

THE CITY OF SEATTLE
SEATTLE PARKS AND RECREATION

Activation and Programming Agreement for Westlake Park and Occidental Square Park

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

WHEREAS, pursuant to Article XI of the Seattle Charter, the Parks Superintendent 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, Seattle 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, the DBIA Services, is an experienced nonprofit organization, that has long been a partner with Seattle 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, the DBIA, in recognition of the depth and breadth of problem issues continuing to occur in downtown parks, has voluntarily increased its engagement in supporting and improving downtown parks by funding a new children’s play space, new public amenities such as ping pong and furniture, and providing free programming in Westlake Park; and

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

WHEREAS, because of DBIA’s longstanding historical support of and successful engagement in these shared efforts, Parks desires to enter into an experimental one-year pilot agreement with this community partner to provide the services described herein to significantly increase the activation and programming services of Westlake and Occidental Square Parks; and

WHEREAS, on May 5, 2015, DBIA and the CITY entered into an Agreement for the Activation and Programming of Westlake Park and Occidental Square Park, designated as Consultant Agreement Number CC15-2571-008 (hereinafter referred as “Consultant Agreement”), within the parameters of Chapter 20.50, Seattle Municipal Code; and

WHEREAS, DBIA and the CITY desire to rescind and substitute the entire Consultant Agreement with this Agreement, which covers the same subject matter and obligations and responsibilities between the Parties for the activation and programming services of Westlake Park and Occidental Square Park. It is the intent of both Parties that this Agreement, upon the mutual execution of the Parties and the approval and authorization by ordinance by the City of Seattle City Council, shall wholly rescind, substitute and replace the Consultant Agreement with this Agreement while continuing the collaborative partnership and pilot project between the Parties for the activation and programming services of Westlake Park and Occidental Square Park through April 30, 2016. The parties acknowledge and intend for

this Agreement to 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; and

WHEREAS, upon mutual agreement as set forth herein, DBIA will work in collaborative partnership with Parks for activation, programming and coordination services to assure that Westlake and Occidental parks 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 a pilot in nature and 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 Occidental Park and Westlake Park; and

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance by both Parties of this AGREEMENT and 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 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.

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

“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, provided that the term of this Agreement shall retroactively begin as of May 5, 2015, the date of the mutual execution of the Consultant Agreement between the Parties, and end on April 30, 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 person for such purposes. All expressive activity shall include, without limitation, all such activity that occurs on City property, including at Occidental Park and Westlake Park.

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

“Parks” means the City of Seattle Parks and Recreation Department.

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

“Occidental Park” or “Occidental Square Park” means the City property as defined in ATTACHMENT F.

“Westlake Park” means the property as defined in ATTACHMENT F.

2. TERM OF AGREEMENT

The term of this Agreement shall retroactively begin on May 5, 2015, the date of the mutual execution of the Consultant Agreement between the Parties and end on April 30, 2016, unless terminated earlier under the provisions herein.

3. 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 Occidental Square Park and Westlake Park

- i. DBIA will provide services for, and on behalf of Parks, related to the primary activation and programming of Occidental Square Park and Westlake Park that is above and beyond the baseline programming generally provided by Parks, as defined below under Section 4. PARKS RESPONSIBILITIES: Operations of Occidental Square Park and Westlake Park, of this Agreement.
- ii. DBIA will manage permitting and scheduling of activation, programming, concessions and vending, and events in Occidental Square Park and Westlake Park, except expressive activities and Citywide Special Events and those events and activities to be provided by Parks as part of its baseline programming. DBIA will notify Parks immediately upon the receipt of a permit application for any free speech requests in accordance to the instructions set forth in **EXHIBIT B**.
- iii. DBIA's responsibilities will include acting on public requests for events and activities other than free speech events and baseline programming performed by Parks. DBIA shall only apply fees as set forth by Parks 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.
- iv. 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.
- v. DBIA will maintain an electronic calendar for both Occidental Square Park and Westlake Park that is accessible to Parks staff and shows accurate and detailed information about all scheduled events, programs, and activities. 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 Parks to allow Parks to manage maintenance, park ranger, and free speech issues in a well-informed manner.
- vi. DBIA and Parks will work together to coordinate the permitting by DBIA of events and activities not related to free speech and the permitting by Parks of free speech events as described in **EXHIBIT B**.
- vii. DBIA shall immediately correct any unsafe physical conditions to Occidental Square Park and/or Westlake Park that result from its performance of services under this Agreement, or notify the Department of any potentially unsafe conditions, as well as any potentially unsafe conduct that it observes.
- viii. Representatives of DBIA and Parks shall, at a minimum, meet monthly and at such other times as may be required by Parks or DBIA to review DBIA's performance, and Parks service levels under this Agreement, and discuss any problems or emerging issues.

B. Activation and Programming Services: First Amendment Activities Protected

- i. Parks will regulate the permitting, and maintain responsibility of all free speech activities and events in Occidental Square Park and Westlake Park, 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 Parks instructions regarding any rules, policies or practices or actions of DBIA relating to free speech events occurring in the parks.
- iv. 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.
- v. DBIA will work cooperatively with Parks to accommodate free speech events and will provide Parks with clear and accurate information regarding time, location, equipment, and expected attendance for events and programming scheduled by DBIA so that Parks 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. DBIA will designate a “Speakers Corner” in Westlake Park that will be available for non-permitted First Amendment events and will provide signage that notifies groups and individuals of its availability. In performance of all other services in this Agreement, DBIA agrees not to regulate or manage Expressive activity or other First Amendment activities in Westlake Park and Occidental Park.

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 Occidental and Westlake Park 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 responsibility for, and maintaining liability for food and beverage concessions in Occidental Square Park and Westlake Park.

DBIA will invite Parks to participate in the planning and review of creative collateral materials related to the general branding of the activation and programming events, including logos, signage, and website, but shall be authorized to develop event, programming, and social media collateral so long as said materials apply to the proposed City approved collateral materials and do not reflect a branding of the Occidental Square Park and Westlake Park or involve the use of the City of Seattle or Seattle Parks and Recreation’s name, logos, likeness or images without written approval.

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

- i. In accordance with **EXHIBIT B**, DBIA may, at its discretion and own cost, purchase, or fund the purchasing of plantings, planters and other non-capital assets to add to the beautification of Occidental Square Park and Westlake Park. DBIA shall not undertake any improvements, additions, alterations or changes to Occidental Square Park or Westlake Park or appurtenant facilities that fall outside the principles and thresholds defined in **EXHIBIT C** without the prior, written approval of Parks.
- ii. When added amenities and/or increased programming results in a greater need for maintenance beyond the current baseline described in **EXHIBIT D**, to the extent available, DBIA will provide funding to Parks to accomplish the necessary work, based on current labor protocols and service levels indicated in **EXHIBIT D**.
- iii. DBIA reserves the right to provide limited maintenance such as 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 the Occidental Square Park and Westlake Park, including the location of benches, signs, and other permanent or semi-permanent features, which may generally be implemented by Parks to collaboratively implement this Agreement, provided any DBIA recommendations are consistent with the programming and aesthetic vision as outlined in **EXHIBIT C** and do not exceed the threshold of maintenance and beautification described therein.

E. **Financials and Measurements**

- i. DBIA will report to Parks on a quarterly basis, the outcomes, measurements and assessments as set forth in **EXHIBIT E**, and including a detailed revenue, cost and expense report in a form acceptable to the City. If the Superintendent does not approve the Quarterly Report, DBIA shall take all corrective action and submit a revised report to the Superintendent for review and approval.
- ii. 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 Parks’ 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 Parks assets. Under no circumstances shall resources provided by or through DBIA result in or justify reductions in Park's support for its own functions and responsibilities. DBIA acknowledges that Parks maintenance and park ranger activities are budget-related and are subject to the City's needs and funding limitations.

- iii. Parks shall, on a quarterly basis, provide DBIA a report of measurements regarding maintenance and park ranger activities as set forth in **EXHIBIT D**.
- iv. DBIA funding sources will meet a ratio of a minimum of three private sector dollars to every one Parks dollar and this will be documented in DBIA's financial reporting.
- v. DBIA will provide parks with a copy of its parks-related financials as reported on DBIA's yearly tax filings for 2015 and 2016, and as set forth below in the financial reporting requirements of this Agreement.
- vi. All funds raised and collected by DBIA will be applied towards programming and activation of the Occidental Square Park and Westlake Park (as described in **EXHIBIT A**), and will be subject to the Financial and Accounting Procedures set forth in Section 11 of this Agreement. Until the expiration or termination of this Agreement, the City temporarily assigns to DBIA, the City's right to collect revenues from permit fees and/or revenue generating activities occurring within Occidental Square and Westlake Park 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 Occidental Square Park and Westlake Park. DBIA will adhere to the Financial and Accounting Procedures set forth in Section 11 of this Agreement for collection of all revenues collected from permit fees and/or revenue generating activities. To the extent any revenues are collected by DBIA from permit fees and/or any revenue generating activities occurring within Occidental Square Park and Westlake Park (excluding revenue derived from sponsorships, pass-through payments of BIA 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 Parks within 5 business days of the expiration or termination of this Agreement.

4. CITY'S RESPONSIBILITIES:

A. The City's Collaborative Programming and Activation of Occidental Park and Westlake Park

- i. Parks will utilize DBIA Services in the role of permitting and scheduling activation and programming activities and events, except those related to free speech events, and Parks baseline programming at Occidental Square Park and Westlake Park. Parks will immediately forward any and all requests for event permits in Occidental Square Park and/or Westlake Park, except free speech events, to DBIA.
- ii. DBIA and Parks will coordinate permitting of the Occidental Park and Westlake Park and mutual notification of permitting activity as described in **EXHIBIT B**.
- iii. In the event that Parks 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.

B. City's Operations of Occidental Park and Westlake Park

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

- i. Summer Programming and Events:
 - Dancing til Dusk in Westlake. 6-9:30PM: July 14th, 21st, 28th, August 4th, 11th, and 18th,
 - Dancing til Dusk in Occidental Square. 6-9:30PM: July 9th and 16th,
 - Sunday Family Fun Days in Westlake. 10:30AM-2:30PM: Sundays, July 14th- August 23rd,
 - Chess Tournaments in Occidental Square. 9:00AM-4:00PM: July 25th and August 15th
- ii. Cleaning the parks on a daily basis and maintaining basic infrastructure
- iii. Providing Park Rangers for a uniformed and positive presence and commitment to deterring Parks Code violations through education, diplomacy, trespass warnings and collaboration with the Seattle Police.

- iv. Supporting large public space activation events, such as Out to Lunch and Movies in the Park, through the provision of Parks equipment, such as seating and staging, as available and as further described and outlined in **EXHIBIT D**.
- v. Continuing to work with SPD to strengthen collaborate efforts between police officers and park rangers. Parks will provide DBIA with a copy of any written agreement between Parks and SPD that is applicable to DBIA’s activation and programming services of Occidental Park and Westlake Park as soon as such agreement is finalized.

5. PAYMENT

Total compensation by the City to DBIA under this Agreement shall not exceed sixty thousand dollars (\$60,000) unless modified by a written amendment to this Agreement. In performance for services or purchases under this Agreement, DBIA will be compensated by the City within 15 working days of Effective Date of this Agreement in one lump sum payment for all rates, expenses, costs, and any other amounts incurred by DBIA to provide activation and programming services. Both Parks and the City agree that full consideration for this Agreement has been exchanged between the Parties under the prior Consultant Agreement, which is being substituted by this Agreement, and therefore, shall be fully and wholly received between the Parties under this Agreement. All work related to completing the Scope of Work referenced in Section 3 of this Agreement performed by DBIA under the Consultant Agreement prior to the execution of this Agreement is hereby retroactively ratified and eligible for reimbursement by the City, subject to Parks’ review and approval of invoices submitted by DBIA and all other applicable terms and conditions set forth in this Agreement.

6. 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.

7. ACCEPTANCE AND TRANSFER

For purposes of DBIA providing activation and programming services, prior to the Effective Date of this Agreement, DBA has made an inspection of Occidental Park and Westlake Park, and related fixtures and facilities and hereby accepts the condition of them for purposes of this Agreement on an “as is” basis and as described in the “Walk Through Report”, attached as Exhibit F. Throughout the term and performance of this Agreement, DBIA shall keep and maintain in good, operable, usable and sanitary order and repair all amenities, facilities, and aspects of the Occidental Park and Westlake Park that DBIA utilizes while providing activation and programming services. Upon termination or expiration of the Agreement, all employees and agents of DBIA shall vacate the premises of the Occidental Park and Westlake Park in a condition substantially similar to that described in the Walk Through Report, excepting normal and reasonable wear and tear, and shall have no further rights or duties thereon, except to ensure and organize a proper transfer of the premises, Parks-owned equipment and property, records, all inventories, and funds or revenues (if applicable) of the Occidental Park and Westlake Park back to the City. DBIA will maintain a current list of publicly recognized sponsors, vendors, and Permittees of programming and activation services at Occidental Park and Westlake Park and surrender such to the City upon transfer.

8. COMPLIANCE WITH LAWS

DBIA, at no expense to the City, shall comply with all laws of the United States and 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.

- A. Public access: Occidental Park and Westlake Park 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 Occidental Park and Westlake Park.
- B. DBIA shall follow all city laws, including all aspects of the Parks Code and the Department of Planning and Development’s Sign Code, and codes pertaining to off-premises advertising.

- C. DBIA shall obtain all required permits or licenses from the appropriate regulatory agency before undertaking any regulated activity.

The ownership of all Occidental Park and Westlake pre-existing structures, buildings, equipment or improvements thereto or thereon, merchandise, maintenance equipment constructed or acquired by the City, or used by DBI 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.

9. 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.

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:

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

Notwithstanding the foregoing, DBIA shall not have any affirmative duty to perform any construction or perform work on any City property for the purpose of making it ADA compliant.

10. INSURANCE

A. Evidence of Insurance.

Prior to the commencement of this Agreement and at no expense to Parks, DBIA shall secure and maintain during the term of this 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 by this 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 Parks 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

11. 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 the Occidental Park and Westlake Park 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. DBIA shall establish and implement adequate internal controls for this operation and all cashiering and cash handling that comply with GAAP, and with the City's cash handling policies to be provided by Parks prior to the execution of this Agreement. 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. DBIA shall provide to the City a Quarterly Report of the previous quarter's transactions that includes the current quarter and year-to-date, and income statement, as defined in **EXHIBIT E**.
- C. 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).
- D. After review of the above items, the City may request additional reports that detail previous transactions related to the activities described in this Agreement.
- E. 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, in its sole 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 (Three) 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.
- F. 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.
- G. 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.

12. 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 performed 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.

13. 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.

14. 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.

15. 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 this Agreement.

16. CITY CODE AND ETHICAL STANDARDS

DBIA shall promptly notify the City in writing of any person 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.
- C. 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.

Protecting your Materials from Disclosure (Protected, Confidential, or Proprietary): You must determine and declare any materials you want exempted (redacted), and that you believe are eligible for redaction. This includes but is not limited to your contract materials and work products.

Contract Work Products: If you wish to assert exemptions for your contract work products you must notify the Parks 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. You may not exempt an entire page unless each sentence is entitled to exemption; instead, identify paragraphs or sentences that meet the RCW exemption criteria you are relying upon.

City’s Response to a Public Records Act Requests: The City will prepare two versions of your materials:

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 you identified as exempt. The fully redacted version is made public upon contract execution and will be supplied with no notification to you.

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 you identified. The Limited Redaction will be released only after you are provided “third party notice” that allows you the legal right under RCW 42.56.540 to bring a legal action to enjoin the release of any records you believe are not subject to disclosure.

If any requestor seeks the Limited Redacted or original versions, the City will provide you “third party notice”, giving ten business days to obtain a temporary restraining order while you pursue a court injunction. A judge will determine the status of your 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 Vice President Public Area Management and the City’s Center City Parks Manager. It shall be referred to the Director 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

A. 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 caused by DBIA’s performance or nonperformance of the services to be provided under this Agreement attributable to the acts or omissions, willful misconduct, or breach of this Agreement by DBIA, or DBIA’s sub consultants, servants, agents, officers or employees. This obligation to defend and indemnify the City 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.

B. 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.

C. With respect to the First Amendment and expressive activities described in Section 3(B)(a)-(b) and Section 4A(b), DBIA shall have no obligation to defend, indemnify and/or hold the City harmless from any claims arising out of or related to (1) the City’s regulating, permitting and responsibility for free speech activities and events in Occidental Square Park and Westlake Park; and (2) parks maintenance, operational and programming services described in **EXHIBIT D**. The indemnification provided for in this section shall survive any termination or expiration of this 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 compliance it shall ensure strict compliance with all provisions in this Agreement including without limitation the financial and measurement responsibilities of DBIA in Section 3.E. Financials and Measurements of this Agreement, and the financial and accounting procedures set forth in Section 11 of this Agreement, Financial And Accounting Procedures/Business Records.
- 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 Consultant 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 Park. 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 City of Seattle City Council, this Agreement shall become effective and shall wholly supersede, substitute and replace the Consultant 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 Statement 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 on a quarterly basis, throughout this pilot. 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 and Attachments to this AGREEMENT including:
 - i. Exhibit A – DESIGN, ACTIVATION AND PROGRAM PLAN AND BUDGET
 - ii. Exhibit B – PERMITTING PROTOCOLS INCLUDING ALLOWABLE FEES AND CHARGES
 - iii. Exhibit C – PRINCIPLES AND THRESHOLDS TO GUIDE IMPROVEMENTS
 - iv. Exhibit D- PARKS MAINTENANCE AND PARK RANGER SERVICE LEVELS
 - v. Exhibit E – REPORTING COMMITMENTS
 - vi. Exhibit F – PROPERTY DESCRIPTION, CURRENT CONDITIONS, AND MAPS OF OCCIDENTAL SQUARE PARK AND WESTLAKE PARK

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):

Contact for DBIA is:		Contact for the City is:	
Name:		Name:	Victoria Schoenburg
Address:		Address:	100 Dexter Ave N
City, State, Zip:		City, State, Zip:	Seattle WA 98109
Phone:		Phone:	206-684-7031
Fax:		Fax:	
Email:		Email:	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 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 Occidental Park and Westlake Park 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 where 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 Department

By _____
Signature Date

By _____
Signature Date

Jon Scholes
President/CEO, Downtown Seattle Association

Jesús Aguirre,
Superintendent of Parks and Recreation

City of Seattle Business License Number: _____
Washington State Unified Business Identifier Number (UBI): _____