

*Draft Permit dated February 25, 2016*

PERMIT TO ENTER AND USE PROPERTY  
(KEZAR STADIUM AND OTHER FACILITIES)

by and between

CITY AND COUNTY OF SAN FRANCISCO

and

FCSF, LLC,  
a Delaware limited liability company  
Permittee

to enter and use property located at  
Kezar Stadium and Certain Other Facilities,  
San Francisco, California

[\_\_\_\_\_], 2016

**CITY AND COUNTY OF SAN FRANCISCO  
 PERMIT TO ENTER AND USE PROPERTY**  
 (Kezar Stadium and Certain Other Facilities, San Francisco)

THIS PERMIT TO ENTER AND USE PROPERTY (this "Permit"), dated for reference purposes only as of \_\_\_\_\_, 2016, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through its Recreation and Park Commission (the "Commission"), and FCSF, LLC, a Delaware limited liability company ("Permittee").

City and Permittee agree as follows:

**1. BASIC PERMIT INFORMATION; DEFINITIONS**

**1.1. Basic Permit Information**

<i>Permit Date:</i>	_____, 2016
<i>Permitter:</i>	<b>CITY AND COUNTY OF SAN FRANCISCO</b> , a municipal corporation, operating by and through the <b>SAN FRANCISCO RECREATION AND PARK COMMISSION</b>
<i>Recreation and Park Department ("RPD"):</i>	The San Francisco Recreation and Park Department, sometimes referred to in this Permit as "RPD" or the "Department".
<i>RPD Address for Notices:</i>	Recreation and Park Department Permits and Reservations 501 Stanyan Street San Francisco, California 94117 Attention: General Manager Re: Kezar NASL Team Soccer Permit
<i>Permittee:</i>	<b>FCSF, LLC</b> , a Delaware limited liability company
<i>Permittee's Contact Person:</i>	Name: Brian Helmick, CEO Telephone: Email:
<i>Permittee's Address for Notices:</i>	San Francisco Deltas 5 Freelon Street #200 San Francisco, CA 94107
<i>Permit Areas:</i>	The "Permit Areas" shall refer collectively to the Event Areas, the Practice Fields, the Office Space, and the Storage Space, as defined below, during the periods of Permittee's use of such areas pursuant to this Permit.
<i>Event Areas:</i>	The Event Areas shall refer collectively to the following areas, each of which is generally depicted on the attached Exhibit A:

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	<ul style="list-style-type: none"> <li>• Kezar Stadium;</li> <li>• Kezar Pavilion Locker Room;</li> <li>• That certain space in Golden Gate Park known as the “Kezar Triangle”; and</li> <li>• That certain space in Golden Gate Park known as the “Kezar Waller Street Lot.”</li> </ul>
<i>Office Space:</i>	That certain designated space located on the second level of Boxer Stadium, located in Balboa Park, San Francisco.
<i>Storage Space:</i>	Space in the parking lot in Balboa Park, San Francisco, sufficient to accommodate a storage container with dimensions of 10 (H) x 20 (W) x 40 (L), as designated by RPD from time to time.  <i>See Section 3(f).</i>
<i>Practice Fields:</i>	The Practice Fields are comprised of practice soccer pitches in San Francisco, California at Boxer Stadium, West Sunset Soccer Fields, Crocker Soccer Fields, Minnie Lovie Soccer Fields, the Polo Fields, and the Beach Chalet. The Parties anticipate that Permittee will reserve and use (i) one grass Practice Field at Boxer Stadium, the Polo Fields or West Sunset for 2 hours per day, 3 days per week, 50 weeks per year, and (ii) one turf Practice Field at Crocker Soccer Fields, the Minnie Lovie Soccer Fields, or the Beach Chalet pursuant for 2 hours per day, 2 days per week, 50 weeks per year, in accordance with the provisions of Section 3(e) below.  <i>See Section 3(e).</i>
<i>Purpose of Permit; Description of Events:</i>	Permittee’s San Francisco NASL club, the Deltas (the “Team”), will use the Event Areas for 15 to 16 home league games and related activities each year (subject to the provisions of Section 3(a) below regarding possible use for additional preseason and playoff games) (each, an “Event” and collectively the “Events”), commencing in calendar year 2017. In no event shall Permittee use Kezar Stadium for more than twenty (20) home league games per season. During the Term of this Permit Permittee may reserve Practice Fields as provided in Section 3(e), and use certain Office Space and Storage Space in connection with the Events and the operation and management of the Team for general office and storage purposes, as provided in Section 3(f) and Section 3(g).  <i>See Section 3.</i>
<i>Availability of Stadium for School Uses; Coordination of Schedule:</i>	Permittee shall cooperate with certain school groups to develop a master schedule of proposed Event Periods for Permittee’s use of the Stadium that accommodates the dates and times required by such groups, as described in Section 3(k). The final schedule for use of the Stadium for the next calendar year will be set by December 1 of each year.

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	<i>See Section 3(k)</i>						
<i>Term:</i>	The term of this Permit shall commence on the later of the Effective Date (as defined in Section 1.2) or April 1, 2016 (the “Commencement Date”) and end on December 1, 2021 (the “Term”).						
<i>Annual Base Scheduled Use Fee Prepayment:</i>	Thirty Thousand Dollars (\$30,000) per year (the “Annual Base Scheduled Use Fee Prepayment”). Permittee shall pay the Annual Base Scheduled Use Fee Prepayment on or before March 1 of each year of the Term, commencing on March 1, 2017, and such Annual Base Scheduled Use Fee Payment shall be credited against the next \$30,000 Permit Fees next due under this Permit, as provided in Section 6.4. The amount of the Annual Base Scheduled Use Fee Prepayment shall be subject to annual increases as provided in Section 6.4.  <i>See Section 6.4.</i>						
<i>Permit Fees:</i>	“Permit Fees” means all Fees payable under this Permit other than the Required Event Reimbursements, and includes the following: Kezar Fixed Event Fees Kezar Hourly Event Fees Kezar Triangle Event Fees Kezar Waller Street Lot Event Fees Office License Fees Storage License Fees Practice Field Permit Fees						
<i>Kezar Fixed Event Fees; Kezar Hourly Event Fees:</i>	Kezar Fixed Event Fees: \$1,000 per Event Kezar Hourly Event Fees: \$500 per hour Subject to annual increase based on any increase in the Index. <i>See Section 6.1.</i>						
<i>Kezar Triangle Event Fee:</i>	Kezar Triangle Event Fee: \$500 per Event Subject to annual increase based on any increase in the Index. <i>See Section 6.1.</i>						
<i>Kezar Waller Street Lot Event Fee:</i>	Kezar Waller Street Lot Event Fee: \$500 per Event Subject to annual increase based on any increase in the Index. <i>See Section 6.1.</i>						
<i>Office License Fee and Storage Space License Fee:</i>	<table border="0"> <thead> <tr> <th><u>License Area</u></th> <th><u>Applicable Permit Fee</u></th> </tr> </thead> <tbody> <tr> <td>Office Space</td> <td>\$800 per month</td> </tr> <tr> <td>Storage Space</td> <td>\$100 per month</td> </tr> </tbody> </table> Subject to annual increase based on any increase in the Index. <i>See Section 6.1.</i>	<u>License Area</u>	<u>Applicable Permit Fee</u>	Office Space	\$800 per month	Storage Space	\$100 per month
<u>License Area</u>	<u>Applicable Permit Fee</u>						
Office Space	\$800 per month						
Storage Space	\$100 per month						

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<i>Practice Field Fees:</i>	<p>Permittee shall pay fees for the Practice Fields (“Practice Field Permit Fees”) in accordance with the schedule in effect from time to time under the San Francisco Park Code, and subject to such periodic increase, if any, as provided therein.</p> <p><i>See Section 6.1.</i></p>
<i>Required Event Reimbursements:</i>	<i>See Section 6.8.</i>
<i>Discount Tickets:</i>	<p>Permittee shall make no fewer than 3,000 tickets for each Event available to the general public at a cost of \$20 or less (as adjusted as provided in <u>Section 5.8</u>) (the “Discount Tickets”). Preference for Discount Tickets may be provided to San Francisco residents.</p>
<i>Community Benefit Tickets:</i>	<p>Permittee will provide for each Event at least 100 complimentary tickets to community centers, non-profits, or youth recreation groups (the “Community Benefit Tickets”). The number of Community Benefit Tickets distributed by Permittee for each Event shall be credited against the number of Discount Tickets Permittee is required to make available for such Event.</p>
<i>Complimentary Tickets</i>	<p>Permittee will donate for each Event at least fifty (50) complimentary tickets to the Department.</p>
<i>Required Kezar and Boxer Stadium Improvements:</i>	<p>Permittee has the obligation to perform the Required Kezar and Boxer Stadium Improvements, subject to the terms and conditions of <u>Section 8</u>.</p> <p><i>See Section 8 and Exhibit D</i></p>
<i>Credit Against Certain Fees for Approved Stadium Improvement Costs:</i>	<p>See <u>Section 8.2(j)</u> and <u>Exhibit D</u>.</p>
<i>Security Deposit:</i>	<p>Five Thousand Dollars (\$5,000)</p> <p><i>See Section 6.3.</i></p>
<i>Defined Terms:</i>	<p>Capitalized terms not otherwise defined are defined in <u>Section 1.2</u> below.</p>
<i>Exhibits and Attachments:</i>	<p>Exhibit A – Depiction of Kezar Stadium, Kezar Pavilion Locker Room, Kezar Triangle and Kezar Waller Street Lot</p> <p>Exhibit B – Summary of Current Projected Permit Fees</p> <p>Exhibit C – Estimate of Known Reimbursable Expenses</p> <p>Exhibit D – Summary of Required Kezar and Boxer Stadium Improvements</p> <p>Exhibit E – Rules and Regulations Regarding Installations</p>

**1.2. Definitions**

As used in this Permit, the following terms shall have the following respective meanings:

- (a) “City” shall mean the City and County of San Francisco, a municipal corporation.
- (b) “Commission” means the Recreation and Park Commission of the City and County of San Francisco, or the General Manager thereof when acting for and on behalf of the Commission.
- (c) “CPI” or “Index” means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.
- (d) “Designated Facility Manager” shall mean the staff member with the City’s Recreation and Park Department in charge of game day operations of the Stadium.
- (e) “Effective Date” shall mean the date upon which (i) the Commission passes a resolution approving this Permit, and (ii) the Parties hereto have duly executed and delivered this Permit.
- (f) “Event” and “Events” have the meaning given in Section 1.1 above.
- (g) “Event Period” shall mean the 6 hour period for each Event described in the approved Operations Plan, or the longer or shorter period proposed by Permittee and approved by the General Manager.
- (h) “General Manager” shall mean the General Manager of the City’s Recreation and Parks Department or his or her designee.
- (i) “Hazardous Material” shall have the meaning set forth in Section 4(c) of this Permit.
- (j) “Index” means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.
- (k) “Kezar Stadium” or “Stadium” shall mean that certain real property and improvements consisting of a sports stadium located in the City and County of San Francisco and generally depicted on Exhibit A attached hereto and incorporated herein.
- (l) “Operating Plan” shall have the meaning set forth in Section 5.3 of this Permit.
- (m) “Permittee” shall have the meaning set forth in Section 1.1 of this Permit.

(n) "Permit Areas" shall refer collectively to the Event Areas, the Practice Fields, the Office Space, and the Storage Space, during the periods of Permittee's use of such areas pursuant to this Permit.

(o) "Permit Fee" shall mean any of the following fees: Kezar Fixed Event Fees; Kezar Hourly Event Fees; Kezar Triangle Event Fees; Kezar Waller Street Lot Event Fees; Office License Fees; Storage License Fees; and Practice Field Permit Fees.

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

(q) "RPD" or "Department" means the San Francisco Recreation and Park Department.

## **2. LICENSE; PERMIT AREAS**

City confers to Permittee a revocable, temporary, personal, unassignable, and non-exclusive privilege to enter upon and use those portions of the Event Areas and other Permit Areas, subject to the terms of this Permit.

Such privilege to enter and use the Permit Areas shall be for the limited purpose and subject to the terms, conditions and restrictions set forth below. This Permit gives Permittee a license only, and notwithstanding anything to the contrary herein, this Permit does not constitute a grant by City of any ownership, possessory, leasehold, easement or other property interest or estate whatsoever in the Permit Areas, or any portion thereof subject to all the terms and conditions of this Permit. The privilege given to Permittee under this Permit is effective only insofar as the rights of City in the Permit Areas are concerned, and Permittee shall obtain any further permission necessary because of any other existing rights affecting the Permit Areas.

City may revoke this Permit upon written notice to Permittee, without limiting any of its other rights and remedies, whereupon Permittee shall immediately surrender the Permit Areas in the condition required hereunder: (i) in the event Permittee fails to comply with any of the terms or conditions of this Permit and cure such non-compliance within ten (10) business days after written notice by City (or in the case of Permittee's failure to comply with any non-monetary obligation that cannot be cured within such period, in the event Permittee does not commence cure within such period and diligently pursue such cure to completion); or (ii) in the event Permittee fails to comply with a term or condition of this Permit more than three (3) times (provided that City gave Permittee written notice of at least three (3) prior failures to comply with such term or condition).

## **3. USE OF PERMIT AREAS – SCOPE OF PERMITTED USE**

(a) Kezar Stadium. Permittee shall have the option to use Kezar Stadium to exhibit the Events described in Section 1.1 during the Event Periods, and for the sales of food, beverage and other commodities, articles and services usually sold to sporting event participants during the Event Periods, as provided in Section 3(h) below, and for no other use or purpose. In no event shall Permittee use Kezar Stadium for more than twenty (20) home league games per year.

(b) Kezar Pavilion Locker Room. Permittee shall have the option to use Kezar Stadium for locker room purposes in connection with Events during the Event Periods, and for no other use or purpose.

(c) Kezar Triangle. Permittee shall have the option to use Kezar Triangle for staging before game events during the Event Periods, and for no other use or purpose. If Permittee wishes to use Kezar

Triangle on some or all Event days, Permittee must provide the Department prior notice of the days and times that are requested by completing a Special Events Application available on the Department's Permits and Reservations website not later than November 1 of the prior calendar year. Notwithstanding the foregoing or anything to the contrary in this Permit, if Department staff determines from time to time that Kezar Triangle should be closed for a period for maintenance or for rest, Kezar Triangle shall not be available for Permittee's use during such period. Further, the General Manager may impose additional restrictions on the use of Kezar Triangle to safeguard the condition of Kezar Triangle.

(d) Kezar Waller Street Lot. Permittee shall have the option to use Kezar Waller Street Lot for the sole purpose of pacing during the Event Periods; provided however City reserves the right to not make the Kezar Waller Street Lot available during one or more Event Periods upon not less than 30 days prior notice to Permittee.

(e) Practice Fields. Permittee shall have the option to use the Practice Fields for the sole purpose of Team practice for the Events described in Section 1.1. One Practice Field shall be available for Permittee's use each weekday for 2 hours, ending prior to 2:30 P.M. Permittee must reserve Practice Fields through the Department's Permit and Reservations website. Permittee may request additional or weekend practice times, subject to availability. Permittee must request Practice Fields in writing no later than 30 days in advance. Any cancellations must be made through the Department's Permit and Reservations website at least 30 days in advance of the reserved practice time. Permittee will be required to pay any applicable change or cancellation fees generally charged by the Department from time to time. In the event of rain closures, Permittee will receive a credit or, alternatively, use of a practice field on an all-weather field.

(f) Office Space: Permittee's Election to Cease Use of Office Space. Permittee shall have the option to use the Office Space for general office purposes in connection with in connection with the Events and the operation, management and promotion of the Team, and for no other use or purpose. Permittee shall have the option to terminate the license to use the Office Space by providing not less than sixty (60) days prior written notice of such election, specifying the date on which such license shall end, and in such event (i) Permittee shall surrender the Office Space on such date in the condition required hereunder, and (ii) Permittee's license to use the Office Space shall terminate on such date and all rights and duties of the parties under this Permit with respect to the Office Space shall terminate effective as of midnight of such date; provided, however Permittee shall remain liable for all of Permittee's obligations which arose under this Permit with respect to the Office Space prior to midnight on such date and Permittee's obligation to indemnify, defend and hold City harmless for matters relating to the Office Space contained in this Permit shall survive the deletion of the Office Space from this Permit with respect to all claims, injuries, losses, damages, costs and expenses, including attorneys' fees, arising from or connected with circumstances, actions or omissions that occurred on or about the Office Space prior to midnight on the later of such date or the date on which Permittee vacates the Office Space in accordance with the provisions of this Permit.

(g) Storage Space. Permittee is hereby granted a license to place and use a \_\_\_ x \_\_\_\_\_ foot storage container on the grounds of Balboa Park in a location to be designated by the Department (the "Storage Space"). Without limiting the generality of Section 19 below, City shall have no liability if Permittee's personal property stored in the storage container is damaged or stolen. The storage container and Storage Space shall be used for the sole purpose of storing Permittee's equipment and personal property used in connection with the Events and the Team practices on the Practice Fields. City has the right to require Permittee to relocate the storage container to another portion of the Boxer Stadium parking lot on not less than thirty (30) days written notice to Permittee, and Permittee shall relocate the storage container by the date specified in such notice.

(h) Food, Beverage and Other Sales. During each Event Permittee shall be entitled to operate concessions on the Event Area for the sale of beverages, food and foodstuffs, and other



commodities, articles and services usually sold to sporting event participants. Permittee must require all vendors to, at all times, be neatly and cleanly uniformed and to not unreasonably disturb or offend participants or disturb or interfere with the Event. Permittee shall conduct any food, beverage and merchandise sales in compliance with all applicable rules, regulations and codes including, without limitation, the San Francisco Department of Public Health and the California Department of Alcoholic Beverage Control. Alcohol sales shall be subject to the restrictions set forth in Section 4(h). Permittee shall have the right to install temporary booths and provide staff for the sale of such merchandise at the areas within Kezar Stadium [and the other Event Areas] mutually agreed upon by the Parties.

(i) Generally. Permittee covenants that Permittee shall use and shall cause its officers, agents, employees, invitees, contractors, and subcontractors of every tier and the members, officers, agents, employees, invitees, contractors and subcontractors of the teams to use the Permit Areas with due care at all times to avoid any damage or harm to the Permit Areas. Permittee shall be responsible for the acts or omissions of any agents or invitees of any team as if they were the acts or omissions of Permittee's agents or invitees. City shall use reasonable efforts to make the Permit Areas available for Permittee's use in accordance with the terms and conditions of this Permit, provided that in the event of City's failure or inability to make the Permit Areas available because of required maintenance or repairs, damage or destruction, or for any reason, such failure or inability shall not impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or lost profits by Permittee.

(j) General Availability of Permit Areas to Others. At all times during the term of this Permit, and subject to the provisions of this Permit, the use of the Permit Areas shall be available for such other events and uses as City may, in its discretion, determine, as long as such events do not unreasonably interfere with the Events, and provided that Permittee shall have the sole right to use the Office Space and Storage Space during the Term.

(k) Availability of Permits Areas to School Groups; Coordination of Schedules: In order to ensure that school use of the Permit Areas is not displaced, not later than November 1 of each year, City will provide Permittee with a list of use of the Stadium for the next year for purposes of SFUSD track and field events and football games, for Sacred Heart Cathedral football games, for North Coast Section soccer and lacrosse games, and for other school uses (collectively, "School Use"); provided that the number of School Uses on such list will not increase above 2016 levels. Permittee will cooperate with the representatives of the groups on the School Use list to attempt to develop a master schedule of proposed Event Periods for Permittee's use of the Stadium that accommodates the dates and times required by such groups for the proposed School Use of the Stadium. City will facilitate conversations between Permittee and representatives of the School Use groups to ensure to the extent practicable that that all uses can be accommodated to the reasonable satisfaction of all parties. The final schedule for use of the Stadium for the next calendar year will be set by December 1 of each year.

#### **4. RESTRICTIONS ON USE**

Permittee agrees that, by way of example only and without limitation, the following uses of the Permit Areas by Permittee or any other person claiming by or through Permittee are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

(a) Improvements. Except as otherwise expressly provided in this Permit, Permittee shall neither (i) construct or place any temporary or permanent structures or improvements nor (ii) alter any existing structures or improvements on, within, or under the Permit Areas without the prior written approval of the General Manager, which shall not be unreasonably withheld.

(b) Dumping. Permittee shall not dump or dispose of refuse or other unsightly materials on, in, under or about the Permit Areas.

(c) Hazardous Material. Permittee shall not cause, nor shall Permittee allow any of its Agents or Invitees (as defined in Section 18 below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Permit Areas, or transported to or from the Permit Areas. Permittee shall immediately notify City when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Permit Areas. Permittee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee shall, without cost to City and in accordance with all laws and regulations, return the Permit Areas to the condition immediately prior to the release. In connection therewith, Permittee shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Areas or are naturally occurring substances in the Permit Areas, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Permit Areas.

(d) Nuisances. Permittee shall not conduct any activities on or about the Permit Areas that constitute waste, nuisance or unreasonable annoyance to City, to the owners or occupants of neighboring property or to the public.

(e) Damage. Permittee shall not do anything about the Permit Areas that will cause damage to any of City's property.

(f) Limitation on Signs and Displays. Permittee shall not mar or deface any part of the Permit Areas, nor shall it display any signs, pictures, notices or advertisements, either on the outside or inside of the Permit Areas, without the prior written consent of the General Manager, in his or her sole reasonable discretion. All signage must comply with San Francisco Park Code Section 3.07(b)(3), which provides that all signage may only be installed on the day of the event except that signage in a designated location may be posted one week prior informing the public of the event to occur.

(g) No Smoking. Smoking is prohibited in all Permit Areas. Neither Permittee nor the teams shall knowingly or intentionally permit the smoking of tobacco products in the Stadium except as allowed under San Francisco Health Code Section 1009.22(b).

(h) Alcohol Restrictions. Permittee shall comply with all regulations set by the California Department of Alcoholic Beverage Control. Permittee shall not over serve alcoholic beverages to individuals and shall not serve alcoholic beverages to obviously intoxicated individuals. Alcoholic beverage sales must end by 80 minutes after game start. The sale of beer and wine may be available generally in the Stadium during Event Periods. The sale of any other alcoholic drinks may only be made only in a designated VIP area, and such drinks may only be consumed in such area. Permittee shall collaborate with both the Department and San Francisco Police Department (Park Station) to develop and implement a comprehensive Alcohol Monitoring Plan, which plan shall be continually monitored and

revised, if necessary, at the direction of the Department. The Alcohol Monitoring Plan, location, price, and conditions of any and all alcohol sales must be approved in advance in writing by the General Manager.

## **5. OTHER COVENANTS AND DUTIES OF PERMITTEE**

### **5.1. Arrangements for Events**

Subject to City's approval rights under this Permit, Permittee shall perform the following obligations at its sole cost and expense, unless otherwise specified in this Permit.

(a) General Conduct; Department Requirements Regarding Security and Crowd Control. Permittee shall conduct its activities at all times with full regard for public safety and shall observe and abide by all applicable regulations and requests of Department, the Commission and of duly authorized governmental agencies responsible for public safety. Permittee agrees that minimum requirements for security and crowd control can be set by the Designated Facility Manager, acting on behalf of Department, in consultation with Permittee and the San Francisco Police Department. This requirement for security in no way precludes any requirements that may be set by the San Francisco Police Department.

(b) Arrangements for Traffic and Security. Permittee shall make any and all necessary arrangements with the San Francisco Police Department, Department of Parking and Traffic, San Francisco Municipal Transit Authority (Muni), San Francisco Fire Department, and any private security firms for the following services: (i) directing traffic, (ii) protecting employees, participants, vendors and others in the Permit Areas from disorderly or unlawful conduct, (iii) providing on-site and off-site security before during and after the Event to ensure a safe and orderly Event, and (iv) other tasks that would be customarily performed by private security at this type of event for the purpose of ensuring a safe and orderly Event.

(c) Transportation Plan. Permittee must submit annually to the City a transportation plan (the "Transportation Plan") as part of the Operating Plan. At the request of the City, Permittee may be required to modify the Transportation Plan at any time based on expected attendance. The Transportation Plan must include alternative transportation options (bus, bicycles). Among other matter, conditions might include some or all of the following, depending on the expected:

- Public notice of alternative transportation routes
- Bicycle valet parking area
- Additional Muni buses
- Rerouting Muni buses
- Alternative bus transportation
- Additional DPT officers, Park Rangers or Police Officers at the expense of the Permittee
- Arrangements for alternative parking areas
- Alternative transportation for all staff.

The Transportation Plan must be included in Event publicity, which must encourage the use of public transportation.

(d) Security Plan. Permittee must submit a security plan to the City annually (the Security Plan") as part of the Operating Plan. At the request of the City, the Permittee may be required to modify

the Security Plan at any time based on conditions or issues at any game. The Security Plan will provide details on compliance with Section 5.1(b) above and will include the name of the private security company providing services. Any change in the private security company will require permission of the City

(e) Police Department Charges; Other City Departments. City's Board of Supervisors has directed the San Francisco Police Department to charge all promoters for security and/or traffic services which are required as a result of their promotion. Permittee shall pay all fees required by other City, County and State governmental agencies resulting from the production of the activities contained in this Permit.

(f) First Aid Station. Permittee shall provide a stationary first aid station on-site during all events contemplated by in this Permit and shall ensure that the station is equipped with necessary personnel and supplies and provide all other medical services necessary for the Event.

(g) Reimbursements. Permittee shall pay City for all reimbursements required hereunder, including, without limitation, as set forth in Section 6.8 below, within fourteen (14) days of a written request for reimbursement from the City. City's request for reimbursement shall include invoices or other documentation of costs and expenses.

(h) Insurance. Permittee shall satisfy all insurance requirements as set forth in this Permit and shall provide the Designated Facility Manager with copies of all insurance certificates no later than five (5) days prior to Permittee's first use of any Permit Areas.

(i) Kezar Stadium. Permittee shall use the name Kezar Stadium in advertising for the Events and shall not identify the Stadium by any other name.

(j) Media. Permittee shall make arrangements for any television or other media coverage of the Events.

(k) Retention of Books. Permittee shall maintain all books of account, records, cash receipts, and other records relating to gross revenues for a period of at least four (4) years after the termination of this Permit.

(l) Clean Up and Custodial Services: Permittee shall be responsible for cleaning the facility during and after each Event. In the event that the facility is not fully cleaned after the Event, City will assess a charge against Permittee for the cost of any clean up, and Permittee shall pay such charge within thirty (30) days of receipt of a demand therefor.

## **5.2. Licenses and Permits**

Permittee agrees to pay promptly all taxes (including without limitation any possessory interest tax and stadium admissions tax) or license fees required for the production of the Events, which may be required by federal state or local governmental agencies. Permittee shall provide the Designated Facility Manager with evidence of all permits or licenses required by any governmental agency having regulatory jurisdiction over the uses and activities at the Stadium for any and all activities planned or contemplated to occur on any portion of the Event Areas during an Event no later than five (5) days prior to the date of the Event.

## **5.3. Professional Operation of Events; Operating Plan**

Prior to the commencement of the Term and not less frequently than annually thereafter (or if applicable, at least sixty (60) days prior to the proposed date of any Event not covered in a prior Operating Plan), Permittee shall submit to the General Manager for review and approval a written plan

(the “Operating Plan”) enumerating in detail all activities, preparations, regulatory permits, Security Plan, Transportation Plan, and other conditions that must be completed in order to hold upcoming Events. Permittee shall implement the approved Operating Plan in the manner approved by the General Manager. The General Manager may, at the General Manager’s reasonable discretion, require Permittee to modify its Operating Plan if required for the safe and/or efficient operation of the Event and any other related activities in the Permit Areas. Permittee shall communicate at regular intervals approved by the General Manager with the Designated Facility Manager regarding the status of Permittee’s implementation of the Operating Plan.

**5.4. False Advertising**

Permittee shall provide the public with accurate information regarding the time, price and other matters pertaining to the events included in this Permit. If Permittee makes false representation regarding the Event or any related activities, the General Manager or his or her designee may require Permittee to correct any false statements through additional advertising.

**5.5. Mitigating Neighborhood Impact**

Permittee recognizes and acknowledges that the Event may have adverse impacts upon the neighborhood(s) surrounding the Stadium. Because of such potential adverse impacts, Permittee agrees that the General Manager may impose additional requirements upon the Permittee, if the General Manager and Permittee reasonably determine that such additional requirements are necessary and/or appropriate for the successful mitigation of any adverse impacts on the neighborhood(s) surrounding the Stadium caused by the occurrence of the Event.

**5.6. Approval Rights by City**

The following items are subject to the Designated Facility Manager’s prior reasonable approval: (a) all contracts between Permittee and other parties regarding the use of Kezar Stadium for the Event; (b) field and track protection material and schedule for installation and removal, if applicable; and (c) plans for any additional activities not directly related to the Event; including but not limited to pre-Event activities, post-Event activities, and fireworks. Plans for all of the above must be submitted at least fourteen (14) days in advance of the commencement of the Event Period.

**5.7. Discount, Community Benefit, and Complimentary Tickets**

Permittee shall make no fewer than 3,000 Discount Tickets available for each Event, and shall provide and distribute the Community Benefit Tickets, and Complimentary Tickets, described in Section 1.1.

On each Adjustment Date described in Section 6.1 below, the limit on the price of the Discount Tickets shall be set by multiplying the original limit of \$20 by a fraction, the numerator of which is the current Index and the denominator of which is the Base Index (as defined in Section 6.1).

**5.8. City’s Police Powers**

Permittee understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Stadium and not as a regulatory agency with police powers. The foregoing notwithstanding, however, nothing herein shall limit in any way City’s rights and powers, acting in City’s regulatory capacity, to enact legislation and impose regulatory requirements or restrictions upon the use and occupancy of the Stadium, including any portion of the Event Area, for the health and safety of the public.

**5.9. Surrender**

Following each Event and each practice, Permittee shall surrender the Event Areas or applicable Practice Fields, as applicable, in the same condition as received, except for reasonable wear and tear (other than wear and tear to the turf, which Permittee shall repair). Upon the expiration of this Permit, Permittee shall surrender the Office Area and Storage Area in the same condition as received, except for reasonable wear and tear. At such times, Permittee shall remove all of its property from the Permit Areas and any signs permitted hereunder, and shall repair, at its cost, any damage to the applicable Permit Area (including without limitation any damage to the turf) caused by such removal. Permittee's obligations under this Section shall survive any termination of this Permit.

**5.10. Intellectual Property; Music Broadcasting Rights**

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

**5.11. Amplified Sound**

The use of amplified sound shall be limited to announcements relating to the game and the singing of the National Anthem. Permittee may install temporary sound system after testing and consultation with the City about the impact on neighboring communities and if approved by the City.

**6. FEES, DEPOSITS AND REVENUES**

**6.1. Permit Fees; Periodic Adjustments of Certain Permit Fees**

Permittee shall pay to City the “Permit Fees” in the amount specified in Section 1.1 above. The Permit Fees shall be due and payable by wire transfer or cashier’s check, unless otherwise approved by the General Manager, at the times provided by this Permit.

On the anniversary date of this Permit each year (each, an "Adjustment Date"), the Kezar Fixed Event Fee, Kezar Hourly Event Fee, Kezar Triangle Event Fee, Kezar Waller Street Lot Event Fee, Office License Fee and Storage License Fee payable by Permittee shall be adjusted in the following manner. The Index in effect on such date shall be compared with the Index in effect on the Commencement Date (the “Base Index”). If the Index has increased over the Base Index, then the applicable Permit Fee payable on and after such Adjustment Date shall be set by multiplying the initial Permit Fee by a fraction, the numerator of which is the current Index and the denominator of which is the Base Index. In no event shall the applicable Permit Fee on or after the Adjustment Date be less than the such fee in effect immediately prior to the Adjustment Date.

The following Permit Fees are subject to annual adjustment as provided in the San Francisco Park Code: Practice Field Fees

**6.2. [Reserved]**

**6.3. Security Deposit**

At the time of execution of this Permit, Permittee shall deposit with City the sum specified in Section 1.1 as a security deposit (the "Security Deposit") to secure Permittee's faithful performance of all terms and conditions of this Permit, including, without limitation, its obligation to surrender the Permit Areas in the condition required by this Permit. Such Security Deposit shall be in the form of cash. The amount of the Security Deposit shall not limit Permittee's obligations under this Permit. Permittee agrees that City may (but shall not be required to) apply the Security Deposit in whole or in part to remedy any damage to the Permit Areas caused by Permittee, its Agents or Invitees, or any failure of Permittee to perform any other terms, covenants or conditions contained herein (including, but not limited to, the payment of City's reimbursable expenses as described in this Permit), without waiving any of City's other rights and remedies hereunder or at law or in equity and without any obligation. The amount of the Security Deposit shall in no way limit the liabilities of Permittee under any provision of this Permit.

**6.4. Facility Reservation Deposit**

Permittee shall pay to RPD the Annual Base Scheduled Use Fee Prepayment in the amount specified in Section 1.1 by the deadline specified in Section 1.1 as a facility reservation deposit. The Annual Base Scheduled Use Fee Prepayment will be applied toward the Permit Fees described in Section 6.1 above. The Annual Base Scheduled Use Fee Prepayment will be non-refundable. On each Adjustment Date described in Section 6.1 above, the amount of the Annual Base Scheduled Use Fee Prepayment next payable shall be set by multiplying the initial Annual Base Scheduled Use Fee Prepayment amount by a fraction, the numerator of which is the current Index and the denominator of which is the Base Index. In no event shall the Annual Base Scheduled Use Fee Prepayment amount on or after the Adjustment Date be less than the amount in effect immediately prior to the Adjustment Date.

**6.5. Food and Beverage Concession Revenue**

Permittee shall be entitled to retain any and all revenues generated during the Event Periods from the sale on the Event Areas of beverages, food and foodstuffs, and other commodities.

**6.6. Parking Revenues; Parking Areas for Permittee Use**

City owns the parking lot adjacent the Stadium, which is generally depicted on Exhibit A attached hereto and made a part hereof (the "Kezar Waller Street Lot"). Except as otherwise provided herein, during each Event Period, Permittee shall operate the Kezar Waller Street Lot. Permittee shall be entitled to retain any and all revenues generated from the Kezar Waller Street Lot during Event Periods, subject to the obligation to pay applicable parking taxes from such revenue.

**6.7. Merchandise Produced or Provided by Permittee**

Without limiting the provisions of Section 6.5 above, Permittee shall be entitled to retain one hundred percent (100%) of all revenues resulting from the sale of merchandise produced solely by or on behalf of Permittee for the Events, excluding any taxes thereon.

**6.8. Permittee to Reimburse City for Costs**

Permittee shall reimburse City for all costs reasonably incurred by City for the Events. RPD's estimate of the cost of the preparation, operation, maintenance, clean up, restoration, and repair of the Event Areas for the Event Periods are listed on the attached Exhibit C. In addition, Permittee may be required to reimburse other City departments for requirements of departments with regulatory or permitting authority over the Events, including, without limitation, any special costs incurred by the

San Francisco Police Department, Department of Parking and Traffic, and the San Francisco Fire Department. Any additional operational costs shall also be the sole responsibility of Permittee.

**6.9. Media Rights and Revenues**

Permittee shall have the right to broadcast, exhibit, disseminate, reproduce and transmit by radio, television, internet, cablecast or otherwise all or any part of the Event and Permittee shall retain all radio, television and other public media income from radio, television, internet, cablecast, or other video rights (except as otherwise stated herein) for the Event.

**6.10. Advertising Revenues**

Permittee's sponsor(s) may advertise their product(s) on temporary banners and billboards at field level. Permittee may retain revenue from such sponsor(s). All signage must comply with San Francisco Park Code Section 3.07(b)(3).

**6.11. Form of Payment**

Payments shall be made by wire transfer or cashier's check payable to the City and County of San Francisco and delivered to:

Revenue Unit  
The Recreation and Park Department  
McLaren Lodge - Annex, 2<sup>nd</sup> Floor  
501 Stanyan Street  
San Francisco, California 94117

**6.12. Late Payment**

If Permittee fails to pay any Permit Fee or any other payment required under this Permit on or before the due date, such unpaid amount shall be subject to a late payment of Two Hundred and Fifty Dollars (\$250) in each instance. The late payment charge has been agreed upon by City and Permittee, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Permittee, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and shall be paid to City together with such unpaid amount. In addition to the late payment fee, fees and other payments not paid when due shall bear interest from the date due until paid at the lesser of 1% per month or the maximum annual interest rate allowed by law on such due date for business loans (not primarily for personal, family or household purposes) not exempt from the usury law.

**7. TERM OF PERMIT**

This Permit shall be effective as of the Effective Date. The term of this Permit shall be for the Term, as defined in Section 1.1, unless earlier suspended or terminated as provided under this Permit. The privilege given to Permittee pursuant to this Permit is temporary only.



**8. REQUIRED KEZAR AND BOXER STADIUM IMPROVEMENTS; CREDIT AGAINST PERMIT FEES**

**8.1. Alterations and Improvements Generally**

Permittee shall not construct, install or otherwise place any improvements or make or permit any alterations in, to or about the Permit Areas, without the General Manager's prior written consent in each instance, which the General Manager may give or withhold in its sole and absolute discretion.

**8.2. Required Kezar and Boxer Stadium Improvements; Credit Against Permit Fees**

(a) Proposed Improvements. As a material consideration for the Parties' agreement to enter into this Permit, Permittee shall perform improvements and repairs to rehabilitate and renovate Kezar Stadium as required to make Kezar Stadium "NASL ready," and shall perform certain improvements and repairs to Boxer Stadium to make Boxer Stadium suitable for use as the Team's primary practice facility, and shall install in Kezar Stadium and Boxer Stadium certain the equipment, fixtures and furnishings required for such purposes, all subject to the provisions of this Section 8. A general description of the proposed work is attached hereto as Exhibit D.

(b) Design Documents. Prior to obtaining necessary reviews, permits, and approvals from City in its regulatory capacity, Permittee shall submit to the General Manager schematic design plans and specifications for the proposed work, or if plans and specifications are not required for an element of the proposed work, such as a repair, shall submit a detailed description of the proposed work. The plans and specifications (the "Design Documents") shall be subject to the approval of General Manager, which approval shall not be unreasonably withheld or delayed.

(c) Budget. To avoid future disputes about which costs can be credited against Permit Fees, Permittee shall submit to the General Manager a proposed budget at the time Permittee submits Design Documents. Prior to commencing construction, installation or performance of any category of the proposed improvements, installations and repairs Permittee shall provide the General Manager with a proposed budget for the relevant work, and shall obtain written confirmation from the General Manager that (a) the work shown in the budget would qualify as work for which Permittee would be entitled credit against the Permit Fees for the applicable category of work, and (b) the General Manager approves the budget for the proposed work, including the amounts in each budget category (as approved, the "Budget"). Work shown on approved Design Documents and an approved Budget is referred to as "Kezar and Boxer Stadium Improvements."

(d) Regulatory Permits and Approvals. City and Permittee understand, acknowledge and agree that prior to commencing the Kezar and Boxer Stadium Improvements, Permittee shall be required to obtain the approval of any regulatory agency that may have jurisdiction. Permittee shall have the responsibility for obtaining all governmental permits and approvals required to commence and complete the Kezar and Boxer Stadium Improvements, and upon request shall deliver copies of all of such permits and approvals to the General Manager. Permittee shall have the responsibility of calling for all inspections required by City's Bureau of Building Inspection, to the extent applicable.

(e) Performance of Proposed Improvements; License; Evidence of Insurance. Following the General Manager's approval of the approved Design Documents and the Budget and receipt of the required regulatory approval and permits, and approval of a Work Plan for the relevant work, as described in Section 8.2(f) below and receipt of a written notice to proceed from the General Manager, Permittee shall cause the Kezar and Boxer Stadium Improvements to be performed and installed in a good and professional manner in accordance with sound building practice and in conformity with the Design Documents and applicable law and the terms of this Permit. City shall not have any obligation with respect to any such work. Permittee shall have a license to enter Kezar Stadium and Boxer Stadium to

perform the Kezar and Boxer Stadium Improvements in compliance with the approved Work Plan and the provisions of this Permit. Permittee shall require from each contractor and subcontractor performing any work on or about the Permit Areas a policy of commercial general liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in Section 9 below.

(f) Work Plan; Conditions on Performance. Permittee shall perform or cause the Kezar and Boxer Stadium Improvements to be performed in accordance with one or more work plans approved in writing by the General Manager (as approved, a “Work Plan”), which Work Plan(s) shall include the following details:

- a. Hours for performance of work;
- b. Timeline for commencement date and completion date of construction;
- c. Access routes for the trucks, equipment, etc.;
- d. Access routes for the removal of debris, special conditions regarding debris storage, if applicable;
- e. If work is to be performed in stages, provisions describing the phases thereof;
- f. Requirements for cautionary signage;
- g. Requirements for security in the construction area;
- h. Safety measures; and
- i. Other practical concerns.

(g) Timing of Required Kezar and Boxer Stadium Improvements. Permittee shall perform at least \$500,000 of the Kezar and Boxer Stadium Improvements (the “Required Kezar and Boxer Stadium Improvements”) not later than the Team’s opening day in 2017. If Permittee does not complete the work by such deadlines and in the manner provided herein, such failure shall constitute a breach of the Permit.

(h) Required Documentation of Costs. Permittee shall keep accurate books and records of all costs incurred in connection with the Kezar and Boxer Stadium Improvements in accordance with accounting principles generally accepted in the construction industry. Not later than sixty (60) days after completion of an element of the Kezar and Boxer Stadium Improvements, Permittee shall deliver to the Department an itemized statement of the actual costs expended by Permittee on such element of the Kezar and Boxer Stadium Improvements, accompanied by documentation substantiating such expenditures and the applicable dates such expenditures were made. At City’s request, Permittee shall also provide (i) all invoices received by Permittee from the contractor, supplier or other third parties in connection with the performance of the Kezar and Boxer Stadium Improvements, (ii) satisfactory evidence of payment of such invoices, including unconditional lien waivers, or if such invoices have not been paid, conditional lien waivers, all such lien waivers being in the form prescribed by California Civil Code Section 3262 and executed by each subcontractor and material supplier, and (iii) such additional documentation as City may reasonably request. City shall have the right on written notice to Permittee to audit Permittee’s books and records with respect to the Kezar and Boxer Stadium Improvements.

(i) Ownership of Improvements. Notwithstanding in this Permit to the contrary, all affixed improvements and alterations that are part of the Kezar and Boxer Stadium Improvements, including temporary and permanent fixtures, furniture and equipment, regardless of whether such item is considered a trade fixture, shall become the property of City upon the expiration or termination of this Permit, and shall be surrendered to City.

(j) Credit Against Permit Fees. Permittee shall receive a credit against Permit Fees in an amount equal to properly documented and approved costs of the Kezar and Boxer Stadium Improvements, provided (i) in no event shall such credit in any Permit Year be applied to the first \$30,000 of Permit Fees payable in such Permit Year, and (ii) the credit shall not reduce the Permit Fee payable in

any month or any Permit Year below zero. In the event that this Permit is terminated early for any reason, in no event will the City be required to reimburse Permittee for the cost of the Kezar and Boxer Stadium Improvements or any other improvements.

**9. INSURANCE; WAIVER OF SUBROGATION**

**9.1. Permittee Insurance**

Permittee shall procure and keep in effect at all times during the term of this Permit, at Permittee's expense insurance as follows:

(a) General Liability Insurance (including Excess Liability Insurance) with limits not less than \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Performers, Event Workers, Event Participants and Spectators, Liquor Liability, Independent Contractors, Broadform Property Damage, Products Liability and Completed Operations, Food Product Liability coverage;

(b) Required limit for liability insurance can be met with the use of an excess or umbrella policy that follows form;

(c) Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable; and

(d) Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident.

(e) Such additional or other insurance as may be required by City's Risk Manager within fourteen (14) days of a written request from City for such insurance; provided the request is made before the Event.

All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

All policies shall be endorsed to provide thirty (30) days' prior written notice of cancellation, non-renewal or reduction in coverage to City.

Prior to the commencement date of this Permit, Permittee shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required hereunder. In the event Permittee shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of Permittee, and the cost thereof shall be paid to City within five (5) days after delivery to Permittee of bills therefor. Permittee shall cause a copy of each certificate required hereunder to be delivered to the physical address for City as specified in the Basic Permit Information.

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

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

Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Permit or any of Permittee's other obligations hereunder. Notwithstanding anything to the contrary in this Permit, this Permit shall terminate immediately, without notice to Permittee, upon the lapse of any required insurance coverage. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

### **9.2. Waiver of Subrogation**

Notwithstanding anything to the contrary contained herein, Permittee hereby waives any right of recovery against City for any loss or damage sustained by Permittee with respect to the Permit Areas or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of City, to the extent such loss or damage is covered by insurance which is required to be purchased by Permittee under this Permit or is actually covered by insurance obtained by Permittee. Permittee agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Permit Areas; provided, the failure to obtain any such endorsement shall not affect the above waiver.

### **9.3. Vendor and Subcontractor Insurance**

Permittee shall cause any of Permittee's contractors, subcontractors or agents performing work under this Permit on behalf of Permittee during the Term to procure and maintain insurance required by this Permit, or as otherwise required or recommended by City's Risk Manager at the time such work is performed and shall provide evidence of such insurance to the Designated Facility Manager prior to the date such contractors, subcontractors or agents first commence activities in the Event Areas. Without limiting the foregoing, Permittee shall ensure that any subcontractors or vendors any serving alcoholic beverages on the Event Areas during the Event Periods carry commercial general liability insurance in a form and with coverage at least as broad as ISO CG 00 01, with limits not less than \$1 million each occurrence and \$2 million annual aggregate with host or liquor (as applicable) liability included by endorsement or otherwise, or addressed by a separate policy with the same minimum limits of \$1 million per occurrence, \$2 million aggregate and Permittee shall ensure that any subcontractors or vendors providing food and/or beverages for Events carry and provide evidence of food product liability insurance with limits of not less than \$1M per occurrence.

## **10. CITY'S RESPONSIBILITIES**

During each Event and in strict accordance with Permittee's reimbursement obligations under Section 6.8, City shall perform the following services at Permittee's sole cost and expense:

- (a) Provide a ground crew as described in Exhibit C; and
- (b) Supply utilities for the Event.

**11. COMPLIANCE WITH LAWS**

Permittee shall, at its expense, conduct and cause to be conducted all activities on the Permit Areas allowed hereunder in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act), whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Areas any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Areas and not as a regulatory agency with police powers. Nothing herein shall limit in any way Permittee's obligation to obtain any required regulatory approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers.

**12. COVENANT TO MAINTAIN PERMIT AREAS**

In connection with its use hereunder, Permittee shall at all times, at its sole cost, maintain the Permit Areas in a good, clean, safe, secure, sanitary and sightly condition, so far as the Permit Areas may be affected by Permittee's activities hereunder.

**13. REPAIR OF DAMAGE**

Permittee shall be responsible for any and all damage to the Permit Areas resulting from the Event or Permittee's other activities hereunder, including all damage to the field and turf but otherwise excluding normal wear and tear. Upon completion of each Event, the Designated Facility Manager shall inspect the Event Areas for damages and Permittee shall be billed for the direct cost of repairs or replacement including staff time. Permittee shall pay for all documented damage within thirty (30) days of receipt of the invoice.

Permittee shall have the right to a pre-event inspection of the Event Areas with the Designated Facility Manager prior to commencing use of the Event Areas for the Event and pre-Event activities.

**14. WAIVER OF CLAIMS; WAIVER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES**

(a) Neither City nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Permittee, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Permit Areas or their use by Permittee.

(b) Permittee acknowledges that it will not be a displaced person at the time this Permit is terminated or revoked or expires by its own terms, and, without limiting any indemnification rights of Permittee contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action 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 present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

(c) Permittee expressly acknowledges and agrees that the fees payable hereunder do not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the facilities or Permittee's uses hereunder. City would

not be willing to give this Permit in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Permittee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Permit or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Permittee pursuant to this Permit, regardless of the cause, and whether or not due to the negligence of City or its Agents, except for the gross negligence or willful misconduct of City or its Agents.

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

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Without limiting any indemnification rights of Permittee contained in this Permit and as a material part of the consideration for this Permit, Permittee acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Permit.

## **15. UTILITIES**

In the event of an interruption in, or failure or inability to provide any service or utility for the Permit Areas for any reason, such interruption, failure or inability shall not impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or lost profits by Permittee. City has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Permit Areas.

## **16. CITY'S RIGHT TO CURE DEFAULTS BY PERMITTEE**

If Permittee fails to perform any of its obligations under this Permit, to restore the Permit Areas or repair damage in accordance with the terms of this Permit, or if Permittee defaults in the performance of any of its other obligations under this Permit and does not cure such default within three (3) days of written notice of such default (provided that that no such prior notice shall be required in the event of an emergency as determined by City), then City may, at City's sole election, remedy such failure for Permittee's account and at Permittee's expense. Such action by City shall not be construed as a waiver of any rights or remedies of City under this Permit, and nothing herein shall imply any duty of City to do any act that Permittee is obligated to perform. Permittee shall pay to City upon demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Permittee's obligations under this Section shall survive the termination of this Permit.

**17. NO COSTS TO CITY**

Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Areas (including for the cost of repair of damage that is Permittee's responsibility pursuant to the provisions of this Permit), and shall keep the Permit Areas free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Areas.

**18. INDEMNITY**

Permittee shall indemnify, defend and hold harmless City, its officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "Losses"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Permit Areas, or any part thereof, whether the person or property of Permittee, its officers, agents, employees, contractors or subcontractors (including the members, agents and invitees of any participating teams) (collectively, "Agents"), its invitees, guests or business visitors (collectively, "Invitees"), or third persons, relating in any manner to any use or activity under this Permit, (b) any failure by Permittee to faithfully observe or perform any of the terms, covenants or conditions of this Permit, (c) the use of the Permit Areas or any activities conducted thereon by Permittee, its Agents or Invitees, or (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Permittee, its Agents or Invitees, on, in, under or about the Permit Areas, any improvements permitted thereon, or into the environment; except solely to the extent of Losses resulting directly from the gross negligence or willful misconduct of City or City's authorized representatives. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Permit Areas and claims for damages or decreases in the value of adjoining property. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by City and continues at all times thereafter. Permittee's obligations under this Section shall survive the expiration or other termination of this Permit.

**19. "AS IS" CONDITION OF PERMIT AREAS; DISCLAIMER OF REPRESENTATIONS**

Permittee accepts the Permit Areas in their respective "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, including, without limitation, the suitability, safety, or duration of availability of the Permit Areas or any facilities on the Permit Areas for Permittee's use. Without limiting the foregoing, this Permit is made subject to all applicable laws, rules and ordinances governing the use of the Permit Areas. It is Permittee's sole obligation to conduct an independent investigation of the Permit Areas and all matters relating to its use of the Permit Areas hereunder, including, without limitation, the suitability of the Permit Areas for such uses. Permittee, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights as may be necessary for Permittee to make use of the Permit Areas in the manner contemplated hereby.

California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Permittee is hereby advised that the Permit Areas have not been inspected by a CASp.

**20. REVOCATION OR TERMINATION IN THE EVENT OF DAMAGE OR EMERGENCIES**

Notwithstanding anything to the contrary herein, City may revoke any previous reservation for any Event Area made in accordance with this Permit, or any license granted hereunder, in the event adverse weather, damage to the facility, or an emergency requires the temporary closure of such facility.

**21. NO ASSIGNMENT**

This Permit is personal to Permittee and shall not be assigned, conveyed or otherwise transferred by Permittee under any circumstances. Any attempt to assign, convey or otherwise transfer this Permit shall be null and void and cause the immediate termination and revocation of this Permit.

**22. CESSATION OF USE; PERMITTEE RIGHT TO TERMINATE**

Permittee will not terminate its activities on the Permit Areas pursuant hereto without prior written notice to City. Permittee shall have the option to terminate this Permit early on not less than six (6) months prior written notice to City, which notice shall specify the date of termination.

**23. NO JOINT VENTURES OR PARTNERSHIP; NO AUTHORIZATION**

This Permit does not create a partnership or joint venture between City and Permittee as to any activity conducted by Permittee on, in or relating to the Permit Areas. Permittee is not a State actor with respect to any activity conducted by Permittee on, in, or under the Permit Areas.

**24. MACBRIDE PRINCIPLES - NORTHERN IRELAND**

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

**25. NON-DISCRIMINATION**

**25.1. Covenant Not to Discriminate**

In the performance of this Permit, Permittee agrees not to discriminate against any employee of, any City employee working with Permittee, or applicant for employment with Permittee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**25.2. Subcontracts**

Permittee shall include in all subcontracts relating to the Permit Areas a non-discrimination clause applicable to such subcontractor in substantially the form of Section 25.1 above. In addition, Permittee shall incorporate by reference in all 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 subcontractors to comply



with such provisions. Permittee's failure to comply with the obligations in this Subsection shall constitute a material breach of this Permit.

**25.3. Non-Discrimination in Benefits**

Permittee does not as of the date of this Permit and will not during the term of this Permit, in any of its operations in San Francisco, on real property owned by City, 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.

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

**26. TROPICAL HARDWOODS AND VIRGIN REDWOOD BAN**

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, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Permittee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Permittee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Permit.

**27. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS**

Through its execution of this Permit, Permittee 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 (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) 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. Permittee 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. Permittee further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Permittee's board of directors, and Permittee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty

percent (20%) in Permittee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Permittee. Additionally, Permittee acknowledges that Permittee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Permittee further agrees to provide to City the names of each person, entity or committee described above.

**28. POSSESSORY INTEREST TAXES**

Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest under applicable law. In strict accordance with Section 6.8 of this Permit, Permittee agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on Permittee's interest under this Permit or use of the Permit Areas pursuant hereto and to pay any other taxes, excises, licenses, permit charges or assessments based on Permittee's usage of the Permit Areas that may be imposed upon Permittee by applicable law. Permittee shall pay all of such charges when they become due and payable and before delinquency.

**29. PESTICIDE RESTRICTIONS**

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Permittee shall not use or apply or allow the use or application of any pesticides on the Permit Areas or contract with any party to provide pest abatement or control services to the Permit Areas without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the Permit Areas during the term of this Permit, (ii) describes the steps Permittee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Permittee's primary IPM contact person with the City. Permittee shall comply, and shall require all of Permittee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Permittee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Permittee to keep certain records and to report to City all pesticide use at the Permit Areas by Permittee's staff or contractors.

If Permittee or Permittee's contractor will apply pesticides to outdoor areas at the Permit Areas, Permittee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

**30. PROHIBITION OF TOBACCO SALES AND ADVERTISING**

Permittee acknowledges and agrees that no sale or advertising of cigarettes or tobacco products is allowed on the Permit Areas. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

**31. RESTRICTIONS ON SUGAR-SWEETENED BEVERAGE ADVERTISING**

**32. PREVAILING WAGES FOR PUBLIC WORKS**

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Permittee shall require its contractors and subcontractors performing (i) labor in connection with a “public work” as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Permit Areas to (1) pay workers performing such work not less than the highest prevailing rate of wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “Prevailing Wage Requirements”). Permittee agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Permittee shall include, and shall require its sublicensees, and contractors and subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Permittee’s failure to comply with its obligations under this Section shall constitute a material breach of this Permit. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party.

**33. PREVAILING WAGES FOR THEATRICAL WORKERS AND CERTAIN OTHER WORKERS**

Permittee shall pay, and shall require its sublicensees, and contractors and subcontractors (regardless of tier) to pay, prevailing wages for the following activities and services on the Permit Areas as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: Motor Bus Services (as defined in Section 21C.1), Janitorial Services (as defined in Section 21C.2), Public Off-Street Parking Lots, Garages or Storage Facilities for Automobiles (as defined in Section 21C.3), Theatrical Services (as defined in Section 21C.4), Solid Waste Generated by the City in Course of City Operations (as defined in Section 21C.5), Moving Services (as defined in Section 21C.6), Trade Show and Special Event Work (as defined in Section 21C.8), and Broadcast Services (as defined in Section 21C.9).

Permittee may obtain a copy of the current Prevailing Rate of Wages from City, including its Office of Labor Standards Enforcement. Permittee acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Permittee and any Subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors.

**34. CONFLICTS OF INTEREST**

Through its execution of this Permit, Permittee 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 Sections 87100 *et seq.* and Sections 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 said provision, and agrees that if Permittee becomes aware of any such fact during the term of this Permit, Permittee shall immediately notify the City.

**35. FOOD SERVICE WASTE REDUCTION**

Permittee 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 Permit as though fully set forth herein. This provision is a material term of this Permit. By entering into this Permit, Permittee 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, Permittee 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 Permit was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Permittee's failure to comply with this provision.

**36. FIRST SOURCE HIRING AGREEMENT**

Permittee and City are parties to the First Source Agreement attached to this Permit as Exhibit F pursuant to San Francisco Administrative Code, Chapter 83 (the "First Source Agreement"). Any default by Permittee under the First Source Agreement shall be a default under this Permit.

**37. CRIMINAL HISTORY INQUIRIES FOR EMPLOYMENT**

(a) Unless exempt, Permittee 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 Permittee who would be or are performing work at the Permit Areas.

(b) Permittee shall incorporate by reference the provisions of Chapter 12T in all sublicenses of some or all of the Permit Areas, and shall require all sublicensees to comply with such provisions. Permittee's failure to comply with the obligations in this subsection shall constitute a material breach of this Permit.

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

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

(g) Permittee and sublicensees 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 Permit, 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 Permit.

(h) If Permittee 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.

### **38. BOTTLED DRINKING WATER**

Unless exempt, Permittee 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 Permit as though fully set forth.

### **39. NOTICES**

Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail, with a return receipt requested, or overnight courier, return receipt requested, with postage prepaid, addressed provided in Section 1.1. Notices herein shall be deemed given two (2) days after the date when it shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

### **40. SUNSHINE ORDINANCE**

Permittee understands and agrees that the City’s Sunshine Ordinance (Section 67.24(e) of the San Francisco Administrative Code) and the State Public Records Law (Government Code Section 6250 et seq.), apply to this Permit and any and all records, information, and materials submitted to the City in connection with this Permit. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City’s Sunshine Ordinance and the State Public Records Law. Nothing in this provision requires the disclosure of a private person’s or organization’s net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided that is covered by this Section will be made available to the public upon request.

**41. BUDGETARY AND FISCAL REQUIREMENTS OF CITY CHARTER**

The terms of this Permit shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Agreement, there shall be no obligation for the payment or expenditure of money by City under this Permit unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

**42. COUNTERPARTS**

This Permit may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Permit may be executed and delivered by facsimile signature, or by a scanned PDF of the signed original sent by email, which signature and copies shall be deemed to be an original.

**43. COOPERATIVE DRAFTING**

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

**44. GENERAL PROVISIONS**

(a) This Permit may be amended or modified only by a writing signed by City and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) All approvals and determinations of City requested, required or permitted hereunder may be made in the sole and absolute discretion of the General Manager or other authorized City official. (d) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (f) Time is of the essence. (g) This Permit shall be governed by California law and the City's Charter. (h) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience. (i) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (j) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (k) Permittee represents and warrants the following: (i) that Permittee is a Delaware limited liability company duly organized and validly existing under the laws of the State of Delaware and is in good standing under the laws of the State of California; and (ii) this Permit and all documents executed by Permittee which are to be delivered pursuant to the Permit will be duly authorized, and executed and are, or will be, legal, valid and binding on, and enforceable against Permittee in accordance with their respective terms.

*Draft Permit dated February 25, 2016*

Permittee represents and warrants to City that it has read and understands the contents of this Permit and agrees to comply with and be bound by all of its provisions.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

PERMITTEE:

FCSF, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
PHILIP A. GINSBURG, General Manager  
Recreation and Park Department

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Anita L. Wood  
Deputy City Attorney

**Exhibit A**

Event Areas



1. Kezar Stadium
2. Kezar Pavilion Locker Room
3. Kezar Waller Street Lot
4. Kezar Triangle



*Draft Permit dated February 25, 2016*

**Exhibit B**

Summary of Current Scheduled Permit Fees

Years of Term                      5  
Projected Events per Year        16

Projected Fees	Fee	Projected Annual Use	Projected Annual Fee
Grass Field Rental	\$75 per hour	2 hours per day x 3 days per week x 50 weeks	\$22,500
Turf Field Rental	\$75 per hour	2 hours per day x 2 days per week x 50 weeks	\$15,000
Office License Fee (Boxer)	\$800 per month	12 months	\$ 9,600
Storage License Fee (Boxer)	\$100 per month	12 months	\$ 1,200
Kezar Fixed Event Fees	\$1000 per Event	16 Events	\$16,000
Kezar Hourly Event Fees	\$500 per hour	(Estimated) 6 hours per Event; 16 Events per year	\$48,000
Kezar Triangle Event Fee	\$500 per Event	16 Events	\$ 500
Kezar Waller Street Lot Event Fee	\$500 per Event	16 Events	\$500

Fees are subject to Adjustment as provided in the Permit

**Exhibit C**

Estimate of Known Reimbursable Expenses per Game

<b>Department Staff</b>	<b>No. of Personnel</b>	<b>Estimated Hours</b>	<b>Estimated Cost</b>
Park Rangers	Four (4)	Four (4)	\$1,120
Grounds Crew	One (1)	Eight (8)	\$680
Event Manager	One (1)	Eight (8)	\$736
Facility Manager	One (1)	Eight (8)	\$160

**Exhibit D**

Summary of Required Kezar and Boxer Stadium Improvements

<b>Location and Scope</b>	<b>Cost</b>
Kezar - Locker Room Paint/Clean	\$20,000
Kezar - Locker Room Repairs	\$20,000
Kezar - Cameras	\$10,000
Kezar - Tunnel Repairs	\$40,000
Kezar - Seating Repairs/Paint	\$40,000
Kezar - Lighting	\$300,000
Kezar - Fiber	\$50,000
Boxer - Locker Room Repairs	\$20,000
Boxer - Paint & Misc	\$20,000
<b>Total</b>	<b>\$500,000</b>

**Exhibit E**

**RULES AND REGULATIONS REGARDING INSTALLATIONS AND DISPLAYS**

Without limiting Permittee's obligations under the terms and conditions of the Permit, Permittee agrees as follows:

1. All set ups must consider safety for site impaired users to avoid tripping hazards. Permittee and Event Sponsors shall not install any tents or other structures or use any equipment in a manner that would block any ADA walkways or paths without ensuring that alternative routes are available and marked. All cords must be protected with proper ADA-approved cable covers.
2. All vehicles loading and unloading on grass must have turf tires and must be approved by the Designated Facility Manager.
3. All structures are to be freestanding. **NO STAKING ALLOWED.**
4. Anchor bolts are NOT to be drilled into the concrete, asphalt or lawn areas.
5. Tent anchors (sandbags or water barrels) are to be marked so as to be highly visible to the public and made for easy maneuvering of the sight impaired and wheelchairs.
6. Structures, decorations, equipment, etc. may NOT be attached to San Francisco Recreation and Park Property (i.e.: garbage cans, benches, trees, etc.).
7. Vehicles are restricted to paved surfaces and may only be on site for loading and unloading. Permittee will be held liable for any damage caused by vehicles to lawns, sprinkler systems and/or structures. Any vehicles on display for an Event must be placed on a protective surface approved by the Designated Facility Manager.