

**THE CITY OF SEATTLE  
SEATTLE PARKS AND RECREATION**

**PARTNERSHIP AGREEMENT:  
ACTIVATION AND PROGRAMMING AGREEMENT FOR WESTLAKE PARK AND OCCIDENTAL  
SQUARE**

This Partnership Agreement for activation and programming services of Westlake Park and Occidental Square is entered into by and between The City of Seattle, a Washington State municipal corporation, by and through the Department of Parks and Recreation, (“the City” or “DPR”), and DBIA Services, a Washington State non-profit corporation (hereinafter referred as “DBIA”). Both the City and DBIA are collectively referred to as “Parties” within this Agreement.

WHEREAS, pursuant to Article XI of the Seattle Charter, the Superintendent of Parks and Recreation has the responsibility for the operation and control of the parks and recreation system of the City; and

WHEREAS, in 2006, the Downtown Parks and Public Spaces Task Force Report put forth a “charge and vision for downtown parks” central to which was the recommendation to “foster a Downtown Parks Renaissance through a new partnership between the City and the downtown community;” and

WHEREAS, since that time, the Department of Parks and Recreation has partnered with the downtown community to carry out the recommendations of the Task Force to employ programming and events to deter negative activity and bring positive uses to our downtown parks; and

WHEREAS, DBIA Services, is an experienced nonprofit organization, that has long been a partner with the Department of Parks and Recreation in the effort to create safe and lively downtown public parks; and

WHEREAS, in 2010, the Center City Parks Task Force was formed to follow up on the work of the earlier Downtown Parks and Public Spaces Task Force and took on the mission to “identify and support processes whereby a new management model and/or organizational entity can be created to provide the management and finances necessary to support and improve downtown Seattle parks in a sustainable manner;” and

WHEREAS, DBIA is focused on making Downtown Seattle a great place to live, work, shop and play through public realm management, economic development and marketing, and the City shares the same fostered vision; and

WHEREAS, on August 5, 2014 Seattle voters approved the Seattle Park District, a metropolitan park district authorized by Chapter 35.61 of the Revised Code of Washington, providing funding for the Urban Parks Partnership Investment Initiative 4.11 to “expand

programming and activation and provide research and money for a new management/partnership model for downtown parks;” and

WHEREAS, because of DBIA’s longstanding historical support of and successful engagement in these shared interests, DPR entered, with this community partner, into an experimental one-year Pilot Agreement for the Activation and Programming of Westlake Park and Occidental Square from May 5, 2015 through April 30, 2016 to significantly increase the activation and programming services of Westlake Park and Occidental Square; and

WHEREAS, the Urban Parks Partnership Investment Initiative 4.11, as part of the Seattle Park District’s six year plan, allows for the opportunity to fund a long term sustainable activation plan to activate Westlake Park and Occidental Square; and

WHEREAS, in December 2015, DPR invited all community organizations interested in a multi-year partnership with the City for activating and programming of Westlake Park and Occidental Square to submit proposals to the City through a publicly advertised Request for Proposal process; and

WHEREAS, following a formal and thorough review process of the submitted proposals, the DPR evaluation panel determined the strongest proposal to be that of DBIA Services; and

WHEREAS, upon mutual agreement as set forth herein, DBIA will work in collaborative partnership with DPR for activation, programming and coordination services to assure that Westlake Park and Occidental Square are operated in an efficient and effective manner to increase opportunities for positive public use and enjoyment of these parks; and

WHEREAS, DBIA acknowledges that this Agreement is subject to available City funding, which must be properly leveraged and efficiently used according to the terms herein, and all services shall be performed in strict compliance with all terms in this Agreement to ensure the positive, open, public use and enjoyment of Westlake Park and Occidental Square; and

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance by both Parties of this AGREEMENT and the incorporated Exhibits contained herein, the City and DBIA mutually agree as follows:

## **1. DEFINITIONS FOR THIS AGREEMENT**

“Activation” means providing semi-permanent or regularly available amenities such as moveable furniture, seasonal flowers, ping-pong tables, temporary art, information kiosks, and other elements, tasks and activities set forth in the Scope of Work that shall create a welcoming atmosphere and encourage people to use the park for positive reasons.

“Agreement” or “Partnership Agreement” means this mutually executed agreement, including any incorporated exhibits.

“City” means the City of Seattle, a municipal corporation and its elected officials and any department or subdivision thereof, including without limitation, the Department of Parks and Recreation.

“Citywide Special Events” means events permitted by the City of Seattle Special Events Office.

“DBIA Services” means the Washington State non-profit corporation organized under RCW Chapter 24.03.

“Effective Date” means the date this Agreement is executed by both parties, and commencing retroactively as of May 1, 2016.

“Expressive activity” means conduct protected by the First Amendment primarily intended to convey a particularized message and is likely to be understood as such in the surrounding circumstances. The principal object of expressive conduct is the expression, dissemination or communication by verbal, visual, literary or auditory means of opinion, views or ideas. Expressive activity includes, but is not limited to, public oratory and the distribution of literature, including the assembly of persons for such purposes. All expressive activity shall include, without limitation, all such activity that occurs on City property, including at Westlake Park and Occidental Square.

“Free speech activity or event” means an event that includes expressive activity as one or more of its stated purposes.

“Parks” means Westlake Park and Occidental Square collectively.

“Programming” means scheduled activities and entertainment and associated staffing that bring participants to the parks, including without limitation, community events, classes, readings, musical performances, chess tournaments, or other open public activities.

“Occidental Square” means the City owned property as legally described and depicted in **EXHIBIT F**.

“Scope of Work” or “Work” means the services provided by DBIA, and on behalf of DPR, related to the primary activation and programming of Westlake Park and Occidental Square.

“DPR” means Department of Parks and Recreation.

“Superintendent” means the Superintendent of Parks and Recreation.

“Westlake Park” means the City owned property as legally described and depicted in **EXHIBIT F**.

## **2. TERM OF AGREEMENT**

The term of this Agreement shall commence upon the Effective Date, which shall be May 1, 2016 and end on December 31, 2020, unless terminated earlier under the provisions herein.

### 3. OBJECTIVES

Both parties agree and understand that the City expects to achieve the following outcomes through this Partnership Agreement, including, but not limited to providing a safe, welcoming and vibrant environment:

- i. **Safe Environment:** Activation and programming of the Parks are perceived by the Seattle community to be safe, and achieve and maintain an approximate annual average of 1:1 ratio between men and women in both Parks as determined by counting the number of people in each park twice daily between the years of 2016-2020.
- ii. **Welcoming Environment:** Activation and programming of the Parks will reflect and welcome the perspective of the community as a whole, including underserved communities in the area, as demonstrated/documented through ongoing communication tools with the surrounding community, starting in 2016.
- iii. **Vibrant Environment:** Demonstrated proof that the community supports vibrant activation and programming strategies in the Parks through regular people counts (daily and event-based) and through regular community surveys or other professionally implemented mechanisms.
- iv. Application of all funds raised and collected in the Parks towards programming and activation of these same Parks as documented in bi-annual reports.

### 4. SCOPE OF WORK

The scope of work of this Agreement is as described below and as further defined in **EXHIBIT A**.

#### **A. Programming and Activation Services of Westlake Park and Occidental Square**

- i. DBIA shall provide services for, and on behalf of DPR, related to the primary activation and programming of Westlake Park and Occidental Square, and shall generally ensure free, open and public access to the public properties while providing these services.
- ii. DBIA shall provide supervision and oversight services to ensure sufficient personnel and general staffing necessary to promote and support the effective operation of all programs and events at the Parks and provide security services as needed to protect property and to ensure effective operation of programs and events at the Parks (excluding expressive First Amendment activities and events sanctioned and approved by the City).
- iii. DBIA will manage permitting and scheduling of activation, programming, concessions and vending, and events in Westlake Park and Occidental Square, except expressive activities and Citywide Special Events. A representative from DBIA will attend Citywide Special Events meetings and provide comment and questions for all Citywide Special Events in or around Occidental and Westlake parks. DBIA will

- notify DPR immediately upon the receipt of a permit application for any expressive activities/free speech requests in accordance to the instructions set forth in **EXHIBIT B**. DBIA may, at its discretion, provide funding to DPR for DPR programs and events to be implemented by DPR in Westlake Park and/or Occidental Square as mutually agreed upon by both Parties.
- iv. DBIA’s responsibilities will include acting on public requests for events and activities other than free speech events. DBIA shall only apply fees as set forth by DPR in the Fee schedule included in **EXHIBIT B**. DBIA shall not be required to pay any City permit fees during any activation and programming events sponsored by DBIA.
  - v. DBIA will work with permit applicants to ensure their events and activities are appropriate for the applied-for park, comply with all applicable city policies, rules, laws, and regulations, and configured in such a way as to fit successfully within the overall operation of the park.
  - vi. DBIA will maintain an electronic calendar for both Westlake Park and Occidental Square that is accessible to DPR staff and provides accurate and detailed information about all scheduled events, programs, and activities, and allows for coordination with DPR’s maintenance services. The calendar will indicate start and end times including set-up and take-down times if relevant, siting within the park, expected attendance, equipment, and other information that may be requested by DPR to allow DPR to manage maintenance, park ranger, and free speech issues in a well-informed manner.
  - vii. DBIA and DPR will work together to coordinate the permitting by DBIA of events and activities not related to free speech and the permitting by DPR of free speech events as described in **EXHIBIT B**.
  - viii. Representatives of DBIA and DPR shall meet as may be required by DPR or DBIA to review DBIA’s performance and DPR’s service levels under this Agreement, and discuss any problems or emerging issues.

**B. Activation and Programming Services: First Amendment Activities Protected**

- i. DPR will regulate the permitting of, and maintain responsibility for, all free speech activities and events in Westlake Park and Occidental Square; and all events permitted through the Citywide Special Events Committee, in accordance with applicable City rules and regulations.
- ii. DBIA recognizes that Westlake Park and Occidental Park are traditional public forums for purposes of the First Amendment of the U.S. Constitution and Article 1, Section 5 of the Washington Constitution.
- iii. DBIA will comply with DPR instructions regarding any rules, policies, practices or actions of DBIA relating to free speech events occurring in the Parks. DBIA will follow all City policies, practices, rules and laws regarding the regulation of speech in City parks that are provided to DBIA by the City.
- iv. DBIA will immediately forward any applications or requests for free speech activities or events to DPR.
- v. DBIA will work cooperatively with DPR to accommodate free speech events and will provide DPR with clear and accurate information regarding time, location, equipment, and expected attendance for events and programming scheduled by DBIA

so that DPR may determine whether the available space can accommodate a free speech event.

- vi. DBIA shall configure amenities and furniture in such a manner as to allow free speech events such as rallies and assemblies to occur safely.
- vii. In performance of all other services in the Partnership Agreement, DBIA agrees not to regulate or manage Expressive activity or other First Amendment activities in Westlake Park and Occidental Square. DBIA will be fully responsible, legally liable, and hold the City harmless for any First Amendment violations that the DBIA commits during performance of the Partnership Agreement.-

### **C. Additional Services**

DBIA will provide the following additional services, including but not limited to:

- i. Providing at DBIA’s discretion and own cost, new furniture and amenities to Westlake Park and Occidental Square as necessary to support, promote, and facilitate any activation and programming services provided by DBIA. Any and all new furniture and amenities added to the Parks by DBIA will comply with the principles and thresholds defined in **EXHIBIT C**.
- ii. Providing security services to protect property purchased by DBIA to ensure effective operation of programs and events.
- iii. Providing supervision and oversight services to ensure sufficient personnel and general staffing necessary to promote and support the effective operation of programs and events.
- iv. Developing, permitting, managing, and maintaining liability and responsibility for: all of DBIA’s activation and programming activities, and DBIA’s permitted activities and events at Westlake Park and Occidental Square, which shall include without limitation:
  - v. any damage, losses or liability, in any form, arising from DBIA’s conduct or omissions in performance of any terms and conditions of this Partnership Agreement, including any and all DBIA activation and programming activities at Westlake Park and Occidental Square,
  - vi. any damage, losses or liability, in any form, arising from the unlawful or negligent conduct of any DBIA Permittee user at Westlake Park and Occidental Square;
  - vii. any damages, losses or liability, in any form, asserted by a DBIA Permittee against the City related in any way to a DBIA permitted event, or a DBIA activation and programming activity or event, occurring at Westlake park and Occidental Square;
    - a. DBIA shall require its Permittees for activation and programming to ensure the City is an additional insured as an insurance requirement of the DBIA permit, and that the user fully indemnifies the City for any act or omission by the DBIA permit user, and that the City is added as a third party beneficiary to any DBIA permit for activation and programming at Westlake Park and Occidental Square.
- viii. Including the DPR name and/or logo in all branding of the partnership. DBIA shall be authorized to develop event, programming, and social media collateral so long as said materials are consistent with a City approved style guide for collateral materials

- which shall govern any branding of Westlake Park and Occidental Square or the use of the City of Seattle or Department of Parks and Recreation’s name, logos, likeness or images. The City shall review and within three business days of receipt act on any requests to use marketing or collateral material that materially deviate from the approved style guide.
- ix. Immediately correct any unsafe physical conditions to Westlake Park and/or Occidental Square that result from DBIA’s performance of services under this Partnership Agreement, and notify DPR of any potentially unsafe conditions, as well as any potentially unsafe conduct that it observes.

**D. Additional Maintenance and Beautification to Support Activation and Programming**

- i. In accordance with **EXHIBIT A**, DBIA may, at its discretion and own cost, purchase, or fund the purchasing of temporary equipment and other non-capital assets including but not limited to installations, activation elements, kiosks, artworks, and signage to add to the beautification or enjoyment of Westlake Park and Occidental Square. DBIA shall not undertake any improvements, additions, alterations or changes to Westlake Park and/or Occidental Square or appurtenant facilities that fall outside the principles and thresholds defined in **EXHIBIT C** without the prior, written approval of DPR.
- ii. When added amenities and/or increased programming directly and specifically results in a greater need for maintenance beyond the current baseline described in **EXHIBIT D**, to the extent available, DBIA will provide funding to DPR to accomplish the necessary work, based on current labor protocols and service levels indicated in **EXHIBIT D**. This in no way relinquishes DPR from the duties of providing adequate service to Occidental Square of Westlake Park, should the demand for these parks increase over time.
- iii. DBIA reserves the right to provide limited maintenance of any temporary installations or equipment purchased by DBIA in addition to hanging banners, litter pick-up, garbage-liner replacement, provision of recycling/compost, and wiping down of furniture to support programming and activities, if necessary.
- iv. DBIA may recommend changes to the basic look and design of Westlake Park and Occidental Square, including the location of benches, signs, and other permanent or semi-permanent features, which may generally be implemented by DPR to collaboratively implement this Agreement, provided any DBIA recommendations are consistent with the programming and aesthetic vision as outlined in **EXHIBIT A** and do not exceed the threshold of maintenance and beautification described therein.

**E. Report Outcomes and Assessment**

It is the responsibility of DBIA to define and measure success through a variety of communication tools, surveys or other professionally implemented mechanisms.

- i. DBIA will provide to the City an assessment of set aspirational targets for Women and Minority Owned Business Enterprises (WMBE) contracts, vendors and concessions, and include actual outcomes in a bi-annual report.
- ii. DBIA will conduct outreach that is inclusive of underserved communities to ensure planning, community feedback, measurements and assessments of the activation and programming of the Parks, including the perspective of underserved communities in the area. DBIA will report the methods and outcomes in a bi-annual report to DPR.
- iii. DBIA will provide a bi-annual report to DPR on outcomes, measurements and assessments of activation and programming services, including, but not limited to, summary of programs and activities, detailed revenue costs and expenditures, community surveys or other feedback tools, and measurements to indicate the levels of participation in events and activities, and the average daily ratio of men to women.

#### **F. Community Organization Financial Commitment**

All funds raised and collected by DBIA under this agreement will be applied towards programming and activation of Westlake Park and Occidental Square, and will be subject to the Financial and Accounting Procedures set forth by DPR. The City shall temporarily assign to DBIA the City's right to collect revenues from permit fees and/or revenue generating activities occurring within Westlake Park and Occidental Square related to activation and programming activities, and limited authorization for DBIA to apply such revenues directly towards paying for or offsetting of DBIA's costs of performing activation and programming services within Westlake Park and Occidental Square. To the extent any revenues are collected by DBIA from permit fees and/or any revenue generating activities occurring within Westlake Park and Occidental Square (excluding revenue derived from sponsorships, pass-through payments of DBIA collections, contributions, donations and grants from other city or other public, private or non-profit entities to DBIA) and remain unspent by DBIA at the time of the expiration or termination of this Agreement then all such revenues shall be remitted by DBIA to DPR within 5 business days of the expiration or termination of this Partnership Agreement.

- i. DBIA funding sources will meet a ratio of a minimum of three private sector dollars to every one public investment dollar for the duration of the contract and document in DBIA's financial reporting.
- ii. If necessary, DBIA will purchase from DPR any additional maintenance services needed in the Parks that are a direct and specific result of added amenities and/or increased programming and that are above and beyond the baseline maintenance already provided by DPR, which is reflected in **EXHIBIT D** – Baseline Parks Maintenance for Westlake Park and Occidental Square.
- iii. DBIA will report to DPR on a bi-annual basis, the outcomes, measurements and assessments as set forth in **EXHIBIT E** – Bi-annual Reporting Commitment, and including a detailed revenue, cost and expense report in a form acceptable to the City. If the Superintendent does not approve the bi-annual report, DBIA shall take all corrective action and submit a revised report to the Superintendent for review and approval.



- iv. DBIA and the City agree that the attached and incorporated **EXHIBIT D** establishes measurable levels of service that include maintenance, infrastructure repairs, the presence and enforcement actions of park rangers. Such levels shall reflect a “maintenance of effort” standard under which DPR’s support for functions and responsibilities reserved for it under this agreement represent not less than its commitment to other similarly situated, highly utilized or maintenance intensive DPR assets. Under no circumstances shall resources provided by or through DBIA result in or justify reductions in DPR’s support for its own functions and responsibilities. DBIA acknowledges that DPR maintenance and park ranger activities are budget-related and are subject to the City’s needs and funding limitations.
- v. DBIA will provide DPR with a copy of its parks-related financials as reported on DBIA’s yearly tax filings for 2016 through 2020, and as set forth below in the financial reporting requirements of this Agreement.

## **5. CITY’S RESPONSIBILITIES**

### **A. Ownership/Operational Services of Westlake Park and Occidental Square**

The ownership of Westlake Park and Occidental Square, including any pre-existing structures, buildings, equipment or improvements thereto or thereon, merchandise, maintenance equipment constructed or acquired by the City, or used by DBIA on behalf of the City (if applicable), and all alterations, additions or betterments thereto, shall remain with and be owned by the City. The ownership of all non-permanent amenities purchased by DBIA Services shall remain the property of DBIA unless otherwise agreed to by both Parties.

The City will:

- i. Provide funding over the next five years for the activation of both Westlake Park and Occidental Square through the Seattle Park District Investment Initiative 4.11.
- ii. Continue to maintain both properties and to provide park rangers, as available.
- iii. Continue to permit Free Speech activity or events; and permit Citywide Special Events through the City of Seattle Special Events Committee, taking into consideration all comments and questions posed by DBIA to the Citywide Special Events Committee regarding Citywide Special Events in or around Occidental and Westlake parks.
- iv. Notify DBIA of requests for Citywide Special Events to occur in Westlake Park and/or Occidental Square and, if so requested by DBIA, seek council from DBIA regarding approval of these events.
- v. Provide a minimum of 8 hours of Race and Social Justice training for all staff related to developing, implementing or overseeing programming and activation of the Parks.

**B. The City’s Collaborative Programming and Activation of Westlake Park and Occidental Square**

- i. DPR will utilize DBIA Services in the role of permitting and scheduling activation and programming activities and events, except those related to free speech events at Westlake Park and Occidental Square. DPR will immediately forward any and all requests for event permits in Westlake Park and/or Occidental Square, except free speech events, to DBIA.
- ii. In the event that DPR receives complaints regarding the performance of DBIA staff, the Parties shall appoint representatives to meet and confer on strategies for improving staffing and/or customer service.

**C. City’s Operations of Westlake Park and Occidental Square**

DPR will continue to provide the following operational services currently provided in Westlake Park and Occidental Square, as defined in **EXHIBIT D**, and including without limitation:

- i. Cleaning the Parks on a daily basis and maintaining basic infrastructure as described in **EXHIBIT D**.
- ii. Providing park rangers as available for a uniformed and positive presence and commitment to deterring Parks Code violations through education, diplomacy, trespass warnings and collaboration with the Seattle Police Department.

**D. Capital Project Planning Study**

During the term of this agreement, DPR will spend \$25,000 for a capital project planning study for Westlake Park. The study will identify and prioritize future capital projects for the park.

**6. PAYMENT**

Total compensation by the City to DBIA under this Agreement shall not exceed nine hundred thousand dollars (\$900,000) unless modified by a written amendment to this Agreement and at all times subject to Seattle City Council approval and authorization of the available City funds.

DPR will in good faith request to the Seattle City Council in its annual budget the anticipated funding levels set forth below to fulfill the commitments set forth in this Agreement. Anticipated funding levels for this Agreement are illustrated on the chart below.

| Anticipated Funding Levels | 2016   | 2017   | 2018   | 2019   | 2020   | Total     |
|----------------------------|--------|--------|--------|--------|--------|-----------|
|                            | \$250K | \$250K | \$200K | \$100K | \$100K | \$900,000 |

In year three, the City will evaluate the funding for years four and five with consideration for maintaining services and quality programming. At a minimum, the City will commit \$100,000 in year four and five each, for a minimum total contract of \$900,000.

It is the City's intent to compensate DBIA under this Agreement in the amount set forth in the illustrative anticipated funding levels chart above, subject to Seattle City Council approval and authorization of the available funds annually under the Seattle Park District Investment Initiative 4.11 Urban Parks Partnership and City budgets, which shall at all times remain at the City Council's sole discretion.

Notwithstanding the foregoing, in performance of the terms and conditions of this Agreement, DBIA will be compensated in a lump sum amount of \$125,000 by the City within 15 working days of the Effective Date of this Agreement, with the remaining \$125,000 to be paid to DBIA in November, 2016, following receipt and DPR's approval of DBIA's Bi-Annual Report which shall be due to DPR on November 1, 2016. Thereafter, if authorized and appropriated by City Council, DBIA will be compensated annually in two equal lump sum payments for all rates, expenses, costs, and any other permitted amounts incurred by DBIA to provide the activation and programming services for the Parks, upon receipt and DPR's approval of DBIA's Bi-Annual Reports. The 2017-2020 Bi-Annual Report dates shall be due the first business days of the months of May and November respectively. All work related to completing the Scope of Work referenced in **EXHIBIT A** which was performed by DBIA for this Partnership Agreement prior to the mutual execution of this Agreement is hereby retroactively ratified and eligible for reimbursement by the City, subject to DPR's review and approval of invoices submitted by DBIA, and in accordance with all other applicable terms and conditions in this Agreement.

## **7. TAXES, FEES, and LICENSES**

DBIA shall pay and maintain all applicable fees, licenses, assessments, permit charges and other business charges and requirements to perform the professional services in this Agreement. Each party will be responsible for payment of any applicable taxes owed by it and arising from this Agreement. As authorized by SMC, the Director of Finance and Administrative Services may withhold payment pending satisfactory resolution of unpaid taxes, fees, licensures and other permit and business charges due to the City.

## **8. ACCEPTANCE AND TRANSFER**

DBIA shall keep and maintain in good, operable, usable and sanitary order and repair all amenities, facilities, and aspects of Westlake Park and Occidental Square that DBIA utilizes while providing activation and programming services. Upon termination or expiration of this Partnership Agreement, all employees and agents of DBIA shall vacate the premises of Westlake Park and Occidental Square in a condition substantially similar to that described in the DPR Walk-Through Report as documented in **EXHIBIT F**, excepting normal and reasonable wear and tear. DBIA shall have no further rights or duties thereon, except to ensure and organize a proper transfer of the premises, DPR-owned equipment and property, records, all inventories, and funds or revenues (if applicable) of Westlake Park and Occidental Square back to the City.

DBIA will maintain a current list of publicly recognized sponsors, vendors, and Permittees of programming and activation services at Westlake Park and Occidental Square and surrender such to the City upon transfer.

## **9. COMPLIANCE WITH LAWS**

DBIA, at no expense to the City, shall comply with all laws of the United States and the State of Washington, the Charter and ordinances of the City of Seattle; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, DBIA shall comply with the requirements of this Section.

- i. Public access: Westlake Park and Occidental Square shall remain public property, with public access governed by applicable city rules, policies and laws, and nothing in this Agreement shall affect or limit the nature of open and public access to Westlake Park and Occidental Square. DBIA shall comply with all city, state and federal laws and regulations including all aspects of the Parks Code and the Department of Construction and Inspections Sign Code, including codes pertaining to off-premises advertising.
- ii. DBIA shall obtain all required permits or licenses from the appropriate regulatory agency before undertaking any regulated activity.

## **10. NONDISCRIMINATION**

DBIA will comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code (SMC), as they may be amended; and rules, regulations, orders, and directives of the associated administrative agencies and their officers. Failure to comply with any of the terms of these provisions shall be a material breach of the Partnership Agreement.

DBIA shall comply with the Americans with Disabilities Act 2010 Standards for accessible design, which in addition to existing federal, state, and city non-discrimination laws, extends the same civil rights protection to persons with disabilities, which have already been granted on the basis of race, color, religion, sex, age and national origin requirements.

DBIA shall also make every reasonable effort to increase public awareness and sensitivity to persons with disabilities. Among other things, DBIA shall:

- i. Provide advance notification of public meetings regarding its programs with statement “accommodation for persons with disabilities upon request.”
- ii. Hold public meetings in accessible locations when practical and accommodation is requested.
- iii. Provide alternate forms of communication if requested.

## **11. INSURANCE**

## **A. Evidence of Insurance**

Prior to the commencement of this Partnership Agreement and at no expense to DPR, DBIA shall secure and maintain during the term of this Partnership Agreement policy or policies of insurance as enumerated below. Evidence of such insurance, shall be delivered to the address shown in this Agreement. Said policy(ies) (1) shall be subject to approval by the City’s Risk Manager as to Company, Form and Coverage, and primary to all other insurance the City may secure, and (2) must protect the City from any negligence claims in connection with any activity performed by DBIA by virtue of this Agreement or any use and occupancy of the DPR facilities authorized under the Partnership Agreement.

## **B. Commercial general liability insurance**

A policy of Commercial General Liability Insurance, written on an occurrence form, including all the usual coverages known as:

1. Premises/Operations Liability,
2. Products/Completed Operations,
3. Personal/Advertising Injury,
4. Contractual Liability,
5. Owners and Contractors Protective Liability, and
6. Stop Gap or Employers Contingent Liability.

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage –  
\$1,000,000 each occurrence  
\$1,000,000 annual aggregate

Any deductible or self-insured retention must be disclosed and is subject to approval by the City’s Risk Manager.

## **C. Requirements**

Coverage and/or limits may be altered or increased as necessary, by agreement of the Parties. Said insurance policy(ies) and subsequent renewals must be maintained in full force and effect, at no expense to the City, throughout the entire period of the Agreement. The following documents must be provided as evidence of insurance coverage:

- i. Declarations: A copy of the policy’s declarations pages, showing the policy effective dates, limits of liability and the Schedule of Forms and Endorsements.
- ii. Required Separation of Insured Provision and Endorsement; Cross-Liability Exclusion and other Endorsements Prohibited: DBIA’s insurance policy shall include a “separation of insureds” or “severability” clause that applies coverage separately to

each insured and additional insured, except with respect to the limits of the insurer’s liability. DBIA shall provide the City a copy of the endorsement naming the City of Seattle as an Additional Insured, showing the policy number and signed by an authorized representative, on Form CG2026 (ISO) or comparable. A copy of the “Endorsements Form” to the policy that shows endorsements issued on the policy, and which include any company-specific or manuscript endorsements. A copy of an endorsement stating that “The coverages provided by this policy to the City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City of Seattle.”

DBIA’s insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under DBIA’s insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. DBIA’s CGL policy shall NOT include any of the following Endorsements (or their equivalent endorsement or exclusions): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer’s Liability exclusion, (e) any “Insured vs. Insured” or “cross-liability” exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. DBIA’s failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Agreement with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by DBIA or reduced and/or offset against the Contract.

#### **D. Business automobile liability insurance**

When a vehicle is used on DPR property under this Agreement then a policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles is required. Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage:  
\$1,000,000 per person  
\$1,000,000 per occurrence

#### **E. Worker’s COMPENSATION INSURANCE**

A policy of Worker’s Compensation to comply with all applicable workers’ compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. Such workers’ compensation and occupational disease requirements

shall include coverage for all employees suffering bodily injury (including death) by accident or disease, which arises out of or in the connection with the performance of this Agreement.

#### **F. Rating & City approval**

All policies shall be subject to approval by the City’s Risk Manager as to company (must be rated A-VII or higher in the A.M. Best’s Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker), form and coverage, and primary to all other insurance.

### **12. FINANCIAL AND ACCOUNTING PROCEDURES/BUSINESS RECORDS**

#### **A. Accounting Procedures**

DBIA shall employ a method of accounting for all the funds, permit fees, revenues and expenses in connection with the activation and programming services of Westlake Park and Occidental Square that correctly and accurately reflect the gross receipts and disbursements received or made by DBIA for performance under this Agreement in a separate and wholly segregated account.

- i. DBIA shall establish and implement adequate internal controls for this operation and all cashing and cash handling that comply with GAAP, and with the City’s cash handling policies to be provided by DPR prior to the execution of this Agreement.
- ii. The method of accounting, including bank accounts, established for the operation shall be separate from the accounting system used for any other business operated by DBIA.

#### **B. Monthly Reports and Transactions**

- i. DBIA shall provide to the City a Bi-annual Report of the previous six-month transactions that includes year-to-date, and income statement, as defined in **EXHIBIT E**.
- ii. As requested by the City, DBIA shall provide a copy of every bank deposit slip and a copy of every credit card batch settlement for the previous month(s), and a revenue report that separates the revenue by category and source approved by the City (excluding revenue derived from sponsorships, pass-through payments of DBIA collections, contributions, donations and grants from other city or other public, private or non-profit entities to DBIA).
- iii. After review of the above items, the City may request additional reports that detail previous transactions related to the activities described in this Agreement.

#### **C. Types of Business Records**

DBIA shall keep and store within the city limits of Seattle, Washington the following records and documents:

- i. Regular books of account such as general ledgers;

- ii. Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.;
- iii. Sales tax returns and checks and other documents proving payment of sums shown;
- iv. Cash register tapes or computerized records for the identification of day-to-day sales; Logs showing the dates and times of programming activities and events that generated revenue; and
- v. Any other accounting records that the City, exercising reasonable discretion, deems necessary for proper reporting of receipts.
- vi. All books and records related to the activities performed pursuant to this Agreement will be turned over to the City after 3 years for retention in City archives, in City-authorized storage boxes with a completed City archival form attached to each box as required by the City Archivist.

#### **D. Annual Financial Statements**

The City may request and DBIA shall provide to the satisfaction of the City audits of financial statements related to the activities performed pursuant to this Agreement.

#### **E. Public Records**

All information obtained in connection with the City’s inspections of the records or audits and all information submitted to the City may be or become subject to public inspection and/or reproduction as public records.

### **13. AUDIT**

Upon City’s request and with 10 days’ notice, DBIA shall permit the City and any other governmental agency (“Agency”) involved in the funding of the Work to inspect and audit all pertinent books and records. DBIA agrees to comply with the City’s examination of all applicable records, inspection and verification rights, and/or audit requirements related to DBIA’s performance of this Agreement. This includes work of DBIA, any subcontractor, or any other person or entity that performs connected or related Work. Such books and records shall be made available at all times deemed necessary by the Agency, including up to six years after final payment or release of withheld amounts. Such inspection and audit shall occur in King County, Washington, or other reasonable locations that the Agency selects. DBIA shall supply or permit the Agency to copy such books and records. DBIA shall ensure that inspection, audit and copying rights of the Agency is a condition of any subcontract, agreement or other arrangement under which any other persons or entity may perform Work under this Agreement.

### **14. INDEPENDENT CONTRACTOR**

The relationship of DBIA to the City due to this Agreement shall be that of an independent contractor and not a City employee. Neither DBIA nor any of DBIA’s employee or employments



performing services under this Agreement shall be an employee of the City. Except as set forth in this Agreement, the City has neither direct nor immediate control over DBIA nor the right to control the manner or means by which DBIA works. This Agreement prohibits DBIA to act as an agent or legal representative of the City. DBIA is not granted express or implied rights or authority to assume or create any obligation or responsibility for or in the name of the City, or to bind the City. The City is not liable for or obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay social security or other tax that may arise from employment to DBIA. If the City needs DBIA to work on City premises and/or with City equipment, the City may provide the necessary premises and equipment. Such premises and equipment are exclusively for the Work and not to be used for any other purpose. If DBIA works on the City premises using City equipment, DBIA remains an independent contractor and does not function as a City employee.

### **15. ASSIGNMENT AND SUBCONTRACTING**

DBIA shall not assign its obligations under this Agreement. DBIA shall not subcontract its obligations under this Agreement without the City's written consent, which may be granted in the City's sole discretion but shall not be unreasonably withheld. Any subcontract made by DBIA shall incorporate by reference this Agreement, except as otherwise provided. DBIA shall ensure that all sub consultants comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release DBIA from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

### **16. CITY CODE AND ETHICAL STANDARDS**

DBIA shall promptly notify the City in writing of any person who is expected to be a DBIA worker (including any DBIA employee, sub consultant, principal, or owner) and was a former City officer or employee within the past twelve (12) months.

DBIA shall ensure compliance with the City Ethics Code by any DBIA worker when the Work or matter related to the Work is performed by a DBIA worker who has been a City officer or employee within the past two years.

DBIA shall provide written notice to the City of any DBIA worker who shall or is expected to perform over 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those performed for DBIA and other hours that the worker performed for the City under any other contract. Such workers are subject to the City Ethics Code, SMC 4.16. DBIA shall advise their workers of this requirement.

DBIA shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to DBIA. Promotional items worth less than \$25 may be distributed by DBIA to City employees if DBIA uses the items as routine

and standard promotional materials. Any violation of this provision may cause termination of this Agreement. Nothing in this Agreement prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

## **17. NO CONFLICT OF INTEREST**

DBIA confirms that DBIA or workers have no business interest or a close family relationship with any City officer or employee who was or will be involved in DBIA selection, negotiation, drafting, signing, administration or evaluation of DBIA’s work. As used in this Section, the term DBIA includes any worker of DBIA who was, is, or will be, involved in negotiation, drafting, signing, administration or performance of the Agreement. The term “close family relationship” refers to: spouse or domestic partner, any dependent parent, parent-in-law, child, son-in-law, daughter-in-law; or any parent, parent in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

## **18. INTELLECTUAL PROPERTY RIGHTS**

### **A. Copyrights**

DBIA shall retain the copyright (including the right of reuse) to all materials and documents prepared by DBIA for the Work, whether or not the Work is completed. DBIA grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use, copy and distribute every document and all the materials prepared by DBIA for the City under this Agreement. If requested by the City, a copy of all drawings, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs, and other storage facilities), software program or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials developed solely for and paid for by the City to perform the Work, shall be promptly delivered to the City.

### **B. Patents**

DBIA assigns to the City all rights in any invention, improvement, or discovery, with all related information, including but not limited to designs, specifications, data, patent rights and findings developed with the performance of the Agreement or any subcontract. Notwithstanding the above, DBIA does not convey to the City, nor does the City obtain, any right to any document or material utilized by DBIA created or produced separate from the Agreement or was pre-existing material (not already owned by the City), provided that DBIA has identified in writing such material as pre-existing prior to commencement of the Work. If pre-existing materials are incorporated in the work, DBIA grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display and transfer the pre-existing material, but only as an inseparable part of the work.

The City may make and retain copies of such documents for its information and reference with their use on the project. DBIA does not represent or warrant that such documents are suitable for reuse by the City or others, on extensions of the project or on any other project.

## **19. CONFIDENTIALITY**

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act*) all materials received or created by the City of Seattle are **public records**. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material. Some records or portions of records are legally *exempt from disclosure* and can be redacted or withheld. The Public Records Act (RCW 42.56 and RCW 19.10) describes those exemptions. DBIA must familiarize themselves with the Washington State Public Records Act (PRA) and the City of Seattle’s process for managing records.

### **A. Protecting your Materials from Disclosure (Protected, Confidential, or Proprietary)**

DBIA must determine and declare any materials DBIA may want exempted (redacted), and that DBIA believes are eligible for redaction. This includes but is not limited to DBIA’s contract materials and work products.

### **B. Contract Work Products**

If DBIA wishes to assert exemptions for DBIA’S contract work products, DBIA must notify DPR at the time such records are generated.

Please note the City cannot accept a generic marking of materials, such as marking everything with a document header or footer, page stamp, or a generic statement that a document is non-disclosable, exempt, confidential, proprietary, or protected. DBIA may not exempt an entire page unless each sentence is entitled to exemption; instead, identify paragraphs or sentences that meet the RCW exemption criteria DBIA is relying upon.

### **C. City’s Response to a Public Records Act Requests**

The City will prepare two versions of DBIA’s materials:

- i. Full Redaction: A public copy that redacts (blacks out) both the exemptions (such as social security numbers) identified by the City and also materials or text DBIA identified as exempt. The fully redacted version is made public upon contract execution and will be supplied with no notification to DBIA.
- ii. Limited Redaction: A copy that redacts (blacks out) only the exemptions (such as social security numbers) identified by the City. This does not redact (black out) exemptions DBIA identified. The Limited Redaction will be released only after DBIA is provided “third party notice” that allows DBIA the legal right under RCW 42.56.540 to bring a legal action to enjoin the release of any records DBIA believe are not subject to disclosure.

- iii. If any requestor seeks the Limited Redacted or original versions, the City will provide DBIA “third party notice”, giving ten business days to obtain a temporary restraining order while DBIA pursues a court injunction. A judge will determine the status of DBIA’s exemptions and the Public Records Act.

## **20. DISPUTES**

Any dispute or misunderstanding that may arise under this Agreement, concerning DBIA’s performance, shall first be through negotiations, if possible, between DBIA’s Senior Manager, Public Space Operations & Events and the City’s Center City Parks Manager. It shall be referred to the Director of Partnerships and Strategic Outreach and DBIA’s senior executive(s). If such officials do not agree upon a decision within a reasonable period of time, either party may decline or discontinue such discussions and may then pursue the legal means to resolve such disputes, including but not limited to alternative dispute resolution processes. Nothing in this dispute process shall mitigate the rights of the City to terminate the contract. Notwithstanding all of the above, if the City believes in good faith that some portion of the Work has not been completed satisfactorily, the City may require DBIA to correct such work prior to the City payment. The City will provide to DBIA an explanation of the concern and the remedy that the City expects. The City may withhold from any payment otherwise due, an amount that the City in good faith finds to be under dispute, or if DBIA provides no sufficient remedy, the City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed. In the event that any dispute cannot be resolved through negotiations, venue for any litigation arising out of this Agreement shall be in King County Superior Court.

## **21. INDEMNIFICATION**

DBIA releases and shall defend, indemnify, and hold the City and its officers, employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local laws or regulations) (and including, but not limited to, claims for infringement of any copyright, patent, trademark, or trade secret), costs (including attorneys’ fees), actions or damages of any sort arising out of DBIA’s performance or nonperformance of the services to be provided under the Partnership Agreement attributable to the acts or omissions, willful misconduct, or breach of the Partnership Agreement by DBIA, or DBIA’s sub consultants, servants, agents, officers or employees. This obligation to defend and indemnify the City also extends to any claims of discrimination, retaliation, harassment, and all other employment-related claims arising from the conduct of any DBIA agent or employee. In furtherance of these obligations, and only regarding the City and its officers, employees, and agents, DBIA waives any immunity it may have or limitation on the amount or type of damages imposed under Title 51 RCW, or any other industrial insurance, workers compensation, disability, employee benefit or similar laws. DBIA acknowledges that the foregoing waiver of immunity was mutually negotiated, and that the contract amount reflects this negotiation. For any claims caused by or resulting from the concurrent negligence of the City and DBIA, DBIA only shall be obligated to defend and indemnify the City to the extent of DBIA’s negligence. DBIA shall have no obligation to defend or indemnify the City for any claims caused by or resulting from the City’s sole negligence.

DBIA shall defend and hold the City harmless for any and all claims made against the City for any violations of the First Amendment of the U.S. Constitution or Article 1, Section 5 of the Washington Constitution, related to restrictions imposed by DBIA on an applicant for a free speech event that are not approved in advance by the City or that arise out of DBIA's performance or nonperformance of the services to be provided under this Partnership Agreement. Upon the receipt of or service on the City of any such claim, lawsuit, demand or any other such complaint based on such restrictions imposed without DPR's approval, the City may tender the defense to DBIA. Upon the tender of such defense, DBIA shall vigorously and thoroughly prosecute such defense on the City's behalf. DBIA shall be responsible for and shall pay any and all amounts incurred by the City as a result of any such claim, lawsuit, demand or any other such complaint, including, but not limited to, the amount of any judgments, costs, fines, damages and attorneys' fees charged against the City. DBIA shall have no obligation to defend and hold the City harmless from any claims arising out of (i) the City's regulating, permitting and responsibility for Expressive Activity and/or Free Speech Activities or Events; and (ii) City's maintenance and/or capital construction as set forth in this Agreement.

The indemnification provisions shall survive any termination or expiration of the Partnership Agreement.

## **22. TERMINATION**

### **A. For Cause**

The City may terminate the Agreement if DBIA is in material breach of this Agreement, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.

### **B. For Reasons Beyond Control of Parties**

Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout or lockout, except labor disputes involving DBIA's own employees, sabotage, or superior governmental regulation or control.

### **C. For Convenience**

The City or DBIA may terminate this Agreement without cause and including the Party's convenience, upon thirty (30) days written notice. To the extent, DBIA exercises termination for convenience it shall ensure strict compliance with all provisions in this Agreement including without limitation the financial and measurement responsibilities of DBIA in **Section 4.F. Community Organization Financial Commitment**, and the financial and accounting procedures set forth in **Section 12 Financial And Accounting Procedures/Business Records**, of this Agreement.

### **D. Notice**

Notice of termination under this Section shall be given by the party terminating this Agreement to the other not fewer than thirty (30) business days prior to the effective date of termination.

#### **E. Actions upon Termination**

If termination occurs through no fault of DBIA, DBIA shall be paid for the services properly performed prior to termination, with any reimbursable expenses then due, but such compensation shall not exceed the maximum compensation to be paid under the Agreement. DBIA agrees this payment shall fully and adequately compensate DBIA and all sub consultants for all profits, costs, expenses, losses, liabilities, damages, taxes and charges of any kind (whether foreseen or unforeseen) attributable to the termination of this Agreement.

### **23. AGREEMENT ALTERATIONS AND AMENDMENTS**

DBIA and the City agree that the Partnership Agreement (as defined in the Recitals to this Agreement), including all terms and conditions therein, shall be rescinded and substituted with this Agreement, which covers the same subject matter and obligations and responsibilities between the Parties for the activation and programming services for Westlake Park and Occidental Square. DBIA and the City agree that upon the mutual execution of this Agreement by the Parties and the approval and authorization by ordinance by the Seattle City Council, this Agreement shall become effective and shall wholly supersede, substitute and replace the Partnership Agreement.

The parties acknowledge and agree that this Agreement and the attached and incorporated Exhibits sets forth the entire understanding and complete agreement between DBIA and the City, and all prior or contemporaneous agreements, undertakings, communications or representations of the parties with respect to the subject(s) contained herein this Agreement are null and void. No changes to provisions, price, quality, or Scope of Work, or the Exhibits attached to this Agreement will be effective without the written consent of both parties. This Agreement may be amended by mutual Agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### **24. APPLICABLE LAW**

This Agreement shall be construed and interpreted under the laws of the State of Washington. The venue of any legal action or claim brought under this Contract shall be in the Superior Court for King County.

### **25. SECTION HEADINGS, AND SUB-HEADINGS, INCORPORATED DOCUMENTS/EXHIBITS AND ORDER OF PRECEDENCE**

The headings used herein are inserted for convenience only and do not define or limit the contents. No verbal agreement or conversation between any officer, agent, associate or employee of The City and any officer, agency, employee or associate of DBIA prior to the execution of this Agreement shall affect or modify any of the terms or obligations in this Agreement. The following documents are incorporated by reference into this Agreement. Where there is conflict

or gap among these documents, the controlling document will be resolved in the following order of precedence:

- A. Applicable federal, state and local statutes, laws and regulations;**
- B. This Agreement;**
- C. All Exhibits to this AGREEMENT including:**
  - i. Exhibit A – Scope of Work, Budget, and Design Pallet
  - ii. Exhibit B – Park Use Permit Instructions and Use Permit Application Form
  - iii. Exhibit C – Principles And Thresholds
  - iv. Exhibit D – DPR Baseline Maintenance Service Levels
  - v. Exhibit E – Reporting Commitments
  - vi. Exhibit F – Westlake and Occidental Legal Descriptions and As-Is Conditions

**26. NOTICE**

All notices under this Agreement shall be delivered to the following addresses (or such other addresses as either party may designate in writing):

| <b>Contact for DBIA is:</b> |                                  | <b>Contact for the City is:</b> |                                 |
|-----------------------------|----------------------------------|---------------------------------|---------------------------------|
| <b>Name:</b>                | Jennifer Casillas                | <b>Name:</b>                    | Victoria Schoenburg             |
| <b>Address:</b>             | 1809 7 <sup>th</sup> Ave<br>#900 | <b>Address:</b>                 | 100 Dexter Ave N                |
| <b>City, State, Zip:</b>    | Seattle, WA 98101                | <b>City, State, Zip:</b>        | Seattle WA 98109                |
| <b>Phone:</b>               | 206-623-0340                     | <b>Phone:</b>                   | 206-684-7031                    |
| <b>Fax:</b>                 |                                  | <b>Fax:</b>                     |                                 |
| <b>Email:</b>               | jenniferc@downtownseattle.org    | <b>Email:</b>                   | victoria.schoenburg@seattle.gov |

**27. MISCELLANEOUS PROVISIONS**

**A. Binding Agreement**

This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors and assigns.

### **B. Remedies Cumulative**

Rights under this Agreement are cumulative and nonexclusive of any other remedy of law or in equity.

### **C. Captions**

The titles of sections or subsections are for convenience only and do not define or limit the contents.

### **D. Severability**

If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.

### **E. Waiver**

No covenant, term or condition or the breach shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by DBIA after the time the same shall have become due nor payment to DBIA for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.

### **F. No personal liability**

No officer, agent or authorized employee of the City or DBIA shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.

### **G. Inspections**

The City may conduct both scheduled and unscheduled inspections of the Westlake Park and Occidental Square without interrupting the activation and programming services. The City shall retain a written report of such inspections for reference and a copy of the report shall be forwarded to DBIA if and when an issue arises.



## H. Organization and Authority

As of the date of this Agreement and thereafter, DBIA hereby represents and warrants that (a) it is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Washington and is qualified to do business in Washington State, and has all requisite power and authority to conduct its business and own its property utilized under this Agreement, (b) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement, (c) the execution, delivery and performance by DBIA under this Agreement has been duly authorized by all necessary action and this Agreement has been duly and validly executed and delivered by DBIA, and (d) this Agreement constitutes the legal, valid and binding obligation of DBIA and is enforceable against DBIA in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the rights of creditors generally.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained, or attached, incorporated, and made a part, the parties have executed this Agreement by having legally binding representatives affix their signatures below.

**DBIA SERVICES**  
**A Washington State Non Profit**  
**Corporation**

**CITY OF SEATTLE**  
**Seattle Parks and Recreation**

By \_\_\_\_\_  
Signature Date

By \_\_\_\_\_  
Signature Date

Jon Scholes  
President/CEO, DBIA Services

Jesús Aguirre  
Superintendent of Parks and Recreation

**City of Seattle Business License Number: 529711**  
**Washington State Unified Business Identifier Number (UBI): 601 958 851**