



**Request for Proposals**  
**Golden Gate Park Tennis Center Operations**



**CITY AND COUNTY OF SAN FRANCISCO**

**London Breed, Mayor**

**SAN FRANCISCO RECREATION and PARK COMMISSION**

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## NOTICE

In order to receive additional information regarding this RFP please e-mail Jackie.Suen@sfgov.org. Please include all contact information: name, email, address, phone number and cell phone number.

All proposals must be received by Property Management of the Recreation and Park Department no later than 5 p.m. on December 14, 2018.  
Late proposals will not be accepted.

Issued: Tuesday, August 7, 2018  
Due: Friday, December 14, 2018

**Summary of Offering and Scheduling**  
**Golden Gate Park Tennis Center Operations**

Opportunity:	Operate the Golden Gate Park Tennis Center, a 17 court newly renovated lighted facility and a 7,756 square foot clubhouse
Location:	Golden Gate Park, San Francisco, CA
Maximum Term:	Five (5) years with an option to renew for three (3) years if both parties agree
Goals:	Assure that the Tennis Center remains accessible and affordable for children, youth and adults of all ages. Assure that the tennis center is welcoming, well organized and maintained, connects players, is informative, professionally run and overall, is an exemplary public tennis center.
Hours of Operation	6:30 a.m. to 10 p.m. 365 days per year
Financial Requirements:	The selected respondent or respondents will be required to pay the <i>greater of</i> either (a) the proposed Minimum Annual Guarantee or (b) a percentage of the gross revenues as proposed by the respondent and accepted by the Department.  Lessee will be responsible for certain aspects of operating and maintaining premises.
Selection Process:	The RFP responses will be evaluated by a Selection Committee and ranked on how well they meet the project objectives and selection criteria described in this RFP. The Department may request additional information from respondents during this process. Final approval of a lease must be approved by the Recreation and Park Commission.
Pre-submittal Meetings:	Thursday, August 30, 2018 at 10 a.m.
Proposal Due Date:	5 p.m. on Friday, December 14. Three printed copies and ten searchable flash drives must be received by the below contact.
Contact:	Jackie Suen Recreation and Park Department 501 Stanyan Street San Francisco, CA 94117 (415) 831-6821 Jackie.Suen@sfgov.org

## I. BACKGROUND

### A. History of Courts

The first two tennis courts were laid in Golden Gate Park in 1894. These two original courts were made of dirt and replaced in 1901 with six asphalt courts. By 1915, there were 21 courts with the same configuration as is present today. The first wooden clubhouse was constructed onsite in 1917. Although showers were included in the original configuration, it was not until 1923 that hot water was made available. The current clubhouse was built in 1958 by architect Leonard S. Mosais and named the “William M. Johnston Memorial Clubhouse” in honor of tennis great, “Little Bill” Johnston. In addition to William Johnston, other tennis greats that refined their game at the storied Golden Gate Park Tennis Center include Maurice McLoughlin, Alice Marble, Helen Wills, Art Larson, “Peanut” Louie, Brad Gilbert and Rosie Casals. The Center has produced possibly the greatest number of tennis champions ever known to originate from one area, not to mention a public facility, hence its nickname “the Cradle of Champions.”

### B. Current Renovation

The Tennis Center currently consists of 21 tennis courts and an approximately 3,200 square-foot one-story clubhouse. The current court configuration is problematic, with insufficient space between courts and circulation that causes disruption to play. The renovation will remove the existing 21 tennis courts and install 18 courts, 17 of which will be regulation-size, well-separated tennis courts in pods of one, two and three courts with ample pathways and viewing spaces between them and one of which will be a dedicated pickleball court. Additional tennis courts may be lined to accommodate pickleball as well. The tennis courts will have night lights for the first time. See Exhibit A for a diagram of the new tennis facility.

The new clubhouse will be a one-story building of approximately 7,756 square feet, which will provide a large common space for lounging, socializing and special events; a dedicated south wing for after-school tennis and learning programs including a classroom and related spaces; an adjacent, flexible, recreation room; office/administrative space, lockers and restrooms, kitchen space, a check-in area, vending space and a storage and maintenance space. On the south end of the clubhouse, just beyond the classroom, there will be a 6,100 square foot landscaped garden which will provide additional outdoor space for viewing, events, social and classroom activities.

One of the 18 reconfigured courts will be a sunken feature court located adjacent to the new clubhouse, and will accommodate approximately 180 seated spectators. A new entry plaza will be constructed at the entrance to the tennis center from Nancy Pelosi Drive. A new 10-foot-tall fence will be installed along the perimeter of the tennis courts, clubhouse, and viewing garden, producing a single point of entry into the facility through the clubhouse. See Exhibit B for a diagram of the new clubhouse.

## II. VISION and OBJECTIVES

### A. Vision

Located in historic Golden Gate Park, the newly renovated GGPTC will be the largest up-to-date public tennis center in the San Francisco Bay Area. As an exemplary public tennis center, GGPTC will be the bedrock of tennis for the City, broadening the services offered by RPD and improving tennis throughout the City. GGPTC will offer robust, diverse tennis activities, the range and depth of which could not be achieved in a neighborhood facility nor be affordable to most if offered through a private facility.

The Department is committed to ensuring that the facility will remain accessible and affordable. The Department is seeking an operator to manage GGPTC in a manner committed to ensuring that players of all ages, abilities and socioeconomic background are welcome, and love playing there. The operator will assure that GGPTC is well maintained, organized and informative, connects players, and invites socializing and tennis viewing.

### B. Objectives

The Department has developed the following objectives for the operation of the Golden Gate Park Tennis Center:

- Accessible and affordable for players of all ages and skill levels
- Fully, professionally staffed
- A user-friendly online reservation system
- Easy for players of all ages and skill levels to get a match
- A broad variety of programs that promote tennis as a lifetime sport across generations and skill levels including extensive tennis instruction, recreational programs and play, leagues, drop in play, tournaments, special events and associated social activities for the whole tennis community
- Ensure coordination and collaboration with RPD's continued operation at GGPTC of its Summer Camp, the new Tennis and Learning Center for disadvantaged middle school children and high school league matches
- Continued hosting, rejuvenation and expansion of the 116 year old tradition of the San Francisco City Open Tennis Tournament
- Opportunities for pickleball play
- Assure the long-term sustainability and vitality of the Center by creating a financing model that builds a capital reserve fund for long term needs
- A mutually collaborative, transparent and flexible relationship among the Operator, the tennis community and the Department



### **III. THE OPPORTUNITY**

#### **A. Facility Space**

1. 18 New Courts
  - 17 full size tennis courts with lights
    - Includes a sunken exhibition court adjacent to the east facing glass wall of the clubhouse
    - The capacity to convert Court 8 into a center, exhibition court with bleachers on both sides capable of seating nearly 1,000 spectators
  - One dedicated pickle ball court (some tennis courts may additionally be lined for pickleball play)
  - 90 new 20-foot-tall light poles
2. A New Clubhouse
  - Single point of entry and check in area with room for check-in desk, separate court check-in kiosk and retail sales in a 7,756 square foot building
  - Administrative area including space for stringing equipment, one private office, a conference room and a common work station area, exceeding 800 square feet
  - Community space of nearly 2,000 square feet that can serve as a lounge, social and special event area with windows facing on to the tennis courts
  - Recreation room of 875 square feet that can be used for alternative recreation such as ping pong and a meeting space
  - Dedicated classroom and administrative space for the RPD administered Tennis and Learning Center of over 1,200 square feet
  - Men's and women's locker rooms, a single occupancy restroom and a single private shower
  - Prep kitchen, pantry and vending area
  - Janitorial services and storage room
  - An outside viewing terrace running the length of the east facing glass wall of the clubhouse
3. Garden, viewing and special event area of 6,100 square feet, capable of seating 80 at tables for special events
4. Landscaped walkways and viewing areas throughout the 17 court layout
5. External equipment storage shed near the teaching courts (15, 16 and 17) and external enclosure for refuse storage (to the west of the clubhouse)

#### **B. Operating Requirements**

1. Hours of Operation
  - Court hours will be 6:30 a.m. to 10 p.m. 365 days per year
  - Operator to provide staff on site to monitor use and provide custodial services
  - Department will consider a limited number of holiday exceptions

## 2. Website and Online Reservation System

The Operator will be required to develop a website and to provide an online reservation system that will allow users to easily reserve the courts and provide transparency over court utilization. The online registration system should also provide a customer relationship management system. The Operator, with community input, will be able to set the rules for online reservations. The Operator will also be required to accept reservations over the phone and onsite. In addition, the Operator will be required to have point of sale registers.

The Operator will be required to provide quarterly reports of court usage including age of users and types of uses.

## 3. Court Fees

The Court Fees are set in the San Francisco Park Code and will be as follows (subject to annual CPI adjustments):

<b>Hourly Rates</b> (can be reserved by the half hour)	<b>Residents</b>	<b>Non-Residents</b>
Weekdays	\$8	\$12
Weekends and evenings	\$9	\$15
Seniors*	\$4	\$6
Youth*	no fee	\$12
USTA matches**	\$18	\$18

\*Youth and senior discounted fees are available only during off peak hours. The times will be established by the Operator but are expected to be weekdays before 3 p.m. for seniors and before 6 p.m. for youth.

\*\*Fees for non-USTA tournaments will be subject to negotiation but will in no event be less than the USTA rate

Other fees including camps, clinics, group play, challenge courts, rental and event fees will be set annually by the Operator as part of the Operating Budget.

## 4. Court Usage

The Operator will be responsible for coordinating the scheduling of the GGPTC with the goal of ensuring that it is welcoming to all and balancing the desires and needs of a variety of users including the following:

- Basic Individual Reservations and Play
  - Online Reservations and Drop in times

- Access for RPD Youth Programs (see Existing Youth programs below)
- Access for San Francisco High School Matches (see Existing Youth programs below)
- Leagues and USTA Matches
- Lessons and Clinics to be offered by the Operator
- Tournaments (see Tournaments)
- Pickleball
- Special Events
  - Social Programs, Mixers, Match ups

Any special events that would require the closure of more than 50 percent of the courts will require the prior approval of the Department. In addition, any agreement to provide access to or use of the courts by third parties will require approval of the Department.

#### 5. Accommodating Youth Programs

The operator will need to ensure coordination and collaboration with two RPD programs and high school tennis team matches that will be continuing at the GGPTC.

**TLC Program:** RPD has been operating a Tennis Learning Center (“TLC”) in a variety of parts of the city serving disadvantaged elementary school youth for tennis and tutoring after school and during the summer. RPD is planning to expand the TLC program to serve middle school children at the GGPTC after the renovation. RPD will use the dedicated classroom and recreation room for this program which will operate from 3 p.m. to 6 p.m. during the school year and from 8 a.m. to 6 p.m. during the summer months. During the school year RPD will also have use of 3 courts from 3 p.m. to 6 p.m. During the summer, the TLC will share the use of the RPD summer camp courts described below.

**RPD Summer Camp:** RPD has historically offered an extremely popular summer camp at the Golden Gate Park Tennis Center. After the renovation, RPD will continue to run a summer camp serving children ages 8 to 14 using 5 courts from 7 a.m. to 6 p.m. These courts will also serve the TLC program. The camp will focus on entry level players.

The operator may not offer a similar or competing camp but can offer a camp for older or younger youth or for experienced players of a similar age. The operator may also offer camps during the existing school year and/or during non-summer holiday weeks.

**High School Tennis Matches:** San Francisco High Schools have historically held their tennis matches and end of season tournaments at the Golden Gate Park Tennis Courts. The Operator will be required to coordinate their continued use of the courts by reserving the following courts for use during the high school competitive seasons:

- From 3 to 5:30 p.m. for league matches (no charge for use)
  - 6 courts Monday, Tuesday and Thursdays
  - 12 courts Wednesday and Friday
  - Weeks at end of each season for tournament finals will require 12 courts and extended hours
- Operator to schedule court time for school matches generally 3 months in advance

- Unused time may be scheduled by Operator for other users

#### 6. Annual San Francisco Tennis Tournament

The Department and the TCSF will be annually sponsoring the Taube Family San Francisco Open Tennis Tournament and will have access to the courts for that event for no fees. The Operator will assist with onsite coordination.

### C. Maintenance and Equipment

#### 1. Daily Maintenance and Preparation

**Tennis Courts:** The Operator will be responsible for ensuring that the courts are cleaned daily and prepared and ready for play including the following:

- Court Cleaning
- Net replacement and maintenance
- Touch ups to lines and striping
- Cleaning drinking fountains
- Scorecards
- Equipment including sweepers, ball baskets and ball machines
- Cleaning paths between courts

**Other Facilities:** The Operator will be responsible for maintaining all other areas of the facility on a daily basis except landscaping. This would include:

- Building (including the TLC Area), Patio, Walkway and Restroom cleaning
- Maintenance of small repairs (plumbing, building light replacements, hinges)
- Minor paint touch ups
- Cleaning of furnishings

#### 2. Maintenance Fund: Replacements and Damage

A Maintenance Fund is being established to cover the future capital needs to sustain the newly renovated GGPTC at a high standard. Anticipated expenditures include windscreens (+/- 10 years), furniture and equipment (+/- 5-10 years), fencing and court resurfacing and lines (+/- 5-7 years).

The Maintenance Fund can also be used for repairing any unforeseen damage (e.g. from storms or accidents) not covered by the Operator's insurance.

The Maintenance Fund will have two funding sources:

- Initial Maintenance Payment made by the Operator (exact amount to be negotiated).
- A portion of the rent from the Operator which will be the higher of the Annual Minimum Annual Guaranteed Rent or the percentage rent (exact amount to be negotiated). See Section IV, Item F.

The Maintenance Fund will be a separate account held at the San Francisco Parks Alliance on behalf of RPD. Expenditures from the Maintenance Fund shall only be used if approved by RPD after consultation with the Operator and Golden Gate Park Tennis Center Advisory

Committee (the “TCAC”). Any amounts remaining in the Maintenance Account will remain in the account at the end of the lease or be returned to RPD. The Operator will have no rights to the funds in the Maintenance Account.

In the event that the Maintenance Fund is not sufficient for replacements or repairs, the Department will be responsible for making those replacements and repairs. The City, in consultation with the Operator and the TCAC will review annually the amounts to be held in the Maintenance Fund with the goal of increasing it so that there will be sufficient funds to cover repairs and replacements over the lifecycle needs of the Center, which shall be reviewed in 10-year increments.

### 3. Structural Replacements and Repairs

RPD will be responsible for maintaining basic building operations including heat/air, roof, electrical, plumbing (other than small blockages) and building painting and long-term maintenance of doors, windows and court lighting (including replacement of light fixtures).

### 4. Utilities and Other Basic Connections

The Operator will be responsible for security, internet, and phone connections. The Department will be responsible for utilities and services such as water, electricity, garbage removal, and landscaping.

### 5. Security

The Operator will be responsible for security including the installation and maintenance of a security system.

### 6. Furnishings

The GGPTC will initially be provided with all furnishings including tables, chairs, sofas and cabinets. The Operator will be responsible for maintaining these items and as needed replacing them. The Operator will also be responsible for providing all needed start up equipment for their offices.

## **D. Concessions**

The Operator will be expected to offer a variety of concessions including:

- Rentals (ball machines)
- Retail sales of balls and tennis equipment (there is limited space for clothing)
- Repairs of rackets and restringing
- Pre-packaged, prepared food and beverage (including coffee)

## **E. Community Relations**

The Operator will be responsible for meeting regularly with the community to garner input on operations and in order to balance the various demands for the tennis courts. The TCAC will provide regular processes for gathering input and feedback from the players at GGPTC and

providing it to the Operator. The Operator will meet monthly during the first year of operations with RPD to discuss performance. Representatives of TCAC will attend those meetings.

## **IV. KEY LEASE TERMS**

### **A. Term**

5 years with option to renew for 3 years if both parties agree.

### **B. Minimum Base Rent and Initial Maintenance Payment**

Respondent shall propose a Minimum Annual Guarantee (“MAG”) to the City as a base rent payment. The proposed minimum base rent should be no less than \$45,000 per year, in monthly payments subject to adjust for seasonal variation. RPD will consider an increasing MAG to reflect startup costs in first years of operations.

Respondent shall also propose an initial payment that it will make into the Maintenance Fund the “Initial Maintenance Payment”.

Annual CPI Increase - Effective each anniversary date, the then current rent shall increase at the lesser of the current CPI or 3 percent.

### **C. Percentage Rent**

Proposals must also include an exact Percentage Rent proposal payable on gross receipts. The proposal should detail an exact percentage for each revenue stream, to be paid monthly to the Department. The higher of the monthly Base Rent or the monthly Percentage Rent would be payable. In any month in which the Percentage Rent does not exceed the Base Rent, only the Base Rent would be payable. The Department will consider an adjustable percentage that increases as revenues increase such as xx% of the first \$xxx of revenues, xx+xx% of the second \$xxx of revenues and so on.

### **D. Utilities**

The Operator will be responsible for security, internet, and phone connections. The Department will be responsible for utilities and services such as water, electricity, garbage removal, and landscaping.

### **E. Maintenance and Repairs**

#### **1. Daily Maintenance and Preparation**

**Tennis Courts:** The Operator will be responsible for ensuring that the courts are cleaned daily and prepared and ready for play including the following:

- Court Cleaning
- Net replacement and maintenance
- Touch ups to lines and striping
- Cleaning drinking fountains

- Scorecards
- Equipment including sweepers, ball baskets and ball machines
- Cleaning paths between courts

**Other Facilities:** The Operator will be responsible for maintaining all other areas of the facility on a daily basis except landscaping. This would include

- Building (including the TLC Area), Patio, Walkway and Restroom cleaning
- Maintenance of small repairs (plumbing, building light replacements, hinges)
- Minor paint touch ups
- Cleaning of furnishings

## 2. Structural Replacements and Repairs

RPD will be responsible for maintaining basic building operations including heat/air, roof, electrical, plumbing (other than small blockages) and building painting and long-term maintenance of doors, windows and court lighting (including replacement of light fixtures).

## 3. Maintenance Fund - Capital Replacement

A Maintenance Fund will be established to take care of future capital needs to sustain the newly renovated GGPTC at a high standard. Anticipated expenditures include windscreens (+/- 10 years), furniture and equipment (+/- 5-10 years), fencing and court resurfacing and lines (+/- 5-7 years), and can be used, as well, for repairs of these items. The Maintenance Fund can also be used for repairing any unforeseen damage (e.g. from storms or accidents) not covered by insurance.

The Maintenance Fund will have two sources:

- Initial Maintenance Payment made by the Operator (exact amount to be negotiated).
- A portion of the rent from the Operator which will be the higher of the Annual Minimum Annual Guaranteed Rent or the percentage rent (exact amount to be negotiated).

The Maintenance Fund will be a separate account held at the San Francisco Parks Alliance on behalf of RPD. Expenditures from the Maintenance Fund shall only be used if approved by RPD after consultation with the Operator and the TCAC. Any amounts remaining in the Maintenance Account will remain in the account at the end of the lease or be returned to RPD. The Operator will have no rights to the funds in the Maintenance Account.

In the event that the Maintenance Fund is not sufficient for replacements or repairs, RPD will be responsible for making those replacements and repairs.

**F. Rent Reserves Into Maintenance Fund**

It is anticipated that rent will be deposited into the Maintenance Fund according to the below schedule. In addition, a portion of the rent will be deposited in an account with the San Francisco Parks Alliance to fund transportation of TLC program participants.

Amount in Maintenance Fund	Amount to Be Deposited in Maintenance Account	Amount to be Deposited in TLC Transportation Fund
\$0 to \$500,000	90% of Rent	10% of Rent
Over \$500,000	25% of Rent	25% of Rent

RPD, in consultation with the Operator and the TCAC, will review annually the amounts to be held in the Maintenance Fund with the goal of increasing it so that there will be sufficient funds to cover repairs and replacements over the lifecycle needs of the Center, which shall be reviewed in 10-year increments. Any remaining amounts will be paid to RPD to be used for tennis operations and maintenance throughout the park system.

**G. Annual Operating Plan**

Operator will be required to provide RPD and the TCAC with an annual Operating Plan at least 60 days prior to the start of each fiscal year covering proposed activities, staffing levels, court scheduling and fees among other things.

**H. Subordination**

The City’s fee ownership and rental income stream will not be subordinated.

**I. Security Deposit and Performance Bond**

In connection with the Lease, the selected Lessee, upon signing the Lease, will be required to provide a security deposit.

**J. Insurance Requirements**

The Operator will be required to obtain in amounts to be negotiated but no less than the standard lease terms attached.

**K. Nondiscrimination in Contracts and Benefits**

As a condition to the Lease, Proposer shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Contract Monitoring Division 12B-101 Form) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

**L. 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.



**M. Final Accounting**

Within twenty-one (21) days after each anniversary date, Lessee shall provide an accounting to the City reflecting all sums received by Lessee and in which the City is entitled to share pursuant to the Agreement. Such accounting shall be in a form approved by the City and shall contain such substantiation as the City may reasonably require.

**V. RFP SCHEDULE, EVALUATION and SELECTION PROCESS**

**A. Tentative Schedule**

Anticipated Timeline*	
RFP issued	August 7, 2018
Pre-bid meeting/site visit	August 30, 2018
Last date to submit questions	November 30, 2018
Proposals due	December 14, 2018
Lease Approval at Commission	May 2019
Anticipated Golden Gate Park Tennis Center**	2020

*\*Please note that the above anticipated timeline is subject to change without notice*

*\*\*Timing may also change based on bidding and construction timing*

**B. Pre-Submittal Conferences and Questions**

The Department will host one pre-bid site meeting. This meeting is open to all prospective respondents. The pre-bid meeting will start at the site at the Golden Gate Park Tennis Center and then meet at 501 Stanyan Street to answer questions on Thursday, August 30, 2018 at 10 a.m. Please RSVP to Jackie Suen at [Jackie.Suen@sfgov.org](mailto:Jackie.Suen@sfgov.org) to confirm your attendance.

Department staff will address questions and provide any new information then available at the pre-bid site meeting. Questions may be answered orally at the meeting. Department staff also will provide written responses to substantive and procedural questions raised at the pre-bid meeting, which may clarify oral responses previously given. Only written responses posted on the Department’s web page for this RFP will be deemed final.

The Department may choose to change pre-bid dates or hold additional pre-bid meetings and will notify prospective bidders who request to be contacted of any new dates or changes to the dates above. Prospective bidders may email Jackie Suen at [Jackie.Suen@sfgov.org](mailto:Jackie.Suen@sfgov.org) to request updates throughout this competitive process or to coordinate access to the site besides the pre-bid meeting. Request for access must be submitted to Jackie Suen no later than two weeks prior to the deadline for submitting the proposal. The Department may send a representative with the party to tour the space. No questions will be answered on individual tours of the space. Only questions in writing to Jackie Suen will be answered and posted on the Department web page for this RFP. Please note that there will be no brokerage commission as part of this opportunity.

Any requests for information or clarification of this RFP other than those raised at the pre-submittal conferences must be submitted in writing or by email to Jackie Suen at [Jackie.Suen@sfgov.org](mailto:Jackie.Suen@sfgov.org) before Friday, November 30, 2018, 2018 before 5 p.m. Except for inquiries at the pre-bid meeting, no oral inquiries will be answered.

Written responses to all questions directed to the Department staff at the pre-bid meeting or in writing by the specified date will be posted on the Department's web page for this RFP, and notice of the posting will be sent to all interested parties who email to Jackie Suen at [Jackie.Suen@sfgov.org](mailto:Jackie.Suen@sfgov.org) to get on the interested parties list before the deadline specified above. Therefore, the Department strongly recommends that interested parties get on the interested parties list and consult the Department's website frequently to determine if new information regarding the RFP is available.

### **C. Selection Criteria**

#### **1. Minimum Qualifications**

Each respondent must possess the following minimum experience to be considered as a possible candidate for this opportunity:

- 3 years of experience in fully managing a business of the nature of this opportunity which at a minimum will be a facility or a group of facilities of at least 6 courts
- Sufficient financial capacity to undertake this opportunity
- Professional Licenses and Certifications: United States Professional Tennis Association (USPTA) Certified Tennis Professional, Elite Professional, or Master Professional level membership for all instructors. Firms must provide proof with submission of proposal.

Respondents must fully describe and present adequate proof of experience and financial capacity through factual records and/or signed letters of reference. Should any person or entity not be able to satisfy the above mentioned minimum qualifications, the City shall deem any proposal submitted by such individuals or entities as "non-responsive" and will not consider any additional submitted information.

#### **2. Evaluation Criteria**

A Selection Committee (described below) will use the following criteria in evaluation the responses to the RFP:

##### **a. Experience and Qualifications (30 Points):**

- i. Level of experience fully operating, managing a tennis center of the size of the GGPTC
- ii. Experience managing a public tennis center
- iii. Experience and qualifications of Respondent and key personnel related to consistent quality, management, maintenance, and operation of tennis centers

##### **b. Operations Plan (30 Points):**

- i. Consistency with the Department's Objectives

- a) How the concession will activate and enliven the use of the Golden Gate Park Tennis Center
  - b) Plan to ensure the following:
    - 1. Access for players of all ages and skill levels and provide a broad variety of programs that promote tennis as a lifetime sport across generations and skill levels
    - 2. The GGPTC is fully and professionally staffed
  - c) Quality of online reservation system and plan for assisting players to find matches
  - d) Plan for community input to ensure a mutually collaborative, transparent and flexible relationship between the Operator, the tennis community and the Department
  - e) Recognition of need to ensure coordination and collaboration with continuing youth uses and programs
  - f) How the proposal will assure the long term sustainability and vitality of the Center by creating a financing model that builds a capital reserve fund for long term needs
- ii. Quality of Operations Plan
- a) Court Schedule and why it is feasible
  - b) Staffing Schedule and why it is feasible
  - c) Management Plan including quality of onsite manager
  - d) Proposed Reservation System
  - e) Systems for handling payments including receipts, cash handling procedures, reporting and audit trail.
  - f) Training Plans:
    - 1. Training for staff to assist customers who speak different languages.
    - 2. Training for staff on cultural competency.
  - g) Affordability and Scholarships

**c. Business Plan and Financial Projections (20 Points)**

- i. Viability of business, marketing, and operating plan.
- ii. Financial projections and the reasonableness of the underlining assumptions.
- iii. Marketing Plan to market, promote, and advertise the operation.
- iv. Creation of jobs and career opportunities for economically disadvantaged persons

**d. Financial Capability and Proposed Financial Terms (20 points)**

- i. Proposed Minimum Annual Guarantee as Base Rent to be paid to the City.
- ii. Proposed Percentage Rent Formula on net gross receipts (gross receipts less applicable sales tax) of the proposed project to be paid to the City, including percentage figures by revenue stream.
- iii. Proposed Initial Maintenance Payment to be Paid to the Maintenance Fund
- iv. Proposed other Lease terms so the City fully understands the intent and basis of the proposal.

- v. Funding for all required investments, including identifying sources of funds.
- vi. Financial capacity to undertake this opportunity including the ability to finance initial capital investments.
  - a) Provide proof of experience and financial capacity through factual records and/or signed letters of reference.

#### **D. Selection Process**

##### **1. Selection Process Generally**

All proposals will be evaluated by the Department in accordance with the criteria and procedures identified in this RFP. Without limiting any of its rights described in Section 3 below, the Department 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 RFP will be chosen on the basis of their apparent ability to best meet the overall objectives of the City, as ultimately determined by the Recreation and Park Department in its sole and absolute discretion. The Department may request additional information from respondents during this process.

Each proposal will be initially reviewed by Department 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.

##### **2. Public Input**

As the Department moves forward, there will be public meetings at the Recreation and Park Commission and meetings held in the community. Respondents may be asked to participate in one or more of these meetings to present and answer questions about submitted proposals. The public is encouraged to review and comment on all responsive proposals. Below is an estimated outline of anticipated public meetings and public postings. Anticipated meetings are subject to change without notice.

- Commission Review of RFP
- Release of RFP
- The responsive RFP Executive Summaries received will be posted on the City's website and the public will be encouraged to provide comments
- Commission approval of the lease

##### **3. Selection Committee**

Following the Department's receipt of submittals, the Department will implement the evaluation process of timely, complete and responsive submittals from qualified respondents. A Selection Committee will evaluate the submittals of each respondent based on the minimum qualifications and selection criteria as 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.

The Department reserves the right to request clarification or additional information from individual respondents and to request that some or all respondents make presentations to Department 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.

A selection panel shall assist staff with this review and shall score the proposals according to the point system and criteria listed under "Evaluation Criteria" below. 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. The Department reserves the right to request clarification or additional information from a respondent.

The Selection Committee will be instructed to score the proposals based upon how completely respondents responded to the requested information outlined in this RFP, the quality, professionalism, vision and appropriateness of such responses, and the level of experience and expertise demonstrated by the responses.

Following the submittal process, Respondents may be invited to interviews with a selection panel. Interviews will consist of standard questions asked of Respondents and clarifying questions regarding individual submissions. The lead staff of the Respondent should be present for the interview as well as the lead staff of any partners and parties authorized to negotiate a contract. Information provided to the panel from the interviews may be used during the scoring process and evaluated using the same evaluation criteria that the selection panel will use to score the written proposals.

#### **E. Exclusive Negotiations**

After the Department finalizes its selection, there will be an exclusive negotiating period of 90 days where the City and the selected respondent will negotiate a lease that is consistent with the terms of this RFP and the successful respondent's proposal. Upon successful agreement to all terms of the lease, the proposed lease will be taken to the Commission for approval.

The period of exclusive negotiations may be extended solely at the City's option. In the event the General Manager of the Department determines that such negotiations are not proceeding satisfactorily, the City may commence negotiations with another respondent or begin the selection process anew.

## **vi. REQUIRED SUBMITTALS**

The following information is what the Selection Committee will utilize to rate your firm's response. Your firm's response must provide all information requested below items A through K. Firm's non-compliance to the outline below will hinder the Selection Committee's ability to

assess the responses to the RFP and could cost your firm points for information that is not easily found.

Firms are to submit information/responses on ten (10) thumb drives that are searchable in adobe format and three (3) printed hard copies. In order to ascertain that the proposal information provided on the thumb drive contains data that allows the reviewer to perform an “edit” and “find” search, your firm must test each thumb drive before it is submitted. Firms must make sure that the thumb drive is tested before submission. Do not place password on the thumb drives.

The outline for items A through K below must be followed. The purpose of the proposal is to demonstrate the qualifications, competence, and capacity of the firms seeking to undertake the work for the City in conformity with the requirements of the specifications in the RFP. As such, the substance of the proposals will carry more weight than their form or manner of presentation.

The proposal should address all points outlined in the specifications of this RFP. The proposal should be prepared simply and economically, providing straightforward, concise description of the proposer’s capability to satisfy the requirements of the RFP.

The title page and the five page executive summary will be posted on the Department’s website and be made available to the public upon receipt. All other portions of the proposal will not be made public during the review process. However, these documents are subject to City’s Sunshine Ordinance and all responses and other communications from interested parties must be open to inspection by the public upon request immediately after a lease is awarded. Each Respondent must clearly mark any of the financial materials that it in good faith believes to be a trade secret or confidential proprietary information protected from disclosure under applicable law. To the extent permitted by law, the Department will attempt to maintain the confidentiality of financial materials marked confidential and/or proprietary.

In order to be eligible for evaluation, all firm(s) responses to this RFP must demonstrate and submit with firm’s response all of the Minimum Qualification Requirements (MQRs) stated below. Proposing firm(s) must meet the MQRs stated below in order to be eligible for evaluation of their response/submittal. If firm is proposing work to be provided by more than one (1) firm, all proposed firms must meet and provide the MQRs with the response/submittal. While additional data may be presented, the information requested in below must be included.

**A. Title Page**

Provide the RFP Title, the firm’s name; the name, address, telephone number and email of the contact person; and the date of the proposal.

**B. Table of Contents**

Include clear identification of the material by section and by page number.

### **C. Executive Summary**

The Proposer shall submit an executive summary of up to five pages, which outlines its Proposal, including the proposed general management philosophy. The executive summary shall, at a minimum, include an identification of the proposed services team, responsibilities of the Service team, and a summary of the proposed services. This section should highlight aspects of this Proposal, which make its superior or unique in addressing the needs of the City.

The title page and the five page executive summary will be posted on the Department's website and be made available to the public upon receipt. All other portions of the proposal will not be made public during the review process. However, these documents are subject to City's Sunshine Ordinance and all responses and other communications from interested parties must be open to inspection by the public upon request immediately after a lease is awarded. Each Respondent must clearly mark any of the financial materials that it in good faith believes to be a trade secret or confidential proprietary information protected from disclosure under applicable law. To the extent permitted by law, the Department will attempt to maintain the confidentiality of financial materials marked confidential and/or proprietary. Page numbers are required and submissions in binders with tabs are greatly appreciated.

### **D. Minimum Qualification Requirements (MQR)**

Ensure that within this section your firm includes and addresses all of the MQRS requested below. All firms responding to perform the work for this project/RFP must provide and meet all the MQRs:

1. Years in business: Proof of experience must be provided
2. Professional Licenses and Certification: USPTA Certified Tennis Professional, Elite Professional, or Master Professional level membership for all instructors. Firms must provide proof with submission of proposal.

### **E. Operations Plan: Approach to Project**

Describe your approach to performing the contracted work. This should include the following points:

1. Approach to scheduling and allocation of courts to user groups including
  - League Play
  - Reservation Times
  - Drop in Times
  - Lessons/Clinic Times
  - Use of courts by non-conforming tennis games (Pickleball, Smash Tennis, etc.)
2. Approach to relationship with community
  - Customer service plan, plan for establishing and maintaining positive relationships with tennis and community groups including current members and the United States Tennis Association.
3. Proposed hours of operation, including holidays.
4. Concession Plans
  - Food and Beverage offerings

- Tennis Services
  - Equipment (Racquets, Tennis Balls including model inventory summary)
5. How you believe that your approval will meet the Department's objectives outlined in the scoring criteria.

## **F. Operations Plan**

1. Services or programs proposed, including instruction/ lessons, clinics, tournaments, league play, junior tennis, school age programs.
  - Proposed Fees for each of the above (please take into account fee structures outlined in Operating Requirements above).
  - Number of hours and participants planned for each program or service
  - Sample court schedule – Please include multiple schedules if needed to reflect different seasons and days of the week
2. Proposed reservation system and related equipment
  - Point of Sale System
3. Maintenance plan for the center including courts, building, and support facilities. including the plan for the frequency and description of custodial and basic maintenance of the buildings and courts at the Tennis Center.
4. Staffing levels including all required positions, qualifications, functions, and pay rates
  - Sample Work schedule
  - Involvement of principals and/or owners in operations
  - Names, qualifications, and certifications of operator's current teaching and management staff.
5. Safety and Training plan and Background Checks
  - Covering the various types of programs and activities included in the proposal.
  - Background Checks
    - Plan for verification that all staff, volunteers, and instructors will abide by the City's requirement that they successfully complete a background screening prior to performing services
  - Proposed written safety procedures and policies
  - Training Processes
  - Diversity Training
  - Harassment Training
6. Marketing plan
7. Best Practices utilized not covered by the above
8. Start Up Investments including but not limited to:
  - Supplies and materials for the operation of services and programs
  - Computers and Office Supplies
  - Expendable equipment
9. Describe the difference between startup operations and operations as fully implemented.



### **G. Business Plan/Pro Formas**

Provide a business plan with financial projections and pro forma for five (5) years to include but not be limited to:

1. Methodology for determining fees for instructional programs as well as general pricing strategy for food/beverage and merchandise sales.
2. Anticipated income from all revenue sources taking into account court rental fees described above.
3. Anticipated expenses broken down by category and rate
4. Proposed rent structure/revenue sharing plan including:
  - Minimum Annual Guarantee (MAG) which may vary by year
  - Percentage rent based on percentage of gross revenues which may vary by type of revenue, year and total revenues
  - Initial Maintenance Payment
5. Proposed Scholarship program for lessons

### **H. Past Performance (References)**

The City will conduct reference checks as a component of due diligence to determine the capability of firms to be able to perform the requirements of the project. The reference questions will be sent via email; therefore, please make sure that the references your firm provides are aware that they will be receiving a Reference Form from the City of San Francisco to be completed by a deadline date.

Each firm responding to this RFP must provide five (5) verifiable references for local or statewide issuers, which your firms served as a Tennis Center/Program Operator. Do not provide more or less than five (5) references. The City will only contact the five (5) references provided. Each firm must provide the following information for each of the references provided and ensure that the contact information you are providing has an up-to-date email address, and will be accessible and able to respond to the request for reference.

1. Name of company/agency for which work was provided.
2. Name of specific Reference contact (Project Manager) charged with managing said project. References shall be employees in senior level management positions.
3. Type and size of Tennis Center Operated. Year started and completed.
4. Dollar amount of contract.
5. Phone # for Reference (Project Manager).
6. Updated email address for Project Manager.

### **I. Proposer's Qualifications**

1. State whether your organization is national, regional or local as well as the location of the office from which your work is performed.
2. Describe the firm, including the size, range of activities, etc. Particular emphasis should be given as to how the firm-wide experience and expertise in the area

addressed by this Request for Proposal, will be brought to bear on the proposed work. Supply your firm's federal ID number and Dun and Bradstreet number.

3. Provide the legal structure of the entity submitting proposal, i.e., sole proprietor, partnership, corporation, etc. If a partnership or corporation, indicate the ownership, rights and roles of each member of the partnership or corporation. Single proposers, consisting of consortiums, joint ventures, or other partnership ventures must clearly establish that all license negotiation responsibilities will rest solely with one individual, firm or legal entity. All principals of entity submitting proposal, and a contact person with contact address, phone number, and email.
4. Have you been involved in litigation within the last five (5) years or is there any pending litigation arising out of your performance? Provide a list of litigation within the last five (5) years.
5. Describe the organization of the proposed project team, detailing the level of involvement, field of expertise and estimated hours for each member of the team.
6. Provide related experience of principals including number of years, type of business, positions held, special training, education, certifications, level of authority, etc.
7. Describe your most recent experience in managing and operating a municipal tennis complex. Provide evidence of a verifiable track record of success in similar or related business operations.
8. Provide the name and location of all existing operations and any operations managed in past five years.
9. Has your firm ever failed to complete any work awarded to you? If so, where and why?
10. Has your firm ever been terminated from a contract? If so, where and why?

#### **J. Financial Resources**

Submit Evidence of financial ability to fulfill probable commitments, including the ability to provide start up needs. Specifically, respondents shall submit business profit and loss statements detailing sources of revenue and detailed expenses for the prior two calendar years. Additionally, during negotiations with the successful respondent but prior to approval, the respondent shall be required to submit for review two years of signed business tax returns including all pages to the City which are materially consistent with the profit and loss statements submitted as part of the response to the RFP.

During negotiations, the successful respondent will also be required to provide an executed IRS Form 4506-T (Request for Transcript of Tax Return) to the City with the City listed as the third party to receive the transcript. Other Possible Things to Cover. Please provide Proof of Insurance.

#### **K. Earnest Money Deposit**

Each respondent must submit with its response an earnest money deposit in the amount of \$5,000 payable to the Recreation and Park Department in the form of a cashier's check. Submittals received without the earnest money shall be deemed non-responsive. Earnest money will be refunded, without interest, to each respondent not selected for exclusive negotiations.

The earnest money deposit of the respondent selected for exclusive negotiation will be nonrefundable, whether or not the exclusive negotiations result in the agreement.

## **VII. TERMS and CONDITIONS for RECEIPT of RFP**

### **A. Errors and Omissions in RFP**

Respondents are responsible for reviewing all portions of this RFP. Respondents are to promptly notify the Department, in writing, if the respondent discovers any ambiguity, discrepancy, omission, or other error in the RFP. 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 RFP**

Inquiries regarding the RFP and all notifications of an intent to request written modification or clarification of the RFP must be directed via email to: [Jackie.Suen@sfgov.org](mailto:Jackie.Suen@sfgov.org).

### **C. Objections to RFP Terms**

Should a respondent object on any ground to any provision or legal requirement set forth in this RFP, the respondent must, not more than ten calendar days after the RFP is issued, provide written notice to the Department setting forth with specificity the grounds for the objection. The failure of a respondent 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 RFP, prior to the proposal due date, by issuing change notices, which will be posted on the Department's website. The respondent shall be responsible for ensuring that their 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 respondent consult the Department's website frequently, including shortly before the proposal due date, to determine if the respondent 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 respondent may revise a proposal on the respondent's own initiative at any time before the deadline for submission of proposals. The respondent 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 respondent.

At any time during the proposal evaluation process, the Department may require a respondent to provide oral or written clarification of their 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 RFP or excuse the vendor from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

#### **H. Respondent Selection Does Not Guarantee Project Approval**

The Commission's selection of a respondent and authorization to commence exclusive negotiations may not be construed as an approval of the proposed project.

The Department's status as an agency of the City will not in any way limit any selected respondent's obligation to obtain requisite approvals from City departments including the Department and the Department of Public Health.

#### **I. Environmental Review**

The proposed GGTC project will continue to evolve through the public review process. All project approval actions, including without limitation approval of any transaction documents by the RPD Commission and other applicable City agencies, are subject to environmental review as required by the California Environmental Quality Act, Cal. Pub. Res. Code Section 21000 et seq. ("CEQA"), the CEQA Guidelines, 15 Cal. Code Regs. Section 15000 et seq, and San Francisco's Environmental Quality Regulations, codified at San Francisco Administrative Code Chapter 31 ("SF Admin. Code Chapter 31").

In order to comply with CEQA and give decision-makers and the public the opportunity to be aware of the environmental consequences of any contemplated actions with respect to a proposed project and to fully participate in the CEQA process, the City retains the absolute and sole discretion to (i) modify a proposed project as the City determines may be necessary to mitigate significant impacts, (ii) select other feasible alternatives to a proposed project to avoid significant environmental impacts, (iii) require the implementation of specific measures to mitigate the significant environmental impacts of a proposed project, (iv) balance the benefits of a proposed project against any significant environmental impacts before final approval by the City if such significant impacts cannot otherwise be avoided, and (v) determine not to proceed with a proposed project due to unavoidable significant environmental impacts.

#### **J. Financial Responsibility**

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

#### **K. Respondent's Obligations under the Campaign Reform Ordinance**

Respondents 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 respondent 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 respondent is prohibited from making contributions to:

1. the officer's re-election campaign
2. a candidate for that officer's office
3. 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, respondents should contact the San Francisco Ethics Commission at (415) 581-2300.

**L. Responsible Proposals**

No proposals will be accepted from any person, firm, partnership, corporation or other entity that is in arrears upon any obligation to the City or that otherwise may be deemed irresponsible, unreliable or unqualified by the City.

**M. One Proposal Per Respondent**

Only one proposal will be accepted from any one firm or corporation, or affiliated entities; however, several alternatives may be included in one proposal, and, as noted above, joint ventures or similar arrangements are permitted.

**N. Grounds for Rejection**

Any false, incomplete, or unresponsive statements in connection with a proposal may be cause for its rejection at the City's discretion. Any judgment as to the significance of any falsity, incompleteness, or unresponsiveness associated with a proposal shall be the prerogative of the City and its judgment shall be final.

**O. Sunshine Ordinance**

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs 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.

**P. Public Access to Meetings and Records**

If a respondent 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 respondent must comply with Chapter 12L. The respondent must include in their proposal (1) a statement describing their efforts to comply with the Chapter 12L provisions regarding public access to respondent's meetings and records, and (2) a summary of all complaints concerning the respondent'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 respondent shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in respondent'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.

**Q. Return of Materials**

The City will not return proposals or any information submitted in connection with a proposal unless the respondent has properly designated financial portions of the proposal as confidential at the time of proposal in accordance with the terms above and has then clearly requested that such information be returned, and provided that the City is legally permitted to return such documents.

**R. Right to Disqualify**

The City reserves the right to disqualify any respondent to this RFP on the basis of any real or apparent conflict of interest that is disclosed by the responses submitted, misrepresentation or false statements in proposal, or other data available to the City. This disqualification is at the sole discretion of the City.

**S. Waiver of Claims Against City**

The respondent shall not obtain by its response to this RFP any claim against the City by reason of any or all of the following: any aspect of this RFP, the selection process or any part thereof, any informalities or defects in the selection process, the rejection of any offer or all such offers, the acceptance of any offer, entering into any lease, the failure to enter into any such lease, any statement, representations, acts or omissions of the City or its agents, the exercise of any discretion set forth in or concerning any of the foregoing; and any other matters arising out of all or any of the foregoing.

**T. Reservations of Rights by the City**

The issuance of this RFP 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 Proposals;
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 RFP, or the requirements for contents or format of the proposals;
5. Procure any materials, equipment or services specified in this RFP by any other means; or
6. Determine that no project will be pursued.

**U. No Waiver**

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

## V. Protests

Within five working days of the City's issuance of a notice of non-responsiveness, any firm that has submitted a proposal and believes that the City has incorrectly determined that their proposal is non-responsive may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day following the City's issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the respondent, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

- **Protest of Contract Award**

Within five working days of the City's issuance of a notice of intent to award the contract, any firm that has submitted a responsive proposal and believes that the City has incorrectly selected another respondent for award may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day after the City's issuance of the notice of intent to award.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the respondent, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

- **Delivery of Protests**

All protests must be received by the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the City received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered. Protests must be delivered to:

Jackie Suen  
jackie.suen@sfgov.org  
Recreation and Park Department  
501 Stanyan Street  
San Francisco, CA 94117



# VIII. EXHIBITS

Exhibit A: Diagram of tennis facility



**Exhibit B: Diagram of clubhouse**



**Exhibit C: Standard Department Lease**

**RECREATION AND PARK DEPARTMENT**

**LEASE**

THIS LEASE (this "Lease") dated for reference purposes only as of \_\_\_\_\_, 20\_\_, 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

\_\_\_\_\_, a \_\_\_\_\_ **[NOTE: Insert legal name of Tenant – check Secretary of State website and obtain further evidence of formation and good standing if required]** ("Tenant").

City and Tenant hereby agree as follows:

**1. BASIC LEASE INFORMATION**

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below is 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: \_\_\_\_\_, 20\_\_

Landlord: CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

Tenant: \_\_\_\_\_,  
a \_\_\_\_\_

Premises (Section 3.1): \_\_\_\_\_, located in San Francisco, California, owned by City and under the jurisdiction of its Recreation and Park Department (the "Department"), as more fully described in **Section 3.1** and delineated on **Exhibit A**.

Term (Section 4): Approximately \_\_\_\_\_ (\_\_\_) years, as described in **Section 4**.  
Estimated commencement date: \_\_\_\_\_, 20\_\_  
Expiration date: \_\_\_\_\_

**[NOTE: include reference to any options to extend, including reference to applicable Lease section.]**

Rent (Section 5)

Tenant shall pay the greater of Base Rent or the Percentage Rent, as such terms are defined below.

Base Rent (Section 5.1):

Annual Base Rent: \$\_\_\_\_\_ per year

Monthly Base Rent: \$\_\_\_\_\_ per month

***[NOTE: If Monthly Base Rent is not payable in equal monthly installments, drop the second \$ amount and include: payable in monthly installments as provided in Section 5.2.]***

Base Rent Adjustment Dates (Section 5.2):

Beginning on the first anniversary of the Commencement Date of this Lease and continuing on each subsequent anniversary date (each, an "Adjustment Date"), the annual and monthly Base Rent payable under this Lease shall increase according to **Section 5.2**.

***[NOTE: If Adjustment Date is not the anniversary of the Commencement Date, edit as required.]***

Percentage Rent (Section 5.3):

Percentage Rent is the aggregate of the following percentages of the respective categories of Gross Receipts:

<u>Type of Sale</u>	<u>Percentage</u>
_____	_____ %

***[NOTE: Include a reference to any other significant financial term, such as a minimum guaranteed amount, if different from base rent amount, and if amount is payable in monthly installments, describe.]***

Use (Section 7.1):

\_\_\_\_\_, as more particularly described in **Section 7.1**.

Security Deposit (Section 23):

\_\_\_\_\_

Notice Address of City (Section 27.1):

Recreation and Park Department  
Property Management  
McLaren Lodge Annex  
  
501 Stanyan Street  
  
San Francisco, CA 94117

Re: ***[Identify Project/Property]***

with a copy to

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682

Attn: Real Estate/Finance Team

Address for Delivery of Insurance  
Certificates (Section 19.3):

1. Hard (paper) copy to first Notice Address listed above.
2. Electronic copy to \_\_\_\_\_@\_\_\_\_\_.

Certificates must clearly indicate the Premises for which the certificate is issued

Key Contact for City:

\_\_\_\_\_

Telephone No.:

\_\_\_\_\_

Address for Tenant (Section 27.1):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Key Contact for Tenant:

\_\_\_\_\_

Telephone No.:

\_\_\_\_\_

Brokers (Section 27.8):

\_\_\_\_\_

Other Noteworthy Provisions:

## 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 Tenant under this Lease.

**"Adjustment Date"** means the annual date for adjusting the 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 Tenant"** 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, Tenant. 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.

"**Anniversary Date**" means the annual anniversaries of the Commencement Date.

"**Assignment**" has the meaning given in **Section 16.1** hereof.

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

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

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

"**Beginning Index**" means the Index published most immediately preceding the Commencement Date.

"**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 4.1** 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 Tenant is dispossessed.

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

"**Department Facilities**" means any and all surface and subsurface facilities owned by the City and now or later located in, under, on or about the Premises, including, without limitation, sidewalks, plazas and street improvements.

"**Effective Date**" means the date on which this Lease becomes effective pursuant to **Section 4.4** 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 expires as described in **Section 4.1** 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 conducted in, from or attributable to the Premises by Tenant, 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 as a subtenant, licensee, concessionaire, contractor, or subcontractor of Tenant, including amounts received from orders or bookings for rental or sales of merchandise made by telephone, mail or online or through tour operators or third parties. The following items will 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 Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises; 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 Tenant 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 is 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 will 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 Tenant means the clients, customers, invitees, guests, members and licensees, assignees and subtenants of Tenant.

**"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.

**"Lease Year"** is determined as follows: the first "Lease Year" is the period commencing on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month thereafter, and each twelve (12) calendar month period thereafter shall also constitute a "Lease Year," provided that the final Lease Year shall end on the expiration or termination date of this Lease.

**"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.



**[NOTE: Include the following only if the concept is included in this Lease, otherwise delete.]** “**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 Tenant; "**Parties**" means both City and Tenant.

"**Percentage Rent**" means a sum equal to the stated percentage of Tenant’s Gross Receipts for the stated categories made from or upon the Premises during each calendar month of the Term in the respective percentage amount set forth in the Basic Lease Information.

"**Permitted Uses**" has the meaning given in **Section 7.1** hereof.

"**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 under this Lease. 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 under this Lease by or on behalf of Tenant, 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 5.2**, together with any and all Percentage Rent and Additional Charges, whether or not any such amounts are specifically characterized as rent.

"**Sublease**" has the meaning given in **Section 16.1** 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.

"**Tenant**" means the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. The term Tenant also refers to the successors and assigns of Tenant's interests under this Lease, provided that the rights and obligations of Tenant's successors and assigns will 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.

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

"**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 Tenant's leasehold interest under this Lease or any recognized subtenant of any portion of the Premises, pursuant to a Transfer that complies with **Article 16** hereof.

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

### **3. PREMISES**

**3.1. Leased Premises.** Subject to the terms, covenants and conditions of this Lease, City leases to Tenant and Tenant leases from City, the real property shown delineated on **Exhibit A**, attached hereto, located in the City and County of San Francisco, State of California, together with the Improvements thereon (the "Premises").

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

(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 Tenant, without Tenant'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 will be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain under this Lease as a result of the grantee's use of such easement or right of way;

(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 Tenant's use of the Premises under this Lease, and provided further that the grant of any such easement or right-of-way will be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain under this Lease 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 20** below.

**3.3. Subject to Public and Municipal Uses and Rules.** Lessee acknowledges that the Premises is under the Commission's jurisdiction and must be used for recreational purposes under Section 4.113 of the City Charter and in compliance with the San Francisco Parks Code. 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, and cause its subtenants to comply, with Section 4.113 of the City Charter and the San Francisco Parks Code with respect to the Premises and any rules and regulations relating to property under the Commission's jurisdiction, as the same may change from time to time (the "Rules and Regulations"). A copy of the current Rules and Regulations can be downloaded from the web address provided in the attached **Exhibit B**.

**3.4. As Is Condition of Premises.**

(a) **Inspection of Premises.** Tenant represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use. Tenant 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) **Accessibility Inspection Disclosure.** California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements.

The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises have not been inspected by a CASp. A CASp can inspect the Premises and determine if they comply with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, City may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant if requested by Tenant. City and Tenant shall mutually agree on the arrangements for the time and manner of such CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

(c) **As Is; Disclaimer of Representations.** Tenant 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. Tenant represents and warrants to City that Tenant has investigated and inspected, either independently or through Agents of Tenant's own choosing, the condition of the Premises and their suitability for Tenant's intended use. Tenant has determined, based solely on its own investigation, that the Premises are suitable for Tenant's business and intended use. Tenant 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 Tenant's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Tenant'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.

(d) **Energy Consumption Disclosure.** Tenant consents to Tenant's utility service providers disclosing energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as they may be amended from time to time ("Energy Consumption Reporting Laws"), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

#### 4. TERM

**4.1. Term of Lease; Commencement Date and Expiration Date.** 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 4.4** 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. The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date."

**4.2. Delay in Delivery of Possession.** If City is unable to deliver possession of the Premises to Tenant on or before the scheduled Commencement Date, then the validity of this Lease shall not be affected thereby and City shall not be liable to Tenant for any Losses resulting therefrom. Tenant 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.

**4.3. Delays Caused by Tenant.** 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 Tenant or any of Tenant's Agents, then the Base Rent and Additional Charges payable by

Tenant under this Lease shall commence on the date when City would have delivered possession of the Premises but for such acts or omissions.

**4.4. 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. *[NOTE: If there are other conditions to the effectiveness, such as Board of Supervisor and Mayor approval, edit as required. If other conditions are added that can be waived by the City at the General Manager's election, make that clear.]*

## 5. RENT

**5.1. Base Rent.** Tenant shall pay to City monthly during the Term of this Lease, beginning on the Commencement Date, the *greater of* (A) the monthly Base Rent, or (B) Percentage Rent calculated using the applicable percentages of Gross Receipts specified in the Basic Lease Information for the various sources Gross Receipts. Base Rent or Percentage Rent shall be payable monthly on or before the tenth (10<sup>th</sup>) day of each month, for the previous month's business operations, without prior demand and without any deduction, setoff or counterclaim whatsoever.

*[NOTE: If monthly Base Rent is payable other than in equal monthly installments, insert a table of monthly amounts here or in the Basic Lease Information section.]*

*[NOTE: IF LEASE PROVIDES FOR FREE RENT, FREE RENT SHOULD BE EXPRESSED AS A CREDIT AGAINST BASE RENT PROVIDED THE TENANT IS NOT IN DEFAULT OF ANY OF ITS OBLIGATION UNDER THE LEASE. FREE RENT SHOULD ALSO BE IDENTIFIED IN THE BASIC LEASE INFORMATION SECTION.]*

**5.2. Adjustments in Base Rent.** On the Anniversary Date each year (each, an "Adjustment Date"), the Base Rent payable by Tenant shall be adjusted in the following manner. The Adjustment Index shall be compared with the Beginning Index. If the Adjustment Index has increased over the Beginning Index, then the Base Rent payable on and after such Adjustment Date shall be set by multiplying Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. In no event shall the Base Rent on or after the Adjustment Date be less than the Base Rent in effect immediately before the Adjustment Date.

**5.3. Payment; Generally.** Rent shall be paid in lawful money of the United States, 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. If Tenant pays by check and such check is not honored, then City may require Tenant to make all future payments in cash or by cashier's check. 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 Tenant, upon 30 days written notice, to deposit all payments required under this Lease from Tenant's account into the City designated revenue account by bank or wire transfer.

**5.4. Monthly Gross Receipts Statements; Determination of Percentage Rent Payable.** On or before the tenth (10<sup>th</sup>) day of each full calendar month of the Lease Term and the of the calendar month immediately following the expiration or termination of this Lease, Tenant shall deliver to City a statement certified as correct by an officer or owner of Tenant and otherwise in form satisfactory to City, showing taxes paid and the Gross Receipts received during the last preceding calendar month broken down by the categories listed in the Basic Lease Information (if applicable), as required to

determine the Percentage Rent payable for such calendar month (a "Monthly Gross Receipts Statement"). Percentage Rent (as shown in the Basic Lease Information) shall be calculated for such calendar month based on the Monthly Gross Receipts Statement and, if the amount so calculated exceeds the monthly Base Rent, such Percentage Rent shall be payable in accordance with **Section 5.1** above. In the event this Lease terminates during a month at no fault of Tenant, payment of City's share of Admission Revenue and the Percentage Rent for that portion of the month during which sales are made on the Premises shall be determined and reported by Tenant to City within ten (10) days after Tenant ceases to make sales on the Premises, but if this Lease terminates as a result of Tenant's default, including insolvency thereof, any amounts due under this Lease shall be payable immediately.

#### **5.5. Cash Register Requirements.**

**(a)** Tenant shall install on the Premises at least one cash register. Tenant 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. Such cash register(s) used on the Premises shall be of a type approved by General Manager in writing and shall register every transaction made in, on, about or from the Premises, including every type of Gross Receipts, and the tape or digital record of each such cash register shall be accessible to and subject to inspection by the General Manager or his/her agent, provided that such inspection shall be conducted in a manner reasonable designed to minimize interference with the conduct of Tenant's business at the Premises, and City shall not perform such inspection unless a manager of Tenant's business is present. Tenant shall make a manager available to City for such inspection during business hours upon request (which may be oral) by City.

**(b)** Mechanical cash register(s) must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit capacity or grater, as determined by the General Manager based on the type of business, with a four-digit overrun counter. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales on the Premises and be no more subject to tampering than mechanical cash register(s).

**(c)** Each sale or other transaction on the Premises must be recorded at the time of each sale or other transaction, in the presence of the customer, and Tenant shall present a receipt from such sale or other transaction to the customer. Each customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register types. All cash receipts must include Tenant's identification thereon. Each cash register (including computerized cash registers or other similar electronic devices) shall be serviced by an established contractor approved by General Manager. At General Manager's request, Tenant must furnish to City a statement from an established contractor that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by General Manager.

**(d)** Upon the installation or removal of any cash register (including computerized cash registers or other similar electronic devices) used on the Premises, Tenant must immediately furnish to General Manager notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s) (including computerized cash registers or other similar electronic devices). Any repair contractor employed to repair or replace any cash register (including computerized cash registers or other similar electronic devices if used) on the Premises is hereby authorized and directed to disclose and furnish to City or its auditors any

information obtained by the contractor in the course of making such repair or replacement pertaining to such cash register (including computerized cash registers or other similar electronic devices if used). City shall have the right during business hours to examine the totals of the cash register(s) (including computerized cash registers other similar electronic devices if used) used on the Premises and to inspect for compliance with this section.

#### **5.6. 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 a "Concessionaires' Payment Statement", detailing a true and factual accounting of all Gross Receipts, taxes paid and rent figures calculated for that month.

**(b) Books and Records.** Tenant 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 Tenant utilizes in its business operations. Tenant shall not co-mingle personal funds with business funds. Tenant 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) Annual Gross Receipts Report; Annual Income and Operations Report.** On or before the date which is ninety (90) days following the close of each Lease Year during the Term and ninety (90) days following the end of the Term, Tenant shall deliver to City a statement (the "Annual Gross Receipts Statement"), certified as correct by an officer or owner of Tenant, certified or audited by an independent certified public accountant, and otherwise in form satisfactory to City. The Annual Gross Receipts Statement shall set forth the Gross Receipts, as defined above and shown on Tenant's books, for the Lease Year just concluded broken down by category. Further, on or before the date which is ninety (90) days following the close of each fiscal year during the Term and ninety (90) days following the end of the Term, Tenant shall deliver to City an itemized income statement for such year, certified as correct by an officer or owner of Tenant, with (i) supporting tables that include Gross Receipts by department, distributed departmental expenses and undistributed expenses, and (ii) a cash flow table that itemizes expenditures on capital improvements and personal property and indicates which of the improvements and acquisitions represent replacements.

**(d) Audit.** Tenant agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City, for the purpose of examining such books and records to determine the accuracy of Tenant's earnings from Tenant's business. Such 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 such 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 Tenant has understated its Gross Receipts, Tenant shall pay City, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to City. If Tenant understates its Gross Receipts by three percent (3%) or more, the cost of the audit shall be borne

by Tenant. If Tenant 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 Tenant 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.

**5.7. Late Charge.** If Tenant fails to pay any Rent and/or fails to submit a Monthly Gross Receipts Statement by the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to five percent (5%) of the amount due, in each instance. The late payment charge has been agreed upon by City and Tenant, 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 Tenant, 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 Tenant shall promptly pay such charge to City together with such unpaid amount.

**5.8. 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 Tenant nor on any amounts on which late charges are paid by Tenant 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 Tenant.

**5.9. Costs of Collection.** In addition to any interest or late charges, if Tenant does not pay Rent in immediately available funds or by good check (if Tenant is permitted to pay by personal or business check), then Tenant will pay to City immediately upon demand as Additional Charges the amount of any fees, charges, or other costs incurred by City, including, but not limited to, dishonored check fees and any costs of collection.

**5.10. Net Lease.** This Lease is a "net lease." Accordingly, Tenant shall pay to City all Rent (including the Base Rent, Percentage Rent, Additional Charges and any other payments under this Lease) 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 Tenant'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, Tenant 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 Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant 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.** Tenant 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, Tenant's Personal Property, the leasehold estate or any subleasehold estate, or Tenant's use of the Premises or any Improvements. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days before delinquency, subject to Tenant'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, Tenant shall reimburse City for payment of such sums immediately upon demand.

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

**(c) No Liens.** Tenant shall not allow or suffer a lien for any taxes payable by Tenant under this Lease to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity of any such taxes provided Tenant, 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 Tenant be unsuccessful in any such contest. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for under this Lease. The foregoing Indemnity shall not be limited by the amount of the bond.

**(d) Reporting Requirement.** San Francisco Administrative Code Sections 23.38 and 23.39 require that City report certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to such matters to City within thirty (30) days after the applicable transaction. Tenant agrees to provide such information as may be requested by City to enable City to comply with this requirement.

**6.2. Other Expenses.** Tenant 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 Tenant's use.

**6.3. Evidence of Payment.** Tenant 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. Tenant's Permitted Use.** Tenant shall continuously use the Premises and Improvements for the following uses (collectively the "Permitted Uses"), and for no other use or purpose:

**[Describe allowable uses]**

**[Include the following if applicable, and include a reference to the Exhibit on the table of contents page:]**

The Permitted Uses shall be generally conducted in accordance with the description of such Permitted Uses set forth in Tenant's Management Plan attached to this Lease as **Exhibit C**. In the event of a conflict between the provisions of Tenant's Management Plan and the provisions of this Lease, the provisions of this Lease shall control. If Tenant desires to engage in an additional use not enumerated above, or desires to materially change the manner in which Tenant conducts a Permitted Use from the manner described in the Management Plan, Tenant shall request such additional use or modification in writing, and such addition or modification shall be subject to the approval of the General Manager, which may be withheld in his or her sole discretion. Tenant acknowledges that that this prohibition on the change in use is expressly authorized by California Civil Code Section 1997.230 and is fully enforceable.

**7.2. Appropriate Operations, Goods, and Services.** Tenant has developed the Management Plan attached to this Lease as **Exhibit C**, as Tenant's proposed manner to market, promote and manage the concessions at the Premises, and the Department approves the Management Plan for such purpose, except to the extent inconsistent with the Permitted Uses or other provisions of this Lease. Upon written notice from the Department that the operations, goods or services provided at the concessions at the Premises are not in keeping with the approved Management Plan and the Department's vision outlined in the Request for Proposals, Tenant shall attempt in good faith to correct such deficiency within thirty (30) calendar days of such notice. If the deficiency cannot be corrected within the 30-day period, Tenant shall submit a written proposal for the correction along with a specific timeline for such cure no later than thirty (30) days after the date of the original notice from City. Tenant's proposal shall be subject to approval by the Department at Department's sole and absolute discretion. If the deficiency is not corrected by the end of the 30-day period, or if the Department has not accepted Tenant's plan for cure by such date, the Tenant shall be in default of this Lease.

**7.3. Days and Hours of Operation.** Tenant shall actively operate the Premises and use its best business efforts to further the operations thereof and maximize its potential revenue and to serve the public. The hours of operation shall be as follows: **[Insert 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.

**7.4. Rates and Charges.** The rates and charges for goods sold and services offered at the Premises shall be reasonable and competitively priced with similar businesses in San Francisco. The Department reserves the right to review and approve the increases in rates and charges for rentals and food and beverage items. Prices for **[list items where Commission will approve prices]** are set by the

Commission and may not be altered in any manner without prior written approval. As of this date the approved rates are as follows:

*[Insert approved rates or prices]*

*[NOTE: THE FOLLOWING SECTION TO BE USED ONLY IF TENANT INTENDS TO SELL MERCHANDISE AND IT IS THE WILL OF THE DEPARTMENT TO BRAND PRODUCTS.]*

**7.5. Branded Products.**

(a) The Tenant may, at Tenant's expense, and with Department's consent, develop and sell products including clothing that are "branded" with some form of artwork, logos, trademarks or service marks, related to *[facility name]* or similar/related logo, artwork and/or words (collectively "Logo").

*[Include the following (b) for Golden Gate Park leases if appropriate:]*

(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.

Tenant shall not use the Logo until it has been approved in writing by the Department. The Logo and any other original works of authorship or designs (including any domain names or website designs, source code, and content) related to the facility, or Tenant's services or operations in or for the facility ("Works") shall be works for hire under Title 17 of the United States Code, and all copyrights in such Logo and other Works are the City's property. If the Department or Tenant's use of the Logo or Works creates trademark, service mark or trade dress rights in connection with the Logo or Works, the City shall also have an exclusive and irrevocable right in such trademark, service mark, or trade dress. If any Logo or Works created by Tenant or its subcontractors under this Lease are not works for hire under federal law, the Tenant hereby assigns all copyrights to such Logo and Works to the City and further agrees to provide any material and execute any documents necessary to effectuate such assignment.

(c) The Department shall have the right to pre-approve or disapprove all products that are to receive the Logo, including the use and placement of such Logo on the products.

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

(i) **No Unlawful Uses or Nuisances.** Tenant shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any manner that would violate any Laws 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. Tenant shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted under this Lease.

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

**(iii) Covenant to Protect Premises and Department Facilities.** At all times during the Term of this Lease, Tenant shall protect the Premises and the Department Facilities, if any, from any damage, injury or disturbance. If Tenant or any of its Agents or Invitees damages, injures or disturbs any of the Premises or the Department Facilities, or any portion thereof, Tenant shall immediately notify City of that occurrence. Without limiting any of its other rights under this Lease, City may immediately take all actions it deems proper to repair the Department Facilities at Tenant's sole expense, and, following notice and a reasonable opportunity to cure (except in 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 Tenant's sole expense. Tenant shall promptly, upon City's request, remove or alter to City's satisfaction and at Tenant's sole cost, any Improvements, Alterations or Tenant's Personal Property placed on the Premises by or on behalf of Tenant as necessary to avoid interference with City's use of the Premises for municipal purposes; provided, such removal shall be at City's sole cost if the applicable Improvements or Alterations were approved by City in writing pursuant to the terms of this Lease. City may adopt from time to time such rules and regulations with regard to Tenant's facilities and operations under this Lease as City may determine are necessary or appropriate to safeguard the Department Facilities and City's interests in the Premises. Tenant shall comply with all such rules and regulations upon receipt of a copy thereof.

**(iv) Covenant Against Dumping; Waste Disposal.** Tenant 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. Tenant 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.

**(v) Covenant to Protect Trees or Other Native Vegetation.** Tenant 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.

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

**(vii) Covenant Against Hunting.** Tenant 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. Tenant shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Tenant 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.

**(viii) Restrictions on the Use of Pesticides.** Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “IPM Ordinance”) describes an integrated pest management (“IPM”) policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City’s written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City’s IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant’s primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant’s contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant’s staff or contractors. If Tenant or Tenant’s contractor will apply pesticides to outdoor areas at the Premises, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation (“CDPR”) and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City’s current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website.

**(ix) Weed Control.** Tenant shall not introduce any noxious weeds on or about the Premises. Tenant shall control noxious weeds, provided that Tenant may use chemical herbicides only if such use complies with the requirements of **Section 7.6(viii)** above.

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

**(xi) Sewerage System.** Tenant 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 such sewage system.

**(xii) Soil Erosion.** Tenant shall not cause any material erosion of soil on or around the Premises. Tenant 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 Tenant 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.

**(xiii) Operating Covenants.** Tenant 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 City's prior written consent, which City may give or withhold in its sole discretion. Tenant 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.

**(xiv) Americans with Disabilities Act.** Tenant acknowledges that the Americans with Disabilities Act (the "ADA") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Tenant further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Without limiting the provisions of **Section 8.1** and **Article 11** below, Tenant warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Lease. City shall bear all responsibility and cost for mandated physical changes to the Property resulting from disability access laws.

## **8. ALTERATIONS AND IMPROVEMENTS**

**8.1. Construction of Alterations and Improvements.** Tenant shall not construct, install or otherwise place any Improvements or 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 Tenant's sole expense (i) in strict accordance with designs, 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 (including, without limitation, all health, disabled access and building codes and ordinances), 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 City. 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. Before the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, Tenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to City. No material change from the plans and specifications approved by City may be made without City's prior written consent. City and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Tenant shall furnish City 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), Tenant shall pay City an administrative fee equal to ten percent (10%) of the total cost of the work. Tenant shall require from each contractor and subcontractor performing any work on or about the Premises a policy of commercial general 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 19.2**.

**8.2. Ownership of Improvements.** Any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Tenant above shall be and remain Tenant's property during

the Term. Upon the Expiration Date or any earlier termination hereof, Tenant shall, upon City's request, remove all such Improvements and Alterations from the Premises in accordance with the provisions of **Section 22.1** hereof, unless City, at its sole option and without limiting any of the provisions of **Section 8.1** above, specifies at the time of City'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. Tenant's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Tenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Tenant's Personal Property") shall be and remain the property of Tenant and may be removed by it subject to the provisions of **Section 22.1** hereof. At least ten (10) days before delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Personal Property and shall deliver satisfactory evidence of such payment to City.

**8.4. Prevailing Wages.** Tenant shall comply with the applicable requirements of San Francisco Administrative Code Section 6.22(E) in the performance of Required Improvements, Proposed Improvements, Alterations, demolition, installation, and repair work at the Premises, as set forth in **Section 26.20** below.

**8.5. Local Hire Requirements.** Tenant and its subtenants shall comply with the applicable provisions of the Local Hiring Policy set forth in San Francisco Administrative Code Section 6.22(G) (the "Local Hiring Policy") in the performance of the Required Improvements, the Proposed Improvements, or any Alterations, as set forth in **Section 26.21** below.

**8.6. Arts Commission Approval.** With respect to any Alterations or Improvements which would be visible from the exterior of the building, Tenant shall obtain the prior written approval of City's Arts Commission to the extent the Arts Commission has jurisdiction over the design of such proposed alterations under City's Charter Section 5.103.

**[NOTE: IF TENANT COULD UNDERTAKE WORK THAT WOULD DISTURB LEAD-BASED OR PRESUMED LEAD-BASED PAINT (i.e., PRE-1979 BLDG. OR STEEL STRUCTURES) ON THE EXTERIOR OF THE BUILDING OR STEEL STRUCTURES OR INTERIOR OF THE BUILDING, INCLUDE THE FOLLOWING SECTION]**

**8.7. Improvements or Alterations that Disturb or Remove Lead Based Paint.** Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the San Francisco Building Code, Section 3407, and all other applicable present or future federal, state, local and administrative laws, rules, regulations, orders and other governmental requirements, the requirements of any board of fire underwriters or other similar body, any directive or occupancy certificate issued pursuant to any law by any public officer or officers acting in their regulatory capacity (collectively, "Laws"), including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). Tenant and its Agents or Invitees shall give to City three (3) business days prior written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding

or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to City under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code. *[Additional limitations may be appropriate in any particular instance. Consult the City Attorney's Office.]*

## **9. REPAIRS AND MAINTENANCE**

### **9.1. Tenant Responsible for Maintenance and Repair.**

**(a)** Except as provided in **Section 9.2** below, City shall not under any circumstances be responsible for the performance of any Alterations or Improvements 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.

**(b)** Tenant 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 Tenant or its Agents or Invitees under this Lease, Tenant shall immediately, at its sole cost, repair any and all such damage and restore the Premises or City's property to its previous condition.

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

**(d)** Tenant shall subject the fire extinguishers in the Premises inspection in accordance with the manufacturer's recommendations found on the label or in the user manual, shall ensure that access to extinguishers is not obstructed, and shall provide a minimum of routine annual professional maintenance of the fire extinguishers. Tenant shall also subject any other fire suppression systems to maintenance as required by manufacture's recommendation or the San Francisco Fire Department.

*[Include the following, if applicable, or include any other provisions specifically applicable to the facility.]*

**(e) Food Service and Seating Areas.** During the hours Tenant is open for business, Tenant shall keep the food service and seating areas and any furniture free of dishes, utensils, debris and spills and in a neat, clean, orderly and attractive condition at all times and shall, as necessary, provide and empty garbage receptacles serving such area. The tables and chairs in any seating areas



shall be configured so that there are walkways and sufficient area for pedestrian ingress and egress on either side of the tables and to minimize any potential tripping or other hazards.

**(f) Public Restrooms.** Tenant shall be responsible for the regular cleaning on the public restrooms located on the Premises. The restrooms shall be open to the public at all times the Premises are open to the public. The restrooms shall be kept clean, neat, orderly and functioning properly at all times. Tenant, at its own expense, shall provide all necessary items for the restrooms including, but limited to, toilet tissue, paper towels, seat covers and hand soap. Tenant shall provide, at its sole expense, all cleaning materials and supplies necessary to maintain the public restrooms in the condition as described above. Restrooms shall be thoroughly cleaned daily and inspected for supplies and neatness a minimum of two (2) times during each day Tenant's business is open to the public.

**9.2. City's Maintenance and Repair Obligations.** City shall maintain, repair and keep in good condition any property that abuts the Premises and is under the jurisdiction of the Commission, including gardening and landscaping services, and exterior bathrooms. Tenant shall provide City with prompt written notice of any required repair or maintenance item. 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. No Right to Repair and Deduct.** Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant 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 Tenant's obligations under this Lease 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, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Tenant to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost thereof from Rent.

## 10. UTILITIES

***[NOTE: Edit as required if other utilities are provided, not utilities are provided, or utilities are separately metered to the Premises or Tenant otherwise pays. If Tenant will be given the right to obtain its own utilities, add requirement that they get electricity from SFPUC unless SFPUC determines it is not feasible to provide such utilities to the Premises to comply with Administrative Code Section 99.3]***

**10.1. Utilities and Services.** City shall pay for water, gas and electricity to the Premises. If Tenant desires any upgrades to water, gas or electricity services in connection with the operation of Tenant's business at the Premises, such upgrades shall be subject to City's prior written consent, and shall be made at Tenant's sole cost and expense. Tenant shall fully cooperate with City and any utility service provided selected by City. Tenant shall permit City and the utility service provider to have reasonable access to the Premises and the utility equipment serving the Premises, including lines, feeders, wiring, pipes and meters. Tenant shall pay for sewer charges billed to Tenant 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.

**10.2. Interruption of Services.** City's obligation to provide utilities and services for the Premises are subject to applicable Laws (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of City. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Law permitting the termination of this Lease due to such interruption, failure or inability.

**10.3. Water and Energy Conservation; Mandatory or Voluntary Restrictions.** In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or if City is required or elects to make alterations to any part of the Improvements on the Premises in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Rent and Additional Charges reserved under this Lease or to perform each of its other covenants under this Lease or constitute or be construed as a constructive or other eviction of Tenant. City shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by Tenant.

**10.4. Antennae.** No antennae or telecommunication dish may be installed on the Premises without the advance written approval of City. No such antennae or telecommunications dishes shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City. Tenant agrees, at the request of City, to permit City to install, at City'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 Tenant.

## **11. LIENS**

Tenant 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 Tenant. In the event Tenant 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 Tenant 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. Tenant 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, Tenant 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 Tenant

has failed to do so within ten (10) days after final determination of the validity thereof. Tenant shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

## **12. COMPLIANCE WITH LAWS**

**12.1. Compliance with Laws.** Tenant shall promptly, at its sole expense, maintain the Premises, any Improvements permitted under this Lease and Tenant'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.A. §§ 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 Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained-for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant 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 Tenant or City, the degree to which the curative action may interfere with Tenant'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 Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant 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.

### **12.2. Regulatory Approvals**

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

**(b) City Acting as Owner of Real Property.** Tenant 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 Tenant'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 Tenant'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.

**12.3. Compliance with City's Risk Management Requirements.** Tenant shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted under this Lease that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. Tenant 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 under this Lease.

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

### **13. FINANCING; ENCUMBRANCES; SUBORDINATION**

**13.1. Encumbrance of City'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 Tenant 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 under this Lease.

**(b) Encumbrance By Tenant.** Tenant 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.

**13.2. Leasehold Encumbrances.** Without limiting **Article 15** hereof, Tenant shall not Encumber this Lease or Tenant'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.

***[NOTE: Edit this provision if Tenant is responsible for maintaining insurance on the Improvements and for repairing/restoring following a casualty.]***

### **14. DAMAGE OR DESTRUCTION**

**14.1. Damage or Destruction to the Improvements.** If the Premises or the Improvements are damaged by fire or other casualty, within ninety (90) days after the date of such fire or other casualty,

Tenant shall notify City in writing (a "Repair Determination") if any of the following conditions (the "Repair Conditions") are met: (i) such damage can be repaired within one hundred eighty (180) days of the date of such fire or other casualty, (ii) Tenant elects to repair such damage at its sole cost, and (iii) Tenant has funds available to fully pay for such repairs. If each of the Repair Conditions are met, this Lease shall remain in full force and effect, Tenant shall diligently pursue such repairs in the manner required for Alterations under **Article 8**, and unless the damage or destruction was caused by the negligence or intentional misconduct of Tenant or its Agents, Base Rent will be proportionately reduced during the period between such fire or other casualty and the completion of such repairs based on the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises.

If any of the Repair Conditions is not met, either City or Tenant shall have the right to terminate this Lease by delivering written notice to the other Party within thirty (30) days following City's receipt of the Repair Determination and this Lease shall terminate as of the date specified in such notice. If Tenant does not timely deliver a Repair Determination to City, City shall have the right to terminate this Lease by delivering written notice to the Tenant of such termination within one hundred twenty (120) days following the date of such fire or other casualty and this Lease shall terminate as of the date specified in such notice. If either Party terminates this Lease pursuant to this Section, then unless the damage or destruction was caused by the negligence or intentional misconduct of Tenant or its Agents, Base Rent will be proportionately reduced during the period between such fire or other casualty and such termination based on the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises.

**14.2. Tenant's Obligations.** If this Lease is terminated as provided in **Section 14.1** above, then at City's written request Tenant shall promptly, at its sole cost, demolish such damaged Alterations and damaged Improvements or Alterations that were installed or made on the Premises by or at the expense of Tenant and remove them (including all debris) from the Premises in compliance with the provisions of **Section 22.1** below.

**14.3. 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 Tenant 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.

## **15. EMINENT DOMAIN**

**15.1. 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 under this Lease shall be determined pursuant to this Section. City and Tenant 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.

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

**15.3. 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 Tenant, (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) Tenant elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations under this Lease.

(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 15** 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.

**15.4. Rent; Award.** Upon termination of this Lease pursuant to an election under **Section 15.3** above, then: (i) Tenant'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 15.5** 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 Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

**15.5. Partial Taking; Continuation of Lease.** If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 15.3** 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 before 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). Tenant shall have no claim against City for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

**15.6. 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 Tenant 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, Tenant 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 Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award.

## **16. ASSIGNMENT AND SUBLETTING**

**16.1. Restriction on Assignment and Subletting.** Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Tenant), 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 under this Lease (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 Tenant.

**16.2. Effect of Transfer.** No Sublease or Assignment by Tenant shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment shall constitute a material Event of Default by Tenant 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 Tenant or other transferor to comply with this Section.

**16.3. Indemnity for Relocation Benefits.** Without limiting **Section 16.2**, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant 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. Tenant's obligation to Indemnify City under this Section will survive the termination of this Lease and any Assignment or Sublease.

## **17. DEFAULT; REMEDIES**

**17.1. Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Tenant under this Lease:

**(a) Rent.** Any failure to pay any Rent or other sums as and when due, provided Tenant 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 Tenant's failure to make such payments when due more than twice during any calendar year, and any such failure by Tenant after Tenant has received two such notices in any calendar year from City shall constitute a default by Tenant under this Lease without any requirement on the part of City to give Tenant 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 Tenant 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, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and

Tenant 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 Tenant's failure to perform such obligation, and any subsequent failure by Tenant after Tenant has received two such notices shall constitute a default by Tenant under this Lease without any requirement on the part of City to give Tenant 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 Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant 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.

**17.2. Remedies.** Upon the occurrence of an Event of Default by Tenant, 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 Tenant'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 Tenant 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 Tenant'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 Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant'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 Tenant 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, Tenant shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due under this Lease, 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 under this Lease 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 17.2(b)** shall be deemed a waiver of any default by Tenant 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 Tenant 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.

**17.3. City's Right to Cure Tenant's Defaults.** If Tenant 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 Tenant's account and at Tenant's expense. Tenant 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. Tenant'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 Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any rights or remedies of City on account of such Event of Default.

## **18. WAIVER OF CLAIMS; INDEMNIFICATION**

**18.1. Waiver of Claims.** Tenant covenants and agrees that City shall not be responsible for or liable to Tenant for, and, to the fullest extent allowed by Law, Tenant 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)** Tenant expressly acknowledges and agrees that the Rent payable under this Lease 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 Tenant's uses under this Lease. 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 Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Tenant or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant 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 under this Lease, including, without limitation, any interference with uses conducted by Tenant 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, Tenant 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 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Tenant acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Tenant 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.

**18.2. Tenant's Indemnity.** Tenant, 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 Tenant, 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 Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Tenant, 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 Tenant, or Tenant's failure to properly repair or maintain any Improvements on the Premises; (e) any construction or other work undertaken by Tenant 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 Tenant, 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. Tenant 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 Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the expiration or sooner termination of the Lease.

## **19. INSURANCE**

***[INSURANCE REQUIREMENTS ARE SUBJECT TO REVIEW BY THE CITY'S RISK MANAGER BASED ON THE PROPOSED USE - IMPORTANT TO CHECK WITH THE CITY'S RISK MANAGER TO DETERMINE WHETHER MODIFICATIONS TO THESE PROVISIONS ARE APPROPRIATE.]***

**19.1. Tenant's Insurance.** Tenant, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows:

(i) Commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) 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, and explosion, collapse and underground (XCU). If the operation of Tenant's business includes food sales, such coverage shall include Food Products Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence. If the operation of Tenant's business includes the sale of alcoholic beverages, such coverage shall include legal liquor liability coverage with limits not less than One Million Dollars (\$1,000,000) each occurrence.

(ii) Workers' Compensation Insurance in statutory amounts with Employer's Liability of not less than One Million Dollars (\$1,000,000) per accident, injury or illness.

(iii) Sexual molestation and abuse coverage with minimum limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Coverage may be held as a separate policy or included by endorsement in the Commercial General Liability or Errors and Omissions policy.

(iv) Business automobile 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 owned and non-owned and hired vehicles, as applicable, if Tenant uses automobiles in connection with its use of the Premises.

(v) Business Interruption Insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Tenant is unable to operate its business at the Premises. Such insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. To calculate Rent during any such interruption of business, the Rent for the 12-month period immediately preceding the incident causing the business interruption shall be used.

(vi) Such other risks in such amounts as City's Risk Manager may from time to time reasonably require.

***[NOTE: IF TENANT IS HIRING LICENSED PROFESSIONALS, ADD THE FOLLOWING SUBSECTION:]***

(vii) [Licensed professionals (i.e., architects, engineers, certified public accountants, etc.) shall provide professional liability insurance with limits not less than One Million Dollars (\$1,000,000) each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Lease or to the Premises.]

**19.2. 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, Tenant 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:

i. Name Tenant 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 under this Lease.

ii. 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.

iii. 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.

(d) Each insurance policy required under this Lease shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

**19.3. Proof of Insurance.** Tenant shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required under this Lease and specifically and clearly referencing the Premises, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant 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 Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor. Tenant shall cause a copy of each certificate and renewal certificate required under this Lease to be delivered to both the physical address and the email address for delivery of insurance certificates specified in the Basic Lease Information

**19.4. Review of Insurance Requirements.** Tenant 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 Tenant with respect to risks comparable to those associated with the Premises, then, at City's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant to conform to such general commercial practice.

**19.5. No Limitation on Indemnities.** Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's indemnification obligations under **Sections 18.2** and **23.2** hereof, or any of Tenant's other obligations or liabilities under this Lease.

**19.6. 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 Tenant.

**19.7. Tenant's Personal Property and Alterations and Improvements.** Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property, Alterations, and Improvements made by or on behalf of Tenant.

**19.8. City's Self Insurance.** Tenant 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.

**19.9. Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Tenant 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 Tenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Tenant 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.

## **20. ACCESS BY CITY**

### **20.1. 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 Tenant (except in the event of an emergency) for any of the following purposes:

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

ii. To determine whether Tenant is in compliance with its obligations under this Lease and to cure or attempt to cure any such default in accordance with the provisions of **Section 17.3** hereof;

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

iv. To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform under this Lease; and

v. 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" or "coming soon" 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 Tenant'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 Tenant from the Premises or any portion thereof.

**(c) No Liability.** City shall not be liable in any manner, and Tenant 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 Tenant, its Agents or Invitees.

**(d) No Abatement.** Tenant 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 Tenant's use under this Lease.

**20.2. Department Facilities and Utility Installations.** Without limiting **Section 20.1** 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 Tenant, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Tenant's use of the Premises occasioned by any such facility installations or other activities.

**20.3. 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.

**20.4. Rights of Public.** Tenant shall keep the Premises open to the public at all times consistent with the uses permitted under this Lease, subject to the Rules and Regulations or as otherwise approved by the General Manager in writing.

## **21. 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.

## **22. SURRENDER**

**22.1. Surrender of the Premises.** Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Tenant 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 Tenant. On or before the Expiration Date or any earlier termination hereof, or later upon City's request, Tenant shall, at its sole cost, remove any and all of Tenant's Personal Property from the Premises and demolish and remove any and all Improvements and Alterations from the Premises requested by City 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, Tenant 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 before the presence of any Improvements or Alterations. In connection therewith, Tenant 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 under this Lease. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant'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 Tenant fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Tenant shall Indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Tenant resulting from Tenant's failure to surrender the Premises.

**22.2. 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 Tenant 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, Tenant 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 Tenant's leasehold estate under this Lease 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.

## **23. HAZARDOUS MATERIALS**

***[NOTE: THIS SECTION IS APPLICABLE ONLY TO BUILDINGS WITH NO KNOWN ENVIRONMENTAL PROBLEMS; IF THE BUILDING IS KNOWN TO CONTAIN ASBESTOS OR OTHER HAZARDOUS MATERIALS, DISCUSS SUCH MATTERS WITH CITY'S ENVIRONMENTAL EXPERTS. MAY NEED TO MAKE SPECIAL DISCLOSURES TO TENANT AND LEASE PROVISIONS MAY NEED TO BE MODIFIED ACCORDINGLY. SIMILARLY, IF TENANT'S USE INVOLVES ANY HAZARDOUS MATERIALS, THIS USE MUST BE EXAMINED BY CITY'S ENVIRONMENTAL EXPERTS AND MUST BE ADDRESSED IN THE LEASE.]***

**23.1. No Hazardous Materials.** Tenant covenants and agrees that neither Tenant 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. Tenant shall immediately notify City if and when Tenant 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 Tenant to provide adequate information for City to determine that any Hazardous Material permitted under this Lease is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. Without limiting **Article 20** 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 Tenant (except in the event of an emergency).

**23.2. Tenant's Environmental Indemnity.** If Tenant breaches any of its obligations contained in **Section 23.1** above, or, if any act or omission or negligence of Tenant 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 Tenant's general Indemnity contained in **Section 18.2** above, Tenant, 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 Tenant or any of Tenant'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, Tenant 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 before such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant 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.

## **24. SECURITY DEPOSIT**

Tenant 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. Tenant 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 Tenant, its Agents or Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained in this Lease, without waiving any of City's other rights and remedies under this Lease or at Law or in equity. Should City use any portion of the security deposit to cure any Event of Default by Tenant under this Lease, Tenant shall immediately replenish the security deposit to the original amount, and Tenant'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, Tenant 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



Tenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease.

## **25. 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 Tenant 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. Tenant's obligations under this Section will survive the termination of this Lease.

## **26. GENERAL PROVISIONS**

**26.1. Notices.** Except as otherwise expressly provided in this Lease, any notice given under this Lease 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) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent before Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant'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 Tenant 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 before the effective date of such change. Any notice under this Lease 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 26.1** and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by email to the email address 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 email. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of an email copy of the notice.

**26.2. No Implied Waiver.** No failure by City to insist upon the strict performance of any obligation of Tenant 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 before 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 Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

**26.3. 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. Whenever this Lease requires or permits the giving by City of its consent or approval, the General Manager of the Department shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Tenant, and City's agreement may be made upon the sole approval of the General Manager of the Department provided such amendment or modification does not (i) decrease the amount of rental income payable by Tenant to City, (ii) materially increase City's liabilities or financial obligations under this Lease, (iii) materially increase the size 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.

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

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

**26.6. 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 Tenant under this Lease, 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.

**26.7. Successors and Assigns.** Subject to the provisions of **Article 16** 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 Tenant 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 Tenant, 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.

**26.8. 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. If 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.

**26.9. 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.

**26.10. 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.

**26.11. 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. Tenant 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 Tenant by implication or otherwise unless expressly set forth herein.

**26.12. Attorneys' Fees.** If either Party fails to perform any of its obligations under this Lease or if 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 under this Lease (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.

**26.13. 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.

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

**26.15. 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.

**26.16. Relationship of Parties.** City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither Party shall act as the agent of the other Party in any respect under this Lease, 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 Tenant on, in or relating to the Premises.

**26.17. Transfer by City.** If City sells or otherwise transfers the Premises, City shall be released from its obligations under this Lease arising on or after the date of such sale or transfer and Tenant shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Tenant 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 Tenant, with regard to any future sale or other disposition of the Premises, or any portion thereof.

**26.18. Recording.** Tenant agrees that it shall not record this Lease in the Official Records.

**26.19. 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 Tenant, its successors and assigns, if there is any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Lease or otherwise.

**26.20. Wages and Working Conditions.**

**(a) Generally.** Any undefined, initially-capitalized term used in this subsection shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively,

“Prevailing Wage Requirements”). Tenant agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include, and shall require its subtenants and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor’s or Subcontractor’s failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see [www.sfgov.org/olse/prevailingwages](http://www.sfgov.org/olse/prevailingwages) or call the City’s Office of Labor Standard Enforcement at 415-554-6235.

**(b) Prevailing Wages for Theatrical Workers, Trade Shows and Special Event Work, and Off-Street Parking Lot, Garage or Storage Automobile Facility.** Tenant shall pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, prevailing wages, including fringe benefits or the matching equivalents thereof, to persons performing services for the following activity on the Premises to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Storage Automobile Facility (as defined in Section 21C.3) a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), and Broadcast Services (as defined in Section 21C.9).

If Tenant, or its subtenants, contractors, and subcontractors fail to comply with the applicable obligations in San Francisco Administrative Code Chapter 21C, City shall have all available remedies set forth in Chapter 21C and the remedies set forth in this Lease. City may inspect and/or audit any workplace, job site, books and records pertaining to the applicable services and may interview any individual who provides, or has provided, such services. Tenant shall provide to City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to City) immediate access to all workers’ time sheets, payroll records, and paychecks for inspection on request to the extent they relate to such services.

- The types of covered services related to a Show includes individuals engaged in theatrical or technical services, including rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services.
- The types of covered services related to a Special Event includes individuals engaged in on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property.
- The types of covered services related to Broadcast Services includes individuals engaged in the electronic capture and/or live transmission of on-site video, digital, and/or video content for commercial purposes through the use of a remote production or satellite trust on-site, including any technical director, video controller, assistant director, and stage manager, and individuals engaged in audio, camera, capture and playback, graphics and utility functions

**26.21. Local Hiring Requirements for Improvements and Alterations.** Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Improvements and Alterations are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Improvement or any Alteration, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "Covered Project").

Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

**26.22. Intellectual Property; Music Broadcasting Rights.** Tenant shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Premises, including, but not limited to musical or other performance rights. (Note to Tenant: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers ("ASCAP") at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time).

**26.23. Supervision of Minors.** Tenant shall comply and shall require its subtenants, contractors and subcontractors to comply with the obligations in California Public Resources Code Section 5164 if Tenant, or any subtenant, contractor, or subcontractor is providing services at a City park, playground, recreational center or beach, Tenant shall not hire, and shall prevent any subtenant, contractor or subcontractor from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Tenant or any subtenant, contractor or subcontractor, is providing services to the City involving the supervision or discipline of minors, Tenant and any subtenant, contractor or subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for positions involving the supervision of minors. In the event of a conflict between this section and **Section 26.47**, "Criminal History in Hiring and Employment Decisions," of this Lease, this section shall control.

**26.24. Employee Signature Authorization Ordinance.** City has enacted an ordinance at Chapter 23, Article VI of its Administrative Code, commencing at Section 23.50 (the "Ordinance"), which may apply to employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees. The terms of the Ordinance are expressly incorporated herein by reference. To the extent Tenant or its successors or assigns employs employees in a hotel or restaurant in the Premises within the scope of the Ordinance, Tenant hereby agrees as a material condition of this Lease to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to

represent Tenant's employees, if and as required by the Ordinance, and to otherwise fully comply with the requirements of the Ordinance. Tenant recognizes that, if the Ordinance applies to Tenant's operations on the Premises, Tenant must enter into a Card Check Agreement with a Labor Organization(s) as specified by the Ordinance before executing this Lease, and that being party to such a Card Check Agreement(s) is a condition precedent of rights or obligations under this Lease.

## **26.25. Non-Discrimination in City Contracts and Benefits Ordinance.**

**(a) Covenant Not to Discriminate.** In the performance of this Lease, Tenant 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), or association with members of protected classes, or in retaliation for opposition to discrimination against protected classes, against any employee of any City employee working with, or applicant for employment with Tenant, in any of Tenant'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 Tenant.

**(b) Subleases and Other Subcontracts.** Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant 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 subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

**(c) Non-Discrimination in Benefits.** Tenant 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, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division. Tenant hereby represents that before execution of this Lease, (i) Tenant executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved such form.

**(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 Lease as though fully set forth herein. Tenant 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, Tenant 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 Tenant and/or deducted from any payments due Tenant.

**26.26. No Relocation Assistance; Waiver of Claims.** Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant 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.

**26.27. MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code Section 12F are incorporated herein by this reference and made part of this Lease. By signing this Lease, Tenant confirms that Tenant has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

**26.28. Conflicts of Interest.** Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of such provisions, and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately notify City.

**26.29. Tropical Hardwood and Virgin Redwood Ban.** Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide or permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of any alterations or improvements 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 Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

**26.30. Tobacco Product Advertising and Sale Prohibition.** Tenant acknowledges and agrees that no advertising or sale of cigarettes (including electronic cigarettes, as defined in the San Francisco Health Code) or tobacco products is allowed under this Lease. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.



**26.31. Prohibition of Alcoholic Beverage Advertising.** Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises, except for those portions of the Premises used for the operation of a restaurant or other facility where the sale, production or consumption of alcohol is permitted. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

***[NOTE: IF THE LEASE GIVES TENANT THE EXCLUSIVE USE OF THE PREMISES FOR MORE THAN 29 DAYS, HAVE TENANT SIGN A FIRST SOURCE AGREEMENT WITH FSHA UNLESS FIRST SOURCE HIRING ADMINISTRATION IS EXEMPTING THIS LEASE FROM FIRST SOURCE REQUIREMENTS. IF FSHA IS EXEMPTION THIS LEASE, DELETE THE FOLLOWING PROVISION.]***

***[TO DISCUSS WITH THE FIRST SOURCE HIRING ADMINISTRATION, CONTACT LOWELL RICE AT OEWD AT 701-4857.]***

**26.32. First Source Hiring Ordinance.** Tenant and City are parties to the First Source Agreement attached to this Lease as Exhibit \_\_\_ pursuant to San Francisco Administrative Code, Chapter 83 (the "First Source Agreement"). Any default by Tenant under the First Source Agreement shall be a default under this Lease.

**26.33. Sunshine Ordinance.** Tenant acknowledges that 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 by City 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. City will make information provided by Tenant or other which is covered by this Section available to the public upon request.

**26.34. 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.

**26.35. 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.

**26.36. 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 City as landlord under this Lease.

**26.37. 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 Tenant's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby.

**26.38. Notification of Limitations on Contributions.** Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide to City the name of the each person, entity or committee described above.

**26.39. 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 Premises and encouraging use of such facilities, all at Tenant's sole expense.

**26.40. 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.

**26.41. Preservative-Treated Wood Containing Arsenic.** 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" means 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" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**26.42. Resource Efficiency.** Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of buildings owned or leased by City. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

**26.43. Food Service and Packaging Waste Reduction Requirements.** Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging 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 Lease as though fully set forth. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, without limiting City's other rights and remedies, Tenant 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 Lease was made. Such amount shall not be considered a penalty and do not limit City's other rights and remedies available under this Lease, at law, or in equity.

**26.44. No Smoking in City Parks.** Tenant agrees to comply with Section 1009.81 of the San Francisco Health Code, which provides: "Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes, or a farmers' market."

**26.45. Prohibition of the Sale of Lottery Tickets.** The selling of any lottery tickets on the Premises is expressly prohibited.

**26.46. San Francisco Bottled Water Ordinance.** *[NOTE: This is the current "short form" version for users that are unlikely to hold an Event— if this Lease is for an Event, especially an outdoor event or a participant athletic event, or for a food truck, check with the City Attorney for alternate language.]*

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated herein by reference and made a part of this Lease as though fully set forth.

**26.47. Criminal History in Hiring and Employment Decisions**

**(a)** Unless exempt, and subject to the provisions of **Section 26.23** above, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions), as may be amended ("Chapter 12 T"), which are hereby incorporated by reference, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

**(b)** Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions,

subject to the provisions of **Section 26.23** of this Lease. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the Department for additional information. The Department may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

**26.48. Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the

further spread of graffiti. Tenant shall remove all graffiti from the Property within forty eight (48) hours of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Sections 101 et seq.). Any failure of Tenant to comply with this Section of this Lease shall constitute an Event of Default of this Lease.

**26.49. Sugar-Sweetened Beverage Prohibition.** Tenant agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Lease.

**26.50. Vending Machines; Nutritional Standards.** Tenant shall not install or permit any vending machine on the Premises without the prior written consent of the General Manager. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the "Nutritional Standards Requirements"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this **Section 26.50** shall be deemed a material breach of this Lease. Without limiting Landlord's other rights and remedies under this Lease, Landlord shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any restaurant located on the Premises is encouraged to ensure that at least 25% of Meals offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code Section 4.9-1(e), as may be amended.

**26.51. All-Gender Toilet Facilities.** If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the General Manager for guidance.

***[THE FOLLOWING PROVISION IS REQUIRED EXCEPT FOR "Agreements governing the use of City Property under the jurisdiction of the Recreation and Park Department primarily for recreational activities." SOME RECPARK LEASES MAY NOT BE PRIMARILY FOR RECREATIONAL ACTIVITIES, EVEN THOUGH THEY DO SERVE A RECREATIONAL PURPOSE AND ARE PROPER UNDER THE CHARTER. IF THERE IS ANY QUESTION AT ALL ABOUT WHETHER THE EXCEPTION APPLIES, CHECK WITH THE CITY***

***ATTORNEY TO DETERMINE WHETHER THE PROVISION SHOULD BE INCLUDED. OTHERWISE DELETE THE PROVISION ENTIRELY.]***

**26.52. Requiring Health Benefits for Covered Employees.** Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

**(a)** For each Covered Employee, Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

**(b)** Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with subsection (a) above.

**(c)** Tenant's failure to comply with the HCAO shall constitute a material breach of this Lease. City shall notify Tenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

**(d)** Any Subcontract entered into by Tenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to obtain a cure of the violation.

**(e)** Tenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

**(f)** Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

**(g)** Tenant shall keep itself informed of the current requirements of the HCAO.

(h) Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Tenant shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(j) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with City when it conducts such audits.

(k) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000)[ Fifty Thousand Dollars (\$50,000) for nonprofits], but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

**26.53. Cooperative Drafting.** This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No Party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Lease.

## **27. QUALITY OF SERVICES AND PRODUCTS OFFERED.**

Tenant hereby agrees that any food and refreshments offered for sale under this Lease shall be of good quality and that the service shall be prompt, clean, courteous, and efficient. Department shall have the right to raise reasonable objections to the quality of the food, beverages, and service(s) provided and Tenant shall have the obligation to address those objections by modifying the causes of those objections until corrected to the satisfaction of the Department.

## **28. PARTICIPATION IN CITY CUSTOMER SATISFACTION PROGRAM.**

Tenant hereby agrees to participate in any customer satisfaction program developed by the City, provided that the participation requirements of the Customer Satisfaction Program shall be reasonable.

## **29. SIGNS AND ADVERTISING.**

Tenant hereby agrees not to erect or maintain, nor permit to be erected or maintained, upon any part of the Premises, any signs without obtaining City's written consent in advance.

***[NOTE: Include the following for food or beverage concessions.]***

## **30. SUSTAINABLE FOODS.**

Sustainable foods are those which, through their production, purchase, and consumption, enhance the health of the environment, producers and consumers through one or more of these methods: growing, processing and distributing locally; using low or no synthetic agricultural chemicals;

fairly trading with developing countries; meeting animal welfare standards; processing minimally; no genetic modification; no unnecessary antibiotics; and no added growth hormones.

Tenant shall use commercially reasonable efforts to incorporate sustainable food concepts into everyday operations of the business on the Premises. City encourages Tenant to source sustainable foods by buying certified and/or locally produced food products. Acceptable sustainability certifications are limited to organic certification under the National Organic Standards Act ("USDA Organic), Fair Trade certification, Protected Harvest certification, Food Alliance certification, Rainforest Alliance certification, Certified Humanely Raised and Handled certification, American Humane certification, Marine Stewardship Council certification, and Salmon-Safe certification. Sustainability-related product claims that are acceptable under this clause include "grass-fed" claims, "not treated with artificial growth hormones (RBGH)" claims," produced without the nontherapeutic use of antibiotics" claims, and "raised without added hormones/no hormones added" claims.

Locally produced food products are produced within 200 miles of San Francisco including the following counties in the North Coast, Central Coast, Sacramento and San Joaquin Valleys: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, and Yuba counties.

Tenant shall also provide an annual report on each anniversary date of this Lease outlining how Tenant incorporated these sustainable food concepts into everyday operations of the food and beverage concession and how Tenant informed customers and the youth employed by the Tenant, if any, regarding sustainable foods. This report shall include the percentage of total sales that were products certified as sustainably produced.