

File No. 100649

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Sub - Committee: Budget and Finance

Date: June 16, 2010

Board of Supervisors Meeting

Date: _____

Cmte Board

- | | | |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement * |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

(Use back side if additional space is needed)

- | | | |
|-------------------------------------|--------------------------|-----------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Form 126</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Andrea S. Ausberry

Date Friday, June 11, 2010

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Lease of Bill Graham Civic Auditorium to BGCA Management, LLC - 99 Grove Street]

2
3 **Resolution approving and authorizing a lease of the Bill Graham Civic Auditorium**
4 **located at 99 Grove Street to BGCA Management, LLC for a term of approximately**
5 **20 years, with two five-year extension options, under San Francisco Charter Section**
6 **9.118; and making findings that the lease is in conformance with the City's General**
7 **Plan and is categorically exempt from environmental review under CEQA.**

8
9 WHEREAS, The City Administrator requested proposals for the rehabilitation, use, and
10 operation of the historic Bill Graham Civic Auditorium owned by the City and County of
11 San Francisco (the "City") and located at 99 Grove Street (between Polk and Larkin Streets)
12 in San Francisco (the "Building"); and,

13 WHEREAS, As stated in the request for proposals, the City Administrator sought to
14 create a vibrant and active venue for concerts and special events and to optimize the public
15 use and enjoyment of the Building, including the retention of certain City uses during each
16 year; and,

17 WHEREAS, The City Administrator selected and negotiated a lease with BGCA
18 Management, LLC, a Delaware limited liability company ("Tenant"), an affiliate of Another
19 Planet Entertainment, Inc., to maximize revenues while providing a high-quality concert venue
20 at no cost to the City; and,

21 WHEREAS, The lease, a copy of which is located in Board File No. 100649 (the
22 "Lease"), includes: (i) an expiration date of December 31, 2030, subject to Tenant's 2 options
23 to extend the term, each for an additional 5 year period, at fair market rent; (ii) Tenant's
24 acceptance of the Building "as-is", without representation or warranty; (iii) base rent of
25 \$100,000 per year, increased by 2-1/2% each year, but subject to a rent abatement period of

1 up to 12 months during the construction of the Initial Improvements; and (iv) participation rent
2 equal to the sum of (A) 50% of net naming rights revenue (from naming the internal arena, not
3 the Building) in excess of \$500,000, (B) \$5 per ticket, increased each year per CPI, for each
4 ticket sold in excess of 337,000 per year, and (C) \$2,500, increased each year per CPI, for
5 each corporate event, subject to renegotiation after Lease Year 10; and,

6 WHEREAS, The Lease also requires Tenant to make improvements to the Building in
7 3 phases (the "Initial Improvements"), including new staging, lighting, drapery, sound and light
8 systems, and others interior improvements designed to turn the Building into a vibrant concert
9 venue, and to spend at least \$10 million on the Initial Improvements. If the Initial
10 Improvements cost more than \$10 million, then Tenant will receive a rent credit against
11 participation rent, but not base rent, for the overage up to \$2.5 million; and,

12 WHEREAS, Under the Lease, the City will retain the right to use the Building 50 days
13 per year for civic events and other City purposes. The City is not required to pay rent, but is
14 required to pay for the costs of use, such as cleaning, ushers, and security, during these City
15 events; and,

16 WHEREAS, The Lease includes specified termination rights for the benefit of the City if
17 the Tenant does not meet certain performance standards, and specified termination rights for
18 the benefit of Tenant if Tenant cannot by the 10th year profitably operate the premises or if
19 City leases or finances a competing venue, all as more particularly described in the Lease;
20 and,

21 WHEREAS, The Lease also permits the Tenant to sell parking passes and to validate
22 parking at the Civic Center Garage during events at the premises, and to receive credit for
23 50% of the net revenue to City generated from such parking sales at the City's "event rate"
24 and from such validated parking tickets (after deducting from Tenant's share any discounts
25 given by Tenant for parking validation), as more particularly described in the Lease; and,

1 WHEREAS, During the Lease term, Tenant shall have the right to sell, and shall in fact
2 sell, sponsorships and/or naming rights to the theater or arena located within the Building, to
3 maximize participation rent. But the Building itself shall continue to be named the "Bill
4 Graham Civic Auditorium"; and,

5 WHEREAS, During the Lease term, Tenant shall maintain and repair the premises at
6 no cost to the City, provided that Tenant shall have the right to a rent credit in the event
7 Tenant performs a "Major Repair" and such rent credit is approved by the City Administrator in
8 his or her sole discretion. A "Major Repair" is a sudden or unexpected repair to or
9 replacement of the plumbing, elevators, electrical wiring, or heating, ventilation or air
10 conditioning systems not caused by Tenant's failure to maintain such item, the cost of which is
11 expected to cost more than \$250,000; and,

12 WHEREAS, The City shall repair and maintain the exterior and the foundation, load
13 bearing walls and other structural portions of the Building, but if the City repair costs more
14 than \$3 million, as adjusted by CPI, then City shall have the right to make the repair or
15 terminate the Lease. If City elects to terminate, then Tenant may prevent such termination by
16 making the repair and receiving a rent credit in the amount of the repair costs; and,

17 WHEREAS, Tenant shall pay for all utilities in connection with Tenant's use of the
18 Building. But if Tenant's utility costs exceed \$200,000, as adjusted by CPI, in any Lease year,
19 then Tenant shall receive a rent credit for 50% of such excess costs but this rent credit shall
20 not apply during any extension term; and,

21 WHEREAS, Tenant shall have offered employment to all existing employees at the
22 Building, and such employees shall have the right to either accept such employment with
23 Tenant or remain employees of Moscone Center Joint Venture ("SMG"; the current manager
24 of the Building); and,

1 WHEREAS, In a Certificate of Determination dated April 7, 2008, the City's Planning
2 Department determined that this Lease is categorically exempt from environmental review
3 under CEQA State Guidelines Section 15301(a), or Class 1; and,

4 WHEREAS, In a Historic Resource Evaluation Response dated March 28, 2008, the
5 City's Planning Department determined that the proposed interior changes to the Building are
6 consistent with the Secretary of Interior's standards for the treatment of historic properties and
7 would not have an adverse effect on off-site historic resources; now, therefore, be it

8 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
9 hereby finds that the Lease is consistent with the General Plan and with the Eight Priority
10 Policies of City Planning Code Section 101.1, and is exempt from environmental review for
11 the same reasons as set forth in the Planning Department's Certificate of Determination dated
12 April 7, 2008; and, be it

13 FURTHER RESOLVED, That the Board approves the Lease and authorizes the City
14 Administrator and the Director of Property to execute and deliver the Lease and to perform the
15 City's obligations under the Lease; and, be it

16 FURTHER RESOLVED, That the Board authorizes the City Administrator and the
17 Director of Property to amend the existing management agreement between the City and
18 SMG dated as of November 6, 1990, as amended, to remove the Building from the
19 management agreement; and, be it

20 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City
21 with respect to the Lease are hereby approved, confirmed and ratified; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors authorizes the City
23 Administrator and the Director of Property to enter into any additional amendments or
24 modifications to the Lease that they determine, in consultation with the City Attorney, are in
25

1 the best interest of the City, do not decrease the rent or materially increase the obligations or
2 liabilities of the City, and are in compliance with all applicable laws, including the City Charter.

3
4 RECOMMENDED:

5
6
7 By: 
8 City Administrator

9
10
11 By: 
12 Director of Property

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)**

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, SF Board of Supervisors	City elective office(s) held: Members, SF Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Bill Graham Management, LLC	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
1) Gregg W. Perloff; Sherry Wasserman; Steve Welkom; Robert Piccinini 2) CEO – Gregg W. Perloff; COO – Steve Welkom 3) Gregg W. Perloff; Robert Piccinini 4) N/A 5) N/A	
Contractor address: BGCA Management, LLC c/o Another Planet Entertainment 1815 Fourth Street, Suite C Berkeley, CA 94710	
Date that contract was approved:	Amount of contract: TBD – see lease terms on file with the Clerk of the Board (File No. 100649)
Describe the nature of the contract that was approved: Lease of Bill Graham Civic Auditorium	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form (Mayor, Gavin Newsom)
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits
Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Nicole Wheaton, Policy Analyst, Mayor's Office	Contact telephone number: 415-554-7940
Address: City Hall, Room 294	E-mail: Nicole.Wheaton@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR

LEASE

between the

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the City Administrator

“City”

and

BGCA MANAGEMENT, LLC,
a Delaware limited liability company

“Tenant”

Dated as of March 10, 2010

Table of Contents

	Page
Section 1 PREMISES; TERM.....	5
1.1 Definitions.....	5
1.2 Premises.....	5
1.3 Term; Extension Options.....	8
Section 2 RENT.....	13
2.1 Tenant's Covenant to Pay Rent.....	13
2.2 Base Rent.....	13
2.3 Participation Rent.....	14
2.4 Parking Revenue.....	15
2.5 Books and Records.....	17
2.6 Audit.....	18
2.7 Manner of Payment of Rent.....	19
2.8 Limitations on Abatement or Setoff.....	19
2.9 Interest on Delinquent Rent.....	19
2.10 Late Charges.....	19
2.11 Additional Rent.....	20
2.12 Net Lease.....	20
Section 3 USES.....	20
3.1 Permitted Uses.....	20
3.2 Advertising and Signs.....	21
3.3 Limitations on Uses by Tenant.....	21
3.4 Building Rules and Regulations.....	22
3.5 Security Matters.....	22
3.6 Firearms and Ammunition Prohibition.....	22
3.7 Name of Building and Theater/Arena.....	22
Section 4 TAXES AND ASSESSMENTS.....	23
4.1 Payment of Possessory Interest Taxes and Other Impositions.....	23
4.2 City's Right to Pay.....	24
Section 5 CONTESTS.....	24
5.1 Right of Tenant to Contest Impositions and Liens and Laws.....	24
Section 6 COMPLIANCE WITH LAWS.....	25
6.1 Compliance with Laws and Other Requirements.....	25
6.2 Regulatory Approvals.....	25
Section 7 TENANT'S MANAGEMENT AND OPERATING COVENANTS.....	26
7.1 Covenants.....	26
7.2 Non-Operation of Premises.....	27
7.3 Patent and Copyrights.....	27

<i>Section 8</i>	REPAIR AND MAINTENANCE	27
8.1	Covenants to Repair and Maintain the Premises.....	27
<i>Section 9</i>	INITIAL IMPROVEMENTS	29
9.1	Tenant's Obligation to Construct the Initial Improvements.....	29
9.2	Permits.....	30
9.3	Construction of Initial Improvements.....	31
9.4	Construction Schedule.....	31
9.5	Initial Improvements Cost and Potential Additional Improvements.....	32
9.6	Required Documentation of Costs.....	32
9.7	Rent Credit for Improvement Work.....	33
<i>Section 10</i>	SUBSEQUENT CONSTRUCTION; ENHANCED IMPROVEMENTS	33
10.1	Enhanced Improvements.....	33
10.2	City's Right to Approve Subsequent Construction.....	34
10.3	Construction Documents in Connection with Subsequent Construction.....	34
10.4	Construction.....	35
<i>Section 11</i>	GENERAL PROVISIONS FOR ALL CONSTRUCTION	35
11.1	Construction Standards.....	35
11.2	General Conditions.....	35
11.3	Tenant's Duty to Notify City.....	36
11.4	Prevailing Wages.....	36
11.5	Tropical Hardwood and Virgin Redwood Ban.....	36
11.6	Approvals.....	36
11.7	Safety Matters.....	37
11.8	First Source Hiring Ordinance.....	37
11.9	Construction Improvements that Disturb or Remove Exterior Paint.....	37
11.10	Preservative-Treated Wood Containing Arsenic.....	38
11.11	Resource Efficient City Buildings and Pilot Projects.....	38
11.12	As-Built Plans and Specifications.....	38
11.13	Title to Improvements.....	38
11.14	Tenant's Personal Property.....	39
11.15	City Cooperation.....	39
<i>Section 12</i>	UTILITY AND OTHER SERVICES	39
12.1	Utilities and Services.....	39
12.2	Excess Use.....	40
12.3	Interruption of Services.....	40
12.4	Water and Energy Conservation; Mandatory or Voluntary Restrictions.....	40
12.5	Floor Load.....	41
12.6	Antennae and Telecommunications Dishes.....	41
<i>Section 13</i>	DAMAGE OR DESTRUCTION	41
13.1	General; Notice; Waiver.....	41
13.2	Rent after Damage or Destruction.....	42
13.3	Restoration Obligations.....	42

13.4	Major Damage and Destruction or Uninsured Casualty.....	43
13.5	Effect of Termination.	44
13.6	Distribution Upon Lease Termination.	44
Section 14 CONDEMNATION.....		44
14.1	Definitions.	44
14.2	General.....	44
14.3	Total Taking; Automatic Termination.....	45
14.4	Partial Taking; Election to Terminate.....	45
14.5	Rent; Award.....	45
14.6	Partial Taking; Continuation of Lease.....	45
14.7	Temporary Takings.....	46
14.8	Arbitration of Disputes Relating to Rent Reduction.....	46
Section 15 LIENS AND LEASEHOLD MORTGAGES.....		48
15.1	Liens.	48
15.2	Encumbrance of Landlord's Fee Interest.	48
15.3	Leasehold Encumbrances.	49
15.4	Notices to Mortgagee.....	50
15.5	Mortgagee's Right to Cure.	51
15.6	Assignment by Mortgagee.....	53
15.7	Transfer of Mortgage.....	54
15.8	Memorandum of Lease.	54
Section 16 SECURITY DEPOSIT.....		54
16.1	Deposit.....	54
16.2	Replacement.	55
16.3	Alternative Forms of Security.	55
16.4	Assignment of Rents.....	55
Section 17 ASSIGNMENT AND SUBLETTING.....		56
17.1	Assignments and Subleases.	56
17.2	Conditions to Assignment or Sublet.....	56
17.3	License, Advertising and Concession Agreements.	57
17.4	Effect of Sublease or Assignment.....	58
17.5	Assumption by Assignee.	58
17.6	Indemnity for Relocation Benefits.....	58
17.7	Nondisturbance.	58
17.8	Substitution and Release.....	58
Section 18 INDEMNIFICATION OF CITY.....		59
18.1	Indemnification of City.....	59
18.2	Immediate Obligation to Defend.	59
18.3	Not Limited by Insurance.	60
18.4	Survival.....	60
18.5	Defense.	60
18.6	Release of Claims and Losses Against City.	60

18.7	City Indemnification.....	60
Section 19 INSURANCE.....		61
19.1	Premises and Liability Coverage.....	61
19.2	Certificates of Insurance; Right of City to Maintain Insurance.....	63
19.3	Insurance of Others.....	63
19.4	City Entitled to Participate.....	63
19.5	City's Self Insurance.....	64
19.6	Release and Waiver.....	64
Section 20 HAZARDOUS MATERIALS.....		64
20.1	Hazardous Materials Compliance.....	64
20.2	Hazardous Materials Indemnity.....	65
20.3	Hazardous Substance Disclosure.....	66
Section 21 EVENTS OF DEFAULT; TERMINATION.....		66
21.1	Events of Default.....	66
Section 22 REMEDIES.....		67
22.1	City's Remedies Generally.....	67
22.2	Right to Keep Lease in Effect.....	67
22.3	Right to Perform Tenant's Covenants.....	68
22.4	Right to Terminate Lease.....	68
22.5	Equitable Relief.....	69
22.6	Continuation of Subleases and Agreements.....	69
Section 23 NO WAIVER.....		69
23.1	No Waiver.....	69
23.2	No Accord or Satisfaction.....	69
Section 24 ESTOPPEL CERTIFICATES.....		70
24.1	Tenant Certificate.....	70
24.2	City Certificate.....	70
Section 25 APPROVALS BY CITY.....		70
25.1	Approvals by City.....	70
Section 26 SURRENDER OF PREMISES.....		71
26.1	Condition of Premises.....	71
26.2	Termination of Subleases.....	71
Section 27 HOLD OVER.....		71
27.1	Holdover Without Consent.....	71
27.2	Holdover With Consent.....	71
Section 28 NOTICES.....		72
28.1	Notices.....	72

<i>Section 29</i>	CITY ENTRY	72
29.1	City Entry.....	72
29.2	City Reservations.....	73
<i>Section 30</i>	EMPLOYMENT.....	73
30.1	Existing Employees.....	73
30.2	First Source Hiring Ordinance.....	73
30.3	Wages and Working Conditions; Theatrical Services.....	73
30.4	Tenant Control; No Joint Venture.....	74
<i>Section 31</i>	REPRESENTATIONS AND WARRANTIES OF TENANT.....	74
31.1	Tenant Representations.....	74
<i>Section 32</i>	SPECIAL PROVISIONS.....	75
32.1	Non-Discrimination in City Contracts and Benefits Ordinance.....	75
32.2	MacBride Principles - Northern Ireland.....	76
32.3	Tobacco Product Advertising Prohibition.....	76
32.4	Conflict of Interest.....	77
32.5	Drug-Free Workplace.....	77
32.6	Waiver of Relocation Assistance Rights.....	77
32.7	Public Records; Sunshine Ordinance.....	77
32.8	Requiring Health Benefits for Covered Employees.....	77
32.9	Notification of Limitations on Contributions.....	79
32.10	Food Service Waste Reduction.....	79
<i>Section 33</i>	GENERAL.....	79
33.1	Time of Performance.....	79
33.2	Interpretation of Agreement.....	80
33.3	Successors and Assigns.....	80
33.4	Interpretation of Lease; Approvals.....	80
33.5	No Third party Beneficiaries.....	81
33.6	Real Estate Commissions.....	81
33.7	Counterparts.....	81
33.8	Entire Agreement.....	81
33.9	Amendment.....	81
33.10	Governing Law; Selection of Forum.....	81
33.11	Extensions by City.....	82
33.12	Attorneys' Fees and Costs.....	82
33.13	Effective Date.....	82
33.14	Severability.....	83
33.15	Limitation on Liability.....	83
33.16	Guaranties.....	83
<i>Section 34</i>	DEFINITION OF CERTAIN TERMS.....	83

EXHIBITS TO LEASE

EXHIBIT A - Description of the Premises

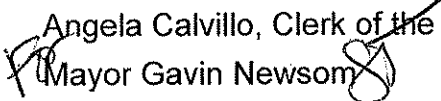
EXHIBIT B - Initial Improvements

EXHIBIT C - City Days

EXHIBIT D - Existing Employees

EXHIBIT E - Form of Guaranty



TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM:  Mayor Gavin Newsom
RE: Lease of Bill Graham Civic Auditorium – 99 Grove Street
DATE: May 18, 2010

Dear Madame Clerk:

Attached for introduction to the Board of Supervisors is the resolution approving and authorizing a lease of the Bill Graham Civic Auditorium located at 99 Grove Street to BGCA Management, LLC for a term of approximately 20 years, with two 5-year extension options, under San Francisco Charter Section 9.118; and making findings that the lease is in conformance with the City's General Plan and is categorically exempt from environmental review under CEQA.

I request that this item be calendared in Budget and Finance Sub-Committee.

Should you have any questions, please contact Starr Terrell (415) 554-5262.

100649