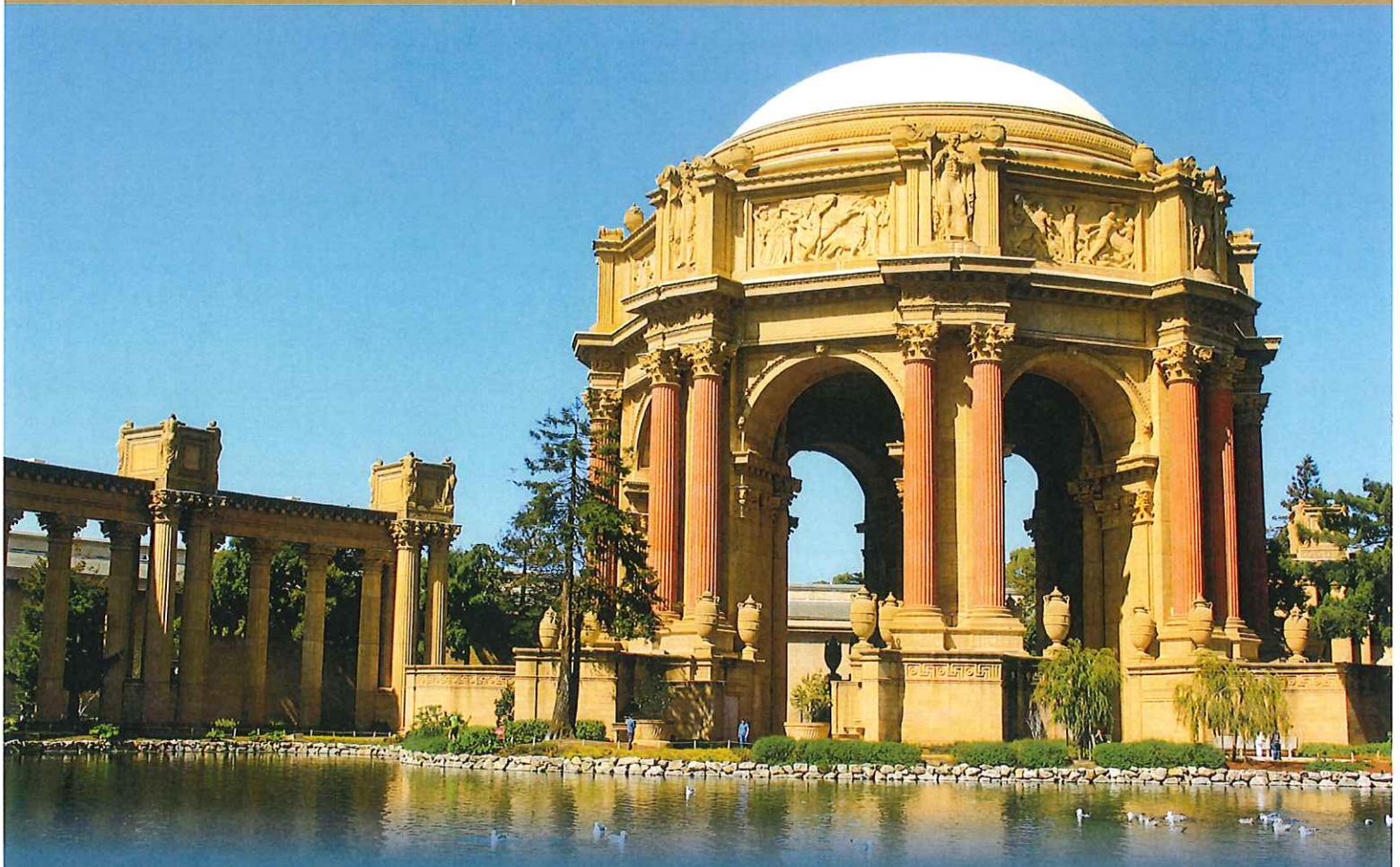




San Francisco Recreation and Parks

# PALACE OF FINE ARTS

## Request for Proposals



**City and County of San Francisco**

Edwin M. Lee, Mayor

**San Francisco Recreation and Park Commission**

Mark Buell, President

Allan Low, Vice-President

Gloria Bonilla, Commissioner

Tom Harrison, Commissioner

Meagan Levitan, Commissioner

Eric McDonnell, Commissioner

December 2, 2015

**Request for Proposals  
San Francisco Palace of Fine Arts  
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Appendices:

- A. Building Specifics
- B. Link to Conditions Assessment Report by EHDD
- C. Palace Drive Parking Lot
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- E. Link to Standard Lease Terms
- F. Link to Request for Concept Proposals and supporting documents, Responses to the Request for Concept Proposals and public comments on the proposals

## I. Summary of Offering

- Opportunity:** This Request for Proposals (RFP) is the second of a two-phase competitive process for the lease of the Palace of Fine Arts (the "Palace"). The Recreation and Park Commission (the Commission) has invited the top scoring Respondents from the first phase of the process, the Request for Concept Proposals (RFCP), to participate in this RFP. The Recreation and Park Department (the "Department") is seeking to enter into a lease agreement with an entity or entities to provide for meaningful public access to the Palace, provide significant financial investment into the Palace and provide for an active and engaging use.
- Location:** The Palace is located in the North West quadrant of San Francisco in the Palace of Fine Arts Park. The park is adjacent to The Marina, Marina Boulevard, the Marina Green, Crissy Field and the Presidio.
- Capital Investment:** The Department is requiring significant initial investment into the building which includes, but is not limited to the improvements listed in Exhibit A, the "Required Improvements." There are also recommended seismic improvements, which, along with the Required Improvements, are described in more detail in the "Cost Estimate" section of this RFP.
- The Department also requires a proposal for improvements to the parking lot surrounding the Palace along Palace Drive, and for funding the ongoing and long term capital improvements, maintenance and repairs for the building and theater.
- Lease duration:** The Department will entertain a proposed lease term, including options, up to 55 years in length. The Lease term will be negotiated with selected Respondent.
- Financial Terms:** Respondents should propose a fair market rent structure with periodic minimum rent increases, appraisal adjustments, and participation rent (in both gross operating revenue and assignment/refinancing proceeds). The Department will entertain a rent credit structure to help amortize the upfront capital investments into the building and adjacent parking lot, however, Respondents should have a net base rent proposal of a minimum of \$700,000 per year in addition to any rent credit or other proposed lease term structure.
- Selection Process:** Following the evaluation of minimum qualifications, the Department will convene a selection panel to evaluate the responses based on the evaluation criteria outlined in this RFP. The Department may schedule interviews with the Respondents. Department staff will

recommend the highest scoring Respondent to the Commission for approval.

Submittal Due Date: Proposals must be received by the Department no later than 5pm P.S.T. on May 20, 2016.

Contact: Cassandra Costello  
501 Stanyan Street. San Francisco, CA 94117  
[Cassandra.Costello@sfgov.org](mailto:Cassandra.Costello@sfgov.org), 415-831-2791

## II. The Opportunity

### A. Overview

This RFP is the second of a two-phase competitive process for the lease of the Palace. The Commission has invited only the top three scoring Respondents from the first phase of the process, the Request for Concept Proposals (RFCP), to respond to this RFP. The top scoring Respondents were selected by the Commission at a public Commission meeting on November 19, 2015.

Those entities (the "Recommended Entities") invited to participate in this RFP are as follows:

- The Maybeck Center at the Palace of Fine Arts
- Palace of Fine Arts-San Francisco Arts, Crafts, Community and Hospitality
- SFMAP Consortium: Response to Request for Concept Proposals For the Palace of Fine Arts

Please note, if you are not one of the Recommended Entities, you are not invited to provide a response to this RFP. Only submissions from the Recommended Entities listed above will be evaluated as part of this RFP.

This RFP is for the lease of the Palace of Fine Arts Building only. Surrounding landscaped park grounds, Crissy Field, the Marina Green and property owned by other entities such as the Presidio Trust are not available as part of this RFP opportunity. However, entities are required to propose improvements to the surrounding parking lot owned by the Department such as landscaping, repaving, resurfacing and restriping. The costs associated with such additional improvements shall be borne strictly by the Respondent and cost estimates associated with this additional work should be included in your submittal. The Department will entertain proposals for uses of the adjacent Department owned parking lot in order to improve efficiencies of proposed operations.

### B. The Offering

The Department desires to enter into a master lease agreement with the highest scoring Respondent to provide for meaningful public access to the Palace, provide significant financial investment into the Palace and provide for an active and engaging use.

### **III. Background**

#### **A. History**

The Palace of Fine Arts was built for the Panama Pacific International Exposition (PPIE) in 1915 to showcase San Francisco's rebirth after the devastating earthquake and fire of 1906. Designed by renowned architect Bernard Maybeck, over 18 million people visited the Palace during the nine-month exhibition. Originally intended for demolition after the Exposition, a group of citizens led by Phoebe Appleton Hearst worked to preserve the Palace Rotunda and Building.

The PPIE opened on February 20, 1915 and closed as planned nine months later. More popular than ever imagined, the glittering Exposition celebrating the opening of the Panama Canal attracted nearly 19 million visitors from around the world. It was a seminal event in California's history. No longer would California be an isolated frontier state, but a player on the international scene and a future powerhouse of the Pacific Rim.

The Exposition also heralded San Francisco's miraculous rise from the ashes of the 1906 earthquake and fire. The Palace of Fine Arts Exhibition Hall presented more than 11,000 works of art from around the world to awestruck fairgoers.

Exposition organizers originally expected to dismantle the entire 635 acre site of the fairgrounds, but citizens succeeded in saving the Palace from destruction in 1916. It was turned over to the San Francisco Art Association (now the San Francisco Art Institute), thus becoming the City's first art museum. The San Francisco Art Institute mounted changing exhibitions and showcased collections from San Francisco's prominent art collectors and artists. The opening of the Palace of the Legion of Honor in 1924 shifted the art scene away from the Palace.

The 1930s brought tennis courts to the Palace. It was pressed into service lodging the Presidio's motor pool during World War II, and provided garage space for limousines of delegates to the San Francisco conference that founded the United Nations in 1945. The 1950s saw use as a phone book distribution center and fire station.

By the late 1950s the Palace structures had badly deteriorated and San Franciscans were again determined to save them. In 1959 voters approved a \$1.8 million bond measure to restore the Palace. These funds, coupled with \$2 million from the State of California and \$4.5 million from civic leader Walter S. Johnson, underwrote the recasting of the Palace of Fine Arts in permanent materials in the 1960s. Nineteen-sixty-nine marked the opening of the Exploratorium in the Palace and 1970 the opening of the Palace of Fine Arts Theatre.

Since 1915 the Palace has been home to art exhibitions, an athletic complex and most recently, the long term tenant, the Exploratorium, an interactive science museum. The Palace has been visited by three US Presidents and is featured in countless films including the classic Alfred Hitchcock thriller, "Vertigo."

With the Palace, Maybeck established a new standard for civic design by showing global audiences what critics have proclaimed "a perfect marriage between architecture and landscape."

Incorporating an ancient tidal basin into his plan, Maybeck demonstrated how nature could serve as a vital design element in modern architecture.

The Palace complex has undergone three significant restorations. One in the 1960s to update and preserve the original structures, a seismic retrofit in 1993 and most recently in 2010, when the Maybeck Foundation and the Department (completed an extensive \$21 million renovation of the Palace grounds and rotunda.

#### **B. Community Process and Palace of Fine Arts Advisory Committee**

Since 2012, the Department has conducted a robust outreach process with the public regarding the activation of the Palace. The Department has hosted many public community meetings to discuss ideas for the next tenant and next uses for the Palace. The Department also convened the Palace of Fine Arts Advisory Committee (the "Advisory Committee") to provide citywide and neighborhood perspectives to help determine the best uses for the Palace. The Advisory Committee was created to provide the Department with expertise, perspective and advice on potential uses for the Palace. Membership of the Advisory Committee, including consultants, was as follows:

**Supervisor Mark Farrell**, San Francisco Board of Supervisors

**Commissioner Allan Low**, Recreation and Park Commission

**Jan Berckefeldt**, Maybeck Foundation

**Scott Maybeck Nittler**, Maybeck Foundation

**Richard Pettler**, Maybeck Foundation

**Hans Baldauf**, Maybeck Foundation

**Jon Ballesteros**, SF Travel

**Jim Lazarus**, San Francisco Chamber of Commerce

**Don Young**, D.R. Young Associates

**Doug Overman**, Golden Gate National Park Conservancy

**Mike Martin**, America's Cup 34

**John Lum**, San Francisco Museum and Historical Society

**Lisa Pagan**, Mayor's Office of Economic and Workforce Development

**Gary Strang**, Principal of GLS Landscape Architecture

**Ike Kwon**, ED Academy of Sciences and Parks Alliance

**Deirdre Araujo**, Exploratorium

**Commissioner Denise Bradley Tyson**, SF Film Commission

**Ariel Kelley**, Marina Community Association

**Ferris Ferdon**, Marina Merchants

**Lori Brooke**, Cow Hollow Association

**Tula Mouroufas**, Palace Neighbor

#### **Consultants:**

**Lynn Sedway**, Sedway Consulting

**Kelly Ishida Sloan**, Senior Associate, Formally with EHDD

**Marc L'Italien**, Principle, EHDD

Through the Advisory Committee meeting process, the Advisory Committee was asked to provide the Department with suggestions of potential uses for the building. The following potential uses were identified:

- Museum (museum-type use)
- Educational use
- Sports facility
- Performing arts
- Exhibition space
- Event venue
- Merchant use/retail space

The Advisory Committee was also tasked with developing desired requirements for the site for future use. The following desired requirements were identified:

- Offers public access to at least a portion of the building (e.g., public atrium, public “pathway”, educational/interpretive center)
- Includes strategies to mitigate parking and traffic impacts to the local neighborhood
- Retains theater and/or comparable performing arts space
- Preserves architectural significance
- Utilizes green building practices
- Is compatible and synergistic with adjacent outdoor space
- Embodies world class ethics (in keeping with the caliber of Bernard Maybeck’s work)
- Reflects and is cohesive with other uses in the area: “synergy with independence”
- Is family-friendly
- Celebrates the history of the building and the work of Bernard Maybeck (e.g., interpretative exhibits, tributes, etc.)
- Offers options for food and dining

Below is a list of potential uses that were suggested by the members of the public at two public community meetings held in November of 2012:

- Cultural use
- General educational use
- Use targeted to children and families (similar to former Exploratorium use) Inclusion of artifacts and interpretation pertaining to Bernard Maybeck and the 1915 Panama-Pacific International Exposition
- Museum for the wine industry
- Museum for the City of San Francisco (Guardians of the City)
- Urban farming/food education
- Art center
- Affordable community theater
- Affordable community space
- Museum for the history of pinball

- Exposition space for historic pipe organ
- Performing arts school
- Studio space for artists
- Use of roof as tenant space (“living roof” concept)
- Tennis Courts

## **IV. Regulatory Context and Steps for Lease Approval**

The following information is intended to provide a general description of the approvals required for the award of a lease; it is not meant to be an exhaustive summary. Additional public agencies may be required to review and approve any proposal.

1. Selection committee review or responses for recommendation to Commission.
2. Commission approval of a Respondent for negotiations regarding Exclusive Negotiating Agreement (“ENA”) and direction to General Manager to commence negotiations.
3. Negotiations with Department staff regarding ENA and approval of ENA.
4. Negotiating with Department staff regarding Lease Disposition and Development Agreement (“LDDA”) and Form of Lease. During the negotiating period the parties will attempt to identify the actions, activities and improvements that would occur under the proposed LDDA, and thereby facilitate meaningful environmental review in accordance with the California Environmental Quality Act (“CEQA”).
5. Environmental Review (concurrent with prior steps)
6. Art Commission Civic Design Review (may happen during or before environmental review is complete).
7. Commission Approval of LDDA and Lease; Recommendation to Board of Supervisors.
8. Board of Supervisors Approval of LDDA and Lease.
9. Permit applications to Department of Building Inspection, and other applicable agencies
10. Possible Historic Preservation Commission Approval of Certificate of Appropriateness.

All fees associated with any aspect of the approval process, including environmental review, permit review, and Historic Preservation Commission approval, will be borne solely by the Respondent. In addition, the ENA will require Respondent to cover certain of the Department expenses.

### **A. Board of Supervisors**

Section 9.118 (c) of the San Francisco City Charter provides that leases in excess of ten years or total anticipated revenues of \$1 million or more are subject to the approval or disapproval of the City’s Board of Supervisors (the “Board”). The Board consideration will happen after completion of environmental review described below and following recommendation by the Commission.

### **B. Recreation and Park Commission**

The selection committee will make a recommendation to the Commission for its review and approval the top ranking respondent and whether to enter into exclusive negotiations with that

Respondent. The Commission shall make its decision in its sole discretion. The Commission will review the recommendation and select a Respondent. Upon approval by the Commission, Department staff will enter into negotiations with the selected Respondent to enter into an ENA. After execution of the ENA the Respondent and the Department will negotiate and LDDA and Lease. After completion of environmental review, the Commission will approve and recommend an LDDA and Lease to the Board for their consideration.

After the selection committee chooses the top ranked Respondent, RPD shall issue a notice of intent to award the lease to the Respondent, with copies to the other Respondents. The notice of intent is not assurance that any of the potential approvals described in the preceding paragraph will occur, including, without limitation, the award of the lease.

### **C. Historic Preservation Commission**

The Palace is listed on the US National Register of Historic Places and is San Francisco Designated Landmark #88. The Palace includes certain historically significant features including the building sizing and mass, oversized double doors and hardware, skylights, chimneys, and fireplaces. According to historic consultant Page and Turnbull, the walls of the building contribute to the resource, but are not a significant feature. Therefore, there is a possibility that the west facing walls could be modified to allow for views of the Golden Gate Bridge. However, any modifications to the Palace, especially any modifications that affect the historically significant features, may trigger additional environmental review, as well as review and approval by the Historic Preservation Commission ("HPC") prior to permit issuance. Additionally, any project that includes building permits may need a Certificate of Appropriateness from the HPC.

If the Respondent were to pursue historic tax credits, the approval of the State Historic Preservation Office would also be required.

### **D. Arts Commission Civic Design Review**

Civic Design Review is a Charter mandated responsibility of the Arts Commission. The Civic Design Review Committee is a committee of the Arts Commission and is comprised of five Commissioners appointed by the Mayor, including two architects, a landscape architect and two other design professionals and/or lay persons. The Committee reviews new and renovated capital projects. The Committee makes a recommendation on the capital projects to Department Staff and the project sponsor. The mission of the Civic Design Review is to ensure that any capital improvement project improves the public realm, respects the natural environment and serves the best interest of the public.

### **E. Environmental Review**

As required by the California Environmental Quality Act ("CEQA"), any proposed project that may have a significant environmental impact will undergo environmental review; the CEQA process may not be waived by the Commission or the Board of Supervisors. Respondents must comply with all CEQA requirements before the Commission or the Board of Supervisors will consider approvals on any lease or capital upgrades. Because the Palace is a designated historic resource, among other

requirements, environmental review may involve completion of a Historic Resource Evaluation Report.

## **V. Mandatory Requirements**

The following are Mandatory Requirements for any response:

- Section 4.113 of the San Francisco Charter prohibits the Recreation and Park Department from leasing park land or buildings for non-recreational purposes. We encourage proposers to be creative in their proposals; however, the Commission cannot approve a lease if it cannot determine that an anticipated use satisfies the recreational purpose requirement.
- In addition to any tenant improvements and seismic improvements that may be required in order to serve a particular proposed use(s), the tenant must have the ability to fund the Required Improvements to the Palace of Fine Arts Theatre and the former Exploratorium Space (together, the Palace of Fine Arts Building) as indicated in the EHDD (Esherick Homsey Dodge and Davis Architects) report (see Appendix A-Building Specifics and Appendix B-Conditions Assessment Report). Respondent must show records of superior credit history and demonstrated ability to finance the project proposed on reasonable terms from equity or debt from bona fide financial institutions or donations. Additionally, Respondents must be able to finance ongoing capital maintenance, repairs and improvements to the building and be able to make improvements to the Palace Drive parking lot (Appendix C) such as repaving and restriping. Additional proposed improvements are welcome.
- The Palace building contains the Palace of Fine Arts Theater, a 36,025 square foot space, including a lobby, built in 1970. The tenant must retain a performing arts theater capable of supporting cultural events, performing arts activities and live performances (including a functional backstage area suitable for professional performance artists) as part of the future use and programming of the building. The theater must contain a comparable number of seats and stage space as currently exists. Installation of a movie theater will not satisfy the theater use requirement.

## **VI. Recreation and Park Department Objectives**

The Department, together with the Palace of Fine Arts Advisory Committee, have developed the objectives listed below for the use of the Palace:

- To obtain a tenant capable of restoring the Palace of Fine Arts Building. This requires a tenant who has the financial capacity to provide the upfront capital costs to complete the Required Improvements in a timely fashion.
- To retain a theater that will continue the offering of performing arts and other types of performances and programming
- To obtain a tenant with a financially sustainable business model that carries through the duration of the proposed term and provides for continued and ongoing capital maintenance to the building.
- To obtain a tenant that will provide valuable services and amenities and significant and meaningful public access.
- To receive proposals that contain strategies and elements that will mitigate noise, parking and traffic impacts to the surrounding residential neighborhood.
- To activate the Palace with a use that will complement and connect existing amenities and recreation in the surrounding area including the Palace of Fine Arts Park and Lagoon, Crissy Field, the Marina Green and the Presidio.
- To provide a use that will continually engage the public over the duration of the term.
- To provide for a public central entryway concept (See Appendix D, Tenant Options Study).
- To restore the Palace of Fine Arts Building to its original architectural state to the extent feasible.
- To provide security for the building.
- To provide business and employment opportunities for local workers and businesses during the design, construction and operation phases of the improvements to the building as well as the long-term activation of the Palace.

The Department encourages Respondents to consider including an interpretive exhibit or signage celebrating Bernard Maybeck and the history of the Palace of Fine Arts.

## **VII. Evaluation Process and Selection Process**

### **A. Selection Panel Review**

Department staff will review all submittals timely submitted to determine whether they are complete and responsive to the RFP. Only submittals that are complete, responsive and meet all requirements of this RFP, including, without limitation, the minimum qualifications will be evaluated during the selection process. Respondents whose proposals are non-responsive will receive a notice of non-responsiveness in accordance with Section X.U (Protest) of this RFP.

The advertised opportunity for which responses will be evaluated and scored involves only the use of the Palace of Fine Arts Building and improvements to the surrounding parking lot along Palace Drive. The Department manages and maintains the surrounding gardens, pond, and landscape. Any use of the outdoor space surrounding the Palace is subject to separate permit requirements. Additionally, the Department cannot authorize any uses that are not on Department-owned property (for example, Crissy Field, the Lair Lot, and other properties owned by the Presidio Trust or the National Park Service). The Department will entertain proposals for uses of the adjacent Department owned parking lot in order to improve efficiencies of proposed operations.

The responses to this RFP will be evaluated by a selection panel. Members of the selection panel will be chosen by the Recreation and Park Department and the panel will score responsive proposals based on the prescribed evaluation criteria listed in this RFP under "Evaluation Criteria." Following the submittal deadline, Respondents may be invited to interviews with the selection panel. Interviews will take place prior to the selection panel scoring the proposals and they will consist of standard questions asked of Respondents, and clarifying questions regarding individual submissions. The lead team members of the Respondent should be present for the interview as well as the lead team members 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.

The selection panel will recommend only one of the proposals to the Commission for final selection and seek authorization to enter into negotiations with the Respondent.

## **B. Evaluation Criteria.**

The responsive proposals will be evaluated by the selection panel based on the criteria stated below. The term "Respondent" as referenced in this document shall mean the primary sponsor of the proposal and any joint venture participants.

1. Public Access and Public Programming (20 points)  
Each element will be evaluated by how well the proposed use provides for meaningful public access based on the following:
  - a. Amount of space allocated for public access (in usable programming square feet)
  - b. Days and hours of public access
  - c. Any and all restrictions on public access
  - d. Any fees associated with public access
  - e. Any fee subsidies for public access
  - f. Any membership requirements for public access
  - g. Any reservations needed for public access
  - h. Space activation and program concepts
  
2. Compatibility with the Surrounding Neighborhood (10 points)
  - a. Demonstrated ability to work with local organization and/or address community concerns
  - b. How the proposal mitigates potential parking and traffic impacts
  - c. How the proposal mitigates potential noise issues
  
3. Consistency with the Department's Objectives as stated in this RFP (15 points)
  - a. Activation of the Palace with a use that will complement and connect existing amenities and recreation in the surrounding area including the Palace of Fine Arts Park and lagoon, Crissy Field, the Marina Green and the Presidio.
  - b. Providing a use that will continually engage the public over the duration of the term.
  - c. Providing for a public central entryway concept (See Appendix D, Tenant Options Study).
  - d. Restoring the Palace of Fine Arts Building to its original architectural state to the extent feasible.
  - e. The size and operation of a theater capable of offering performing arts
  - f. Inclusion of a museum or exhibit relating to the history of the Palace
  - g. Providing security for the building.
  - h. Providing business and employment opportunities for local workers and businesses during the design, construction and operation phases of the improvements to the building as well as the long term activation of the Palace.

4. Proposed Financial Terms (15 points)
  - a. Proposed annual rent structure, including minimum base rent of \$700,000 per year, to the Department after rent credits,
  - b. Provisions for regular rent escalations both CPI and mark to market, provisions for participation rent that would provide for participation in the project's gross revenues and in sale and/or refinancing proceeds.
  - c. A park maintenance fund (the "Park Maintenance Fund"), to offset any impact on the surrounding parklands and to improve the maintenance of the surrounding parklands and for the care of the swans in the lagoon.
  
5. Financial Capacity (30 points)
  - a. Current Available Funding of Preconstruction Expenses:
    - i. At the time of submittal of RFP, Respondent will be required to demonstrate that it has available Confirmed Funding (as defined below) in hand necessary to fund the development expense through the approval of the project (including environmental and planning review but excluding construction expenses) ("Preconstruction Expenses") or \$2 million whichever is higher.
    - ii. A response will be deemed nonresponsive if this condition is not met.
  - b. Funding of Project Investment: Demonstration that the Respondent has the required funding and/or the ability to attract the funding needed to cover the projected cost of the proposed project, including design, negotiations, Required Improvements and Tenant Improvements and the first two years of operations (the "Project Investment") as evidenced by:
    - i. Equity in hand (whether provided directly or through donations that have actually been received)
    - ii. Access to sufficient debt and equity, including risk equity, for the project proposed as demonstrated by documentation of
      1. Financing of comparable projects by the Respondent.
      2. On-going relationships with financial sources
      3. Ability to offer guarantees of bonding arrangements to ensure timely completion of the proposed project
    - iii. If the Respondent intends to rely on donations, the respondent must have written commitments from donors equal to at least 50% of the needed donations.
  - c. Ongoing Operations: Demonstration of proformas evidencing that the proposal has a sustainable operation including during economic downturns
    - i. Financial sustainability of proposal
    - ii. Cash flow projections that demonstrate the project, once operational, will meet all lease, debt service, and operating expenses over the life of the proposed term.

6. Financial Capacity--Confirmed Funding (10 bonus points)
  - a. Demonstration of Respondent's Confirmed Funding. Up to a maximum of 10 points will be awarded based on the ratio of Confirmed Funding to Project Investment. Specifically, points awarded will be calculated by multiply the quotient of the Confirmed Funding divided by the Project Investment by 20, and rounding to the nearest integer. Therefore, if the quotient is 0.12, the points awarded will be 2, if the quotient is .048, the points awarded will be 10, and if the quotient is 0.60, the points awarded will be 10.
  - b. Confirmed Funding includes unencumbered
    - i. Available liquid assets
    - ii. Confirmed Lines of Credit
    - iii. Other available funds that the Selection Panel concludes evidence clearly available funding
  
7. Project Feasibility (10 points)
  - a. Feasibility of the proposal to address the items listed in the Mandatory Requirement
  - b. The probability of obtaining approvals for the proposed design, given the historic status of the building
  - c. Respondent Qualifications
    - i. Respondent's track record in successfully completing projects of a similar nature and scale
    - ii. Experience of Respondent's team members and key personnel
    - iii. Experience with securing necessary approvals for projects of this size and nature
    - iv. Demonstrated ability to operate, sustain and maintain projects of a similar size and nature once completed
    - v. Proven ability to work with public agencies to achieve a completed project
    - vi. Track record of local hiring and participation of locally owned businesses in prior projects.
    - vii. Demonstrated understanding, ability and flexibility to obtain key approvals in a complex political and regulatory context

The Department reserves the right to request clarification or additional information from individual Respondent(s) and to request that some or all Respondents make presentations to the public, the Department, the Recreation and Park Commission and/or other public bodies. The Department also reserves the right to reject any and all responses.

### **C. Commission Determination**

The Commission is the sole decision maker regarding the selection, and the Commission reserves the right to reject any or all submittals or to terminate this process at any time. Department staff will take the selection panel's recommendation to the Commission. Department staff will prepare a report supporting the recommendation, which may include information obtained during reference checks and other background information. After review of the staff recommendation and evaluation findings, the Commission may elect to direct staff to enter into negotiations with a Respondent. The Commission, in its sole discretion, will make such decision in a duly noticed public meeting. The Commission, acting in its propriety capacity as landlord, has authority to approve an agreement to authorize the Department to enter into an ENA with the selection Respondent and upon completion of negotiations between the selected Respondent and Department staff, may recommend a LDDA, Lease and related documents to the Board of Supervisors. The selection of a Respondent will not imply the Commission's acceptance of all terms of the selected Respondent's submittal, which will be subject to further negotiations and approvals before the City may be legally bound.

### **D. Exclusive Negotiating Agreement**

Upon the Commission's selection of a Respondent with whom to negotiate, Department staff and the selected Respondent will negotiate the terms of an ENA to further refine the project, negotiate required transaction documents, and secure approvals. The ENA will contain time and performance benchmarks, including provisions for payment of liquidated damages and termination for non-performance, and provide for the Respondent to fund the Department's costs associated with project planning and review, require a nonrefundable, earnest money deposit. If a satisfactory ENA cannot be negotiated with a selected Respondent, the Department, in its sole discretion, may terminate negotiations with the selected Respondent and the earnest money deposit, described later in this RFP, will be forfeited. The Department may begin exclusive negotiations with the next highest ranking, qualified Respondent, conditioned on the Department's receipt of a new earnest money deposit from that Respondent. The Department may also pursue any of the other courses reserved to it under Section X.S. (Reservation of Rights By City) of this RFP.

Each selected Respondent should anticipate extensive, substantive discussions with the Commission, Department staff and other interested parties during the term of the ENA. The Respondent should also anticipate revisions to their proposals as a result of the negotiation with the Department, and the regulatory review agencies.

## **E. LDDA and Lease Agreement**

Upon completion of the ENA, the following events are anticipated:

1. Negotiation of a LDDA, defining parameters for development, a performance schedule, development standards and requirements, and conditions to be satisfied before the Department will enter into a lease for the building.
2. Negotiation of a form lease and related documents for the building in a final form approved by the City Attorney's Office. The basic terms required in a lease with the Department are provided in Appendix E. The Department reserves the right to make changes to the lease form during the course of negotiations.
3. The selected Respondent will secure all remaining financial commitments (if applicable) for the proposed project from lenders, equity sources, fundraising, donations, if applicable, preliminary sublease commitments from proposed anchor and other tenants.
4. The selected Respondent, with the Department's cooperation and prior approval, will complete the project approval processes.
5. The selected Respondent will undertake any environmental review and secure any additional city approvals that may be required.

Upon successful agreement to all terms of the lease and environmental review, the proposed lease will require approval from the Recreation and Park Commission and the Board of Supervisors.

## **VIII. Public Participation**

### **A. Proposal Display and Video**

Respondents are required to design and install a display of their proposal for the public to view. The display will be placed inside of the Atrium at the Palace of Fine Arts. Respondents are also required to provide a video of their proposal to be displayed in a publically accessible location(s). Details about the requirements for both the display and video can be found under Section X.

### **B. Community Input Process**

The Department has already begun a robust public input program as part of this competitive process. 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.

#### Request for Proposals Public Process

- Release of the RFP
  - The responsive RFP Project Proposal Summaries received will be posted on the City's website
  - Interactive Proposal Displays will be put on display at the Palace of Fine Arts coordinated through the Department
  - Each Respondent's video regarding their proposal will be displayed
  - The Department will host a public meeting to solicit public input on the proposals and possibly request that the Respondents present their proposals.
- 
- The Department will present the Selection Panel's recommendation to the Recreation and Park Commission Operations Committee and then the Full Commission for their consideration.

## IX. Solicitation Schedule

### A. Schedule

#### Schedule

Anticipated Schedule	
Release of RFP	November, 2015
Deadline for submission of written questions	May 6, 2016
RFP Deadline	May 20, 2016
Selection of Winning Respondent to the RFP	Fall, 2016
Negotiation of an ENA, LDDA and Lease Agreement	2016/2017
Environmental Review	2016-2018
Lease Approval	2018-2019

Please note that there will be no brokerage commission as part of this opportunity.

\*The timeline above is approximate and is subject to change without notice. Environmental review and other approvals may necessitate additional time for completion depending on the proposed use and proposed alterations and other conditions studied under environmental review.

## **B. Questions Concerning this RFP**

In order to give the Department ample time to respond to any requests for information concerning, or clarification of, this RFP, questions must be submitted in writing on or before May 6, 2016 to Cassandra Costello, Recreation and Park Department, by email to [Cassandra.Costello@sfgov.org](mailto:Cassandra.Costello@sfgov.org).

Responses to all questions directed to Department staff by phone, in person or email will be posted on the Department's website for this RFP. Respondents are presumed to have received any and all information contained in this RFP or posted on the Department's website for this RFP. Accordingly, the Department strongly recommends that parties consult the Department's website frequently to determine if new information relating to this RFP is available.

## **C. Pre-Submittal Meeting**

The Recommended Entities are strongly encouraged to attend the pre-submittal meeting on December 9, 2015 at 10am at McLaren Lodge, 501 Stanyan Street, in San Francisco. Department staff will address questions and provide any new information that is available. Please RSVP to Cassandra Costello at [Cassandra.Costello@sfgov.org](mailto:Cassandra.Costello@sfgov.org).

The Department will allow access to the Palace, however, it needs to be coordinated with the Department. Please coordinate with Cassandra Costello to obtain additional access besides the pre-submittal meeting. Request for access shall be submitted to Ms. Costello no later than two weeks prior to the deadline for submitting 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 Cassandra Costello will be responded to and posted publically.

## **X. Submittal Requirements**

### **A. Time and Place for Submission of Proposals**

Proposals must be delivered to Cassandra Costello at the Recreation and Park Department, 501 Stanyan Street, San Francisco, CA 94117, on or before noon on May 20, 2016.

The following items must be included in your responses and packaged in a box or envelope clearly marked: "Request for Proposals: Palace of Fine Arts," and addressed to the attention of "Cassandra Costello, Property Manager."

- 1) An original printed proposal with architectural drawings and renderings
- 2) One Flash Drive containing the entire contents of responses, including all attachments. The Flash Drive must be labeled with the proposer's name. All files should be submitted in unprotected PDF or Word format.
- 3) 10 (ten) additional hard copies of your proposal
- 4) Earnest Money Deposit of \$25,000

Proposals that are not received at the designated address by the specified deadline will not be accepted. Facsimile reproductions of proposals also will not be accepted. Proposals should be complete and responsive to all elements of this RFP. Please formulate your responses precisely and with detail; avoid vague, meaningless, or open-ended responses. Explain how your responses further the stated objectives. Each response in the proposal must be numbered to correspond with each of the numbered items listed in the Submittal Format Section below.

**B. Submittal Format**

There are seven components to the required submittal (described in greater detail below):

1. Cover letter
2. Five Page Project Proposal Summary
3. Full Project Proposal
4. Rent Structure
5. Projected Pro-Formas and Budgets
6. Sources of Funds and Financial Capacity
7. Respondent Financial Information
8. Technical Information
9. Earnest Money Deposit of \$25,000
10. Public Proposal Display and Video

The cover letter and the five page project summary will be posted on the Department's website and be made available to the public upon receipt. The Proposal Display will be installed at the Palace of Fine Arts for public comment and review. 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.

A Respondent may revise and submit 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.

Details on each of the required submittal items are as follows:

**1. Cover letter**

- a. Name of organization(s)
- b. Contact information (address, phone number, email address, telephone number)
- c. Date the organization was established

**2. Five Page Project Proposal Summary**

- a. The name of the Respondent and the team members and Respondent's qualifications
- b. An overview of the features of the proposal
- c. Details on spaces that will have public access
- d. How the capital improvements and ongoing operations are to be financed
- e. Diagram of how the space will be used and visuals of the impact on the outside of the building
- f. Must be formatted on 8 ½" X 11" sheets of paper with a font no less than 10 point

**3. Full Project Proposal**

Proposals should contain the following:

- a. The operational and management plan for the proposed project
- b. Detailed description of proposed use for the site:
  1. A table(s) summarizing the proposed programming that identifies each type of proposed use with square footage
  2. A layout clearly showing the different use proposals
  3. Days and hours of operations for each proposed use
  4. Fee structure for each proposed use, if applicable (members, non members, special events, special uses, etc.)
  5. Programs which increase access to low income members of the public, if applicable
  6. Space activation and program concepts

Please note that all proposed uses must allow equal access to members of the public.

- c. Detailed description of the operation of a theater
  - 1. Size and seating
  - 2. Days and hours of operation
  - 3. Proposed operator (if selected)
  - 4. Anticipated program schedule
  - 5. Proposed uses for the theater (i.e., dance, music, lectures, conferences, theater, comedy, etc)
  - 6. Scholarship programs for low income members of the public for shows or programs at the theater
  - 7. Proposed rental rates for client use of the theatre
  
- d. Detailed description of how the project meets a "Recreational Purpose."
  
- e. Description of proposed improvements to the building including the Required Improvements and any tenant improvements and construction timeline for completion of such improvements.
  - 1. Describe the proposed changes to the building and how the Respondent will address integrating modern building systems into an historic structure
  - 2. Describe the proposed improvements to the surrounding parking lot on Palace Drive
  - 3. Provide a construction timeline for the completion of these improvements
  - 4. ensuring that environmental review and any other anticipated approval processes are noted in the construction timeline
  
- f. Description of how the project would complement and link to the surrounding uses in the area and how the project will enhance the visitor's experience to the site and surrounding park property
  - 1. Description of how the project is compatible with the surrounding neighborhood
  - 2. How the project sponsor proposes to mitigate potential parking and traffic impacts
  - 3. How the project sponsor proposes to mitigate potential noise issues
  - 4. Examples of how Respondent proposes to work with local organizations and groups to address community concerns
  - 5. Expected daily numbers of visitors and staff by day of the week.
  - 6. Any proposal for a Park Maintenance Fund
  
- g. How the proposal meets or exceeds the Department's Objectives listed in this RFP.
  
- h. How the Palace Building and surrounding park will be protected and preserved

- i. Demonstrated strength of real estate market for proposed use
- j. Image or Icon of Your Proposal  
Provide a high-resolution image or icon that you would like used to identify your project. The Department will post this image or icon on our website, and possibly elsewhere, to identify your proposal.
- k. Architectural Renderings and Schematics (ARCHITECTURAL DRAWINGS)
  - 1. Detailed renderings and schematics which illustrate how you propose to use the building.
  - 2. Renderings and schematics should be done by a professional and certified architect and printed on paper no smaller than 11"X17". Drawings should clearly show the proposed alterations to the building, noting changes to historic features of the building.
  - 3. Structural engineer reports and analysis showing the feasibility of the proposed improvements
  - 4. Renderings and schematics should show the Required Improvements to the building as well as the tenant improvements. Renderings and schematics should be clearly labeled.
  - 5. Renderings and schematics should clearly show what type(s) of use(s) will activate which parts of the building.
  - 6. Drawings should clearly indicate the user/visitor/guest flow, ingress and egress to, from and through the building.
  - 7. Drawings should clearly show the impact on the outside of the building and views from the outside.

#### **4. Rent Structure**

Provide annual rent structure to the Department throughout the course of the term, including:

- a. The date rent would commence.
- b. A mechanism for periodic adjustment in the ground lease payments, including periodic "mark to market" adjustments. Specify your proposed methodology for such adjustments, including the metrics to be used for determining the market value in "mark to market" adjustments.
- c. For participation rent, the terms of an alternative ground lease structure that would include, in addition to base rent, participation in the project's gross revenue (or other performance-based measure), and in sale and/or refinancing proceeds.
- d. The amounts and terms of the payments you would be willing to make, commencing upon lease execution and extending to the point at which ground rent payment would commence under your above proposals.
- e. Any proposed rent credits

Please be advised that the Department may negotiate additional escalation clauses, market study evaluations and relative negotiated rent increases. Annual CPI adjustments will also be required.

## **5. Projected Pro-Formas and Budgets**

- a. Development Budget
  - Provide an overall proposal budget, including all hard and soft costs (including contingencies) from preconstruction through stabilized occupancy (the "Project Investment"). Provide a separate description of preconstruction expenses as defined in section IV.B. 5 ("Preconstruction Expenses"). Explain the basis for the cost estimates and include copies of any construction cost estimates. These amounts will be used for purposes of the analysis in Section IV.B.
- b. Pro Formas
  - Provide a static pro forma for the proposal illustrating total project investment, total revenues (if applicable), operating expenses, net operating income, debt service, and return to equity at stabilization. Provide cash flow projections that demonstrate the project, once operational, will meet all lease, debt service, and operating expenses.
- c. Market Justification
  - Include market justification that clearly supports revenue assumptions and the viability of proposal.
- d. Debt and Equity
  - Indicate the amount of debt and equity (including working capital) identified for the proposal, including the anticipated loan to cost ratio for the construction financing, and the expected approach to obtaining permanent financing. Please note that, while leasehold financing will be permitted, the Department will not subordinate its fee interest in the Palace to the lien of a leasehold lender.
- e. Guarantees
  - State the proposed guarantees, bonds, or other mechanisms to be used to ensure timely completion of the proposal.

## **6. Sources of Funds and Financial Capacity**

- a. Availability of Preconstruction Expenses
  - Provide evidence of the liquid assets necessary to fund the higher of \$1 million or the Preconstruction Expenses.
- b. Project Investment
  - Describe the sources of the equity and debt needed to fund the Project Investment

- c. Ability to Obtain Necessary Equity and Debt Funding: Demonstrate that the Respondent has the required equity and/or the ability to attract equity or debt for projects similar in scope and cost to the proposed RFP as evidenced by:
- Respondent's current relationships with investors and lenders and the ability to obtain necessary capital and debt
  - Financing of comparable projects by the Respondent
  - Direct access to sufficient debt and equity, including risk equity, for the project proposed
  - On-going relationships with financial sources
  - Written commitments for funding
- d. Fundraising: If the Respondent is relying on any funding coming from fundraising or donations, Respondent must have commitments for a minimum of 50% of the fundraising at the time that the Respondent submits its proposal. The required funding can be evidenced in two ways:
- Individual Donor (s): A letter from the individual donor(s) detailing the level of funding available for the proposed project and any conditions for the release of the funds. The Department also requires evidence from the individual donor(s) that the funding is available. Proprietary financial information from any such donor(s) shall not be subject to public disclosure unless the Respondent is awarded the lease.
    - General public fundraising: Evidence that money is held in an escrow account or other form of bank account.
    - In addition, the Respondent must also provide a timeline with commitments to the Department to show when the remaining funding will be raised. If Respondent is relying on public fundraising the Respondent must also provide confirmation from a fundraising professional with a proposed fundraising plan and indicating the basis for their belief that it is obtainable. Information regarding the fundraising professionals' experience is also required in the form of a resume and references.
- e. Availability of Other Current Confirmed Funding
- Provide evidence of any Other Current Confirmed Funding under Section 5c of the Evaluation Criteria

## **7. Respondent Financial Information**

- a. Financial Statements
- Provide the most recent available credit report and financial statements for the past two years of the Respondent and each joint venture participant. Financial statements shall include balance sheets, income statements, and statements of changes in financial position or cash flows, and all notes to the financial statements. Financial statements must be identified as audited, reviewed, compiled or company prepared. Financial statements prepared by recognized accounting firms are preferred. The Department reserves the right to ask for additional financial statements for other periods.

b. Real Estate Portfolio

- Provide the composition of the current real estate portfolio either owned or managed by the Respondent and each joint venture partner, listing the following for each project: Project name, type, location, project size (rentable area), date completed, value, original and current debt, role (developer, operator, property manager, etc), ownership interest and occupancy rate over a 10-year period. Identify any project with negative cash flow, amount of developer's recourse debt, any non-performing loans, and the amount of guarantees and/or contingent liabilities.

c. Pipeline

- List and describe all current projects in Respondent's and each joint venture partner's pipeline including status, development schedule and financial commitments required.

d. Lender Relationships

- Describe the Respondent's current relationship with lenders and ability to obtain necessary financing for the development proposed, including recent history in obtaining financial commitments, detailing type of project, financing source, amounts committed, etc.

**8. Technical Information**

a. Respondent Entity and Team

- Identify and describe the Respondent submitting a proposal for the project. Include the responsibilities, name address, telephone and email address of the principal developer or the member of the Respondent's team who will lead the proposed development (and relevant joint venture partners), and any other information, including references, about the lead developer that may be pertinent to this opportunity. Joint ventures are acceptable, as long as the proposal designates one organization as the lead development entity. List any and all joint venture partners, limited partners, members of other equity holders and their percentage interests and capital/equity committed to the entity. Provide federal tax identification number and date of incorporation or organization for Respondent. Indicate the architect and other critical consultants that are proposed for this project.
- Identify the person(s) in charge of negotiations, the limits of their negotiation authority, and key personnel who will be involved in decision-making and day to day management.
- Describe the intended role of each team member and key personnel in the implementation of the project and the responsible entity in the organizational structure for entitlement phase, construction stage and on-going property management.

- Discuss plans to include (“LBE”) as defined by San Francisco Administrative Code Chapter 14B as partners, consultants, and contractors. Please identify which members of the Respondent’s team includes any LBE equity partners and, if so, what percent of capital investment each is anticipated to contribute.
- Identify selected consultants, including licensed design professionals, and identify the lead person with each consultant.

b. Disclosures

Please provide answers to the following questions:

- Is the Respondent (note that the term Respondent in this document includes in all case joint venture participants) or any principal owners or investors in the proposed project involved in any litigation or disputes that could result in a judicial decision or financial settlement having a materially adverse effect on the Respondent’s financial condition? If yes, please explain.
- Does the Respondent have any off-balance sheet liabilities, such as corporate or personal loan guarantees? If yes, please provide details of these items.
- Has the Respondent or any named individual in the response ever filed for bankruptcy or had projects that have been foreclosed, or transferred to a creditor in lieu of foreclosure, or projects where the project sponsor negotiated or refinanced permanent project debt which resulted in a relaxation of either financial or other covenant or other terms and conditions for the existing debt on the project? If yes, please list the dates and circumstances.
- List any developments or proposed developments in which the Respondent or any named individual in the response has done involving the City and County of San Francisco and any of its Departments or Divisions

c. Developer Qualifications

- Provide a list of developments in which the Respondent has (have) been involved, indicating the product type, date, size, cost, location and the role of the Respondent in each development.
- Describe in detail the Respondent’s involvement in at least three similar development projects to that proposed, including product type, dates, locations, financing, size, total development cost, performance schedule including timeframe from transaction agreement to completion, marketing, and sales performance, and at least three (3) contact references for each project. Indicate the role of the Respondent in each project. Provide photographs of the project(s) if available.
- Identify historic preservation experience of the Respondent and of the key consultants.
- List all current projects in design or development phase and capital commitments required of Respondent for each.

- Discuss Respondent's experience in meeting local business subcontracting goals on other projects.
- Provide at least three professional references for the Respondent. The references should be able to attest to the relevant experience of the Respondent.
- Demonstrate ability to work with local organizations and/or address community concerns
- Demonstrate ability to operate and maintain real estate projects once completed, inducing sustaining occupancy and addressing on-going operational needs
- Demonstrate ability to work with public agencies to achieve development

d. Project Strategy

- Describe how will the Respondent address integrating the proposed use into an historic structure and existing park.
- Provide a schedule and strategy to secure regulatory approvals for the proposed project through occupancy.

## **9. Earnest Money Deposit**

Each Respondent must submit with its response an earnest money deposit in the amount of \$25,000, payable to the Recreation and Park Department in the form of a cashiers 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 non refundable, whether or not exclusive negotiations result in the agreement. Upon selection for exclusive negotiations, the selected Respondent will be required to increase its earnest money deposit by \$100,000 for a total of \$125,000.

## **10. Public Display and Video**

Respondents will be required to design, produce and install a display of their proposal, (the "Proposal Display"), for public review and comment. Proposal Display must be installed by the due date of the written RFP response. Respondents may use their judgment regarding the information produced for the public display, provided, however, that the information displayed must be consistent with their written proposal. The Proposal Display will be on display at the Palace of Fine Arts atrium space (the "Atrium") shortly after the RFP is due. The Atrium will be open to the public on a regular basis five days per week. The Atrium may be closed from time to time for purposes of special or unanticipated events.

Respondents will have access to electricity for their displays. The Proposal Display will not be staffed or provided any security. Respondents are encouraged to be creative and provide for interactive displays that will engage the public. The proposed Respondents will meet with the Department and the specific dimensions of the display will be refined. Respondents may use the materials of their choice for the construction of the Public Display. Respondents will need to

arrange for one or more site visits to evaluate the display space and coordinate the installation with the Department and the current tenant prior to the deadline for submissions to the written RFP.

Respondents are solely responsible for the costs associated with such display including the de-installation of the display. Respondents shall enter into an agreement with the Department or current tenant at the Palace for the installation of the Public Display. By responding to this RFP, each Respondent agrees to indemnify the City and the current tenant against any and all claims that might result from displaying the Public Display and waives any and all claims resulting from the display that the Respondent may have against the City and the tenant. Respondents agree to execute any additional documents needed to evidence such indemnity and waiver.

No security will be provided for the Public Display. If the Public Display is vandalized, it is the responsibility of the Respondent to remedy in a timely manner. The Public Display needs to be secured to the ground and surrounding walls, if applicable.

Respondents are also required to submit a video of no more than five minutes in length illustrating their proposal. Respondents are encouraged to be creative and informative with the video. The video will be posted on the Department's website and other publicly accessible outlets, at the Department's sole discretion. Respondents may use their judgment on the information produced for the video, provided, however, that the information contained in the video must be consistent with their written proposal. Video must be sent via downloadable link or flash drive along with the written proposal.

The Department will convene a meeting immediately upon the release of this RFP with all invited parties to provide further guidance and answer questions about the public display and video.

### **C. Other Fees**

The Department will negotiate additional fees payable directly to the Department for items including but not limited to staff time, legal fees, consultant fees, lost rent, and other items. Such fees are non refundable and may be payable prior to entering an ENA, LDDA, and or upon execution of a final lease.

## **XI. Terms and Conditions for Receipt of RFP**

### **A. Respondent's Duty to Investigate**

It is the sole responsibility of the selected Respondent to investigate and determine the condition of the Palace of Fine Arts building and the suitability of the conditions for any proposed use and improvements.

The information presented in this RFP and in any report or other information provided by the Department is provided solely for the convenience of the interested parties. It is the responsibility of the interested parties to assure themselves that the information contained in this RFP or other documents is accurate and complete. The Department and its advisors provide no representations, assurances, or warrants pertaining to the accuracy of the information.

Respondents are responsible for reviewing all portions of this RFP and any other information provided by the Department in relation to this RFP. Respondents are to notify the Department in writing of any ambiguity, discrepancy, omissions or other error in this RFP promptly after discovery, but in no event later than 15 business days before the deadline to submit proposals. An interested party that does not give timely notice to the Department will be deemed to have waived any ambiguity, discrepancy, omission, or other error in this RFP. Modifications and clarifications will be made by addenda or other written response to questions submitted in writing.

### **B. Conditional Nature of Offering**

The Department's issuance of this RFP is not a promise or agreement that the Department will actually enter into any agreement. The Department expressly reserves the right at any time to:

1. Waive any technical defect or informality in any submittal or submittal procedure that does not affect or alter the submittal's substantive provisions;
2. Reject any or all submittals;
3. Suspend any and all aspects of the process indicated in this RFP;
4. Amend this RFP;
5. Terminate this RFP and issue a new request for interest, qualifications or proposals;
6. Request some or all Respondents to revise submittals;
7. Select a tenant by any other means;
8. Offer new leasing opportunities in the area at any time;
9. Extend deadlines for accepting submittals, or accept amendments to submittals after expiration of deadlines; or
10. Decide not to pursue this offering.

The Department's failure to object to an error, omission, or deviation in any submittal will in no way modify this RFP or excuse Respondents from full compliance with the requirements of this RFP.

The Department may modify, clarify, and change this RFP by issuing one or more written addenda. Addenda will be posted on the Department's website at [sfrecpark.org](http://sfrecpark.org), and notice of the posting will be sent by email to each party receiving an RFP. The Department will make reasonable efforts to notify the Recommended Entities in a timely manner of modifications to this RFP, but each Respondent assumes the risk of submitting its submittal on time and obtaining all addenda and information issued by the Department. Therefore, the Department strongly encourages the Recommended Entities to check the Department's web page for any updates to this RFP frequently.

### **C. 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 will not enter into a LDDA or Lease agreement for any portion of the Palace until environmental review under CEQA is complete. Changes to the proposed project may occur or be required during the course of public review of the proposed project, during the extensive approval processes that will follow CEQA review, and in response to other City, Department, and public concerns that may arise, and those changes may require additional CEQA review if the changes have not already been analyzed. If a project is found to cause significant adverse impacts, the Department retains absolute discretion to require additional environmental analysis, and to: 1) modify the project to mitigate significant adverse environmental impacts; 2) select feasible alternatives that avoid significant adverse impacts of the proposed project; 3) require the implementation of specific measure to mitigate the significant adverse environmental impacts of the project, as identified upon environmental evaluation in compliance with applicable environmental law; 4) reject the project as proposed if the economic and social benefits do not outweigh otherwise unavoidable significant adverse impacts of the project; or 5) approve the project upon a finding that the economic and social benefits of the project outweigh otherwise unavoidable significant adverse impacts.

The Department is issuing this RFP in its capacity as a landowner with a propriety interest in the Palace of Fine Arts Building as a whole, and not as a regulatory agency of the City. 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 Recreation and Park Department), boards, or commissions with jurisdiction over a proposed project.

Under the San Francisco Charter, no officer or employee of the City and County of San Francisco, including the Department, has authority to commit the Department to any project until the Recreation and Park Commission has approved the transaction following completion of environmental review and until the San Francisco Board of Supervisors has approved the lease.

#### **D. Inquiries Regarding RFP**

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

Cassandra.Costello@sfgov.org

For purposes of this RFP, redundant to language in Section B.

#### **E. 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 its proposal. The Department reserves the right to make an award without further clarifications of proposals received.

#### **F. 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 the City deems appropriate.

#### **G. Card Check**

Should a lodging or restaurant use be proposed, Respondents must comply with San Francisco Administrative Code Article VI (Labor Representation Procedures in Hotels and Restaurant Developments in Which the City Has an Ongoing Proprietary Interest) (Section 23.50 *et seq.*) on card check procedures for determining employee preference on the subject of labor union representation. Sections 23.52(1) and (2) of the Article state:

(1) **Employers.** An employer of employees working in a hotel or restaurant in a hotel or restaurant project, shall:

(i) Enter into a card check agreement, as specified in this Article, with a labor organization which requests such an agreement for the purpose of seeking to represent those employees before executing the subcontract or City contract pursuant to which it will operate a hotel or restaurant in a hotel or restaurant project;

(ii) If the parties are unable to agree to the terms of a card check agreement within 60 days of the commencement of such negotiations, they must enter into expedited binding arbitration in which the terms of a card check agreement will be imposed by an arbitrator.

In such proceedings, to be conducted by an experienced labor arbitrator selected as provided by the rules of the American Arbitration Association or equivalent organization, the arbitrator shall consider any model card check agreement provided by the City and/or to prevailing practices and the terms of card check agreements in the same or similar industries, except that such card check agreement must include the mandatory terms identified in Section [23.51\(1\)](#);

(iii) Comply with the terms of that card check agreement and this Article; and

(iv) Include in any subcontract which contemplates or permits a Subcontractor to operate or manage a hotel or restaurant in a Hotel or Restaurant Project, as defined herein, or to provide a service essential to the operation of such hotel or restaurant, a provision requiring that subcontractor to comply with the requirements provided in this Article. This provision shall be a material and mandatory term of such subcontract, binding on all successors and assigns, and shall state (modified as necessary to accommodate particular circumstances):

"The City and County of San Francisco has enacted an Ordinance at [Chapter 23, Article VI](#) of its Administrative Code, commencing at Section [23.50](#), which may apply to [Subcontractor]. Its terms are expressly incorporated by reference hereto. To the extent [Subcontractor] or its successors or assigns employs employees in a hotel or restaurant in [this facility] within the scope of that Ordinance, [Subcontractor] hereby agrees as a material condition of this [Subcontract] to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent [Subcontractor's] employees, if and as required by that Article, and to otherwise fully comply with the requirements of that Article. [Subcontractor] recognizes that, as required by that Article, it must enter into a Card Check Agreement with a Labor Organization(s) as specified by that Article before executing this [Subcontract], and that being party to such a Card Check Agreement(s) is a condition precedent of rights or obligations under this [Subcontract]."

Notwithstanding the requirements provided in (i) any employer who has in good faith fully complied with those requirements will be excused from further compliance as to a labor organization which has taken economic action against that employer at that site in furtherance of a campaign to organize that employer's employees at that site for collective bargaining. This clause shall not be interpreted, however, to apply to economic action against an employer at other locations where that employer does business, or at any location for purposes other than organizing the employer's employees; nor shall economic action by one labor organization excuse an employer from the obligations of this Article or a card check agreement as to a different labor organization.

**(2) Developers and Manager/Operators.** Any developer or manager/operator of a hotel or restaurant project must:

(i) To the extent it employs employees in a hotel or restaurant in a hotel or restaurant project, abide by the requirements stated in Subsection (1);

(ii) Include the provision specified in (1)(iv) in any subcontract, modified as necessary to accommodate the circumstances of that particular subcontract;

(iii) Refrain from executing a subcontract by which an employer subject to (1) is authorized or permitted to operate a hotel or restaurant in a hotel or restaurant project until that employer has entered into a card check agreement with a labor organization, as required in (1);

(iv) Notify local labor council(s) and/or federation(s) of any hotels(s) or restaurant(s) and/or any employer(s) that will operate a hotel or restaurant in a hotel or restaurant project which may be subject to the requirements of (1), as soon as the developer or manager/operator identifies such hotel(s) or restaurant(s) or employer(s), but in no event later than 21 days before requiring an employer to sign a subcontract. This notification requirement applies only to hotels or restaurants or employers that will operate in a Hotel or Restaurant Project, as defined herein, and only where the City's proprietary interest is based on a Lease, a loan, or a guarantee, as specified in Section [23.51](#)(10)(i);

(v) Inform any prospective subcontractor, that if the subcontractor acts as an employer subject to the requirements of (1), it must enter into a card check agreement pursuant to this Article before it may execute the subcontract, and as a condition precedent to any rights or obligations under such document;

(vi) Take reasonable steps to enforce the terms of any subcontract requiring compliance with this Article. To the extent a developer or manager/operator is found to have intentionally aided, abetted or encouraged a subcontractor's failure to comply with such a provision or the terms of this Article, either by action or inaction, that developer or manager/operator shall be jointly and severally liable for all damages awarded pursuant to Section [23.54](#).

#### **H. Proposer's Obligations under the Campaign Reform Ordinance**

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 (6) six months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

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

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

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a

city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations. Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. Criminal. Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
2. Civil. Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. Administrative. Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

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

#### **I. 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.

#### **J. 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.

#### **K. 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.

#### **L. Invitation to Submit Proposals, no Obligations by City to Contract**

This RFP is only an invitation to submit proposals, and does not commit the City in any way to enter into a Lease or other agreement or to proceed with the RFP. In addition, the issuance of this RFP does not obligate the City to pay any costs incurred by any Respondent in connection with (i) the preparation of a response to this RFP, (ii) any supplements or modifications of this RFP or (iii)

negotiations with the City or other party arising out of or relating to this RFP. All costs incurred in the preparation and presentation of any proposal in response to this RFP shall be borne solely by the Respondent.

**M. Proposal as a Public Record**

Generally, all documentation including financial information submitted by any Respondent to the City are public records under State and local law, including the City's Sunshine Ordinance. The Respondent will clearly designate those financial records which it in good faith determines to be a trade secret or confidential propriety information protected from disclosure under applicable law. To the extent permitted by law, the City will attempt to reasonably maintain the confidentiality of such financial information, consistent with the City's general practices for maintaining the confidentiality of such information. However, the City will not under any circumstances be responsible for any damages or losses incurred by a Respondent or any other person or entity because of the release of such financial information.

**N. 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.

**O. 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.

**P. 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 of 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.

Without limiting the generality of the foregoing, the information presented in or in connection with this RFP is provided solely for the convenience of the interested parties. It is the responsibility of interested parties to assure themselves that any information contained in or related to this RFP is accurate and complete. No representations, assurances, or warranties pertaining to the accuracy of such information are or will be provided by the City or its consultants and no claim may be brought

against the City or any of their respective consultants as a result of the presentation of such information, irrespective of its accuracy, completeness or general utility.

**Q. 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.

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

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

**S. 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.

**T. 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 proposer to observe any provision of this RFP.

**U. 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 its 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 proposer, 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:

Cassandra Costello  
San Francisco Recreation & Park Department  
501 Stanyan Street  
San Francisco, CA 94117

## **Appendix A-Building Specifics**

### **Building Specifics:**

Please note that the Department doesn't have any representation or warranty to the numbers or figures below.

### **Location**

Directly off the Golden Gate Bridge, the Palace is located in the beautiful Marina District overlooking the famous Palace of Fine Arts Park to the east and the Golden Gate Bridge and Crissy Field to the north.

### **Palace Specifics**

- Total Square Footage of entire building: 143,996
- Ground Floor Square Footage: 126,246
- Public Parking: 385 Spaces (Limited to 185 during Doyle Drive Construction). The parking is available on a first come first served basis. The Presidio Trust owns and operates the Lair Lot, which is currently being used for the construction of the Presidio Parkway. According to the Presidio Trust, they intend to convert the Lair Lot back to public parking upon the completion of the Presidio Parkway project.
- Zoning: P-Public
- Periods of Significance: 1964-1967 and 1973-1974
- Historically Significant Features: Building Sizing and Mass, oversized double doors and hardware, skylights, chimneys, and fireplaces.

### **Former Exploratorium Space**

- Total Square Footage: 107,971
- Ground Floor Square Footage: 90,221
- Exploratorium Mezzanine Square Footage: 17,750
- Occupancy Type: A-3
- Capacity: 4,793 (3,969 on ground floor)
- Current Rent: \$500,000 annually
- Leased through September, 2016 with options to extend

### **Theater Space**

- Square Footage: 36,025
- Occupancy Type: A-1
- Capacity: 933
- Current Rent: \$177,000 annually
- Leased through September, 2016 with options to extend

## **Approximate measurements of the theater interior taken from the floor to the tin roof**

Measurements from front row of theater:

Center: 58.9 ft (highest peak of the ceiling)

House Left: 47 ft (on the front, measurement was taken on the side of the last seat on the concrete before the carpet)

House Right: 47.5 ft (same as above)

Measurement from Stage:

Center stage to peak of ceiling: 56.8 ft

House left: 42.8ft

House Right: 42.8 ft

### **Building Conditions:**

In 2012, the Maybeck Foundation convened a Conditions Assessment Study (Appendix D) that was prepared by EHDD Architects. While the scope of work for any renovation project is dependent upon the final use of the Palace, the report found the building to be in fair-good condition yet in need of some significant improvements to ensure the preservation of the Palace for decades to come. The following is a high level summary of the Conditions Assessment Study and it not meant to replace a full and careful read of the entire document:

**Seismic-** The Palace received a full seismic renovation in 1993. Accordingly, Structural Analysis found the building to be compliant with all seismic provisions of the California Historic Building Code. The report did recommend certain un-mandated seismic improvements including adding additional micro-piles to the concrete foundation, tying all micro-piles together to add structural integrity in the event of liquefaction and reinforcing the trussed superstructure.

**HVAC-** The HVAC system serving the theater is approaching the end of its useful life and in need of replacement. The former Exploratorium space is served by a separate HVAC system which is not of a commercial style and will likely need to be replaced.

**Plumbing-**The main theater area is without fire sprinklers which would need to be installed. The building experiences periodic flooding during heavy storms possibly caused both by the high-ground water table at the site and potential irregularities with the sub-floor storm drain piping and sanitary sewer waste systems. The Study recommends scoping and cleaning of those systems.

**Electrical-** The Palace is served by two separate PG&E lines. Both services include a 3-100kVA 12 kV-208Y/120 Volt oil filled transformer and appear likely to have been upgraded around 1989. The former Exploratorium is served by a Main Switchboard (1,000A- 120/208 Volt) which was installed in 1964 and, according to the Study has exceeded its expected lifetime. Similarly, the theater's

electrical system appears obsolete and would likely need to be replaced as well. The Study recommended replacing the Building's entire electrical system.

**Civil-**During heavy rains the Building and the surrounding environs experience flooding. The Study identified potential causes of the flooding but recommended further analysis prior to conceptual design of any renovation project.

**Historic Features-**The Palace contains a limited number of significantly historic elements including the building sizing and mass, oversized double doors and hardware, skylights, chimneys, and fireplaces. According to historic consultant Page and Turnbull, the walls of the building are not a significant historic feature. This could allow for considerable modification of the west facing walls of the building which could open up sweeping views of the Golden Gate Bridge that no other location in the world can offer. There is doubt that any of the walls facing the historic Rotunda and lagoon can be modified due to the original vision of the architect, Bernard Maybeck. The Planning Department has the ultimate authority over permissible changes to the building, including the walls of the building. Respondent should consult a historic preservationist regarding any proposed changes. Respondent should also ensure that all proposed changes are architecturally feasible with the current building structure. The Palace is listed on the US National Register of Historic Places and is San Francisco Designated Landmark #88.

**Cost Estimate-** The following cost estimates are based on the scope of work identified in the EHDD Study in 2012 attached as Exhibit B Please note that these costs are estimates and real costs may be higher or lower than those listed below. These costs do not include tenant improvements specific to Respondent's Concept Proposal or optional improvements listed in the EHDD report such as restoring the historic daylighting which lined the Palace roof but of which only a few remain. Please note that the proposer must have the ability to fund the Required Improvements including seismic improvements listed below.

Description	Estimated Cost of Improvements to the Entire Palace of Fine Arts Building (Former Exploratorium Space and Palace of Fine Arts Theatre Space)
Site Prep & Demolition	\$1,238,331
Interior Construction (including new slab floor)	\$187,779
Exterior Enclosure	\$2,855,899
Plumbing and Fire Protection	\$377,078
Reconstruction	\$3,497,620
Electrical	\$1,070,590
Site Improvements and Utilities	\$505,710
<b><u>Subtotal of Improvements</u></b>	<b><u>\$9,733,007</u></b>
Required Seismic Improvements	\$5,310,000
Total	\$15,043,007
Total Required Improvements Including Soft Costs	<b><u>\$19,331,185</u></b>

**Access: Transportation to the Palace**

**Vehicular Access:** The Palace is adjacent to major thoroughfares Doyle Drive and Lombard Street which effectively connect the eastern half of San Francisco to Marin. Currently, the Presidio Parkway is under construction and is scheduled for completion at the end of 2016. Updated construction information can be found at [www.predioparkway.org](http://www.predioparkway.org). Upon completion of the Presidio Parkway, there will be approximately 385 public parking spaces adjacent to the Palace.

**Transit Access:** The Palace and its surrounding neighborhoods are served by Muni (Lines 30, 30X, 28, 43 and 76), the PresidiGo Shuttle and Golden Gate Transit (Over 20 routes). In addition, approximately 20 tour buses visit the Palace each day.

**Bicycle and Pedestrian Access:** The Palace is located near numerous bicycle paths including the popular tourist route connecting Fisherman's Wharf and the Golden Gate Bridge. Pedestrians can

access the Palace from Crissy Field, the Letterman Digital Arts Center in the Presidio, and the Bay Trail, as well as the City's Marina District.

**Parking availability**

Below is the approximate parking data for the Palace and immediate area. Please note that the "Lair Lot" is managed by the Presidio Trust.

<b>On-Site Parking</b>	<b>Pre-Doyle Drive Construction</b>	<b>During Doyle Drive Construction</b>	<b>After Doyle Drive Construction</b>
Lair Lot	258 spaces	58 spaces	240 spaces
Palace Drive and Exploratorium Entrance	139	139	139
<b>Total On-Site Parking</b>	<b>397</b>	<b>197</b>	<b>379</b>
<b>Off-Site Parking</b>	<b>Pre-Doyle Drive Construction</b>	<b>During Doyle Drive Construction</b>	<b>After Doyle Drive Construction</b>
Yacht Club West	187 spaces	187 spaces	187 spaces
Marina Green	369	369	369
On-Street Parking	191	191	191
<b>Total Off-Site Parking</b>	<b>747</b>	<b>747</b>	<b>747</b>
<b>Total On-Site and Off-Site Parking</b>	<b>1,144 spaces</b>	<b>944 spaces</b>	<b>1,126 spaces</b>

**Appendix B-Link to Conditions Assessment Report by EHDD**

Part One:

<http://sfrecpark.org/wp-content/uploads/PFA-FINAL-Phase-I-Report-PART-ONE.pdf>

Part Two:

<http://sfrecpark.org/wp-content/uploads/PFA-FINAL-Phase-I-Report-PART-TWO.pdf>

### Appendix C- Palace Drive Parking Lot

Area highlighted and cross hatched below in yellow is Recreation and Park Department owned parking lot along Palace Drive.



**Appendix D-Link to Tenant Option Summary by EHDD**

<http://sfrecpark.org/wp-content/uploads/Tenant-Options-Summary-prepared-by-EHDD.pdf>

## Appendix E-Standard Lease Terms

In addition to standard commercial lease provisions, it is anticipated that the lease will require the Respondent, its subtenants, contractors and subcontractors to comply with all City regulatory requirements applicable to the Respondent and the project, and to comply with requirements for entering into contracts with the City acting in its proprietary (not regulatory) capacity in effect at the time the Lease is executed. Many of those policies are codified in the San Francisco Administrative Code and the San Francisco Environment Code.

Descriptions of or sample language for most of the special provisions required by the San Francisco Municipal Codes (available at [www.sfgov.org](http://www.sfgov.org)) and City policies is set forth below. Capitalized or highlighted terms not defined in the sample provisions have the meanings ascribed to them in the cited ordinance.

Where applicable, reference to the governing ordinance is given in brackets following the provision. References are to San Francisco Municipal Codes unless otherwise indicated.

NOTE: These provisions are subject to change/updating as required between now and when the proposed lease is finalized.

- 1. Possessory Interest and Other Taxes.** The selected Respondent will be required to pay possessory interest taxes on the assessed value of its leasehold interest. Respondents may contact the City Assessor's office for more information on how this tax will be calculated. The selected Respondent also will be required to pay other applicable city taxes, including transient occupancy, parking, sales, and payroll taxes. San Francisco Administrative Code Sections 23.38 and 23.39 require that the City report certain information relating to leases, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that the lessee report certain information relating to any assignment of or sublease under a lease of City property to the County Assessor within sixty (60) days after such assignment or sublease transaction. The lease will require the Respondent to agree to provide such information as may be requested by the City to enable the City to comply with this requirement. **[Reference: Administrative Code 23.38; 23.39]**
- 2. Indemnity/Hold Harmless.** The Indemnity/Hold Harmless provision will be crafted to reflect the relative risks, rights and obligations of the parties. Changes to City's standard provision must be approved by City's Risk Manager and reviewed by the City Attorney. **[Reference: Administrative Code 1.24]**
- 3. Insurance Coverage.** The types and amounts of insurance will be tailored to the particular risks of the operation/use and will be subject to approval of City's Risk Manager. **[Reference: Administrative Code 6.22(B); 6.42(B); 21.20]**
- 4. 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, in the event of 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.
- 5. Arts Commission Approval.** With respect to any alterations or improvements which would be visible from the exterior of buildings, 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. **[Reference: Charter Section 5.103]**

**6. Wages and Working Conditions.** Tenant agrees that any person performing labor on any "public work" at the Premises shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Tenant improvements and alterations, and any construction, alteration, demolition, installation, maintenance, repair, or laying of carpet at, or hauling of refuse from, the Premises comprise a public work if paid for in whole or part out of public funds in excess of the levels specified in California Labor Code Section 1782(d)(1). The terms "public work" and "paid for in whole or part out of public funds" as used in this Section are defined in California Labor Code Section 1720 *et seq.*, as amended. Tenant shall include in any contract for such labor a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises. **[Reference: Administrative Code Section 6.22(E)]**

**7. Local Hire Requirements.** Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 6.22(G) (the "Local Hiring Policy"). The tenant improvements and alterations are subject to the Local Hiring Policy unless the cost for such tenant improvement work or alteration is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Policy. Accordingly, as a condition of this Lease, Tenant agrees that it shall comply with the requirements of the Local Hiring Policy applicable to the tenant improvements or any alteration and shall require its subtenants to comply with those requirements to the extent applicable. Before starting any tenant improvement work or any alteration, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to verify if any Local Hiring Ordinance requirements apply to such work. Tenant shall comply with all such applicable requirements. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease and may subject Tenant and its subtenants to the consequences of noncompliance specified in the Local Hiring Policy, including but not limited to penalties. Without limiting the foregoing:

(1) estimated to cost more than \$750,000, Tenant and its subtenants shall comply with the applicable mandatory participation levels for Project Work Hours performed by Local Residents, Disadvantaged Workers, and Apprentices as set forth in San Francisco Administrative Code Section 6.22(G)(4).

(2) For a Covered Project estimated to cost more than \$1,000,000, Tenant and its subtenants shall prepare and submit a local hiring plan to OEWD for approval as set forth in San Francisco Administrative Code Section 6.22(G)(6) prior to commencing any of the work subject to the Local Hiring Policy.

(3) Tenant and its subtenants shall comply with the applicable record keeping and reporting requirements and shall cooperate in City inspections and audits for compliance with the Local Hiring Policy, including access to employees of its contractors and subcontractors and other witnesses at the Premises.

(4) Tenant agrees that (i) Tenant shall comply with all applicable requirements of the Local Hiring Policy; (ii) the provisions of the Local Hiring Policy are reasonable and achievable by Tenant and its subtenants; and (iii) Tenant has had, and its subtenants will have prior to signing their subleases for the Premises, a full and fair opportunity to review and understand the terms of the Local Hiring Policy.

**[Reference: Administrative Code Section 6.22(G)]**

**8. Prevailing Wages for Theatrical Workers.** Tenant further acknowledges that City law entitles individual engaged in theatrical or technical services related to the presentation of a Show at the Premises, including individuals engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, to be paid not less than the Prevailing Rate of Wages (which includes fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the Show is free and open to the public or meets any of the other exemptions in San Francisco Administrative Code Section 21C.4(b). Capitalized terms in this subsection shall have the meanings provided in San Francisco Administrative Code Section 21C.4. Accordingly, Tenant, as a condition of this Lease, agrees that:

(1) Tenant shall comply with the obligations in San Francisco Administrative Code Section 21C.4, and shall require its subtenants, contractors, and subcontractors to comply with the obligations in San Francisco Administrative Code Section 21C.4, including the payment of Prevailing Rate of Wages to individuals engaged in theatrical or technical services related to the presentation of a Show at the Premises. In addition, if Tenant or its subtenant, contractor, or any subcontractor fails to comply with these obligations, City shall have all available remedies against Tenant to secure compliance and seek redress for workers who provided the services as described in San Francisco Administrative Code Section 21C.7, together with the remedies set forth in this Lease.

(2) City may inspect and/or audit any workplace, job site, books and records pertaining to the presentation of a Show at the Premises, and may interview any individual who provides, or has provided, work involving theatrical or technical services for the Show at the Premises.

(3) Tenant shall provide to City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate the presentation of a Show at the Premises.

For current Prevailing Wage rates, 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. Tenant acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Tenant and any subtenants and subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors. **[Reference: Administrative Code Section 21C.4]**

**9. Prevailing Wages for Trade Show and Special Event Work.** Tenant acknowledges that City law entitles individuals engaged in work involving the 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 to receive the Prevailing Rate of Wages (which includes fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the event is free and open to the public or meets any of the other exemptions in San

Francisco Administrative Code Section 21C.8(b). Capitalized terms in this Section shall have the meanings provided in in San Francisco Administrative Code Section 21.C8. Accordingly, Tenant, as a condition of this Lease, agrees that:

(1) Tenant shall comply with the obligations in San Francisco Administrative Code Section 21C.8, and shall require Tenant's subtenants, contractors, and any subcontractors, to comply with the obligations in Section 21C.8, including the payment of Prevailing Wage Rates to workers engaged in On-site work on Trade Shows or Special Events. In addition, if Tenant or its subtenant, contractor (or any subcontractor) fails to comply with these obligations, City shall have all available remedies against Tenant to secure compliance and seek redress for workers who provided the services as described in Section 21C.8, together with the remedies set forth in this Lease.

(2) City may inspect and/or audit any workplace, job site, books and records pertaining to On-site work on Trade Shows or Special Events at the Premises, and may interview any individual who provides, or has provided, On-site work on Trade Shows or Special Events at the Premises.

(3) Tenant shall provide to City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate a Trade Show or Special Event at the Premises.

Tenant acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Tenant and any subtenants and subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors. For current Prevailing Wage rates, 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. **[Reference: Administrative Code Section 21C.8]**

**10. 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. **[Reference: Administrative Code Section 23.50]**

**11. 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) 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 prior to 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. **[Reference: Administrative Code Sections 12B and 12C]**

**12. 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.

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

**14. Certification of No Known 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. **[Reference Charter Section 15.103; Article III, Chapter 2 Campaign and Governmental Conduct Code;; California Government Code and Section 87100 et seq. and Section 1090 et seq.]**

**15. 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. **[Reference: Environment Code Section 802(b) and 802(c)]**

**16. 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, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. **[Reference: Administrative Code Section 4.20]**

**17. Limitation on Alcoholic Beverage Advertising.** Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. 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, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. That portion of the Premises used for operation of a restaurant, concert or sports venue, or other facility or event where the sale production or consumption of alcoholic beverages is permitted, shall be exempt from the alcoholic beverage advertising prohibition during the period such use is allowed. **[Reference: Administrative Code Section 4.20]**

**18. First Source Hiring Ordinance.** The provisions of San Francisco Administrative Code Chapter 83, the First Source Hiring Program, are incorporated in this Section by reference, and are made a material part of this Lease as though fully set forth herein. As an essential term of, and consideration for, this Lease, 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. *[Reference: Administrative Code Section 83. NOTE: Applies to entry level positions for work performed on the contract on property owned by the City.]*

**19. 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 others which is covered by this Section available to the public upon request. *[Reference Administrative Code Section 67.24(e)]*

**20. 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 Tenant under this Lease; 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. *[Reference Campaign and Governmental Conduct Code Section 1.126]*

**21. 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. *[Generally: Implementation of City's transit-first policy.]*

**22. 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.

**23. 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" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater. *[Reference Environment Code Chapter 13.]*

**24. Resource Efficiency.** Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to 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. *[Reference Environment Code Sections 700 to 713]*

**25. Food Service Waste Reduction Requirements.** Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, 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 herein. 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. Without limiting City's other rights and remedies, Tenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a 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 amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision. *[Reference Environment Code Chapter 16]*

**26. San Francisco Bottled Water Ordinance.** 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. *[Reference Environment Code Chapter 24]*

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

(a) Unless exempt, 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; "Chapter 12 T"), which are hereby incorporated as may be amended from

time to time, 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 City's Real Estate Division for additional information. City's Real Estate Division 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. **[Reference: Administrative Code Chapter 12T]**

**28. 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. ***[Reference Executive Directive 09-03]***

**Appendix F**-Link to Request for Concept Proposals and supporting documents, Responses to the Request for Concept Proposals and Public Comments on the Proposals

RFCP and Supporting Documents:

<http://sfrecpark.org/about/partnership-opportunities/palace-of-fine-arts-request-for-concept-proposals/>

Proposals:

<http://sfrecpark.org/about/partnership-opportunities/palace-of-fine-arts-request-for-concept-proposals/palace-of-fine-arts-proposals/>

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