry of Charitable Trusts as required by Title 11 California Code of Regulations, sections 300-301 and Government Code sections 12585-12586.

Robin Hill
Signature

3/21/13
Date

ROBIN HILL, PRESIDENT SCBGF
Print Name and Title of Signer

EXHIBIT J

CERTIFICATION OF COMPLIANCE WITH ARTIFICIAL TRANS FAT REDUCTION PROGRAM

The Contractor certifies that:

(1) It is familiar with the requirements for participation in the County's Artificial Trans Fat Reduction (ATFR) Program and will obtain the County's approval as a participant in the ATFR Program.

(2) Within five days of County's execution of the Contract, it will submit to the County's Public Health Department all required application materials for participation in the ATFR Program, and thereafter diligently pursue approval as an ATFR participant.

Contractor name: _____

BY: Robin C. Hill
Signature

Robin C. Hill
Name

President, SCBGF
Title