

AMENDMENT TO LEASE
(Extending Term)

THIS AMENDMENT TO LEASE (the "Amendment"), dated for reference purposes only as of February 5, 2015, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Recreation and Park Commission (the "Commission") and J.T.G.SF., INC., a California corporation ("Lessee").

RECITALS

A. City and Lessee's predecessor-in-interest, Mureta's Café Hana, Inc., a California corporation ("Original Lessee"), entered into that certain lease, dated for reference purposes as of September 1, 2009 (the "Lease"), covering the premises within the Japanese Tea Garden in Golden Gate Park known as the Tea House and the Gift Shop and the adjacent trash storage area, together with the ticket booth and curio stand located in the tour bus parking lot, all as more particularly described in the Lease (the "Premises"). Original Lessee's interest in and to the Lease, including the security deposit held by City thereunder, was assigned to and assumed by Lessee, with City's consent.

B. Among other matters, the Lease required the lessee to perform certain alterations and renovations described in Exhibit F to the Lease, the cost of which was to be funded by a grant issued through the San Francisco Japantown Foundation. Original Lessee promptly performed the required alterations and renovations, and Original Lessee and Lessee have operated the Premises in accordance with the management plan approved by City and otherwise in accordance with the terms and conditions of the Lease

C. The Lease provides for an initial term of five (5) years, commencing September 1, 2004, and expiring August 31, 2014, and grants the lessee an option to extend the term of the Lease for one additional five (5) year period, provided City has the right to renegotiate the financial terms of the Lease for the extension term and has the right to accept or reject the lessee's exercise of the extension option. Lessee timely exercised the extension option and City's Recreation and Park Department staff commenced a review of the financial terms of the Lease and Original Lessee's and Lessee's performance under the Lease. The term of the Lease was extended on a month-to-month basis pending completion of such review and action by the City to accept or reject Lessee's exercise of the extension option. Department staff has completed its review and recommends an extension of the Lease term on the original financial terms set forth in the Lease.

D. City and Lessee presently desire to amend the Lease to extend the Lease term through August 31, 2019, on the original financial terms set forth in the Lease, and to modify the Lease in certain other respects, as set forth herein.

AGREEMENT

NOW THEREFORE, City and Lessee hereby agree as follows:

1. Defined Terms. Unless otherwise specified, each capitalized term contained herein shall have the same meaning as set forth in the Lease.

2. Extension of Term. Effective as of the Effective Date, the Term is extended through August 31, 2019 (the "Extended Expiration Date").

3. Effective Date. This Amendment shall become effective on the date (the "Effective Date") that is the later of the date on which (i) the Commission passes a resolution approving this Amendment, and (ii) the parties hereto have duly executed and delivered this Amendment.

4. Pesticide Restrictions. Effective as of the Effective Date, the provisions of Section 7.6(h) of the Lease shall be deleted and the following provision shall be substituted therefor:

“(h) Restrictions on the Use of Pesticides. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “IPM Ordinance”) describes an integrated pest management (“IPM”) policy to be implemented by all City departments. Lessee shall not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City’s written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Lessee may need to apply to the Premises during the term of this Lease, (ii) describes the steps Lessee 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 Lessee’s primary IPM contact person with the City. Lessee shall comply, and shall require all of Lessee’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 Lessee 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 Lessee to keep certain records and to report to City all pesticide use at the Premises by Lessee’s staff or contractors. If Lessee or Lessee’s contractor will apply pesticides to outdoor areas at the Premises, Lessee 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.”

5. Fire Extinguishers Maintenance. Effective as of the Effective Date, the following provision shall be added to the end of Section 9.1 of the Lease: “Lessee shall subject the fire extinguishers in the Premises to a monthly inspection in accordance with the manufacturer's

recommendations found on the label or in the user manual (which inspection need not be performed by a professional), shall ensure that access to extinguishers is not obstructed, and shall provide routine annual professional inspection and maintenance of the fire extinguishers in accordance with the manufacturer's manual.”

6. Insurance Requirements.

a. Insurance Coverage. Effective as of the Effective Date, the provisions of Section 17(b) and Section 17(c) of the Lease shall be deleted and the following provision shall be substituted therefor:

“(b) Lessee, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows:

(i) Commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU). If the operation of Lessee's business includes food sales, such coverage shall include Food Products Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence. If the operation of Lessee's business includes the sale of alcoholic beverages, such coverage shall include legal liquor liability coverage with limits not less than One Million Dollars (\$1,000,000) each occurrence.

(ii) Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident.

(iii) [Intentionally Omitted.]

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

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

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

b. Proof of Insurance Coverage. Effective as of the Effective Date, the following provision shall be added to the end of Section 18.3 of the Lease: “Lessee shall cause a paper copy of each certificate and renewal certificate required hereunder to be delivered to the physical address for notices to City given in the Basic Lease Information and an electronic copy of such renewal certificates to be delivered to tom.hart@sfgov.org or such other email address as City shall direct in written notice to Lessee given from time to time. Certificates must clearly indicate the Premises for which the certificate is issued.”

7. Wages and Working Conditions. Effective as of the Effective Date, the provisions of Section 24.21 of the Lease shall be deleted and the following provision shall be substituted therefor:

“24.21 Wages and Working Conditions. Lessee agrees that any person performing labor in connection with the Improvements or any Alterations at the Premises, including any “public work” as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, demolition, installation, and repair work) shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Lessee shall include in any contract for such Improvements and Alterations a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Lessee shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.”

8. Prohibition on Tobacco Product Advertising and Sales. Effective as of the Effective Date, the provisions of Section 24.22 of the Lease shall be deleted and the following provision shall be substituted therefor:

“26.22 Tobacco Product Advertising and Sale Prohibition. Lessee acknowledges and agrees that no advertising or sale of cigarettes (including electronic cigarettes, as defined in the San Francisco Health Code) or tobacco products is allowed under this Lease. This advertising prohibition includes the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.”

9. Additional City Requirements. Effective as of the Effective Date, the following provisions shall be added to the Lease as, respectively, Section 24.41, Section 24.42, Section 24.43, Section 24.44 and Section 24.45:

“24.41 Local Hiring Policy. If estimated cost of an Alteration exceeds \$750,000, unless otherwise exempt, Lessee agrees to comply with the Local Hiring Policy set forth in San Francisco Administrative Code Section 6.22(G) (the “Local Hiring Policy”) in the performance of the Alteration. Before starting any such Alteration, Lessee shall contact City’s Office of Economic Workforce and Development (“OEWD”) to verify the Local Hiring Policy requirements that apply to the Alteration, and Lessee shall comply with all

such requirements. Failure to comply shall be deemed a breach of this Lease, and may subject Lessee to penalties as set forth in the Local Hiring Policy. Any capitalized term used in this Section that is not defined will have the meaning given to such term in the Local Hiring Policy.”

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

“24.43 Criminal History in Hiring and Employment Decisions.

(a) Unless exempt, Lessee 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 Lessee who would be or are performing work at the Premises.

(b) Lessee shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Lessee’s failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

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

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

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

(f) Lessee and subtenants shall post the notice prepared by the Office of Labor Standards Enforcement (“OLSE”), available on OLSE’s website, in a conspicuous place

at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

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

(h) If Lessee 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."

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

"24.45 Sustainable Foods. Sustainable foods are those which, through their production, purchase, and consumption, enhance the health of the environment, producers and consumers through one or more of these methods: growing, processing and distributing locally; using low or no synthetic agricultural chemicals; fairly trading with developing countries; meeting animal welfare standards; processing minimally; no genetic modification; no unnecessary antibiotics; and no added growth hormones.

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

Locally produced food products are produced within 200 miles of San Francisco including the following counties in the North Coast, Central Coast, Sacramento and San Joaquin Valleys: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San

Joaquin, San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, and Yuba counties.

At City's request, made not more frequently than one time per calendar year, Lessee shall provide a summary of how Lessee incorporated these sustainable food concepts into everyday operations of the food and beverage concession and how Lessee informed customers and the youth employed by the Lessee, if any, regarding sustainable foods. At City's request, such report shall include an estimate of the percentage of total sales that were products certified as sustainably produced."

10. Counterparts. This Amendment may be executed in counterparts, each of which shall constitute an original but all of which shall constitute one document.

11. Entire Agreement. This Amendment sets forth the entire understanding of the parties on the subject matter of this Amendment. There are no agreements between Landlord and Lessee relating to the Lease other than those set forth in writing and signed by the parties. Neither party has relied upon any understanding, representation or warranty not set forth herein, either oral or written, as an inducement to enter into this Amendment.

12. Lease in Full Force and Effect; Amendment Prevails. Except as amended hereby, the Lease remains unmodified and in full force and effect. To the extent the provisions of this Amendment conflict with the provisions of the Lease, this Amendment shall prevail.

[No further text this page.]

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

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

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

LESSEE: J.T.G.SF., INC., a California corporation

By: _____
Name: Carol Murata
Title: _____

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

Margaret McArthur, Commission Liaison

APPROVED AS TO FORM:

DENNIS HERRERA,
City Attorney

By: _____
Anita L. Wood
Deputy City Attorney