



December 5, 2008

Dear Prospective Bidders:

The Recreation and Park Department of the City and County of San Francisco is seeking qualified professional promoters to produce an annual two- to three-day for-profit weekend music festival in Golden Gate Park whose proceeds would, in part, benefit Recreation and Park Department properties.

On December 4, 2008, the Recreation and Park Commission authorized the issuance of the following Request for Qualifications (RFQ). Responses to the RFQ are due to the Recreation and Park Department no later than 3:00pm on January 9, 2009.

For questions on the RFQ please contact Tom Hart at tom.hart@sfgov.org. If you are interested in receiving notification of any new information or changes pertaining to this RFQ, please email Tom Hart at tom.hart@sfgov.org and include your name, organization or company, email address and telephone number. Potential respondents are also encouraged to periodically check this web page for any updates.





City and County of San Francisco
Recreation and Park Department

McLaren Lodge in Golden Gate Park

501 Stanyan Street, San Francisco, CA 94117

TEL: 415.831.2700 FAX: 415.831.2096 WEB: <http://parks.sfgov.org>

Request for Qualifications for Golden Gate Park Benefit Concert

CITY AND COUNTY OF SAN FRANCISCO

Gavin Newsom, Mayor

SAN FRANCISCO RECREATION and PARK COMMISSION

Lawrence Martin, President

Jim Lazarus, Vice President

Gloria Bonilla, Commissioner

Tom Harrison, Commissioner

David E. Lee, Commissioner

Meagan Levitan, Commissioner

Michael J. Sullivan, Commissioner

Jared Blumenfeld, General Manager

December 5, 2008

NOTICE TO INTERESTED PARTIES

To ensure that you receive any additional information and other releases by the Recreation and Park Department, you must register on the department's website for this offering at www.sfgov.org/parks.

Summary of Offering and Scheduling Golden Gate Park Benefit Concert

- Opportunity:** The Recreation and Park Department of the City and County of San Francisco is seeking qualified professional promoters to produce an annual two- to three-day for-profit weekend music festival in Golden Gate Park whose proceeds would, in part, benefit Recreation and Park Department properties.
- Location:** All or portions of the following premises in Golden Gate Park: the Polo Fields, Speedway Meadow, and Lindley Meadow.
- Financial Requirements:** The selected respondent will be required to pay base and percentage rent to the Recreation and Park Department.
- Maximum Lease Term:** Maximum lease term of three years, with one two-year extension option subject to the approval of the Recreation and Park Commission. A shorter lease term may be required by the department
- Selection Process:** The RFQ responses will be evaluated by a selection committee and ranked on how well they meet the project objectives and selection criteria described in this RFQ. The selection committee will make a recommendation to the Recreation and Park Commission for its independent review and action to enter into exclusive negotiations with the top ranked respondent.
- Proposal Due Date:** No later than 3:00pm, January 9, 2009.
- Responses shall be submitted via email to Tom Hart at Tom.Hart@sfgov.org.
- Contact:** Tom Hart
Recreation and Park Department
501 Stanyan Street
San Francisco, CA 94117
415.831.2773
tom.hart@sfgov.org

**Request for Qualifications for
Golden Gate Park Benefit Concert**

Table of Contents

	Page
I. Introduction	1
II. The Opportunity	1
III. Proposed Rent and Key Terms.....	3
IV. RFQ Schedule and Submittal Contents.....	5
V. Evaluation of Proposals and Award.....	9
VII. Terms and Conditions for Receipt of Proposals	12

Appendices:

- A. Map of Premises
- B. Sound Policy
- C. Standard City Lease Form

I. Introduction

*“ . . . no city in the world will have as good reason
for taking pride in its park as San Francisco . . . ”*

- Frederick Law Olmstead, 1886

The Recreation and Park Department of the City and County of San Francisco (the “RPD” or the “City”) is soliciting qualified professional promoters (the “Proposer” or “Respondent”) to produce an annual two-to three-day for-profit weekend music festival (the “GGP Event”) in Golden Gate Park. The venues for the GGP Event will include all or portions of the following premises: the Polo Fields, Speedway Meadow, and Lindley Meadow.

The proceeds from the concert would, in part, benefit RPD properties. Towards that end, RPD is soliciting proposals for an annual music event that will achieve multiple goals:

- Create a new and ongoing revenue stream to benefit the park system.
- Create an iconic event that is representative and resonant of both San Francisco and Golden Gate Park and will bring cultural and economic value to the Bay Area.
- Create a means of calling broader attention to both the virtues and needs of San Francisco’s system of public parks, Golden Gate Park among them.

II. The Opportunity

A. Event Venue and Capacity

The venues for the GGP Event would include all or portions of the following premises: the Polo Fields, Speedway Meadow, and Lindley Meadow. A map of the properties is provided in Appendix A.

Maximum attendance per day cannot exceed 80,000.

B. Golden Gate Park

Golden Gate Park, an icon and keystone of San Francisco’s park system, has been beloved by local residents and visited by millions from around the globe for over 135 years. From its scenic lakes and meadows to the distinctive architecture of its buildings and museums, from the bustle of its recreational fields to the stillness of its hidden glades and groves, from carousel to conservatory, tea garden to arboretum, old growth redwoods to old world windmills, the park has served and continues to serve the community in countless ways. It is at once a haven from the hectic pace of city life, a playground for children of all ages, a home for the arts and sciences, a gathering place for song and celebration, San Francisco’s sparkling crown jewel.

Twenty years into its second century, the park is facing new and growing challenges, as is the entire San Francisco park system. The kind of vision that helped transform a barren expanse of sand into a lush greenscape over a century ago is needed again today to both preserve and enhance the parks to ensure they will continue to serve future generations.

In early 2007, the Recreation and Park Department completed its first system-wide assessment of its park properties and facilities. This assessment, called COMET, found a severe need for ongoing capital

investments, identifying nearly \$800 million in repairs alone. When factoring in necessary investments associated with ADA accessibility and modernization, the total reached \$1.7 billion.

In the Clean and Safe Neighborhood Parks Bond was passed but its focus on neighborhood parks excluded any revenues to be directed to Golden Gate Park, as well as several other RPD properties. Without a direct revenue infusion since a 1992 infrastructure bond, Golden Gate Park represents a significant portion of current needs and will be the primary beneficiary of the event.

All told, new sources of funding are imperative for the repairs, maintenance, and modernization of San Francisco parks.

C. Event Schedule and Hours

The GGP Event would initially take place on a weekend to be determined in June, July or August 2009. Performances on Friday and Saturday evening would end no later than 10:00 PM; performances on Sunday evening no later than 7:30 PM.

D. Food and Beverage Sales

The Proposer who is awarded the lease would have the opportunity to arrange and offer food, beverage, and alcohol sales, provided the required permits are obtained.

E. Event History

The RPD permitted a similar benefit concert in Golden Gate Park in 2008 (the “Outside Lands Festival”). The concert was conceived as a pilot to raise funds for Golden Gate Park, which has not received an infusion of money since the 1992 bond. The “Outside Lands Festival” was the basis for issuance of this RFQ.

The “Outside Lands Festival” occurred over three days in Golden Gate Park’s Polo Fields, Speedway Meadow, and Lindley Meadow on August 22-24, 2008. The event was a success with attendance of approximately 130,000 and lease/permit revenue to RPD of approximately \$815,000.

III. Proposed Rent and Key Lease Terms

Upon successful completion of negotiations with the selected Respondent, RPD anticipates entering into a lease for the Site. This Section briefly describes key lease terms required by RPD. The actual terms of the Lease will be negotiated with RPD staff and are subject to final approval Recreation and Park Commission, and, if required, by the San Francisco Board of Supervisors.

A. Rent

The lease will include a minimum base rent and a percentage rent structure.

B. Term

The maximum lease term will be three years in length, with one two-year extension option subject to the approval of the Recreation and Park Commission. RPD may require an initial lease term of less than three years. If a multi-year lease is entered into, the Recreation and Park Commission reserves the right to cancel the lease for any reason not earlier than October 15th and not later than December 15th of each year.

C. Premises

The venues for the GGP Event would include all or portions of the following premises: the Polo Fields, Speedway Meadow, and Lindley Meadow. A map of the properties is provided in Appendix A. Maximum attendance per day cannot exceed 80,000.

D. Cost of Park Services and Materials

Presenter will reimburse RPD for cost of park services and materials incurred in presentation of event, including but not limited to set-up, breakdown, repairs, and turf regeneration.

E. Sound Policies

Presenter must adhere to the City's Sound Policy (See Appendix B) or Presenter will be subject to fines. There will be no amplified music permitted prior to 11:00 AM on any day of event.

F. Event Operations and Outreach Provisions

Of utmost importance to RPD is the maintenance of its park lands and its relationships with its public partners, especially neighborhoods adjacent to its parks. The proposed event will bring a significant number of people to Golden Gate Park. In order to mitigate any potential impacts to the event sites and surrounding areas of the park, and to the neighborhoods adjacent to the park, RPD will require specific lease terms to address the operation of the event and outreach to the potentially impacted communities.

G. Environmental Sustainability

The City has recently passed the Food Service Waste Reduction Ordinance which requires that, "All City Facility Food Providers using any Disposable Food Service Ware shall use Biodegradable/Compostable or Recyclable Disposable Food Service Ware unless there is no Affordable Biodegradable or Compostable product available as determined by the City Administrator in accordance with Subsection 1604(a). Proposers are required to comply with City law.

Presenter needs to achieve a 75% diversion rate at the event, and provide adequate composting and recycling collection services to the public/attendees, event producers and vendors to achieve that diversion rate. Compostable collection may require a monitor or sorting must take place post event to deal with contamination. Compostable collection containers must be color coded as green, recycling as blue and garbage as black. Appropriate, clear signage must be visible." Back up generators need to use B100 as fuel, and 50% of food must come from less than a 200 mile radius from San Francisco.

H. Insurance Requirements

Please see Section 18 of the “Standard City Lease” form in Appendix C for a delineation of all insurance requirements.

I. HRC Certification

At the time the Lease is executed, the Lessee must have been certified by the City’s Human Rights Commission (“HRC”) to be in compliance with Chapter 12B of the San Francisco Administrative Code, including certification of compliance with the City’s Nondiscrimination in Benefits (“Domestic Partners Benefits”) Ordinance. In order to obtain such certification, the Lessee will be required to submit to HRC a “Chapter 12B: Nondiscrimination in Contracts and Benefits” form (Form HRC-12B-101).

J. City Contracting Requirements

The Lessee shall comply with all applicable City contracting requirements, including, without limitation, the City’s Non-Discrimination in Benefits Ordinance, Minimum Compensation Ordinance, Health Care Accountability Ordinance, First Source Hiring Program, and Conflict of Interest Ordinance. Respondents should review Appendix C, the Standard City Lease Form, to ensure their ability to comply with all City requirements and terms.

IV. RFQ Schedule and Submittal Contents

A. Schedule

RFQ issued:	December 5, 2008
Pre-submittal conference:	December 17, 2008, 10:00am
Deadline for submission of written questions:	December 19, 2008
Proposal deadline:	January 9, 2009, no later than 3:00pm
Lease negotiations:	Jan – Feb. 2009
Recreation and Park Commission approval of lease:	February 19, 2009

B. Pre-Submittal Conference and Questions

Interested parties are strongly encouraged to attend a pre-submittal conference to be held at RPD's offices at McClaren Lodge (501 Stanyan Street) on December 17, 2008 at 10:00am.

RPD staff will address questions and provide any new information then available at the pre-submittal conference. Questions may be answered orally at the conference. RPD staff also will provide written responses to substantive and procedural questions raised at the pre-submittal conference, which may clarify oral responses previously given. Only written responses will be deemed final.

Any requests for information or clarification of this RFQ other than those raised at the pre-submittal conference must be submitted in writing by email to Tom Hart at Tom.Hart@sfgov.org before December 19, 2008. Except for inquiries at the pre-submittal conference, no oral inquiries will be answered.

Written responses to all questions directed to RPD staff at the pre-submittal conference or in writing by the specified date will be posted on the department's web page for this RFQ, and notice of the posting will be sent to all interested parties who register with the department before the deadline specified above. Therefore, the RPD strongly recommends that interested parties register for this RFQ on the department's website and consult the website frequently to determine if new information regarding the RFQ is available.

C. Submittal Contents

Proposals submitted in response to this RFQ must meet the specifications set forth herein. Any major deviation from these specifications will be cause for the rejection of the proposal at the City's discretion. The content and sequence of the proposals are to be as follows:

1. Cover Letter

A cover letter should be provided describing the respondent, the name and address of the entity submitting the proposal, the date the entity was established, and the name, address, and telephone number of the person or persons who will serve as the entity's principal contact person with the City and be authorized to make representations on behalf of the entity. The

letter must bear the original signature of the person having proper authority to make the proposal for the entity.

2. Qualifications and Capacity to Perform

At a minimum, the statement of qualifications should describe the following:

- Proposer should offer a description of itself, its history, principal ownership structure, and staff.
- Proposer should detail its experience and abilities in booking, promoting, staffing, and managing events of similar scale in similar venues to the GGP Event. Proposer should describe in detail events it has produced that are similar in character and scale to the event being proposed at GGP.
- Proposer should provide references from artists, agents, managers, publicists, and other relevant professionals or companies with whom Proposer has worked which reflect the experience outlined above.
- Proposer should describe any experience working with civic institutions.

3. RPD Goals and Objectives

At a minimum the proposal should address the following:

- Proposer should describe how its proposed project meets RPD's goals and objectives discussed in Section I above.
- Proposer should describe its vision for an annual GGP Event that would be unique to Golden Gate Park, San Francisco, and the Bay Area, including ways in which it would reflect the aesthetics, spirit, character, and diversity of the area.
- Proposer should describe the means by which it would call greater attention to the value and funding needs of San Francisco Parks.

4. Proposed Operations and Marketing Plan

- Proposer should describe its vision of an optimal user experience for the GGP Event, including potential concert programming. Proposer should describe how the GGP event would be compared to other events the respondent has produced.
- Proposer should note its preference for the number of days and venues it would employ for the GGP Event.
- Proposer should extensively describe efforts to mitigate potentially adverse impact to Golden Gate Park and the surrounding neighborhoods and how it has mitigated similar impacts for other events.

- Proposer should describe its plans to market, promote and advertise for the event and how it has promoted similar events.

5. Financial Capability and Terms

At a minimum, the proposer should discuss the following:

- Proposer should describe its financial position and include a copy of its most recent financial statements, if a publicly held entity. Proposer should indicate whether it will have any financial partners in the GGP Event and, if applicable, include their financial statements or description of financial position.
- Proposer should generally describe its financial proposal, including a proposed structure for minimum base rent and participation rent. Proposers should describe in detail financial terms used for other similar events produced by the respondent. Proposers are not expecting to submit a detailed rent proposal as part of the response to this RFQ; however, the rent structure proposed will be used as a starting point for lease negotiations with the selected respondent.

D. Submittal Deadline and Format

Submittal Deadline:	January 9, 2009 No later than 3:00pm
Email Address for Submittals:	<u>Tom.Hart@sfgov.org</u>
	Clearly mark “Golden Gate Park Benefit Concert” in the subject line.

In order to reduce the amount of paper and other resources used in generating RFQ proposals, RPD will only accept proposals submitted electronically. Proposals must be **sent by email** to:

Tom Hart
Tom.Hart@sfgov.org

RPD must receive each proposal not later than 3:00 p.m. on January 9, 2009, clearly marked “**Golden Gate Park Benefit Concert**” in the subject line. Proposals sent after 3:00 p.m. on January 9, 2009, will not be accepted.

A respondent may revise a proposal on its own initiative at any time before the deadline for submission of proposals specified above. A revised proposal must be received before the proposal submission deadline. In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal submittal deadline for any respondent.

Late proposals and proposals sent by standard mail or facsimile will not be accepted.

V. Evaluation of Proposals and Award

A. Selection Process Generally

All proposals will be evaluated by RPD in accordance with the criteria and procedures identified in this RFQ. Without limiting any of its rights described below, RPD reserves the right in its discretion to make a selection based directly on the proposals submitted or to negotiate further with one or more of the respondents. The respondent selected under this RFQ will be chosen on the basis of its apparent ability to best meet the overall objectives of the City, as ultimately determined by the Recreation and Park Commission in its sole and absolute discretion.

Each proposal will be initially reviewed by RPD staff for demonstration of meeting minimum qualifications, completeness, responsiveness, and adequacy of documentation. Proposals with significant deficiencies in these areas may receive no further consideration.

A selection panel shall assist staff with this review and shall score the proposals according to the point system and criteria listed in this RFQ. Interviews with individual respondents and/or public presentations may be required. In addition, staff may, at its sole discretion, independently investigate the qualifications of certain respondents and/or conduct interviews with members of certain respondents' team. RPD reserves the right to request clarification or additional information from a respondent.

RPD staff will immediately begin lease negotiations with the selected respondent, including negotiation of minimum and participation rent. RPD reserves the right to engage more than one of the respondents in lease negotiations. In addition, RPD may utilize the responses to this RFQ to develop additional events with qualified respondents at other RPD venues.

B. Selection Criteria

1. Minimum Qualifications

Each respondent must individually or collectively, in the case of a joint venture, possess the following minimum experience to be considered as a possible candidate for this opportunity:

- Ten years of experience in fully managing a business of the nature of this opportunity, including booking and promoting popular music in a major metropolitan market;
- Sufficient financial capacity to undertake this opportunity; and
- The ability to obtain all required insurance policies as listed in the sample lease and all necessary permits and licenses required by the City and County of San Francisco.

Any proposal that does not demonstrate that the proposer meets these minimum requirements by the deadline for submittal of proposals will be considered non-responsive and will not be eligible for award of the contract.

2. Evaluation Criteria

A selection committee will use the following criteria in evaluating the responses to the RFQ:

	Evaluation Criteria	Points
a.	Experience, Qualifications and Capacity to Perform: <ul style="list-style-type: none"> • Experience in booking and promoting popular music for an event or events of similar scale, including its ability to professionally staff and orchestrate all details in a safe and secure manner and comply with comparable requirements as are detailed herein. • Years of experience in booking and promoting popular music in major metropolitan markets, relationships with artists, artist managers, and booking agents of the caliber and diversity that would come to bear in booking a major multi-day music festival. • Respondent's ability to work with civic institutions and manage similar events in public venues. • Experience of respondent's team members and key personnel. 	40
b.	Operations and Marketing Plan: <ul style="list-style-type: none"> • Consistency of the proposed event with the goals and objectives of the Recreation and Park Department, as outlined in the RFQ. • Respondent's plan to operate the event and respondent's experience and history operating similar events. • Effectiveness of respondent's plan to mitigate potential adverse impact resulting from the event in the Park itself and in the surrounding communities. • Respondent's plan to promote and market the event, and experience and history marketing similar events. 	30
c.	Financial Capability, History and Terms: <ul style="list-style-type: none"> • Respondent's ability to finance the production of the proposed event. • The respondent's overall financial track record. • Respondent's track record in generating lease revenues for similar events and general rent structure proposed for GGP event. 	30
	Total points	100

C. Selection Committee

Following RPD's receipt of submittals, RPD will implement the following evaluation process of timely, complete and responsive submittals from qualified respondents. A selection committee consisting of City staff and other appropriate parties will evaluate the submittals of each respondent based on the minimum qualifications and selection criteria outlined above. Selected respondents may be interviewed by the selection committee. Those submittals meeting the minimum qualifications will be scored and ranked by the selection committee.

RPD reserves the right to request clarification or additional information from individual respondents and to request that some or all respondents make presentations to RPD staff, the Recreation and Park Commission, community groups and/or others. The City further reserves the right to make an award without further clarification of proposals received.

RPD staff will immediately begin lease negotiations with the selected respondent, including negotiation of minimum and participation rent. RPD reserves the right to engage more than one of the respondents in lease negotiations. In addition, RPD may utilize the responses to this RFQ to develop additional events with qualified respondents at other RPD venues.

VI. Terms and Conditions for Receipt of Proposals

A. Errors and Omissions in RFQ

Proposers are responsible for reviewing all portions of this RFQ. Proposers are to promptly notify the Department, in writing, if the proposer discovers any ambiguity, discrepancy, omission, or other error in the RFQ. Any such notification should be directed to the Department promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

B. Inquiries Regarding RFQ

Inquiries regarding the RFQ and all oral notifications of intent to request written modification or clarification of the RFQ, must be directed via email to:

Tom Hart
Tom.Hart@sfgov.org

C. Objections to RFQ Terms

Should a proposer object on any ground to any provision or legal requirement set forth in this RFQ, the proposer must, not more than ten calendar days after the RFQ is issued, provide written notice to the Department setting forth with specificity the grounds for the objection. The failure of a proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

D. Change Notices

The Department may modify the RFQ, prior to the proposal due date, by issuing Change Notices, which will be posted on the website. The proposer shall be responsible for ensuring that its proposal reflects any and all Change Notices issued by the Department prior to the proposal due date regardless of when the proposal is submitted. Therefore, the City recommends that the proposer consult the website frequently, including shortly before the proposal due date, to determine if the proposer has downloaded all Change Notices.

E. Term of Proposal

Submission of a proposal signifies that the proposed services and prices are valid for 120 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

F. Revision of Proposal

A proposer may revise a proposal on the proposer's own initiative at any time before the deadline for submission of proposals. The proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any proposer.

At any time during the proposal evaluation process, the Department may require a proposer to provide oral or written clarification of its proposal. The Department reserves the right to make an award without further clarifications of proposals received.

G. Errors and Omissions in Proposal

Failure by the Department to object to an error, omission, or deviation in the proposal will in no way modify the RFQ or excuse the vendor from full compliance with the specifications of the RFQ or any contract awarded pursuant to the RFQ.

H. Financial Responsibility

The City accepts no financial responsibility for any costs incurred by a firm in responding to this RFQ. Submissions of the RFQ will become the property of the City and may be used by the City in any way deemed appropriate.

I. Proposer's Obligations under the Campaign Reform Ordinance

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the proposer is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. Criminal. Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.

2. Civil. Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. Administrative. Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

J. Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFQs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

K. Public Access to Meetings and Records

If a proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the proposer must comply with Chapter 12L. The proposer must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to proposer's meetings and records, and (2) a summary of all complaints concerning the proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

L. Reservations of Rights by the City

The issuance of this RFQ does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right at any time to:

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue a Request for Qualifications;
4. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFQ, or the requirements for contents or format of the proposals;
5. Procure any materials, equipment or services specified in this RFQ by any other means; or

6. Determine that no project will be pursued.

M. No Waiver

No waiver by the City of any provision of this RFQ shall be implied from any failure by the City to recognize or take action on account of any failure by a proposer to observe any provision of this RFQ.

N. Protests.

Any respondent to this RFQ whose proposal is determined to be non-responsive shall be allowed five (5) business days from receipt of the Department's said notification to file a written appeal of that determination with the General Manager of the Department. Receipt of notice by the respondent shall be deemed to be no later than five (5) calendar days from the date of mailing by the Department or upon delivery, if delivered. Filing of the appeal shall be accompanied by actual delivery of the appeal document to the office of the General Manager.

After all proposals have been submitted on [date] and upon selection and announcement of the winning proposal, all other respondents shall have up to five (5) business days to submit a formal protest, in writing, to the Department for review. No protests will be accepted after the above-mentioned period.

Appendix A
Map of Premises

Appendix B
Sound Policy

Appendix C
Standard City Lease Form

Please refer to RPD's webpage for GGP Benefit Concert RFQ to download a copy of the standard department lease form.



City and County of San Francisco
Recreation and Park Department

McLaren Lodge in Golden Gate Park

501 Stanyan Street, San Francisco, CA 94117

TEL: 415.831.2700 FAX: 415.831.2096 WEB: <http://parks.sfgov.org>

LEASE

between

CITY AND COUNTY OF SAN FRANCISCO, Landlord

and

[name of lessee], Lessee

For the lease and management of the

Concession Operations

at

[name of facility]

San Francisco, California

[lease date]

CITY AND COUNTY OF SAN FRANCISCO

Gavin Newsom, Mayor

SAN FRANCISCO RECREATION and PARK COMMISSION

Lawrence Martin, President

Jim Lazarus, Vice President

Gloria Bonilla, Commissioner

Tom Harrison, Commissioner

David E. Lee, Commissioner

Meagan Levitan, Commissioner

Michael J. Sullivan, Commissioner

Jared Blumenfeld, General Manager

RECREATION AND PARK DEPARTMENT
LEASE
Table of Contents

Section	Page
1. BASIC LEASE INFORMATION.....	1
2. DEFINITIONS.....	2
3. PREMISES	7
3.1 Leased Premises.....	7
3.2 Rights Reserved to City	7
3.3 Subject to Public and Municipal Uses and Rules	8
3.4 As Is Condition of Premises.....	8
4. TERM	9
4.1 Term of Lease	9
4.2 Extension Option	9
4.3 Commencement Date and Expiration Date.....	9
4.4 Delay in Delivery of Possession	9
4.5 Delays Caused by Lessee.....	9
4.6 Effective Date	9
5. RENT.....	9
5.1 Base Rent	9
5.2 Percentage Rent	10
5.3 Monthly Reporting.....	10
5.4 Maintenance Fund.....	11
5.5 Late Charge.....	11
5.6 Default Interest.....	11
5.7 Net Lease	12
5.8 Compensation for Closure for Filming	12
6. TAXES, ASSESSMENTS AND OTHER EXPENSES	12
6.1 Taxes and Assessments, Licenses, Permit Fees and Liens	12
6.2 Other Expenses	13
6.3 Evidence of Payment	13
7. USE, COVENANTS TO PROTECT PREMISES AND DEPARTMENT FACILITIES	13
7.1 Lessee’s Permitted Use	13
7.2 Appropriate Operations, Goods and Services	14
7.3 Days and Hours of Operation	14
7.4 Rates and Charges.....	14
7.5 Branded Products.....	14
7.6 Covenants Regarding Use.....	15
8. IMPROVEMENTS	17
8.1 Construction of Improvements.....	17
8.2 Ownership of Improvements.....	18

8.3	Lessee’s Personal Property	18
9.	REPAIRS AND MAINTENANCE	18
9.1	Lessee Responsible for Maintenance and Repair.....	18
9.2	City’s Maintenance and Repair Obligations	19
9.3	Utilities.....	19
9.4	No Right to Repair and Deduct.....	19
10.	LIENS	20
11.	COMPLIANCE WITH LAWS	20
11.1	Compliance with Laws.....	20
11.2	Regulatory Approvals	21
11.3	Compliance with City’s Risk Management Requirements	21
11.4	Reports	21
12.	FINANCING; ENCUMBRANCES; SUBORDINATION	21
12.1	Encumbrance of Landlord’s Fee Interest	21
12.2	Leasehold Encumbrances.....	22
13.	DAMAGE OR DESTRUCTION	22
13.1	Damage or Destruction to the Improvements	22
13.2	Abatement in Rent	22
13.3	Waiver.....	22
14.	EMINENT DOMAIN	23
14.1	General.....	23
14.2	Total Taking; Automatic Termination	23
14.3	Partial Taking; Election to Terminate	23
14.4	Rent; Award.....	23
14.5	Partial Taking; Continuation of Lease	23
14.6	Temporary Takings	24
15.	ASSIGNMENT AND SUBLETTING.....	24
15.1	Restriction on Assignment and Subletting.....	24
15.2	Effect of Transfer	24
15.3	Indemnity for Relocation Benefits.....	24
16.	DEFAULT; REMEDIES	24
16.1	Events of Default	24
16.2	Remedies.....	25
16.3	City’s Right to Cure Lessee’s Defaults.....	26
17.	WAIVER OF CLAIMS; INDEMNIFICATION.....	26
17.1	Waiver of Claims	26
17.2	Lessee’s Indemnity	27
18.	INSURANCE.....	28
18.1	Lessee’s Insurance	28
18.2	General Requirements.....	29

18.3	Proof of Insurance.....	30
18.4	Review of Insurance Requirements	30
18.5	No Limitation on Indemnities	30
18.6	Lapse of Insurance	30
18.7	Lessee’s Personal Property	31
18.8	City’s Self Insurance.....	31
18.9	Waiver of Subrogation.....	31
19.	ACCESS BY CITY.....	31
19.1	Access to Premises by City.....	31
19.2	The Department Facilities and Utility Installations	32
19.3	Roadways.....	32
19.4	Rights of Public	32
20.	ESTOPPEL CERTIFICATES.....	32
21.	SURRENDER.....	33
21.1	Surrender of the Premises	33
21.2	Automatic Reversion	33
22.	HAZARDOUS MATERIALS	33
22.1	No Hazardous Materials.....	33
22.2	Lessee’s Environmental Indemnity.....	34
23.	SECURITY DEPOSIT.....	34
24.	GENERAL PROVISIONS	35
24.1	Notices	35
24.2	No Implied Waiver	35
24.3	Amendments	35
24.4	Authority.....	36
24.5	Joint and Several Obligations	36
24.6	Interpretation of Lease	36
24.7	Successors and Assigns.....	36
24.8	Brokers.....	36
24.9	Severability	37
24.10	Governing Law	37
24.11	Entire Agreement.....	37
24.12	Attorneys’ Fees.....	37
24.13	Holding Over	37
24.14	Time of Essence.....	38
24.15	Cumulative Remedies	38
24.16	Survival of Indemnities.....	38
24.17	Relationship of Parties	38
24.18	Transfer by City	38
24.19	Recording.....	38
24.20	Non-Liability of City Officials, Employees and Agents.....	38
24.21	Wages and Working Conditions	38
24.22	Non-Discrimination in City Contracts and Benefits Ordinance	39
24.23	No Relocation Assistance; Waiver of Claims	40

24.24	MacBride Principles - Northern Ireland.....	40
24.25	Conflicts of Interest.....	40
24.26	Charter Provisions.....	40
24.27	Tropical Hardwood and Virgin Redwood Ban	40
24.27	Tobacco Product Advertising Prohibition	40
24.29	First Source Hiring Ordinance	41
24.30	Sunshine Ordinance	41
24.31	Counterparts.....	41
24.32	Vending Machine/Non-Alcoholic Beverage Contract.....	41
24.33	No Light, Air or View Easement	41
24.34	City’s Inability to Perform.....	41
24.35	Notification of Limitations on Contributions.....	42
24.36	Public Transit Information.....	43
24.37	Drug-Free Workplace.....	43
24.38	Preservative-treated Wood Containing Arsenic.....	43
24.39	Resource Efficiency.....	43
24.40	Food Service Waste Reduction Requirements.....	43

RECREATION AND PARK DEPARTMENT

LEASE

THIS LEASE (this "Lease") dated for reference purposes only as of [lease date], is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Recreation and Park Commission (the "Commission"), and [name of lessee] ("Lessee").

City and Lessee hereby agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Article and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date: [lease date]

Landlord: CITY AND COUNTY OF SAN FRANCISCO

Lessee: [name of lessee]

Premises (Section 3.1): [description of premises]

Term (Section 4): [lease commencement date]
[lease expiration date]

Base Rent (Annual Minimum Guarantee) (Section 5.1): [base rent amount]

Percentage Rent (Section 5.2)	Type of Sale	Percentage
	[type of revenue]	[RPD percentage rent]

Use (Section 7.1): [allowable uses of facility]

Security Deposit (Section 23): [deposit amount]

Notice Address of City (Section 24.1): Recreation and Park Department
Property Management
McLaren Lodge Annex
San Francisco, California 94117

with a copy to: Office of the City Attorney

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Key Contact for City: [project manager]

Contact Email Address: [email address]

Notice Address of Lessee
Section 24.1): [lessee address]

Key Contact for Lessee: [lessee contact name]

Lessee Email Address: [lessee email address]

2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

"Additional Charges" means any and all real and personal property taxes, possessory interest taxes, insurance premiums and other costs, impositions and expenses described in hereof or otherwise payable by Lessee under this Lease.

"Adjustment Date" means the annual date for adjusting the Monthly Base Rent as specified in Basic Lease Information and **Section 5.2** hereof.

"Adjustment Index" means the Index which is published most immediately preceding a particular Adjustment Date.

"Affiliate of Lessee" means any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under the common control with, Lessee. As used above, the words "control," "controlled" and "controls" mean the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or earnings of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

"Agents" means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

"Alterations" means any alterations, installations or additions to any Improvements or to the Premises, including but not limited to any interior alterations or renovations.

"**Assignment**" has the meaning given in **Section 15.1** hereof.

"**Award**" means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

"**Basic Lease Information**" means the information with respect to this Lease summarized in **Article 1** hereof.

"**Base Rent**" means the annual Base Rent specified in the Basic Lease Information and described in **Section 5.1** hereof.

"**City**" means the City and County of San Francisco, a municipal corporation.

"**Commencement Date**" means the date on which the Term of this Lease commences as described in **Section 4.2** hereof.

"**Commission**" means the City and County of San Francisco Recreation and Park Commission or its successor.

"**Date of Taking**" means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor or (ii) the date on which Lessee is dispossessed.

"**Department**" means City's Recreation and Park Department.

"**Effective Date**" means the date on which this Agreement becomes effective pursuant to **Section 4.5** hereof.

"**Encumber**" means create any Encumbrance; "**Encumbrance**" means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

"**Encumbrancer**" means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

"**Environmental Laws**" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

"**Event of Default**" means any one of the events of default described in **Section 16.1** hereof.

"**Expiration Date**" means the date on which the Term of this Lease commences as described in **Section 4.3** hereof.

"**General Manager**" means the General Manager of the Recreation and Park Department.

"Gross Receipts" means all amounts received and receivable from all sales and business transacted on the Premises or services performed on the Premises for which a charge is made by Lessee, or by any other person, firm, partnership or corporation conducting sales or performing services of any sort in, upon, or from any part of the Premises, and shall include sales and charges for cash and credit, regardless of collections in the case of the latter. The following items shall be excluded from Gross Receipts for purposes of calculating the Percentage Rent: (a) returns and refunds, and (b) the amount of any sales tax, parking tax, or similar tax or imposition, imposed on all sales or charges where such sales tax, similar tax or imposition is billed to the purchaser as a special item.

"Hazardous Material" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 **et seq.**) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Land, any Improvements to be constructed on the Land by or on behalf of Lessee, or are naturally occurring substances on, in or about the Land; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

"Hazardous Material Claims" means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the Department, their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

"Improvements" means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of Lessee pursuant to this Lease, including, without limitation, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping.

"Indemnify" means indemnify, protect, defend and hold harmless forever.

"Indemnified Parties" means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Department, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

"Index" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

"Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"Invitees" when used with respect to Lessee means the clients, customers, invitees, guests, members and licensees, assignees and subLessees of Lessee.

"Land" means the real property described in **Exhibit A** attached hereto.

"Landlord" means the City and County of San Francisco.

"Law" means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

"Lease" means this Lease as it may be amended in accordance with its terms.

"Lessee" means the Party identified as Lessee in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Lessee shall also refer to the successors and assigns of Lessee's interests under this Lease, provided that the rights and obligations of Lessee's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

"Lessee's Personal Property" means the personal property of Lessee described in **Section 8.3** hereof.

"Losses" means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

"Maintenance Fund" means the Fund established by, and paid into by, Lessee for the purpose of assisting financially with general improvements to the **[name of facility]**.

"Minimum Annual Guarantee" means the annual Minimum Annual Guarantee specified in the Basic Lease Information and described in **Section 5.1** hereof

"**Official Records**" means the official records of the county(ies) in which the Premises are located.

"**Party**" means City or Lessee; "**Parties**" means both City and Lessee.

"**Percentage Rent**" means a sum equal to a percentage of Lessee's Gross Receipts made from or upon the Premises during each calendar month of the Term in the percentage amounts and for the items set forth in the Basic Lease Information.

"**Premises**" has the meaning given in **Section 3.1** hereof. The Premises shall include any existing or permitted Improvements, together with any additions, modifications or other Alterations thereto permitted hereunder. Notwithstanding anything to the contrary in this Lease, the Premises do not include Department Facilities, nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

"**Release**" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Lessee, or in, on, under or about the Premises or Department Facilities or any portion thereof.

"**Remediation**" when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material located in, on, under or about the Premises or Department Facilities or which have been, are being, or threaten to be Released into the environment. Remediate includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

"**Rent**" means the Base Rent, as adjusted pursuant to the provisions of **Section 5.1**, together with any and all Percentage Rent and Additional Charges.

"**Sublease**" has the meaning given in **Section 15.1** hereof.

"**Taking**" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

"**Term**" means the term of this Lease as determined under **Section 4.1** hereof.

"**Transfer**" means any Assignment or Sublease.

"**Transferee**" means any recognized assignee of any part of Lessee's leasehold interest hereunder or any recognized subLessee of any portion of the Premises, pursuant to a Transfer that complies with **Article 15** hereof.

"**Unmatured Event of Default**" means any default by Lessee under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder.

3. PREMISES

3.1 Leased Premises. Subject to the terms, covenants and conditions of this Lease, City leases to Lessee and Lessee leases from City, that portion of that certain premises located [address or location of premises]. The premises are marked and identified in **Exhibit A**, attached hereto (the "Premises"); excluding there from and reserving during the Term unto City, its successors and assigns, during the Term the rights described in **Section 3.2** below.

3.2 Rights Reserved to City. Notwithstanding anything to the contrary in this Lease, during the Term City reserves and retains all of the following rights relating to the Premises:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to interfere with the permitted use thereof by Lessee, without Lessee's prior written consent;

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct any Department Facilities;

(e) The right to grant future easements and rights of way over, across, under, in and upon the Premises as City shall determine to be in the public interest, provided that any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Lessee for damage to its property that Lessee may sustain hereunder as a result of the grantee's use of such easement or right of way; and

(f) Without limiting the generality of **Section 3.2(e)** above, the right to grant future easements, rights of way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of (i) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs and/or advertising kiosks, provided that any such easement or right-of-way shall not materially interfere with Lessee's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way

shall be conditioned upon the grantee's assumption of liability to Lessee for damage to its property that Lessee may sustain hereunder as a result of the grantee's use of such easement or right of way; and

(g) All rights of access provided for in **Article 19** below.

3.3 Subject to Public and Municipal Uses and Rules. Lessee acknowledges that the property of which the Premises are a part constitutes a portion of City's public park system, which City holds for public and municipal use. Lessee's rights under this Lease shall be subject and subordinate to City's use of the Premises for such purposes. However, so long as there is no Event of Default or Unmatured Event of Default on the part of Lessee outstanding hereunder and subject to the terms and conditions of this Lease, City shall use its best efforts to avoid interfering with Lessee's quiet use and enjoyment of the Premises. Lessee shall comply with the Department's rules and regulations relating to its park property, as the same may change from time to time (the "Rules and Regulations"). A copy of the current Rules and Regulations is attached hereto as Exhibit C.

3.4 As Is Condition of Premises.

(a) **Inspection of Premises.** Lessee represents and warrants that Lessee has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Lessee's own choosing, of the Premises and the suitability of the Premises for Lessee's intended use. Lessee is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

(b) **As Is; Disclaimer of Representations.** Lessee acknowledges and agrees that the Premises are being leased and accepted in their "**AS IS, WITH ALL FAULTS**" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Lessee acknowledges and agrees that neither City, the Department, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Lessee's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Lessee's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

4. TERM

4.1 Term of Lease. The Premises are leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the commencement date (the "Commencement Date"), subject to this Lease becoming effective pursuant to **Section 4.5** below. The Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease.

4.2 Commencement Date and Expiration Date. The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date."

4.3 Delay in Delivery of Possession. If City is unable to deliver possession of the Premises to Lessee on or before the Commencement Date, then the validity of this Lease shall not be affected thereby and City shall not be liable to Lessee for any Losses resulting therefrom. Lessee waives all provisions of any Laws to the contrary. In the event of any such delay in delivery of possession, the Term and regular payments of Base Rent and Additional Charges shall not commence until City delivers possession of the Premises. If the Term commences later or earlier than the Commencement Date in accordance with the terms hereof, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions of this Lease.

4.4 Delays Caused by Lessee. Notwithstanding anything to the contrary above, if City's inability to deliver possession of the Premises on the Commencement Date results from the acts or omissions of Lessee or any of Lessee's Agents, then the Base Rent and Additional Charges payable by Lessee hereunder shall commence on the date when City would have delivered possession of the Premises but for such acts or omissions.

4.5 Effective Date. This Lease shall become effective on the date (the "Effective Date") upon which (i) the Commission passes a resolution approving this Lease, and (ii) the Parties hereto have duly executed and delivered this Lease.

5. RENT

5.1 Base Rent. Lessee shall pay to City during the Term of this Lease, beginning on the Commencement Date, the *greater of* either (a) the Minimum Annual Guarantee, or (b) the percentage of the gross revenues, specified in the Basic Lease Information. The Base Rent shall be payable monthly on or before the tenth (10th) day of each month, for the previous month's business operations, at Revenue Unit, Recreation and Park Department, McLaren Lodge Annex, 501 Stanyan Street, San Francisco, California 94117, or such other place as City may designate in writing. In the case of the Minimum Annual Guarantee, it shall be calculated in equal monthly installments. If the Commencement Date occurs on a day other than the first day of a calendar month, or if the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

City reserves the right to direct Lessee, upon 30 days written notice, to deposit all rent payments from the Lessee's account into the City designated revenue account by bank or wire transfer.

(a) Adjustments in Minimum Annual Guarantee. On each Adjustment Date, if any, commencing on each Commencement Date, the Minimum Annual Guarantee payable by Tenant shall be adjusted in the following manner. The Adjustment Index shall be compared with the Base Index. If the Adjustment Index has increased over the Base Index, then the Minimum Annual Guarantee payable on and after the Adjustment Date shall be set by multiplying the Minimum Annual Guarantee by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index. In no event shall the Minimum Annual Guarantee on or after the

Adjustment Date be less than the Minimum Annual Guarantee in effect immediately prior to the Adjustment Date.

5.2 Percentage Rent.

(a) **Agreement to Pay; Determination.** Lessee agrees to pay Percentage Rent to City in the percentage amounts and for the items set forth in the Basic Lease Information. Lessee shall pay to City the amount, computed as a percentage of Lessee's Net Gross Receipts (Gross less applicable sales tax), received during each calendar month of the Term. Percentage Rent shall be determined by Lessee for each calendar month of the year and, if the amount exceeds the Minimum Monthly Guarantee, shall be payable by the tenth (10th) day of the following month in place of the Minimum Monthly Guarantee. In the event this Lease terminates during a month at no fault of Lessee, payment of the Percentage Rent for that portion of the month during which sales are made on the Premises shall be determined and reported by Lessee to City within ten (10) days after Lessee ceases to make sales on the Premises, but in the event this Lease terminates as a result of Lessee's default, including insolvency thereof, any amounts due hereunder shall be payable forthwith. At the time of paying Percentage Rent Lessee shall furnish a statement (herein "Percentage Rent Statement") showing the computation of Percentage Rent for the period covered by such payment.

5.3 Reporting; Books and Records; Audits

(a) **Monthly Reporting.** Along with each monthly rent payment, Tenant shall be responsible for submitting via email to the City contact listed in the Basic Lease Information section a copy of the "Concessionaires' Payment Statement", attached as **Exhibit ___** to this lease, detailing a true and factual accounting of all Gross Revenues, taxes paid and rent figures calculated for that month.

(b) **Books and Records.** Lessee agrees to keep accurate books and records according to generally accepted accounting principles. For purposes herein "books and records" shall include, but not be limited to, daily sales journals, cash register tapes, pre-numbered receipts, guest checks, sales tickets, monthly sales summaries summarizing daily sales, general ledgers, income statements, sales tax returns, income tax returns and any other bookkeeping documents Lessee utilizes in its business operations. Lessee shall not co-mingle personal funds with business funds. Lessee shall use cash registers which segregate sales by categories and shall have separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals.

(c) **Audit.** Lessee agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City (hereinafter collectively referred to as "City representative"), for the purpose of examining said books and records to determine the accuracy of Lessee's earnings from Lessee's business. Said books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts; except that, if an audit is made within said four-year period and City claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If an audit reveals that Lessee has understated its Gross Receipts, Lessee shall pay City, promptly upon demand, the difference between the amount Lessee has paid and the amount it should have paid to City. If Lessee understates its Gross Receipts by three percent (3%) or more, the cost of the audit shall be borne by Lessee. If Lessee understates its Gross Receipts with knowledge of such

understatement or by reason of gross negligence, then, in addition to paying for the cost of the audit, on the first such occasion Lessee shall pay City ten (10) times the amount of the difference between the amount City should have received and amount City actually received. A second such understatement made with knowledge of or by reason of gross negligence shall be considered an Event of Default.

(d) Patrons Audit. Lessee shall participate in the City's Patrons Audit program whereby signs provided by the City will be clearly posted at each point of sale, stating that receipts are to be given for each purchase, and that if a receipt is not given, the patron shall be allowed some form of compensation as mutually agreed upon by the City and Lessee.

5.4 Late Charge. If Lessee fails to pay any Rent and/or fails to submit a Percentage rent Statement by the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to 5% of the amount due, in each instance. The late payment charge has been agreed upon by City and Lessee, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Lessee, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Lessee shall promptly pay such charge to City together with such unpaid amount.

5.5 Default Interest. If any Rent is not paid on the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Lessee nor on any amounts on which late charges are paid by Lessee to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Lessee.

5.6 Net Lease. This Lease is a "net lease." Accordingly, Lessee shall pay to City the Base Rent, Percentage Rent, Additional Charges and any other payments hereunder free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Lessee's use or occupancy of the Premises and any permitted Improvements or this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, Lessee shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of its estate or interests in the Premises and any Improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any permitted Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Lessee from any of its obligations under this Lease, or shall give Lessee any right to terminate this Lease in whole or in part. Lessee waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this

Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

6.1 Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) **Payment Responsibility.** Lessee shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Lessee's Personal Property, the leasehold estate or any subleasehold estate, or Lessee's use of the Premises or any Improvements. Lessee shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Lessee's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, Lessee shall reimburse City for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Lessee shall not allow or suffer a lien for any taxes payable by Lessee hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Lessee may have a reasonable opportunity to contest the validity of any such taxes provided Lessee, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should Lessee be unsuccessful in any such contest. Lessee shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) **Reporting Requirement.** Lessee agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

6.2 Other Expenses. Lessee shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Lessee's use.

6.3 Evidence of Payment. Lessee shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

7. USE; COVENANTS TO PROTECT PREMISES AND DEPARTMENT FACILITIES

7.1 Lessee's Permitted Use. Lessee may use the Premises and any Improvements allowed hereunder only for the following uses:

[describe allowable uses]

7.2 Appropriate Operations, Goods, and Services. The operations, goods and services are outlined in the Lessee's Management Plan (Exhibit B) as the agreed upon manner to market, promote and manage the concession. Upon written notice by the Department that the operations, goods, or services provided at the concessions are not in keeping with the management plan, the Lessee shall have fifteen (15) calendar days to remedy the deficiency in operations, goods or services. If the deficiency is not addressed in the 15-day period, the Lessee shall be in default of this Lease.

7.3 Days and Hours of Operation. Lessee shall be open for business [required operating hours]. The schedule is approved by the Commission and may not be altered in any manner without prior written approval from the Commission. The current days and hours of operation are attached as Exhibit C.

7.4 Rates and Charges. Prices for [list items where RPD Commission will approve prices] are set by the Commission and may not be altered in any manner without prior written approval. The current rates are attached as Exhibit C.

7.5 Branded Products.

(a) The Lessee may, at Lessee's expense, and with Department's consent, develop and sell products including clothing that are "branded" with some form of [facility name] or similar/related logo, artwork and/or words (collectively "Logo"). The Recreation and Park Department retains the right to pre-approve or reject the design or use of any such logo by Lessee. The Department must pre-approve all products that are to receive the Logo. At the termination of the Lease, any such Logo shall become the property of the City.

(b) Alternatively, the Department may decide to develop a master logo for Golden Gate Park and require the Park's concessionaires to participate in the cost of the development of the logo in return for the right to sell the Park logo products.

(c) Any products sold by Lessee that are branded with Logo, shall be properly accounted for in accordance with **Section 5.2 (b)** books and records and GAAP. The percentage of sales of such products is to be shared with City per **Section 5.3** of this Lease, sales records in accordance with **Section 5.2 (b)** and GAAP shall be maintained through the Term of the Lease. A monthly sales report, in a form acceptable to the Department, showing the sales and gross revenue of each branded item sold, if any, shall be remitted each month with Lessee's monthly Rent payment.

7.6 Covenants Regarding Use. As a material inducement to City to enter into this Lease, Lessee covenants with City as follows:

(a) **No Unlawful Uses or Nuisances.** Lessee shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. Lessee shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder.

(b) **Covenant Against Waste.** Lessee shall not cause or permit any waste, damage or injury to the Premises.

(c) **Covenant to Protect Premises and Department Facilities.** At all times during the Term of this Lease, Lessee shall protect the Premises and the Department Facilities, if any, from any damage, injury or disturbance. If Lessee or any of its Agents or Invitees damages, injures or disturbs any of the Premises or the Department Facilities, or any portion thereof, Lessee shall immediately notify City of that occurrence. Without limiting any of its other rights hereunder, City may immediately take all actions it deems proper to repair the Department Facilities at Lessee's sole expense, and, following notice and a reasonable opportunity to cure (except in the event of an emergency in which case no notice or cure period is required), City may take all actions it deems proper to repair the Premises at Lessee's sole expense. Lessee shall promptly, upon City's request, remove or alter to City's satisfaction and at Lessee's sole cost, any Improvements, Alterations or Lessee's Personal Property placed on the Premises by or on behalf of Lessee as necessary to avoid interference with City's use of the Premises for municipal purposes; provided, such removal shall be at Landlord's sole cost if the applicable Improvements or Alterations were approved by Landlord in writing pursuant to the terms of this Lease. City may adopt from time to time such rules and regulations with regard to Lessee's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard the Department Facilities and City's interests in the Premises. Lessee shall comply with all such rules and regulations upon receipt of a copy thereof.

(d) **Covenant Against Dumping; Waste Disposal.** Lessee shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment. Organic wastes from the Premises shall be composted on-site to the extent reasonably possible. Lessee shall use its best efforts to reduce the amount of trash and waste generated from the Premises, to acquire products for use on the Premises which reuse or recycle packaging, and to recycle all materials used on the Premises to the extent reasonably possible.

(e) **Covenant to Protect Trees or Other Native Vegetation.** Lessee shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the prior written approval of the General Manager.

(f) **No Tree Planting.** Lessee shall not plant any trees on the Premises, nor shall Lessee plant any other vegetation on the Premises without the prior written approval of the General Manager.

(g) **Covenant Against Hunting.** Lessee shall not engage in or permit any hunting or, trapping on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the General Manager in writing, provided such hunting and trapping is

done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Lessee shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Lessee use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

(h) Pesticides Prohibition. Lessee shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Lessee to submit to the Department an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Lessee may need to apply to the Premises during the terms of this Lease, (b) describes the steps Lessee will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Lessee's primary IPM contact person with the City. In addition, Lessee shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.

(i) Weed Control. Lessee shall not introduce any noxious weeds on or about the Premises. Lessee shall control noxious weeds, provided that Lessee may use chemical herbicides only if such use complies with the requirements of **Section 7.2(i)** above.

(j) Covenant Against Burning. Lessee shall not burn any weeds, debris or other substances on or about the Premises.

(k) Sewerage System. Lessee shall maintain and its sole cost and expense, and in accordance with the direction and to the satisfaction of the General Managers of the Recreation and Park Department and the SFPUC, the sewerage system now installed on the Premises and shall not permit any sewage or fouled waste water to be disposed of on the Premises, except as provided for and as customary per said sewerage system.

(l) Soil Erosion. Lessee shall not cause any material erosion of soil on or around the Premises. Lessee shall not engage in any activity that causes a material change, disturbance, fill, alteration or impairment to the topography of the Premises by placing on it any soil, dredging, spoils, landfill, or other material, nor shall Lessee engage in any activity that would change, disturb, alter or impair the significant relatively natural ecological features and values of the Premises, without the prior written approval of the General Manager.

(m) Operating Covenants. Lessee shall use the Premises continuously for the permitted use specified in the Basic Lease Information and shall not allow the Premises to remain unoccupied or unused without Landlord's prior written consent, which Landlord may give or withhold in its sole discretion. Lessee shall use and operate its business on the Premises in a first class and professional manner, and shall take all commercially reasonable steps to maximize revenue (and Percentage Rent) from its operations on the Premises.

(n) Recycling and Resource Conservation. The City of San Francisco has set ambitious recycling and composting goals for City Departments including 75% landfill diversion by 2010 and maximum participation the City's

municipal composting program at all City Department locations where there is food service. In addition, the City has recently passed the Food Service Waste Reduction Ordinance (see Section 26.40) which, in part, "Prohibits the use of polystyrene foam dispensable food service ware and requires the use of recyclable or compostable food service ware by restaurants, retail food vendors, City Departments and the City's contractors and lessee." City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease. City contractors and lessees using any Disposable Food Service Ware shall use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while performing under a City contract or lease unless there is no suitable Affordable Biodegradable/Compostable or recyclable product available as determined by the City Administrator in accordance with Subsection 1604(a).

Lessee shall develop a program to work toward a zero waste goal, including the implementation of a composting system for food waste, packaging and 100% biodegradable supplies whenever practical. Lessee shall submit a recycling and composting plan at Commencement of Lease, and provide an annual report on each anniversary date of this Lease outlining their progress toward meeting the recycling and composting goals described above and their success toward a zero waste goal.

8. IMPROVEMENTS

8.1 Construction of Improvements. Lessee shall not construct or install any Improvements nor make or permit any Alterations in, to or about the Premises, without the General Manager's prior written consent in each instance, which the General Manager may give or withhold in its sole and absolute discretion. Subject to the General Manager's consent as provided above, any permitted Improvements or Alterations shall be done at Lessee's sole expense (i) in strict accordance with plans and specifications approved in advance by the General Manager in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the General Manager, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that the General Manager or the Commission may reasonably impose, including, without limitation, provision of such completion security as is acceptable to Landlord. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of Department Facilities (if any), or any portion thereof, or the Department's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, Lessee, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Landlord. No material change from the plans and specifications approved by Landlord may be made without Landlord's prior written consent. Landlord and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Lessee shall furnish Landlord with a complete set of final as-built plans and specifications. If the cost of any proposed Improvements or Alterations is in excess of Five Thousand Dollars (\$5,000), Lessee shall pay City an administrative fee equal to ten percent (10%) of the total cost of the work. Lessee shall require from each contractor and subcontractor performing any work on or about the Premises a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million

Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 18.2(c)**.

8.2 Ownership of Improvements. Any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Lessee pursuant to the terms and limitations of **Section 8.1** above shall be and remain Lessee's property during the Term. Upon the Expiration Date or any earlier termination hereof, Lessee shall, upon Landlord's request, remove all such Improvements and Alterations from the Premises in accordance with the provisions of **Section 21.1** hereof, unless Landlord, at its sole option and without limiting any of the provisions of **Section 8.1** above, specifies at the time of Landlord's approval of any such Improvements or Alterations that such Alterations or Improvements may remain on the Premises following the expiration or termination of this Lease.

8.3 Lessee's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Lessee that can be removed without structural or other material damage to the Premises (all of which are herein called "Lessee's Personal Property") shall be and remain the property of Lessee and may be removed by it subject to the provisions of **Section 21.1** hereof. At least ten (10) days prior to delinquency, Lessee shall pay all taxes levied or assessed upon Lessee's Personal Property and shall deliver satisfactory evidence of such payment to City.

9. REPAIRS AND MAINTENANCE

9.1 Lessee Responsible for Maintenance. Lessee assumes full and sole responsibility for the operation, maintenance and management of the Premises and any permitted Improvements from and after the Commencement Date. Except as provided in **Section 9.2** below, City shall not under any circumstances be responsible for the performance of any of Lessee's Commission-approved changes or alterations to the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost thereof. Lessee shall maintain the Premises and any existing and permitted Improvements at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction. If any portion of the Premises or any of City's property located on or about the Premises is damaged by any of the activities conducted by Lessee or its Agents or Invitees hereunder, Lessee shall immediately, at its sole cost, repair any and all such damage and restore the Premises or City's property to its previous condition. Throughout the term of this Lease, Tenant shall not be responsible for the structural integrity of the roofs nor will it be obligated to replace the roof and its structural members during the Term.

Lessee shall keep the premises and all fixtures and equipment clean, neat, safe, sanitary and in good order at all times. Lessee agrees to remove all waste, trash, rubbish, papers, cartons and refuse from said premises, to pick up trash and debris in the immediate vicinity of the premises and dispose of trash in containers provided by Lessee that are large enough to adequately serve the needs of the facility. Lessee shall provide a dumpster and shall keep it in clean and orderly condition.

9.2 City's Maintenance and Repair Obligations. Notwithstanding **Section 9.1**, City shall maintain, repair and keep in good condition the Park area in which the Premises are located, including gardening and landscaping services, and exterior bathrooms. City shall maintain, repair and replace if necessary all structural elements of the Premises. City shall be responsible for the structural integrity of the roof and its structural members.

9.3 Utilities.

(a) Lessor agrees to pay for water, gas and electricity. Lessee agrees to pay for sewer charges billed to Lessee by the Water Department, charges for garbage and recycling disposal and all telephone, fax and internet connection charges, including the cost of bringing any such service(s) to locations in the Premises.

(b) No antennae or telecommunication dish may be installed on the Premises without the advance written approval of Landlord. No such antennae or telecommunications dishes shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of Landlord. Lessee agrees, at the request of Landlord, to permit Landlord to install, at Landlord's sole cost, transmission equipment for City's emergency or 800 Mhz City wide radio system communications facilities (or its successor) at a location on top of the Improvements acceptable to Lessee.

9.4 No Right to Repair and Deduct. Lessee expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Lessee to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, or to abate or reduce any of Lessee's obligations hereunder on account of the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Lessee expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Lessee to terminate this Lease and with respect to any obligations of City for Lesseeability of the Premises and any right of Lessee to make repairs or replacements and deduct the cost thereof from Rent.

10. LIENS

Lessee shall keep the Premises and all of City's property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Lessee. In the event Lessee does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Lessee upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and materialmen's liens. Lessee shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Lessee shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Lessee has failed to do so within ten (10) days after final determination of the validity thereof. Lessee shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

11. COMPLIANCE WITH LAWS

11.1 Compliance with Laws. Lessee shall promptly, at its sole expense, maintain the Premises, any Improvements permitted hereunder and Lessee's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements. The Parties acknowledge and agree that Lessee's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease. Lessee's obligation under this Section shall include, without limitation, the responsibility of Lessee to make substantial or structural repairs and alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Lessee or City, the degree to which the curative action may interfere with Lessee's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to Lessee's particular use of the Premises. Without limiting **Section 5.5** hereof, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its obligations hereunder, or shall give Lessee any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Lessee waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

11.2 Regulatory Approvals

(a) Responsible Party. Lessee understands and agrees that Lessee's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Lessee shall be solely responsible for obtaining any and all such regulatory approvals. Lessee shall not seek any regulatory approval without first obtaining the written consent of the General Manager. Lessee shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Lessee's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Lessee, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Lessee shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Lessee's failure to obtain or comply with the terms and conditions of any regulatory approval.

(b) City Acting as Owner of Real Property. Lessee further understands and agrees that City, acting by and through the Commission, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Lessee's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Lessee's

obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above.

11.3 Compliance with City's Risk Management Requirements. Lessee shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. Lessee shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

11.4 Reports. Lessee shall submit a report and provide such documentation to City as City may from time to time request regarding Lessee's operations and evidencing compliance thereof with this Lease and all Laws. In the event that Lessee prepares or obtains any report or other informational document relating to the Premises or any Improvements thereon, Lessee shall promptly deliver a copy of such report or document to Landlord.

12. FINANCING; ENCUMBRANCES; SUBORDINATION

12.1 Encumbrance of Landlord's Fee Interest. The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) **Encumbrance by City.** To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Lessee to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder.

(b) **Encumbrance By Lessee.** Lessee shall not under any circumstances whatsoever Encumber in any manner City's estate in the Premises or any adjoining property, or City's interest under this Lease, or any portion thereof.

12.2 Leasehold Encumbrances. Without limiting **Article 15** hereof, Lessee shall not Encumber this Lease or Lessee's interest in this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

13. DAMAGE OR DESTRUCTION

13.1 Damage or Destruction to the Improvements. In the case of damage to or destruction of the Premises by fire or any other casualty, whether insured or uninsured, Lessee shall, at its sole cost and with reasonable promptness and diligence, restore, repair, replace or rebuild the Premises as nearly as possible to the same condition, quality and class the Premises were in immediately before such damage or destruction, unless such damage or destruction was caused solely and directly by the gross negligence or willful misconduct of City or its Agents. With respect to any damage to or destruction by fire or any other casualty to any Improvements permitted hereunder made by or on behalf of Lessee during the Term hereof, Lessee may, at its

option and at its sole cost, restore, repair, replace or rebuild such Improvements to the condition such Improvements were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of **Section 8.1** above. However, if Lessee does not notify City in writing within thirty (30) days after the date of such damage or destruction of Lessee's election to restore, repair, replace or rebuild any such damaged or destroyed Improvements built by or on behalf of Lessee as provided above, Lessee shall promptly, at its sole cost, demolish such Improvements and remove them (including all debris) from the Premises in compliance with the provisions of **Section 21.1** below.

13.2 Abatement in Rent. In the event of any damage or destruction to the Premises or any permitted Improvements that prevents Tenant from using, and Tenant does not use, the Premises or any portion thereof, for thirty (30) consecutive days (the "Eligibility Period"), Rent and Additional Charges payable hereunder shall be abated or reduced, after expiration of the Eligibility Period, for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using bears to the total rentable area of the Premises during the restoration (except to the extent that the damage or destruction was caused by the negligence or intentional misconduct of Tenant, its Agents or Invitees).

13.3 Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Improvements, and City and Lessee each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

14. EMINENT DOMAIN

14.1 General. If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties hereunder shall be determined pursuant to this Section. City and Lessee intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

14.2 Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

14.3 Partial Taking; Election to Terminate.

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Lessee, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Lessee elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Lessee agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) City shall have the right to terminate this Lease in the event of a partial Taking of a substantial portion of any of City's adjoining real property, even if the Taking does not directly affect the Premises.

(c) Either Party electing to terminate under the provisions of this **Article 14** shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

14.4 Rent; Award. Upon termination of this Lease pursuant to an election under **Section 14.3** above, then: (i) Lessee's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in **Section 14.5** below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Lessee shall have no claim against City for the value of any unexpired term of this Lease, provided that Lessee may make a separate claim for compensation, and Lessee shall receive any Award made specifically to Lessee, for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

14.5 Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 14.3** above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Lessee shall have no claim against City for the value of any unexpired Term of this Lease, provided that Lessee may make a separate claim for compensation. Lessee shall retain any Award made specifically to Lessee for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

14.6 Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Lessee shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Lessee shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Lessee for the period of the Taking, and City shall be entitled to receive the balance of any Award.

15. ASSIGNMENT AND SUBLETTING

15.1 Restriction on Assignment and Subletting.

Lessee shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Lessee), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or

rights with respect to the Premises, any Improvements or its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon. (collectively, "Sublease"). Any Assignment or Sublease shall be voidable at the option of the City in its sole and absolute discretion; and the City shall have the right to terminate immediately this Lease by sending written notice to Lessee.

15.2 Effect of Transfer. No Sublease or Assignment by Lessee shall relieve Lessee, or any guarantor, of any obligation to be performed by Lessee under this Lease. Any Sublease or Assignment shall constitute a material Event of Default by Lessee under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Lessee or other transferor to comply with this Section.

15.3 Indemnity for Relocation Benefits. Without limiting Section 15.2, Lessee shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Lessee shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

16. DEFAULT; REMEDIES

16.1 Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Lessee hereunder:

(a) **Rent.** Any failure to pay any Rent or other sums as and when due, provided Lessee shall have a period of three (3) days from the date of written notice of such failure from City within which to cure any default in the payment of Rent or other sums; provided, however, that City shall not be required to provide such notice regarding Lessee's failure to make such payments when due more than twice during any calendar year, and any such failure by Lessee after Lessee has received two such notices in any calendar year from City shall constitute a default by Lessee hereunder without any requirement on the part of City to give Lessee notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided Lessee shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Lessee shall have a reasonable period to complete such cure if Lessee promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Lessee uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two (2) defaults of the same obligation City shall not be required to provide any notice regarding Lessee's failure to perform such obligation, and any subsequent failure by Lessee after Lessee has received two such notices shall constitute a default by Lessee hereunder without any requirement on the part of City to give Lessee notice of such failure or an opportunity to cure;

(c) **Vacation or Abandonment.** Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Lessee, or an assignment by Lessee for the benefit of creditors, or any action taken or suffered by Lessee under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

16.2 Remedies. Upon the occurrence of an Event of Default by Lessee, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

(a) **Terminate Lease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Lessee's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Lessee proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Lessee's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) **Continue Lease and Enforce Rights.** The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Lessee's right to possession, if Lessee has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Lessee's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Lessee specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Lessee shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 16.2(b)** shall be deemed a waiver of any default by Lessee and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) **Appointment of Receiver.** The right to have a receiver appointed for Lessee upon application by City to take possession of the Premises and to apply any rental

collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

16.3 City's Right to Cure Lessee's Defaults. If Lessee defaults in the performance of any of its obligations under this Lease, then City may at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Lessee's account and at Lessee's expense. Lessee shall pay to City, as Additional Rent, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Lessee's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Lessee is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Lessee's Event of Default shall not constitute a waiver of Lessee's Event of Default or any rights or remedies of City on account of such Event of Default.

17. WAIVER OF CLAIMS; INDEMNIFICATION

17.1 Waiver of Claims. Lessee covenants and agrees that City shall not be responsible for or liable to Lessee for, and, to the fullest extent allowed by Law, Lessee hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever. Nothing herein shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages. Without limiting the foregoing:

(a) Lessee expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the Improvements or Lessee's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Lessee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Lessee or other waivers contained in this Lease and as a material part of the consideration for this Lease, Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Lessee pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

(b) In connection with the foregoing releases, Lessee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
RELEASE, WHICH IF KNOWN BY HIM MUST HAVE

MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Lessee acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Lessee realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

17.2 Lessee's Indemnity. Lessee, on behalf of itself and its successors and assigns, shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, Agents and Invitees of Lessee, or loss of or damage to property (including, without limitation, the Department Facilities) howsoever or by whomsoever caused, occurring in, on or about the Premises or any other City property; (b) any default by Lessee in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Lessee's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Lessee, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Improvements; (d) the condition of the Premises or any Improvements constructed by or on behalf of Lessee, or Lessee's failure to properly repair or maintain any Improvements on the Premises; (e) any construction or other work undertaken by Lessee on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Lessee, its Agents or Invitees, or of any trespassers, in, on or about the Premises or any Improvements; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only such Losses as are caused exclusively by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. Lessee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Lessee by City and continues at all times thereafter. Lessee's obligations under this Section shall survive the expiration or sooner termination of the Lease.

18. INSURANCE

INSURANCE REQUIREMENTS ARE SUBJECT TO REVIEW BY THE CITY'S RISK MANAGER BASED ON THE PROPOSED USE.

18.1 Lessee's Insurance. Lessee shall procure and maintain throughout the Term of this Lease and pay the cost thereof the following insurance:

(a) Property Insurance. At all times Lessee shall, at its sole cost, keep the Premises and all Improvements thereon insured for the mutual benefit of City and Lessee against:

Loss or damage by such perils as are included in the standard "All Risks Form" of property damage insurance, in amounts sufficient to prevent City or Lessee from becoming a co-insurer within the terms of the applicable policies, and, in any event, in an amount equal to 100% of the Full Insurable Value of the Improvements which are included in the Premises;

Loss or damage by explosion, rupture or bursting of high pressure steam boilers, steam pipes, steam turbines, steam engines or flywheels, air conditioning equipment, pressure vessels, motors or similar apparatus, now or hereafter installed in the Improvements in such limits with respect to any one accident as may be reasonably required by City from time to time but not less than One Million Dollars (\$1,000,000); and

Such other risks in such amounts as City's Risk Manager may reasonably require.

"Full insurable value" shall mean the actual replacement cost of the Improvements which are included in the Premises (excluding foundation and excavation costs but without deduction for physical depreciation). It shall be determined at such time as City's Risk Manager may request by an appraiser or appraisal company selected and paid by Lessee and reasonably acceptable to City; provided, however, that City's Risk Manager shall have the right, at any time, to ascertain the full insurable value at its own expense, except that in the event such full insurable value as determined by City shall exceed by at least ten percent (10%) of the then existing amount of insurance coverage procured by Lessee, Lessee shall pay the expense of determining the full insurable value.

(b) Comprehensive Insurance. Comprehensive or commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations.

(c) Public Liability and Other Insurance. Lessee shall at all times, at its cost, also maintain insurance for the mutual benefit of City and Lessee against:

Claims for personal injury, including, without limitation, bodily injury or property damage, occurring in or upon the Premises or the property adjoining the Premises, under a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit.

Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against City, Lessee, the Premises or any other City property, not less than \$1,000,000 each accident.

Comprehensive automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Lessee uses automobiles in connection with its use of the Premises.

Business interruption insurance insuring that the Base Rent and Percentage Rent shall be paid for a period of up to one year if Lessee is unable to operate its business at the Premises, on an all risk form excluding earthquake and flood but including business interruptions caused by riots and civil commotion. Percentage Rent shall be calculated by taking the average of the Percentage Rent payments made to Landlord for the twelve (12) months immediately preceding the incident causing the business interruption.

18.2 General Requirements. All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

(a) Should any of the required insurance be provided under a claims-made form, Lessee shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

Name Lessee as the insured and the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in the Basic Lease Information.

18.3 Proof of Insurance. Lessee shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Lessee shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Lessee shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Lessee, and the cost thereof shall be paid to City within five (5) days after delivery to Lessee of bills therefor.

18.4 Review of Insurance Requirements. Lessee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Lessee with respect to risks comparable to those associated with the Premises, then, at City's option, Lessee shall increase at its sole cost the amounts or coverages carried by Lessee to conform to such general commercial practice.

18.5 No Limitation on Indemnities. Lessee's compliance with the provisions of this Section shall in no way relieve or decrease Lessee's indemnification obligations under **Sections 17.2 and 22.3** above, or any of Lessee's other obligations or liabilities under this Lease.

18.6 Lapse of Insurance. Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to Lessee.

18.7 Lessee's Personal Property. Lessee shall be responsible, at its expense, for separately insuring Lessee's Personal Property.

18.8 City's Self Insurance. Lessee acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise.

18.9 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Lessee each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises or other City property and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, other City Property or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises or other City property carried by Lessee does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Lessee shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

19. ACCESS BY CITY

19.1 Access to Premises by City.

(a) **General Access.** City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours oral or written notice to Lessee (except in the event of an emergency) for any of the following purposes:

To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

To determine whether Lessee is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of **Section 16.3** hereof;

To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder; and

To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" signs in connection therewith.

(b) Emergency Access. In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove Lessee's Personal Property on or about the Premises. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Lessee from the Premises or any portion thereof.

(c) No Liability. City shall not be liable in any manner, and Lessee hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Lessee, its Agents or Invitees.

(d) No Abatement. Lessee shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

(e) Minimize Disruption. City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Lessee's use hereunder.

19.2 The Department Facilities and Utility Installations. Without limiting **Section 19.1** above, City shall have the right at all times, to enter upon the Premises upon forty eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the Department Facilities, if any, or any public park or utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions or negligence of Lessee, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Lessee's use of the Premises occasioned by any such facility installations or other activities.

19.3 Roadways. City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City desires.

19.4 Rights of Public. Lessee shall keep the Premises open to the public at all times consistent with the uses permitted hereunder, subject to the Rules and Regulations or as otherwise approved by the General Manager in writing.

20. ESTOPPEL CERTIFICATES

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge and deliver any such certificates of the City.

21. SURRENDER

21.1 Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Lessee shall surrender to City the Premises, in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Lessee. On or before the Expiration Date or any earlier termination hereof, or later upon Landlord's request, Lessee shall, at its sole cost, remove any and all of Lessee's Personal Property from the Premises and demolish and remove any and all Improvements and Alterations from the Premises requested by Landlord to be removed (except for any Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above). In addition, Lessee shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Improvements or Alterations. In connection therewith, Lessee shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Lessee's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Lessee's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law. If Lessee fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Lessee shall Indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Lessee resulting from Lessee's failure to surrender the Premises.

21.2 Automatic Reversion. Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Lessee or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Lessee shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any

other instrument reasonably requested by City to evidence or otherwise effect the termination of Lessee's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above.

22. HAZARDOUS MATERIALS

22.1 No Hazardous Materials. Lessee covenants and agrees that neither Lessee nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements. Lessee shall immediately notify City if and when Lessee learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Lessee to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Lessee shall promptly provide all such information. Without limiting **Section 19** hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Lessee (except in the event of an emergency).

22.2 Lessee's Environmental Indemnity. If Lessee breaches any of its obligations contained in **Section 22.1** above, or, if any act or omission or negligence of Lessee or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting Lessee's general Indemnity contained in **Section 17.2** above, Lessee, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Lessee or any of Lessee's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Lessee shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Lessee shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

23. SECURITY DEPOSIT

Lessee shall pay to City upon execution of this Lease the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants and conditions of this Lease. Lessee agrees that City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises, the Improvements, or the Department Facilities (if any) caused by Lessee, its Agents or Invitees, or any failure of Lessee to perform any other terms, covenants or conditions contained in this Lease,

without waiving any of City's other rights and remedies hereunder or at Law or in equity. Should City use any portion of the security deposit to cure any Event of Default by Lessee hereunder, Lessee shall immediately replenish the security deposit to the original amount, and Lessee's failure to do so within five (5) days of City's notice shall constitute a material Event of Default under this Lease. If the Base Rent is increased pursuant to any of the provisions of this Lease, Lessee shall increase the amount of the security deposit accordingly. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Lessee shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Lessee's liability for the performance of any of its obligations under this Lease.

24. GENERAL PROVISIONS

24.1 Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Lessee (i) at Lessee's address set forth in the Basic Lease Information, if sent prior to Lessee's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Lessee's taking possession of the Premises, or (iii) at any place where Lessee or any Agent of Lessee may be found if sent subsequent to Lessee's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Lessee may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this **Section 24.1** and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

24.2 No Implied Waiver. No failure by City to insist upon the strict performance of any obligation of Lessee under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Lessee of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

24.3 Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto. The General Manager shall have the full power and authority to enter into any amendment to this Lease that does not (i) decrease the amount of rental income payable by Lessee to Landlord, (ii) materially increase Landlord's liabilities or financial obligations under this Lease, (iii) change the legal description of the Premises, (iv) change the Term of this Lease, or (v) materially change the permitted uses of the Premises. Any proposed amendment which falls into the above specified categories shall require the approval of the Commission, and, if required under the City's Charter or Administrative Code, the Mayor, and the Board of Supervisors.

24.4 Authority. If Lessee signs as a corporation, a partnership or a limited liability company, each of the persons executing this Lease on behalf of Lessee does hereby covenant and warrant that Lessee is a duly authorized and existing entity, that Lessee has and is qualified to do business in California, that Lessee has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Lessee are authorized to do so. Upon City's request, Lessee shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

24.5 Joint and Several Obligations. The word "Lessee" as used herein shall include the plural as well as the singular. If there is more than one Lessee, the obligations and liabilities under this Lease imposed on Lessee shall be joint and several.

24.6 Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by Lessee hereunder, City may give or withhold such consent in its sole and absolute discretion. All such consents may be made by the General Manager acting alone, unless stated to the contrary herein.

24.7 Successors and Assigns. Subject to the provisions of **Section 15** hereof relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Lessee and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

24.8 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

24.9 Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

24.10 Governing Law. This Lease shall be subject to, and construed and enforced in accordance with, the Laws of the State of California and the City's Charter and Administrative Code.

24.11 Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Lessee hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Lessee by implication or otherwise unless expressly set forth herein.

24.12 Attorneys' Fees. In the event that either City or Lessee fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

24.13 Holding Over. Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a Monthly Base Rent equal to one hundred ten percent (110%) of the amount set forth in **Sections 5.1 and 5.2** hereof, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any

holding over without City's consent shall constitute a default by Lessee and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease. Any holding over after the expiration of the Term without the City's consent shall be at a monthly rental rate equal to one hundred fifty percent (150%) of the rate in effect at the end of the Term of this Lease.

24.14 Time of Essence. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

24.15 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

24.16 Survival of Indemnities. Termination of this Lease shall not affect the right of either party to enforce any and all indemnities, waivers and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Lessee specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Lessee has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Lessee by City and continues at all times thereafter.

24.17 Relationship of Parties. City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Lessee's business, or joint venturer or member in any joint enterprise with Lessee. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by Lessee on, in or relating to the Premises.

24.18 Transfer by City. If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Lessee shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Lessee shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Lessee, with regard to any future sale or other disposition of the Premises, or any portion thereof.

24.19 Recording. Lessee agrees that it shall not record this Lease in the Official Records. Upon request by Lessee, Landlord shall prepare for recordation a memorandum of this Lease which Lessee may record at its own cost.

24.20 Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Lessee, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Lessee, its successors and assigns, or for any obligation of City under this Agreement or otherwise.

24.21 Wages and Working Conditions. With respect to the construction of any Improvements or Alterations, any employee performing services for Lessee shall be paid not less than the highest prevailing rate of wages, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in the City and County of San Francisco. Lessee shall require any contractor to provide, and shall deliver to City every calendar month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or Alterations on the Premises.

24.22 Non-Discrimination in City Contracts and Benefits Ordinance.

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Lessee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Lessee, in any of Lessee's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Lessee.

(b) **Subleases and Other Subcontracts.** Lessee shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such SubLessee or other subcontractor in substantially the form of subsection (a) above. In addition, Lessee shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subLessees and other subcontractors to comply with such provisions. Lessee's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) **Non-Discrimination in Benefits.** Lessee does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Lease.** As a condition to this Lease, Lessee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this

Section by reference and made a part of this Agreement as though fully set forth herein. Lessee shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Lessee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Lessee and/or deducted from any payments due Lessee.

24.23 No Relocation Assistance; Waiver of Claims. Lessee acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

24.24 MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, **et seq.** The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Lessee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

24.25 Conflicts of Interest. Lessee states that it is familiar with the provisions of Sections 15.103 and C8.105 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Lessee further certifies that it has made a complete disclosure to the Department of all facts bearing upon any possible interest, direct or indirect, which Lessee believes any member of the Commission, or other officer or employee of the City and County of San Francisco, presently has or will have in this Lease or in the performance thereof. Willful failure to make such disclosure, if any, shall constitute a material default hereunder.

24.26 Charter Provisions. This Lease is governed by and subject to the provisions of the City's Charter and Administrative Code.

24.27 Tropical Hardwood and Virgin Redwood Ban. Lessee shall not permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in or on the Premises or otherwise in the performance of this Lease. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. In the event Lessee fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative Code, Lessee shall be liable for liquidated damages for each violation in any amount equal to Lessee's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Lessee acknowledges and agrees that the liquidated damages assessed shall be payable to the City and

County of San Francisco upon demand and may be set off against any monies due to Lessee from any contract with the City and County of San Francisco.

24.28 Tobacco Product Advertising Prohibition. Lessee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Lease. This prohibition includes the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

~~3.1.24.29~~ First Source Hiring Ordinance

The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after the City and County of San Francisco [**Real Estate Division of the Department of Administrative Services**] adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Landlord shall enter into a First Source Hiring Agreement meeting applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

~~3.1.24.30~~ Sunshine Ordinance

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

24.31 Counterparts. This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

24.32 Vending Machine/Non-alcoholic Beverage Contract. Tenant hereby agrees to abide by any and all provisions of any contract entered into by City for the purpose of the sales of non-alcoholic beverages at City-owned facilities.

24.33 No Light, Air or View Easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises shall in no way affect this Lease or impose any liability on Landlord.

24.34 City's Inability to Perform. If City is unable to perform or is delayed in performing any of City's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or

interference with Lessee's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby.

~~3.1.~~24.35 Notification of Limitations on Contributions

San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (a) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (b) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (c) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Lessee understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Lessee except as provided under the Conduct Code. Lessee agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this contract. Upon request, Lessee agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Lessee with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Lessee of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

24.36 Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Building and encouraging use of such facilities, all at Tenant's sole expense.

24.37 Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Lease.

24.38 Preservative-Treated Wood Containing Arsenic. As of July 1, 2003, Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the

Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

24.39 Resource Efficiency. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient buildings and resource-efficient pilot projects. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

24.40 Food Service Waste Reduction Requirements. Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LESSEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL A RESOLUTION OF THE COMMISSION SHALL HAVE BEEN DULY PASSED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON PASSAGE OF SUCH A RESOLUTION, AND THIS LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THE COMMISSION APPROVES THIS LEASE, IN ITS SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.

City and Lessee have executed this Lease as of the date first written above.

LESSEE:

_____,
a _____

By: _____
Its: _____

By: _____
Its: _____

CITY:

**CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation**

By: _____
_____, General Manager
Recreation and Park Department

**APPROVED BY
RECREATION AND PARK COMMISSION
PURSUANT TO RESOLUTION NO. _____ DATED: _____**

Margaret McArthur, Commission Liaison

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By _____
Deputy City Attorney