

File No. 170824

Committee Item No. 2

Board Item No. 15

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: August 1, 2017

Board of Supervisors Meeting:

Date: September 5, 2017

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input 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 type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

- | | | |
|-------------------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>DRAFT Agreement</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>TIDA Summary</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Presidential Action Memo - July 27, 2017</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | <u> </u> |
| <input type="checkbox"/> | <input type="checkbox"/> | <u> </u> |

Prepared by: John Carroll

Date: July 28, 2017

Prepared by: John Carroll

Date: August 4, 2017

1 [Accept Gift - Playworld Systems Inc. - Treasure Island Development Authority - New
2 Playground Equipment - Valued at \$110,000]

3 **Resolution authorizing the Treasure Island Development Authority to enter into a gift**
4 **agreement with Playworld Systems Inc. for the installation of new playground**
5 **equipment at Treasure Island valued at \$110,000.**

6
7 WHEREAS, The Treasure Island Development Authority (the "Authority") is the local
8 reuse authority with jurisdiction over Treasure Island and is currently working on the
9 management and maintenance of existing facilities as well as the redevelopment of the
10 property consistent with entitlement and transaction documents approved by the Board of
11 Supervisors in June 2011; and

12 WHEREAS, Playworld Systems Inc., a Pennsylvania corporation ("Playworld"), is a
13 commercial playground equipment manufacturer that since 1971 has manufactured play
14 structures and related products to promote aerobic exercise with the goal of bettering
15 children's health and fitness; and

16 WHEREAS, In November 2016, Playworld contacted the Authority regarding the
17 possibility of partnering with Playworld to construct a new infinET play structure facility on
18 Treasure Island; and

19 WHEREAS, The Authority selected an area near the intersection of 9th Street and
20 Avenue of the Palms, commonly referred to as the Treasure Island Community Park (the
21 "Community Park"), adjacent to a newly created dog park, as a good site to install the
22 proposed play structure as this site currently has an outdated and underutilized play structure;
23 and

1 WHEREAS, The Authority and Playworld have negotiated an agreement to allow
2 Playworld to enter the site and install the proposed play structure at the Community Park, a
3 copy of which is on file with the Clerk of the Board of Supervisors in File No. 170824 (the
4 Agreement"); and

5 WHEREAS, Playworld's gift shall include all costs to design and install the play
6 structure, including the preparation of construction documents by a licensed professional, the
7 procurement of permits, the freight to the site, and the donation of the play structure,
8 estimated to total approximately \$110,000; and

9 WHEREAS, Before Playworld begins work, the Authority will remove the existing
10 equipment and ready the site for installation of the new play structure; and

11 WHEREAS, Upon completion, the new play structure will be open to the public as part
12 of the Community Park and will also serve a nearby child care center; and

13 WHEREAS, The Authority's Board of Directors approved the Agreement at its
14 January 11, 2017 meeting; now, therefore, be it

15 RESOLVED, That the Board of Supervisors authorizes the Treasure Island Director to
16 execute and perform the Agreement in substantially the form filed with the Clerk of the Board
17 of Supervisors and to make any additions or amendments that the Treasure Island Director
18 determines, in consultation with the City Attorney, are in the best interests of the Authority and
19 do not materially increase the obligations or liabilities of the Authority, and are necessary or
20 advisable to effectuate the purpose this Resolution; and, be it

21 FURTHER RESOLVED, That within thirty (30) days of the Agreement being fully
22 executed by all parties, the Authority shall provide a copy of the agreement to the Clerk of the
23 Board to include into the official file.
24
25

ORIGINAL

GRANT ACCEPTANCE AGREEMENT AND PERMIT TO ENTER

Between

Playworld Systems Inc., a Pennsylvania corporation
and
TREASURE ISLAND DEVELOPMENT AUTHORITY,
a California public benefit nonprofit corporation

This Grant Acceptance Agreement and Permit to Enter (the "Agreement"), is dated for reference purposes only as June 1, 2017, by and between the **TREASURE ISLAND DEVELOPMENT AUTHORITY**, a California public benefit nonprofit corporation (the "TIDA"), and Playworld Systems Inc., a Pennsylvania corporation ("Playworld").

RECITALS

WHEREAS, TIDA operates and maintains, in accordance with a master lease from the US Navy, a copy of which is attached hereto as Exhibit A, certain real property on Treasure Island including the identified area adjacent to the newly created dog park at the intersection of Avenue of the Palms and 9th Avenue (the "Park") located on Treasure Island, San Francisco, CA 94130; and

WHEREAS, The existing playground has an outdated and underutilized play structure that is 21 feet by 19 feet in size and the replacement play structure more than doubles in size encompassing an area of 62 feet by 51 feet; and

WHEREAS, Playworld is a playground equipment manufacturer that proposes to grant new infINET play structure facility to TIDA and to fund the installation of the infINET play structure at the Park (the "Installation"); and

WHEREAS, The Parties acknowledge that the infINET play structure will become the property of TIDA upon execution of the Bill of Sale, and will eventually be removed from the Park pending development of Treasure Island by TIDA and reinstalled at another location to be later determined by TIDA in its sole and absolute discretion; and

WHEREAS, On January 11, 2017, the TIDA Board of Directors recommended to accept and expend this grant from Playworld;

Now, therefore, it is agreed as follows:

1. Grant in-Kind

- a. **Permission to Enter; Term.** TIDA confers to Playworld, its agents and Contractor a revocable, personal, unassignable, non-exclusive and non-possessory privilege to enter upon and use the identified area in the Park, more particularly described in Exhibit C attached hereto (the "Permit Area"), for the limited purpose and subject to the terms, conditions and restrictions set forth below.

The privilege given to Playworld, its agents and Contractor pursuant to this Agreement is temporary only and shall commence when the dates are confirmed and agreed to by the Parties in accordance with Section I.b.iv below. Without limiting any of its rights hereunder, TIDA may at its sole option freely revoke this Agreement at any time prior to such expiration date, without cause and without any obligation to pay any consideration to Playworld, its agents and Contractor.

This Agreement does not constitute a grant to Playworld of any ownership, leasehold, easement or other property interest or estate in the Permit Area. Playworld shall bear all costs or expenses of any kind in connection with its use of the Permit Area. Playworld acknowledges and agrees that the Permit Area is being licensed and accepted in its "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws governing the Permit Area. Playworld, on behalf of itself and its contractors, covenants and agrees that the TIDA shall not be responsible for or liable to Playworld for, and, to the fullest extent allowed by law, Playworld waives and releases all rights against the TIDA and the City, relating to the condition of the Permit Area.

b. **Scope of Work:** Playworld may enter and use the Permit Area for the sole purpose of causing Contractor to perform the Installation and for no other purpose whatsoever. Playworld may cause Contractor to perform the Installation in the Permit Area only upon satisfaction of the following conditions, which are for the sole benefit of the TIDA:

- i. Playworld shall ensure that Contractor performs the Installation in accordance with drawings and specifications approved in advance and in writing by TIDA. The scope of work may be modified only through written amendment to this Agreement executed by the Parties.
- ii. Playworld shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area, including payment to the Contractor to perform the Installation, and shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area.
- iii. Playworld shall provide evidence satisfactory to the TIDA of the acknowledgment of Contractor and any of its subcontractors that the TIDA is not financially liable, and shall not be invoiced, for any costs incurred in performing any work related to the Installation, except as expressly approved by the TIDA in writing.
- iv. Playworld shall coordinate with the TIDA to determine appropriate start and finish date and time for Contractor to perform the Installation. TIDA shall establish the start and finish date in coordination with Playworld. Playworld shall not authorize Contractor to commence work until TIDA has approved the start date(s) and time(s) in writing executed by the Treasure Island Director.

- v. **Exercise of Reasonable Care.** Playworld shall use, and shall cause Contractor to use, reasonable care at all times to avoid any damage or harm to TIDA's property and to native vegetation and natural attributes of the Permit Area. Playworld shall cause Contractor to take such soil and resource conservation and protection measures with the Permit Area as TIDA may request. Playworld shall not perform any excavation or grading work without the prior written consent of TIDA, and TIDA shall have the right to approve and supervise any excavation work. Playworld shall ensure that under no circumstances shall Contractor damage, harm or take any rare, threatened or endangered species on or about the Permit Area. Playworld shall cause Contractor to do everything reasonably within its power, both independently and upon request by TIDA, to prevent and suppress fires on and adjacent to the Permit Area attributable to Playworld's use hereunder.
- vi. **Acknowledgment of Receipt of EBS and FOSL Reports.** Playworld hereby acknowledges for itself and Agents that, prior to the execution of this Agreement, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease. California law requires disclose concerning the presence or potential presence of certain Hazardous Materials. Accordingly, Playworld is hereby advised that the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Premises as described in the EBS and the FOSL. In addition, California's Proposition 65, Health and Safety Code Section 25249.6 et seq., requires notice that some of these Hazardous Materials are known by the State of California to cause cancer or reproductive harm. By execution of this Agreement, Playworld acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Sections 25249.6 et seq., 25359.7 and related statutes.
- vii. **Covenant to Maintain Permit Area.** In connection with its use hereunder, Playworld shall at all times, at its sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary and sightly condition, in so far as the Permit Area may be affected by Playworld's or Contractor's activities hereunder.
- viii. **Restoration of Permit Area.** Immediately following completion of the Installation, PlayPower shall cause Contractor to remove all debris and any excess dirt and restore the Permit Area surrounding the playground to its condition immediately prior to Playworld's and Contractor's use hereunder, to the satisfaction of the TIDA.
- ix. **Repair of Damage.** If any portion of the Permit Area or any property of TIDA located on or about the Permit Area is damaged by any of the activities conducted by Playworld or Contractor hereunder, Playworld shall immediately, at its sole cost, repair or cause Contractor to repair any and all

such damage and restore or cause Contractor to restore the Permit Area or property to its previous condition.

- c. **Limitation on Obligation; Evidence of Available Funds.** TIDA shall not be obligated to pay amount for the work performed or the equipment gifted by Playworld under this Agreement unless such party expressly so agrees in writing. Playworld shall not commence work in the Permit Area unless and until it has certified to TIDA in writing that it has adequate funds to complete the Installation.
- d. **Restrictions on Use.** Playworld agrees that, by way of example only and without limitation, the following uses of the Permit Area by Playworld, Contractor, or any other person claiming by or through Playworld are inconsistent with the limited purpose of this Agreement and are strictly prohibited as provided below:
- i. **Installation.** Neither Playworld nor Contractor shall construct or place any temporary or permanent structures or improvements on the Permit Area, or alter any existing structures or improvements on the Permit Area, except for the Installation described in Exhibit B.
 - ii. **Dumping.** Neither Playworld nor Contractor shall dump or dispose of refuse or other unsightly materials on, in, under or about the Permit Area.
 - iii. **Hazardous Material.** Playworld shall not cause, nor shall Playworld allow Contractor or any of its other Agents or Invitees (as defined 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 Area, or transported to or from the Permit Area. Playworld shall immediately notify TIDA when Playworld learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Permit Area. Playworld 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 Playworld, Contractor, or Playworld's other Agents or Invitees cause a release of Hazardous Material, Playworld shall, without cost to TIDA and in accordance with all laws and regulations, return the Permit Area to the condition immediately prior to the release. In connection therewith, Playworld shall afford TIDA 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 Area or are naturally occurring substances in the Permit Area; 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 Area. For purposes hereof, the term "Agents" shall include the agents, employees, officers, contractors and representatives of Playworld, and the term "Invitees" shall include the clients, customers, invitees, guests, licensees, or assignees of Playworld.

iv. **Nuisances.** Neither Playworld nor Contractor shall conduct any activities on or about the Permit Area that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to TIDA, to the owners or occupants of neighboring property or to the public.

v. **Damage.** Neither Playworld nor Contractor shall do anything about the Permit Area that will cause damage to any of the TIDA's property.

2. **Contractor/Installation Requirements.** Playworld shall, at its own expense and at no cost to the TIDA, hire Contractor(s) selected by Playworld and approved by TIDA (not unreasonably withheld) to perform the Installation. Playworld shall require Contractor or any such other contractors or agents it procures for the Installation to comply with the following requirements in performing work at the Park:

- a. Obtain any and all necessary City permits, and comply with applicable laws including disability access laws and with required noticing procedures before closing any sidewalks.
- b. TIDA will post signs in the Park alerting the public to the date and time the Installation will take place. TIDA will not open the park until the installation is complete and Playworld has conducted their photo/video shoot (immediately following installation completion).
- c. Implement appropriate measures to ensure public safety while working in the Park, including, but not limited to, erecting safety barriers and caution signage and/or tape.
- d. Pay any person performing labor in the construction of any improvements provided under this Agreement 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 provide the same benefits (subject to the same hour and working conditions) as in each case are provided for similar work performed in San Francisco, California.
- e. Adhere to Occupational Safety & Health Administration standards, as applicable, related to any work they perform on site.

f. Agree to the additional requirements specified in Exhibit D with respect to insurance, warranties, third party beneficiaries, indemnification, and payment and performance bonds.

3. **Compliance With Laws.** Playworld shall, at its expense, conduct and cause to be conducted all activities on the Permit Area 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. Playworld shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Area any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Playworld understands and agrees that TIDA is entering into this Agreement in its capacity as a property owner / manager with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. Nothing herein shall limit in any way the PlayPower's or Contractor'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.

4. **Indemnification.** Playworld shall indemnify and save harmless the TREASURE ISLAND DEVELOPMENT AUTHORITY, CITY AND COUNTY OF SAN FRANCISCO, THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE DEPARTMENT OF THE NAVY, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS from any and all loss, expense, damage, injury, liability and claims thereof for injury to or death of a person, including employees and agents of Playworld or Contractor, or loss of or damage to property, resulting directly or indirectly from any activity conducted on or use of the Park by Playworld or Contractor, or their respective agents, employees, volunteers, and contractors under this Agreement, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on TIDA, except and to the extent where such loss, damage, injury, liability or claim is the result of the negligence or willful misconduct of the TIDA, its officers, agents or employees.

TIDA agrees to defend, indemnify and hold harmless Playworld, their officers, directors, employees and agents, from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of TIDA, its officers, employees and agents in connection with this Agreement, except those arising by reason of the sole negligence of Playworld and/or Contractor, their officers, directors, employees and agents.

In the event of concurrent negligence of the TIDA, its officers, employees and agents, and the Playworld and/or Contractor, their officers, directors, employees and agents, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

5. **Insurance.** Without in anyway limiting Playworld's liability pursuant to the "Indemnification" section of this Agreement (Section 4), Playworld shall maintain in force at all times during the term of this Agreement insurance in the amounts and coverage specified in Exhibit D, and shall as an additional insured the TREASURE ISLAND DEVELOPMENT AUTHORITY, CITY AND COUNTY OF SAN FRANCISCO, THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE DEPARTMENT OF THE NAVY, AND

THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS. Before commencing any operations under this Agreement, Playworld shall furnish to TIDA certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to TIDA, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement. Compliance with the provisions of this section shall in no way relieve or decrease Playworld's indemnification obligations under this Agreement or any of Playworld's other obligations hereunder.

6. **Public Relations.** TIDA and Playworld shall use good faith efforts to cooperate on matters of public relations and media responses related to the Installation. The Parties shall also use good faith efforts to cooperate with any inquiry by the other Party or by the public in regard to this Agreement. This Agreement, and any report or memorandum between the Parties, shall be subject to the disclosure requirements of the City's Sunshine Ordinance and the California Public Records Act.

Neither Playworld nor TIDA shall issue a press release in regard to this Agreement without providing prior notice to the other party. To facilitate the execution of this Section, the TIDA and Playworld have each designated one person as a spokesperson with respect to this Agreement. All media contacts to TIDA will be directed to the Treasure Island Director at the address provided for TIDA in Section 9 below. All media contacts to Playworld will be directed to the Marketing and Communications Manager at the address provided for in Section 9 below.

7. **Final Acceptance.** Upon notice from Playworld that the Installation is complete, in accordance with the approved plans, TIDA shall, within 10 working days of such notice, perform a final inspection. Upon TIDA's inspection and decision to accept the work as being in accordance with the approved plans, TIDA will, no later than 5 days from such decision to accept the work prepare a letter of final acceptance (the "Acceptance Letter") addressed to Playworld. Upon receipt of the Acceptance Letter, Playworld shall immediately remove all of its property from the Park Permit Area and shall repair, at Playworld's cost, any damage to the Park caused by such removal or caused by Playworld's construction activities in the Permit Area, and shall restore the Permit Area to its condition prior to construction of the Installation undertaken by Playworld. Upon receipt of the Acceptance Letter, Playworld will provide to TIDA a bill of sale in the form attached as **Exhibit E**. Upon request, Playworld agrees to sign such instrument as may be required to perfect title in the Installation to TIDA and/or the City. Playworld understands that the Installation may be temporary and may be removed or relocated by TIDA at any time.
8. **Termination.** Either party may terminate this Agreement and the Installation to be performed by Playworld or any other entity associated with the Grant or the Installation project for any reason and without cause, upon not less than seven (7) days written notice to the other party.

9. Contacts/Notices TIDA:

Treasure Island Development Authority (TIDA)
Treasure Island Project Office
One Avenue of Palms
Building 1, 2nd Floor
Treasure Island
San Francisco, CA 94130

Attn: Robert P. Beck
Treasure Island Director
Fax No: 415-274-0299

Contacts/Notices PlayPower:

Playworld Systems Inc.
1000 Buffalo Road
Lewisburg, PA 17837-9795

Attn: Vicki Schmidt, Marketing Operations Manager

Phone No: (570) 522-5335
Email: Vicki.Schmidt@PlayPower.com

10. Miscellaneous:

- a. This Agreement may be mutually amended or modified only in writing signed by both Playworld and TIDA.
- b. This Agreement (including the Exhibits hereto, which are incorporated herein by reference) contains the entire understanding between the Parties as of the date of this Agreement, and all prior written or oral negotiations, discussions, understandings and agreements are superseded.
- c. All actions described herein including but not limited to the performance of the Installation as permitted herein, are subject to and must be conducted and accomplished in accordance with the applicable requirements of the City's charter, its municipal code and applicable state and federal laws, building codes and regulations.
- d. Except as expressly provided to the contrary, all approvals, consents and determinations to be made by the TIDA hereunder may be made by the Treasure Island Director or his designee in his sole and absolute discretion.
- e. This Agreement is subject to the review and approval of the TIDA Board of Directors and the San Francisco Board of Supervisors, each in its sole discretion, and will not become effective unless and until such approvals have been obtained.

11. Notification of Limitations on Contributions. Through its execution of this Agreement, Playworld 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 or a state agency on whose board an appointee of a City elective officer serves, for the selling or

leasing of any land or building to or from the City or a state agency on whose board an appointee of a City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, 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 (6) months after the date the contract is approved. Playworld 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. Playworld further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Playworld's board of directors; Playworld's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Playworld; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Playworld. Additionally, Playworld acknowledges that Playworld must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

IN WITNESS WHEREOF, the Parties have indicated their approval effective as of the respective dates set forth by their names.

Approvals:

Playworld, Inc., a Pennsylvania corporation

By: Steven J. Malriat

Steven Malriat, VP, Information Systems & Operational Finance
Playworld Systems Inc., 1000 Buffalo Road
Lewisburg, PA 17837

TREASURE ISLAND DEVELOPMENT AUTHORITY

By: Robert P. Beck

Robert P. Beck
Treasure Island Director

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: Dennis J. Herrera
Deputy City Attorney

Agreement Prepared By: Richard A. Rovetti, Deputy Director of Real Estate

RA
(initial)

Attachments:

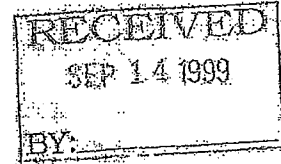
- Exhibit A: Navy Master Lease
- Exhibit B: Installation
- Exhibit C: Permit Area
- Exhibit D: PlayPower Insurance Requirements
- Exhibit E: Additional Contractor Terms
- Exhibit F: Bill of Sale

EXHIBIT A

NAVY MASTER LEASE

All correspondence in connection with
this contract should include reference to:

N6247499RP00B19



LEASE

BETWEEN

THE UNITED STATES OF AMERICA

AND

TREASURE ISLAND DEVELOPMENT AUTHORITY

FOR

TREASURE ISLAND HOUSING

NAVAL STATION TREASURE ISLAND

06/10/99

All correspondence in connection with
this contract should include reference to:

N6247499RP00B19

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-06/11/99

All correspondence in connection with
this contract should include reference to:

LEASE **N6247499RPO0B19**
BETWEEN
THE UNITED STATES OF AMERICA
AND
TREASURE ISLAND DEVELOPMENT AUTHORITY

THIS LEASE, made as of this 1st day of September 1999 is by and between THE UNITED STATES OF AMERICA, acting by and through the Department of the Navy, herein called "Government"; and TREASURE ISLAND DEVELOPMENT AUTHORITY, a non-profit public benefit corporation, herein called "Lessee";

WITNESSETH:

WHEREAS, Government has declared certain real and personal property, as more particularly described as the Leased Premises in Paragraph 1, surplus at the Naval Station, Treasure Island, San Francisco, California, (the "Installation"), and Lessee has identified an immediate need to use such real and personal property; and

WHEREAS, the Secretary of the Navy, pursuant to the provisions of 10 U.S.C. § 2667 (f)(1), has determined that this Lease will facilitate state and local economic adjustment efforts pending final disposition of the Leased Premises; and

WHEREAS, the Secretary of the Navy, pursuant to 10 U.S.C. § 2667 (f)(2) has determined that a public interest will be served as a result of this Lease, the fair market value of the Lease is either unobtainable or not compatible with such public benefit, and consequently, consideration for this Lease will be at less than fair market value; and

WHEREAS, the Secretary of the Navy, after consultation with the Environmental Protection Agency Administrator has determined that the Leased Premises is suitable for lease, and the uses contemplated for the Lease are consistent with protection of human health and the environment; and

WHEREAS, Lessee is recognized by the Secretary of the Defense, through the Office of Economic Adjustment, as the local redevelopment authority with the responsibility for the redevelopment of the Installation; and

WHEREAS, Lessee is a municipal corporation, created and organized under the laws of the State of California, with the power to acquire, lease and dispose of federal military installations, and Lessee desires to enter into this Lease to further reuse efforts at the Installation.

NOW THEREFORE, in consideration of the terms, covenants, and conditions set forth in this Lease, Government and Lessee hereby agree as follows:

06/10/99

All correspondence in connection with this contract should include reference to:

N6247499RP00B19

1. LEASED PREMISES:

Subject to the terms and conditions of this Lease, Government does hereby lease, rent, and demise to Lessee, and Lessee does hereby hire and rent from Government, 86 housing units (133,658 square feet of building space) listed below, located on Treasure Island, all comprising approximately 239,686 square feet of land (5.50 acres), areas as shown on Exhibit A, attached hereto, together with all improvements and all personal property described in Exhibit B attached hereto, and all rights of ingress and egress to such real property (together, the "Leased Premises").

HOUSING

<u>BUILDING NO.</u>	<u>SQUARE FOOT</u>	<u>NO. OF UNITS</u>	<u>BUILDING NO.</u>	<u>SQUARE FOOT</u>	<u>NO. OF UNITS</u>
<u>TI UNITS:</u>					
1403	9,390	6	1435	9,390	6
1405	9,390	6	1440	9,390	6
1406	9,390	6	1441	9,390	6
1409	9,390	6	1442	5,644	4
1419	9,390	6	1443	9,390	6
1432	9,390	6	1445	9,390	6
1433	9,390	6	1447	5,644	4
1434	9,390	6			
			<u>TOTAL</u>	<u>133,358</u>	<u>86</u>

2. TERM:

The term of this Lease shall be for a period of fifteen (15) years beginning on 1 SEPTEMBER 1999 and ending on 31 AUGUST 2014, unless sooner terminated in accordance with the provisions of Paragraph 14, Termination.

3. CONSIDERATION:

3.1 As consideration for this Lease, Lessee agrees to (i) actively market the Installation and attempt to sublease those portions of the Leased Premises which are suitable for subleasing, (ii) provide protection and maintenance to the extent described in Paragraph 12 for those portions of the Leased Premises which are or have been during the term of this Lease used or occupied by Lessee or subleased by Lessee to another and (iii) pay Government the Common Services Charge described in Paragraphs 3.1.2 and 3.1.3 below:

3.1.1 As additional consideration, subject to annual appropriations by Lessee's Board of Supervisor's, Lessee shall apply any Revenue (as defined herein) received from subleasing the Premises as follows: first, to reimburse itself for marketing and property management expenses incurred by Lessee; and second, for expenses incurred by Lessee for

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improvements to the Installation. If sufficient funds for the purposes described in this Paragraph 3.1.1 are not appropriated for any reason in any fiscal year of Lease after the fiscal year in which the Term of this Lease commences, then Government may terminate this Lease, without liability, upon thirty (30) calendar days written notice.

"Revenue" as referred to herein means rental income and any other miscellaneous income derived from the subletting of the Leased Premises less (i) sales tax, use and occupancy tax, franchise tax and any other taxes, building fees, planning fees and inspection fees related to the use and occupancy of the Leased Premises, and (ii) Lessee's cost of operating, maintaining, protecting and repairing the Leased Premises including, without limitation, any Common Services Charges paid to Government pursuant to this Paragraph 3.1.

3.1.2 Lessee shall be responsible for paying the cost of services incurred by Government and provided for the benefit of Lessee and Sublessees as described and in the amount set forth in Paragraph 3.1.3 (the "Common Services Charge"). Lessee shall pay Government the Common Services Charge on the first day of each month.

3.1.3 The Common Services Charge will be calculated as follows:

(1) \$0.025 per square foot per month of occupied building space used or occupied by Lessee; or if subleased by Lessee to another, \$0.025 per square foot per month of building space used or occupied by residential tenants of any Sublessee;

(2) \$0.003 per square foot per month of land area used or occupied by Lessee or subleased by Lessee to another.

The Common Services Charge may be revised by Government and Lessee on an annual basis, or at other times only upon mutual agreement of Government and Lessee or as required by Paragraph 3.1.4 below.

"Common Services" for the purpose of the Common Services Charge shall include, but are not limited to: fire fighting; general perimeter security (this does not include security of those portions of Leased Premises which are (1) used or occupied by Lessee, (2) subleased by Lessee to another); causeway operations, maintenance and repair; maintenance and repair of roads, streets, sidewalks, curbs and gutters; operation, maintenance and repair of street lighting, street signals and signage; operation, maintenance and repair of storm sewer; pest control, and general administration of these services. Nothing in this Lease commits Government to continue to provide Common Services referenced herein.

3.1.4 If and to the extent Government reduces, modifies or ceases to provide all or portion of the Common Services described herein or to the extent Lessee assumes the responsibility for such Common Services pursuant to a cooperative agreement or other agreement with Government, the Common Services Charge shall be proportionately reduced, to an amount mutually agreed upon by Government and Lessee, so that at all times during the term

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of this Lease the amount of the Common Services Charge shall accurately and in substantially the same proportion as provided herein reflect the costs of Government in providing such Common Services.

3.1.5 If the Government expects to incur any unanticipated costs which are specifically attributable to an action or inaction of the Lessee, its Sublessees, or assigns, the Lessee and the Government shall meet and confer on ways to avoid or mitigate such costs and, if the costs can not be entirely avoided, the Lessee and Government shall mutually determine the amount that Lessee shall pay from revenue in addition to the Common Services Charge to defray those costs that cannot be avoided or mitigated. If the Lessee and Government are unable to reach agreement on a way to avoid or mitigate the unanticipated costs or the amount of compensation that the Lessee shall pay to the Government to defray such costs, their dispute shall be resolved in accordance with the provisions of Paragraph 23 of this Lease.

3.2 Consistent with standard accounting practices for tax purposes, Lessee shall keep adequate records and books of account showing the actual cost to it of all items of labor, material, equipment, supplies, services and other items of cost incurred by it directly in the performance of any item of work or service in the nature of marketing and management; the repair, restoration, protection and maintenance of Leased Premises which is required by Paragraph 12; or otherwise approved or directed by Government. Lessee shall provide Government with access to such records and books of account and proper facilities for inspection thereof at all reasonable times.

4. USE OF LEASED PREMISES:

4.1 The Leased Premises may be used and operated by Lessee for residential purposes. Lessee understands and acknowledges that this is not and does not constitute a commitment by Government with regard to the ultimate disposal of Leased Premises, in whole or in part, to Lessee or any agency or instrumentality thereof, or to any Sublessee. The Lease may be terminated by Government or Lessee as provided by the terms of the Lease pursuant to Paragraph 14, and Lessee and Government agree to and acknowledge such terms.

4.2 Lessee shall not undertake any activity that may affect an identified historic or archeological property, including excavation, construction, alteration or repairs of Leased Premises, without the approval of Government. Buried cultural materials may be present on the Leased Premises. If such materials are encountered, Lessee shall stop work immediately and notify Government.

5. SUBLETTING:

5.1 Lessee is authorized to sublease property included in this lease without obtaining Navy approval of the sublease, provided the sublease incorporates the terms of this lease (except for rental terms which may be different in amount or expressed differently) and does not include

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any provisions that are inconsistent with this lease. A copy of the sublease must be provided to the Navy Local Representative.

5.1.1 In the event that the terms and conditions of the proposed sublease do not comply with or do not incorporate the terms of this Lease, then prior Government approval is required. Any proposed sublease which involves the use of hazardous or toxic materials, including those of an explosive, flammable, or pyrotechnic nature, as provided in 10 U.S.C. 2692, shall require prior Government approval. Such consent shall not be unreasonably withheld or delayed.

5.1.2 Each sublease shall contain the environmental protection provisions set forth in Paragraph 13 hereof. Under no circumstances shall Lessee assign this Lease.

5.1.3 Rental agreements for occupancy of individual units by residential tenants do not require the consent of the Government and are not required to attach or incorporate by reference any provisions of this Lease, and copies thereof need not be provided to the Government, the BPA or applicable state equivalent.

5.2 Any sublease granted by Lessee shall contain a copy of this Lease as an attachment and be subject to all terms and conditions of this Lease and shall terminate immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of Government to Lessee or any Sublessee. Under any sublease made, with or without consent, the Sublessee shall be deemed to have assumed all of the obligations of Lessee under this Lease, except that the Sublessee shall not be required to assume any obligation of Lessee which is not set forth in a sublease approved by the Government under Paragraph 5.1.1 above. No sublease shall relieve Lessee of any of its obligations hereunder.

5.3 Upon its execution, a copy of the sublease shall immediately be furnished to the Navy Local Representative. Should a conflict arise between the provisions of this Lease and a provision of the sublease, the provisions of this Lease shall take precedence. Any sublease shall not be taken or construed to diminish or enlarge any of the rights or obligations of either of the parties under this Lease.

5.4 The Government shall give the Sublessee the same ability to cure any default as has been provided to the Lessee and will accept such cure from the Sublessee within the same period of time as is permitted the Lessee.

6. JOINT INSPECTION & INVENTORY REPORT

6.1 Joint Inspection. Representatives of the Lessee and Government shall conduct a joint inspection of all portions of the Leased Premises to be (1) beneficially used or occupied by the Lessee; (2) assigned by the Lessee to another; or (3) subleased by Lessee to another for any purpose. Such inspections shall be completed before any such use begins and may include a representative of the Sublessee if appropriate. Based on the joint inspection, a complete

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inventory of Government property located on the Leased Premises and a report of the condition of the Leased Premises, including the condition of improvements, appurtenances and personal property thereon, has been prepared and is attached to this Lease as Exhibit C.

6.2 No Warranty by Government. All facilities and property delivered to the Lessee shall be delivered "as is, where is," and, as such, the Government makes no warranty as to such facilities and property either as to their usability generally or as to their fitness for any particular purpose. As provided in Paragraph 12 of this Lease, Lessee shall, at no expense to Government, maintain those portions of the Leased Premises which Lessee uses or subleases, and will from time to time make or cause to be made all necessary and proper repairs, replacements, and renewals which shall thereupon become part of the Leased Premises. During the term of this Lease, Government shall have no responsibility, financial or otherwise, except as otherwise described herein with respect to protection and maintenance of the Leased Premises.

6.3 In accordance with 32 CFR §175(h), governing the disposition of personal property at closing military bases, Personal Property shall be identified throughout the Installation for use in connection with redevelopment of the Installation. At no expense to Government, and only with Government approval, Personal Property may be relocated from other buildings to the Leased Premises in order to facilitate redevelopment, including exclusive use thereof by the Sublessee during the Term of this Lease. Each inventory, upon completion, shall be identified by building or facility number, and signed and dated by both parties to this Lease and attached to this Lease as part of the Joint Inspection Report attached hereto as Exhibit C.

7. ENVIRONMENTAL BASELINE SURVEY AND FINDINGS OF SUITABILITY TO LEASE:

An Environmental Baseline Survey for Lease (EBSL) and a Finding of Suitability to Lease (FOSL) are attached to this Lease as Exhibit D and made part of this Lease. The EBSL sets forth the existing environmental conditions of the Leased Premises as represented by the baseline survey which has been conducted by Government. The FOSL sets forth the basis for the Government's determination that Leased Premises are suitable for leasing. Lessee is hereby made aware of the information contained in the FOSL attached hereto as Exhibit D and shall comply with applicable restrictions set forth therein.

8. ALTERATIONS:

8.1 Lessee shall not construct, make or permit its Sublessees to construct or make any substantial alterations, additions, excavations, improvements to, installations upon or otherwise modify or alter the Leased Premises in any way, including those which may adversely affect the remediation of hazardous materials on the Installation (together, "Alterations") without the prior written consent of Government. Such consent may not be unreasonably withheld or delayed.

8.2 Upon termination of this Lease, as directed by Government, Lessee shall, at the option of the Government either:

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8.2.1 Promptly remove all alterations, additions, betterments and improvements made or installed and restore the Leased Premises to the same or as good condition as existed on the date of entry under this Lease, reasonable wear and tear and acts of God excepted; or

8.2.2 Abandon such additions or alterations in place, at which time title to such alterations, improvements and additions shall vest in Government.

8.2.3 In either event all personal property and trade fixtures of Lessee or any third person may be removed from the Leased Premises and Lessee shall repair any damage to the Leased Premises resulting from such removal.

9. ACCESS BY GOVERNMENT:

In addition to access required under Paragraph 1.3, at all reasonable times throughout the term of this Lease, Government shall be allowed reasonable access to the Leased Premises for any purpose. Government will give Lessee or any Sublessee at least twenty-four (24) hour prior notice of its intention to enter the Leased Premises, unless it determines the entry is immediately required for safety, environmental, operations or security purposes. Lessee shall have no claim on account of any entries against Government or any officer, agent, employee, contractor or subcontractor of Government. All keys to the buildings and facilities occupied by Lessee or any Sublessee shall be made available to Government upon request. The Government agrees to not unreasonably disturb tenants of Sublessee in possession of portions of the Leased Premises in the Government's exercise of its right of access to the Leased Premises under the Lease.

10. UTILITIES AND SERVICES:

Procurement of utilities (i.e., electricity, water, gas, sewer, telephone and trash removal) will be the responsibility of Lessee. Lessee agrees to obtain needed utility services from any private or municipal supplier who should, during the term of Lease, become able to deliver such services to Leased Premises. In the event that Government shall furnish Lessee with any utilities or services maintained by Government which Lessee may require in connection with its use of Leased Premises, Lessee shall pay Government the cost incurred in providing such utilities or services in the amounts set forth in Exhibit B attached hereto, which rates shall be determined by Government and Lessee in accordance with applicable laws and regulations. In the event that Government provided utility services shall be made available to Lessee, Lessee, at no cost to Government, shall install metering devices for utilities serving the Leased Premises prior to delivery of utility services by the Government. The volume of Government provided utilities used by Lessee shall be determined by such metering devices. It is expressly agreed and understood that Government in no way warrants the continued availability, maintenance or adequacy of any utilities or services furnished to Lessee.

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11. NON-INTERFERENCE WITH GOVERNMENT OPERATIONS:

Lessee shall not conduct operations nor make any alterations that would interfere with or otherwise restrict operations, environmental clean-up or restoration actions by Navy, Environmental Protection Agency (EPA), applicable state equivalent, or their contractors. Environmental clean-up, restoration or testing activities by these parties shall take priority over Lessee's use of Leased Premises in the event of any conflict. However, Government and Lessee agree to coordinate to minimize potential conflicts between necessary remediation of environmental contamination, including investigation and remedial actions, and Lessee's and any Sublessee's use of Leased Premises.

12. PROTECTION AND MAINTENANCE SERVICES:

12.1 Except as otherwise specifically provided herein, Lessee shall furnish or cause to be furnished all labor, supervision, materials, supplies and equipment necessary to the operation, maintenance and repair of the following building systems and appurtenances located in or on the Leased Premises: structural (including roof), fencing, plumbing, electrical, heating and cooling systems; exterior utility systems (including fire hydrants and mains); pavement and grounds maintenance (including grass cutting, shrub trimming and tree removal); pest and weed control; security and fire protection within Leased Premises; refuse collection, removal and disposal; and utilities maintenance necessary for the protection of Leased Premises. Government shall not be required to furnish any services or facilities to Lessee or to make any repair, restoration, replacement, or alteration in or to Leased Premises. Lessee hereby assumes the full and sole responsibility for the protection, maintenance and repair of Leased Premises set forth in this paragraph. For specifics as to such protection and maintenance required to be provided by Lessee hereunder, the following provisions shall apply:

12.1.1 The degree of maintenance and repair services to be furnished by Lessee hereunder shall be that which is sufficient to assure weather tightness, structural stability (excluding any seismic retrofit and/or modification to foundations resulting from extraordinary natural occurrences such as earthquakes, floods and landslides), protection from fire hazards or erosion, and elimination of safety and health hazards which arise during the term of the Lease and which are not caused by the actions of Government or its employees, contractors or agents, so that the Leased Premises being serviced will remain in the condition in which they existed at the commencement of the Lease as documented in the Joint Inspection and Inventory Report prepared pursuant to Paragraph 6, ordinary wear and tear and acts of God excepted. Prior to use and occupancy, Lessee shall correct the safety and health hazards described on Exhibit F.

12.2 During term of this Lease, debris, trash and other useless materials placed on the Leased Premises during the term of this Lease shall be promptly removed from the Leased Premises. Upon termination or expiration of this Lease, the Leased Premises shall be left without containers, Lessee's equipment, and other undesirable materials placed on the Leased Premises during the term of this Lease (except by Government) and in as clean condition as received by Lessee.

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12.3 Lessee shall provide or cause to be provided all security services necessary to assure security and safety within the Leased Premises. Any crimes or other offenses, including traffic offenses and crimes and offenses involving damage to or theft of Government property, shall be reported to the appropriate authorities for their investigation and disposition and to Government as property owner.

12.4 Lessee shall take or cause to be taken, all reasonable and necessary fire protection precautions at the Leased Premises. Such precautions may include, but are not limited to, the maintenance of any sprinkler system that exists on the effective date of this Lease and/or the provision of portable fire extinguishers for fire protection of Leased Premises.

12.5 Lessee is responsible for the repair and maintenance of all interior utility systems and those exterior utility systems, distribution lines, connections and equipment which solely support the Leased Premises. This responsibility extends from the Leased Premises to the point of connection with the utility system which serves users other than Lessee.

12.6 Lessee shall ensure only trained and qualified persons are utilized in performance of the maintenance and protection services specified in this paragraph.

13. ENVIRONMENTAL PROTECTION PROVISIONS:

13.1 Lessee, Sublessees and contractors shall comply with all applicable Federal, state and local laws, regulations and standards that are or may become applicable during the term of this Lease to Lessee's activities on the Leased Premises.

13.2 Lessee or any Sublessee shall be solely responsible for obtaining, at no cost to Government, any environmental permits required for its operations under the Lease, independent of any existing permits held by the Government. Nothing in this Lease shall require Lessee to become a secondary discharger or co-permittee on any existing environmental permit held by Government relating to the operation of the Installation, including, without limitation, any environmental permits associated with the operation of the Installation's sewage treatment plant. Any and all environmental permits required for any of Lessee's or Sublessees' operations or activities will be subject to prior concurrence of the Commanding Officer, Engineering Field Activity West, Naval Facilities Engineering Command. Lessee acknowledges that the Government will not consent to being named a secondary discharger or co-permittee for any operations or activities of the Lessee or any Sublessee under the Lease. In the event the Government is named as a secondary discharger or co-permittee for any activity or operation of the Lessee or any Sublessee, Government shall have the right to take reasonable actions necessary to prevent, suspend, or terminate such activity or operation, including terminating this Lease, without liability or penalty.

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13.3 Government's rights under this Lease specifically include the right for Government officials to inspect upon reasonable notice the Leased Premises for compliance with environmental, safety and occupational health laws and regulations, whether or not Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. Government will give Lessee or Sublessee twenty-four (24) hours prior notice of its intention to enter Leased Premises unless it determines the entry is immediately required for safety, environmental, operations or security purposes. Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, contractor or subcontractor thereof.

13.4 Government and its officers, agents, employees, contractors and subcontractors have the right, upon reasonable notice to Lessee and any Sublessee, to enter upon the Leased Premises for the purposes enumerated in this subparagraph:

13.4.1 to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, testpitting, testing soil borings and other activities related to the Installation Restoration Program (IRP);

13.4.2 to inspect field activities of Government and its contractors and subcontractors in implementing the IRP;

13.4.3 to conduct any test or survey related to implementation of the IRP or environmental conditions at Leased Premises or verify any data submitted to EPA or applicable state equivalent by Government relating to such conditions;

13.4.4 to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the IRP, including but not limited to monitoring wells, pumping wells and treatment facilities.

13.5 Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP during the course of any of the above described response or remedial actions. Any inspection, survey, investigation or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by Lessee and any Sublessee. Lessee and Sublessee shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor or subcontractor thereof. In addition, Lessee shall comply with all applicable Federal, state and local occupational safety and health regulations.

13.6 Lessee further agrees that if the Leased Premises are subject to ongoing environmental remediation by Government, during such period, Lessee shall provide to EPA and applicable state equivalent by certified mail a copy of any sublease of the Leased Premises within fourteen (14) calendar days after the effective date of such sublease. Lessee may delete the financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this condition.

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13.7 Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act or its applicable state equivalent. Except as specifically authorized by Government in writing, Lessee must provide at its own expense such hazardous waste management facilities as required by its use of the Leased Premises, complying with all laws and regulations. Government hazardous waste management facilities will not be available to Lessee. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

13.8 DOD component accumulation points for hazardous and other waste will not be used by Lessee or any Sublessee. Neither will Lessee or Sublessee permit its hazardous wastes to be commingled with hazardous waste of DOD Component.

13.9 Before beginning operations on the Leased Premises, Lessee shall have a Government-approved plan for responding to hazardous waste, fuel and other chemical spills. Such plan shall be independent of the Installation plan and, except for initial fire response and/or spill containment, shall not rely on the use of Installation personnel or equipment. Should Government provide to the Leased Premises any personnel or equipment whether for initial fire response and/or spill containment, or otherwise on request of Lessee, or because Lessee was not, in the reasonable opinion of Government, conducting timely cleanup actions, Lessee agrees to reimburse Government for its reasonable and actual costs in association with such response or cleanup upon receipt of an invoice for such costs.

13.10 Lessee shall not conduct or permit its Sublessees to conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of Government, which consent shall not be unreasonably withheld or delayed; provided however, that such prior written approval shall not be required for activities consistent with residential use of the Leased Premises, including without limitation, routine landscaping, gardening, and the like.

13.11 To the extent required by law and regulation, Government shall abate, remove or otherwise remedy all friable, accessible and damaged asbestos containing material (ACM), lead based paint (LBP) and polychlorinated biphenyls (PCBs) from Leased Premises. The presence of known ACM, LBP or PCBs shall be fully identified in an Environmental Baseline Survey (EBS) and/or Supplemental Environmental Baseline Survey (SEBS), attached as an Exhibit.

13.11.1 Except as provided in Paragraph 13.11.2, and except to the extent required by law and regulation, Government is not responsible for any removal or containment of asbestos containing materials (ACM). If Lessee intends to make any improvements or repairs that require the removal of asbestos, an appropriate asbestos disposal plan must be incorporated into the plans and specifications and submitted to Government. The asbestos disposal plan will identify the proposed disposal site for the asbestos, or in the event the site has not been identified, will provide for disposal at a licensed facility authorized to receive it.

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13.11.2 Without limiting or derogating from the Government's responsibility set forth in Paragraph 13.11 above, Government shall be responsible for the removal or containment of the ACM identified as requiring abatement shown on Exhibit G attached hereto as damaged or deteriorated ACM. Government agrees to abate these listed items of damaged or deteriorated ACM. Government may choose the most economical means of abating any damaged or deteriorated ACM, which may include removal, repair or containment (encapsulation), or a combination of removal, repair and containment. The foregoing obligation of Government does not apply to any ACM other than that identified in Exhibit G and ACMs for which the Government has obligations under Paragraph 13.11 above. Notwithstanding Paragraph 13.11.1 above, in an emergency, Lessee will notify Government as soon as practicable of its emergency ACM responses. Lessee shall be responsible for monitoring the condition of existing ACM on Leased Premises for deterioration or damaged and accomplishing repairs or abatement pursuant to the applicable conditions of this Lease.

13.12 Subject to the Government's indemnity in Paragraph 13.13, Lessee shall indemnify and hold harmless Government from any costs, expenses, liabilities, fines or penalties resulting from discharges, emissions, spills, storage or disposal arising from Lessee's occupancy, use or operations, or any other action by Lessee or any Sublessee during the term of this Lease giving rise to Government liability under Federal, state or local environmental laws. Lessee's obligations hereunder shall apply whenever Government incurs costs or liabilities as a result of Lessee's activities or activities of any Sublessee as provided hereunder. However, this indemnity does not extend to those damages which are due to the fault or negligence of Government or its contractors, to any suit, claim, demand or action, liability, judgment, cost or other fee for which the Government has agreed to provide indemnification pursuant to Paragraph 13.13. This provision shall survive the expiration or termination of this Lease.

13.13 Pursuant to Section 330 of P.L. 102-484, as amended, and subject to the provisions of this Paragraph 13.13 of the Lease, Government shall hold harmless, defend and indemnify, in full, the Treasure Island Development Authority, any other person or entity that acquires ownership or control from the Government; or any successor, assignee, transferee, lender, or Lessee of the Leased Premises including but not limited to the John Stewart Company, Sublessee of the Lessor (the "Sublessee") (collectively and individually "Indemnitee(s)"), from and against any suit, claim, demand, action, liability, judgment, cost or fee, arising out of any claim for personal injury or property damage (including death, illness, loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant, contaminant, petroleum or petroleum derivative from or on the Leased Premises, as a result of Department of Defense activities at the Leased Premises.

13.13.1 In any case in which Government determines that it may be required to indemnify an Indemnitee(s) for any suit, claim, demand, action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage, Government may settle or defend on behalf of that Indemnitee(s), the claim for personal injury or property damage.

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13.13.2 If any Indemnitee(s) does not allow Government to settle or defend the claim, such Indemnitee(s) will not be afforded indemnification with respect to that claim.

13.13.3 Government will not indemnify the Indemnitee(s) unless such Indemnitee(s):

13.13.3.1 Notifies Government in writing within 90 days after such an indemnification claim accrues. If Indemnitee(s) is served with a complaint or written notice of a claim by Federal, State or local regulators, Indemnitee(s) will provide Government with a copy of such document no later than 15 days following service of the complaint. A claim for indemnification accrues when the Indemnitee(s) receives written notice of any suit, claim, demand, action, liability, judgment, cost or other fee, which relates to personal injury or property damage, that the Indemnitee(s) knows or may be deemed reasonably to have known, may have been caused or contributed to by Department of Defense activities. Indemnitee(s) right to indemnification shall not expire due to late notice unless Government's ability to defend or to settle is materially and adversely affected.

13.13.3.2 Furnishes Government copies of pertinent papers the Indemnitee(s) receives; and

13.13.3.3 Furnishes, to the extent it is in the possession or control of Indemnitee(s), evidence or proof of any claim, loss, or damage covered by Paragraph 13.13; and

13.13.3.4 Provides, upon request of Government, reasonable access to the records and personnel of the Indemnitee(s) for purposes of defending or settling the claim or claims.

13.13.4 Government will not indemnify an Indemnitee(s) to the extent such Indemnitee(s) caused or contributed to any release or threatened release of any hazardous substance, pollutant, contaminant, petroleum or petroleum derivative from or on the Leased Premises. Government is entitled to contribution from Indemnitee(s) to the extent Government shows that such Indemnitee(s) caused or contributed to any release. However, the availability of contribution shall not affect the requirement of Government to defend an Indemnitee(s), unless such Indemnitee(s) is solely responsible for the release or threatened release giving rise to the claim for the indemnity, in which case the Government's duty to defend will not exist as to that claim.

13.14 Pursuant to Section 42 USC Section 9620(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, and the CERCLA lead agent authority of the Department of Defense created by 42 USC Section 9604 and Section 9615 of CERCLA, Section 2.d. of Executive Order 12580 (52 FR 2923; January 29, 1987), and the National Contingency Plan (40 CFR Section 300.5), and subject to the Environmental Protection provisions of this Lease, Government, in consultation with U.S. EPA, has determined that the Leased Premises are suitable for lease, that the uses contemplated for the

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lease of the Leased Premises are consistent with protection of human health and the environment, and that there are adequate assurances that Government will take all response actions necessary to protect human health and the environment that have not been taken as of the date of this Lease.

Further, Government herein provides assurances that, in accordance with and to the extent required at the Leased Premises by applicable Federal, State and local laws, Government will timely:

13.14.1 assess, inspect, investigate, study and remove or remediate, as appropriate, the release or threatened release of a hazardous substance, pollutant or contaminant, from, on or under the Leased Premises; and

13.14.2 settle or defend any claim, demand, or order made by Federal, State or local regulators or third parties in connection with any release or threatened release of a hazardous substance, pollutant or contaminant, from, on the Leased Premises;

13.15 The Lessee and any Sublessee(s) shall:

13.15.1 Notify Government in writing within 90 days after learning of any previously unidentified condition at the Leased Premises that suggests a response action is necessary, or, within 90 days after receiving notice of a claim by Federal, State or local regulators, or other third parties, of the existence of any condition at the Leased Premises that suggests a response action is necessary. If Lessee or any Sublessee is served with a complaint or written notice of a claim by Federal, State or local regulators, the served party shall provide Government with a copy of such document not later than 15 days following service of such document;

13.15.2 Furnish Government copies of pertinent papers the Lessee and any Sublessee(s) receives; and

13.15.3 Provide, upon request of Government, reasonable access to the records and personnel of the Lessee and any Sublessee(s) for purposes of defending or resolving the need for additional response action.

13.16 For purposes of 42 USC Section 9620(h)(3), the Lessee's and any Sublessee(s)'s status as an operator during the lease term will not make it a potentially responsible party or relieve Government of its obligations under Paragraph 13.14 and 42 USC Section 9620(h).

13.17 In accordance with and to the extent required by applicable Federal, State and local laws, Government will timely:

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13.17.1 access, inspect, investigate, study and remove or remediate, as appropriate, the release or threatened release of petroleum or a petroleum derivative, from or on the Leased Premises, caused by Department of Defense activities at the Leased Premises; and

13.17.2 settle or defend any claim, demand, or order made by Federal, State or local regulators or third parties in connection with a release or threatened release of petroleum or a petroleum derivative, from or on the Leased Premises, caused by Department of Defense activities at the Leased Premises.

13.18 The Lessee and any Sublessee(s), upon learning of any previously unidentified release or threatened release of petroleum or a petroleum derivative from or on the Leased Premises, that may have been caused by Department of Defense activities at the Leased Premises, will notify Government by following the notification procedures set forth in Paragraph 13.15 above.

13.19 For the purpose of the provisions of Paragraphs 13.13 through 13.18, the following terms have the meanings indicated below:

13.19.1 "release", "threatened release", "hazardous substance", "pollutant", "contaminant", "removal", "remedial action", and "response" have the meanings given such terms under CERCLA and U. S. EPA regulations implementing CERCLA.

13.19.2 "Department of Defense activities" means the Department of Defense's construction, installation, placement, operation, maintenance, misuse, abandonment or failure to maintain the buildings and equipment and land at the Leased Premises; or failure to satisfy any otherwise legally applicable obligation to investigate or remediate any environmental conditions existing at the Leased Premises. "Department of Defense activities" does not mean the release or threatened release of a hazardous substance, pollutant, contaminant, petroleum or a petroleum derivative, to the extent that Government shows that the release or threatened release is caused or contributed to by the Indemnitee(s).

13.19.3 "Action arising out of any claim for property damage" includes, but is not limited to, any judicial, administrative or private cost recovery proceeding brought against an Indemnitee(s) (i) for response costs arising under CERCLA, (ii) for costs incurred to enjoin or abate the presence of migration of contamination from or on the Leased Premises Resource, Conservation and Recovery Act ("RCRA"), or (iii) for costs incurred to comply with the requirements of similar Federal or State laws and regulations (or the laws of any political subdivision of the state) which arise from the environmental conditions at the Leased Premises.

13.19.4 "Environmental condition(s)" means any hazardous substance, pollutant or contaminant, including hazardous waste or hazardous constituent, petroleum or petroleum derivative disposed of, released or existing in environmental media such as soil, subsurface soil, air, groundwater, surface water or subsurface geological formations at levels above background.

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13.20 Nothing in these provisions shall diminish or waive any rights which parties might otherwise have under common law or any Federal or State law or regulation, with the exception of Paragraph 13.13 of this Lease including applicable references in Paragraph 13.19, which shall be deemed to fully set forth the parties', including the Sublessee(s)', statutory rights under Section 330 of P.L. 102-484, and Paragraph 13.14 of this Lease including applicable references in Paragraph 13.19, which shall be deemed to fully set forth the parties' including any Sublessee(s)'s, statutory rights under 42 USC Section 9620(h)(3); provided that nothing in this Lease shall limit the right, if any, that an Indemnitee, Lessee or Sublessee may have to enforce in a federal district court proceeding, statutory rights under Section 330 of P.L. 102-484 and 42 USC Section 9620(h)(3).

13.21 Any Indemnitee may implement or enforce the terms of Paragraphs 13.13 and 13.14 of this Lease in its own right at its own discretion without obtaining permission from or joining any of the other Indemnitee(s).

13.22 The provisions of Paragraphs 13.13 and 13.14 of this Lease shall survive expiration or termination of the Lease only to the extent a claim is made during or after the lease period by an Indemnitee(s) or by the Lessee or Sublessee(s) under the terms of this Paragraph 13.

13.23 Prior to taking any action or reaching any final settlement under Paragraphs 13.13 or 13.14 of this Lease that could adversely impact Lessee's or Sublessee(s)'s use of the Leased Premises, Government shall consult with Lessee and Sublessee(s) to minimize any such impact.

13.24 Nothing in Paragraphs 13.13 or 13.14 of this Lease creates rights of any kind in any person or entity other than: (i) the Government and (ii) Indemnitees, Lessee and Sublessees.

14. TERMINATION:

14.1 Government shall have the right to terminate this Lease, in whole or in part, without liability, upon thirty (30) calendar days written notice:

14.1.1 If, at any time after January 1, 2003, continued use of the Leased Premises by Lessee under this Lease is inconsistent with the final decision on disposal of the Leased Premises documented in a Record of Decision under the National Environmental Policy Act, or

14.1.2 In the event of a national emergency as declared by the President or the Congress of the United States and Government makes a determination that such national emergency requires termination of this Lease; or

14.1.3 If, at any time after January 1, 2003, (a) Government has complied with all applicable legal requirements to convey fee title to the Premises, (b) Government has satisfied in full all of its obligations under this Lease, (c) Government tenders to Lessee a conveyance of fee ownership of the Premises after negotiating in good faith with respect to establishing reasonable

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terms, conditions of, and consideration for such conveyance, and (d) Lessee fails to accept such conveyance within one hundred eighty (180) calendar days of written notice of such tender, or

14.1.4 In the event of a breach by Lessee of any of the terms and conditions hereof. In the event of a breach involving the performance of any obligation, Lessee shall be afforded thirty (30) calendar days from the receipt of Government's written notice of intent to terminate to complete performance of the obligation or otherwise cure the subject breach and avoid termination of this Lease, unless Government determines that a shorter period is required for safety, environmental, operations or security purposes. In the event that Government shall elect to terminate this Lease on account of the breach by Lessee of any of the terms and conditions, Government shall be entitled to recover and Lessee shall pay to Government:

14.1.4(a) The costs incurred in resuming possession of the Leased Premises.

14.1.4(b) The costs incurred in performing any obligation on the part of the Lessee to be performed hereunder, but only after notice to Lessee and the expiration of all applicable cure periods.

14.1.4(c) An amount equal to the aggregate of any maintenance obligations and charges assumed hereunder and not paid or satisfied, which amounts shall be due and payable at the time when such obligations and charges would have accrued or become due and payable under this Lease.

14.2 Lessee shall have the right to terminate this Lease upon thirty (30) calendar days written notice to Government in the event of breach by Government of any of the terms and conditions hereof. In the event of a breach involving the performance of any obligation, Government shall be afforded thirty (30) calendar days from the receipt of Lessee's notice of intent to terminate to complete performance of the obligation or otherwise cure the subject breach and avoid termination of this Lease. Lessee shall also have the right to terminate this Lease in the event of damage to or destruction of all of the improvements on Leased Premises or such a substantial portion thereof as to render Leased Premises incapable or impracticable of use for the purposes for which it is leased hereunder, provided:

14.2.1 Government either has not authorized or directed the repair, rebuilding or replacement of the improvements or has made no provision for payment for such repair, rebuilding or replacement by application of insurance proceeds or otherwise; and

14.2.2 That such damage or destruction was not occasioned by the fault or negligence of Lessee or any of its officers, agents, servants, employees, subtenants, licensees or invitees, or by any failure or refusal on the part of Lessee to fully perform its obligations under this Lease.

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14.2.3 If Government requires Lessee or any Sublessee to vacate all or a substantial portion of Leased Premises pursuant to any provision of this Lease for a period in excess of thirty (30) calendar days, Lessee may terminate this Lease by written notice to Government given at any time while Lessee shall continue to be denied use of all or a substantial portion of Leased Premises. Lessee shall thereafter surrender possession of Leased Premises within fifteen (15) calendar days of such notice.

14.3 If (i) this Lease is terminated pursuant to Paragraph 14.1.2, and (ii) at the time of termination there remains in effect a sublease of the Leased Premises which has been approved by the Government, then the Lessee and the Sublessee shall have the right to re-enter the Leased Premises if and when the reason for such termination ends upon the terms and conditions of this Lease and any approved sublease (except, however, the term of the Lease and sublease shall be extended by the time during which the Lease and sublease had been terminated).

15. ENVIRONMENTAL CONTAMINATION:

In the event environmental contamination is discovered on the Leased Premises which creates, in Government's determination, an imminent and substantial endangerment to human health or the environment which necessitates evacuation of the Leased Premises, and notwithstanding any other termination rights and procedures contained in this Lease, Lessee shall vacate or require any Sublessee to vacate Leased Premises immediately upon notice from Government of the existence of such a condition. Exercise of this right by Government shall be without liability, except that Lessee shall not be responsible for the payment of consideration, the amount of deduction to be determined on a daily pro-rata basis, during the period Leased Premises is vacated, and Lessee shall have the right to terminate this Lease if, as provided in Paragraph 14.3 above, Lessee or any Sublessee is deprived of the beneficial use and occupancy of the Leased Premises for a period in excess of thirty (30) days. Government's exercise of this right herein to order the Leased Premises immediately vacated does not alone constitute a termination of the Lease, but such right may be exercised in conjunction with any other termination rights provided in this Lease or by law.

16. NON-ENVIRONMENTAL INDEMNIFICATION BY LESSEE:

The Lessee shall hold harmless, indemnify, and defend the Government from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for injury or damage that results from, or is any manner predicated upon activities of the Lessee on the Leased Property during the term of the Lease. This indemnification applies to any fines, claims, demands and causes of action of every nature whatsoever which may be made upon, sustained or incurred by Government by reasons of any breach, violation, omission or non-performance of any term, covenant or condition hereof on the part of Lessee or the employees, agents, servants, guests, invitees and Sublessees of Lessee. This indemnification also applies to claims arising out of the furnishing of any utilities or services by Government or any interruption therein or failure thereof, whether or not the same shall be occasioned by the negligence or lack of diligence of Lessee, its officers, agents, servants, employees or Sublessees. However, this

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indemnity does not extend to those damages which are due to the fault or negligence of Government or its contractors, or to any matters covered in Paragraph 13, including: (i) any matters covered in the Government's indemnity in Paragraph 13.13; (ii) any suit, claim, demand or action, liability, judgment, cost of other fee arising from any environmental condition at the Leased Premises or any ACM or LBP incorporated into, at or from the Leased Premises; or (iii) any breach, violation, omission or non-performance by Indemnitee(s) of any term, covenant or condition contained in Paragraph 13. This covenant shall survive the termination of this Lease.

17. INSURANCE:

17.1 At the commencement of this Lease, Lessee shall obtain, from a reputable insurance company or companies, liability insurance or shall maintain a program of self-insurance. The insurance shall provide an amount not less than a minimum combined single limit of \$10 million, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of Lessee, Sublessees, contractors and invitees under the terms of this Lease. Lessee shall provide Government certificates of its self-insurance or require its insurance company to furnish Government a copy of the policy or policies, or if acceptable to Government, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by Government every three years or upon renewal or modification of this Lease.

17.2 As to those structures and improvements on Leased Premises constructed by or owned by Government, Lessee shall procure and maintain at Lessee's cost a standard fire and extended coverage insurance policy or policies or a program of self-insurance on the Leased Premises in an amount sufficient to demolish damaged or destroyed structures and improvements, remove debris and clear the Leased Premises. Should Lessee elect to purchase commercial insurance in lieu of self-insurance, Lessee shall procure such insurance from a reputable company or companies. In that event, the insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of Government, shall be payable to Lessee to be used solely for the demolition of damaged or destroyed structures and improvements, removal of debris and clear the Leased Premises or for repair, restoration, or replacement of the property damaged or destroyed. Any balance of the proceeds not required for such purposes shall be paid to Government. If Government does not elect, by notice in writing to the insurer within thirty (30) calendar days after the damage or destruction occurs, to have the proceeds paid to Lessee for the purposes herein above set forth, then such proceeds shall be paid to Government, provided however that the insurer, after payment of any proceeds to Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by Lessee. Nothing herein contained shall be construed as an obligation upon Government to repair, restore or replace Leased Premises or any part thereof. If and for so long as there remains in effect a sublease of the Leased Premises which has been approved by the Government, the Government agrees that all proceeds of casualty insurance policies carried by Sublessee shall be paid to Sublessee and Sublessee shall be entitled to all proceeds in excess of that used to demolish

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damaged or destroyed structures and improvements, remove debris and clear the Leased Premises or to repair, restore or replace the property damaged or destroyed until Sublessee has received an amount equal to the total costs of the renovation work performed by the Sublessee (plus a return thereon as provided in the sublease). Any proceeds in excess of the amount paid to Sublessee shall be paid to the Government.

17.3 If and to the extent required by law, Lessee shall provide workmen's compensation or similar insurance or self-insurance in form and amounts required by law.

17.4 During the entire period this Lease shall be in effect, Lessee shall require its contractors or Sublessees or any contractor performing work at Lessee's or Sublessee's request on Leased Premises to carry and maintain the insurance required below:

17.4.1 Comprehensive general liability insurance, including, but not limited to, contractor's liability coverage and contractual liability coverage, of not less than \$3 million, per occurrence with respect to personal injury or death, and \$5 million, per occurrence with respect to property damage.

17.4.2 Workman's compensation or similar insurance in form and amounts required by law.

17.5 Should Lessee purchase commercial insurance in lieu of self-insurance, all insurance which this Lease requires Lessee or Sublessee to carry and maintain or cause to be carried or maintained shall be in such form, for such periods of time, and with such insurers as Government may reasonably require or approve. In that event, all policies or certificates issued by the respective insurers for public liability and property insurance will name Government as an additional insured, provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Lessee or Government or any other person, provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) calendar days after receipt by Government of written notice thereof; provide that the insurer shall have no right of subrogation against Government; and be reasonably satisfactory to Government in all other respects. In no circumstances will Lessee be entitled to assign to any third party, rights of action which Lessee may have against Government.

17.6 Lessee and Sublessees shall deliver or cause to be delivered promptly to Government a certificate of insurance or self-insurance evidencing the insurance required by this Lease and shall also deliver no later than thirty (30) calendar days prior to expiration of any such policy, a certificate of insurance evidencing each renewal policy covering the same risks.

18. LABOR PROVISION:

During the term of this Lease, Lessee agrees as follows:

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18.1 Lessee will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Lessee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Government setting forth the provisions of this nondiscrimination clause.

18.1.1 Lessee shall, in all solicitations or advertisements for employees placed at Leased Premises by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

18.1.2 Lessee shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by Government, advising the labor union or worker's representative of Lessee's commitments under this equal opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

18.1.3 Lessee shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations and relevant orders of the Secretary of Labor.

18.1.4 Lessee shall furnish all information and reports required by Executive order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations and relevant orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records and accounts by Government and the Secretary of Labor for purposes of investigating to ascertain compliance with such rules, regulations and orders.

18.1.5 In the event of Lessee's noncompliance with the equal opportunity clause of this Lease or with any of said rules, regulations or orders, this Lease may be canceled, terminated or suspended in whole or in part, after the expiration of all applicable cure periods, and Lessee may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation or order of the Secretary of Labor, or otherwise provided by law.

18.1.6 Lessee will include the above provisions in every sublease unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of

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October 13, 1967, so that such provisions will be binding upon each Sublessee. Lessee will take such action with respect to any Sublessee as Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Lessee becomes involved, or is threatened with litigation with Sublessee as a result of such direction by Government, Lessee may request the United States to enter into such litigation to protect the interest of the United States.

18.2 This Lease, to the extent that it is a contract of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) and is not covered by the Walsh-Healy Public Contracts Act (41 U.S.C. 35-45), is subject to the following provisions and exceptions of said Contract Work Hours and Safety Standards Act and to all other provisions and exceptions of said law.

18.2.1 Lessee shall not require or permit any laborer or mechanic in any workweek in which he is employed on any work under this Lease to work in excess of 40 hours in such work week on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 40 hours in such work week. The "basic rate of pay", as used in this clause, shall be the amount paid per hour, exclusive of Lessee's contribution or cost for fringe benefits and any cash payment made in lieu of providing fringe benefits or the basic hourly rate contained in the wage determination, whichever is greater.

18.2.2 In the event of any violation of the provision of Paragraph 18.2.1, Lessee shall be liable to any affected employee for any amounts due, and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph 18.2.1 in the sum of ten dollars (\$10.00) for each calendar day on which such employee was required or permitted to be employed on such work in excess of the standard workday of 8 hours or in excess of the standard work week of 40 hours without payment of the overtime wages required by Paragraph 18.2.1.

18.3 In connection with the performance of work required by this Lease, Lessee agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

19. SUBMISSION OF NOTICES:

Notices shall be sufficient under this Lease if made in writing and to the addressees as:

Lessee: City and County of San Francisco
Ms. Annemarie Conroy
San Francisco Mayor's Office
Treasure Island Project
410 Palm Ave. Bldg. 1, Room 237
Treasure Island
San Francisco, CA 94130

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Government: Commanding Officer (Code 624)
Engineering Field Activity - West (Bldg. 208/2)
Naval Facilities Engineering Command
900 Commodore Drive
San Bruno, CA 94066-5000

The individuals so designated above shall be representatives of the parties and the points of contact during the period of this Lease.

20. AUDIT:

This Lease shall be subject to audit by any and all cognizant Government agencies. Lessee shall make available to such agencies for use in connection with such audits all records which it maintains with respect to this Lease and copies of all reports required to be filed hereunder.

21. AMENDMENTS:

This Lease shall not be amended or modified unless in writing and signed by both parties. No oral statements or representation made by, for or on behalf of either party shall be a part of this Lease. Should a conflict arise between the provisions of this Lease and any exhibit hereto, or any other agreement between Government and Lessee, the provisions of this Lease shall take precedence.

22. FAILURE TO INSIST ON COMPLIANCE:

The failure of Government or Lessee to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Lease shall not be construed as a waiver or relinquishment of Government's or Lessee's right to the future performance of any such terms, covenants or conditions and Government's and Lessee's respective obligations in respect of such future performance shall continue in full force and effect.

23. DISPUTES:

23.1 This lease is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613) (the Act).

23.2 Except as provided in the Act, all disputes arising under or relating to this Lease shall be resolved under this clause.

23.3 "Claim", as used in this clause, means a written demand or written assertion by Lessee or Government seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be

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resolved under a lease clause that provides for the relief sought by the claimant. However, a written demand or written assertion by Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph 23.4 below. A voucher, invoice or other routine request for payment that is not in dispute when submitted, is not a claim under the Act. The submission may be converted to a claim under the Act by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

23.4 A claim by Lessee shall be made in writing and submitted within six (6) years after accrual of the claim, to the Naval Facilities Engineering Command, Engineering Field Activity, West (ATTN: Code 64), 900 Commodore Drive, San Bruno, CA 94066-5006 herein called "Command", for a written decision. A claim by the Government against Lessee shall be subject to a written decision by the Command.

23.4.1 Lessee shall provide the certification specified in subparagraph 23.4.3 of this clause when submitting any claim:

- (a) Exceeding \$100,000; or
- (b) Regardless of the amount claimed, when using:
 - (1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or
 - (2) Any other alternative means of dispute resolution (ADR)

technique that the agency elects to use in accordance with the Administrative Dispute Resolution Act (ADRA).

23.4.2 The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

23.4.3 The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which Lessee believes Government is liable; and that I am duly authorized to certify the claim on behalf of Lessee."

23.4.4 The certification may be executed by any person duly authorized to bind Lessee with respect to the claim.

23.5 For Lessee claims of \$100,000 or less, the Command, must, if requested in writing by Lessee, render a decision within 60 calendar days of the request. For Lessee-certified claims over \$100,000, the Command, must, within 60 calendar days, decide the claim or notify Lessee of the date by which the decision will be made.

23.6 The Command's decision shall be final unless Lessee appeals or files a suit as provided in the Act.

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23.7 At the time a claim by the Lessee is submitted to Command or a claim by Government is presented to Lessee, the parties, by mutual consent, may agree to use ADR. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to employ in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in Paragraph 23.4.3 of this clause, and executed in accordance with Paragraph 23.4.4 of this clause.

23.8 Government shall pay interest on the amount found due and unpaid by Government from (1) the date the Command receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Command initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the Command receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

23.9 Lessee shall proceed diligently with the performance of Lease, pending final resolution of any request for relief, claim, appeal or action arising under Lease, and comply with any decision of the Command.

24. COVENANT AGAINST CONTINGENT FEES:

Lessee warrants that no person or agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by Lessee for the purpose of securing business. For breach or violation of this warranty, Government shall have the right to annul this Lease without liability or in its discretion, to require Lessee to pay the full amount of such commission, percentage, brokerage or contingent fee.

25. OFFICIALS NOT TO BENEFIT:

No member of or delegate to Congress or Resident Commissioner, shall be admitted to any share or part of this Lease or to any benefit to arise therefrom, but this provision shall not be construed to extend to this Lease if made with a corporation for its general benefit.

26. LIENS:

Lessee shall promptly discharge or cause to be discharged any valid lien, right in rem, claim or demand of any kind, except one in favor of Government, which at any time may arise or exist with respect to the Leased Property or materials or equipment furnished therefor, or any part thereof, and if the same shall not be promptly discharged by Lessee, or should Lessee or Sublessee be declared bankrupt or make an assignment on behalf of creditors, or should the

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leasehold estate be taken by execution, Government reserves the right to take immediate possession without any liability to Lessee or any Sublessee. Lessee and any Sublessee shall be responsible for any costs incurred by Government in securing clear title to its property.

27. TAXES:

Lessee shall pay or cause to be paid to the proper authority, when and as the same become due and payable, all taxes, assessments and similar charges which, at any time during the term of this Lease, may be imposed upon Lessee with respect to its operations of the Leased Premises. Title 10 United States Code, Section 2667(e) contains the consent of Congress to the Taxation of Lessee's interest in Leased Premises, whether or not the Leased Premises are in an area of exclusive federal jurisdiction. Should Congress consent to taxation of Government's interest in the property, this Lease will be renegotiated.

28. SUBJECT TO EXISTING AND FUTURE EASEMENTS AND RIGHTS-OF-WAY:

This Lease is subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in and upon Leased Premises or any portion thereof and to the right of Government to grant such additional easements and rights-of-way over, across, in and upon Leased Premises as it shall determine to be in the public interest, provided that any such additional easement or right-of-way shall be conditioned on the assumption by the grantee thereof of liability to Lessee for such damages as Lessee shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such easements and rights-of-way as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any Federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over Leased Premises as shall be necessary for the performance of their duties with regard to such facilities.

29. INGRESS-EGRESS AND PARKING:

Lessee and any Sublessees will be granted reasonable access to Leased Premises under this Lease. Such access will be coordinated with Government. Lessee and any Sublessees agree to adhere to all base rules and regulations regarding installation security, ingress, egress, safety and sanitation as may be prescribed from time to time by Government.

30. ADMINISTRATION:

Except as otherwise provided for under this Lease, Government shall, under the direction of the Command, have complete charge of the administration of this Lease, and shall exercise full supervision and general direction thereof insofar as the interests of Government are affected.

All correspondence in connection with
this contract should include reference to:

N6247499RP00B19

31. SURRENDER:

Upon the expiration of this Lease or its earlier termination in accordance with the terms of this Lease, Lessee shall quietly and peacefully remove itself and its property from Leased Premises and surrender the possession thereof to Government. Government may, in its discretion, declare any property which has not been removed from Leased Premises upon expiration or termination provided for above, as abandoned property upon giving to Lessee an additional 30 calendar days notice after the termination date.

32. INTEREST:

32.1 Notwithstanding any other provision of this Lease, unless paid within thirty (30) calendar days from the due date, all amounts that become payable by Lessee to Government under this Lease (net any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due. The rate of interest will be the Current Value of Funds rate published by the Secretary of Treasury pursuant to 31 U.S.C. 3717 (Debt Collection Act of 1982).

32.1.1 Amounts shall be, subject to applicable cure periods, due upon the earliest of:

32.1.1(a) the date fixed pursuant to this Lease,

32.1.1(b) the date of the first written demand for payment, consistent with this Lease, including demand consequent upon default termination,

32.1.1(c) the date of transmittal by Government to Lessee of a proposed supplemental agreement to confirm completed negotiations fixing the amount,

32.1.1(d) if this Lease provides for revision of prices, the date of written notice to Lessee stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by Lease supplement.

33. AVAILABILITY OF FUNDS:

33.1 The Government's obligations under this Lease are subject to the availability of funds appropriated for such purposes. Nothing in this Lease shall be interpreted to require obligations or payments by Government which are in violation of the Anti-Deficiency Act (31 USC 1341).

34. SPECIAL PROVISIONS:

34.1 Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by Lessee under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of

All correspondence in connection with
this contract should include reference to:

N6247499RP00B19

the Charter of the City and County of San Francisco, 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. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Lease commences, sufficient funds for the payment of any payments required under this Lease are not appropriated for any reason, then either party may terminate this Lease upon thirty (30) calendar days written notice and Lessee shall quietly and peacefully remove itself and its property from Leased Premises and surrender possession thereof to the Government. Notwithstanding the foregoing, this Paragraph 34.1 shall not in any way limit or otherwise impair Lessee's indemnification obligation arising under Paragraphs 13, 12 and 16 of this Lease.

34.2 Article 1.5 of the San Francisco Planning Code ("Code") requires the provision of bicycle storage at all properties leased by the City at no cost to the landlord, here the Government, and only if funds are available. In the event public and/or private donations, grants or other funds become available, at any time during this Lease, Lessee shall have the right to request that the Government amend this Lease to include space sufficient for the installation and operation of bicycle storage facilities. In the event of storage locker installation, the storage lockers shall be considered a trade fixture. Government, at no cost to Government, shall reasonably cooperate with City regarding the implementation of this Code.

34.3 The date on which this Lease shall become effective (the "Effective Date") is the date upon which (i) Lessee's Mayor and Board of Supervisors enact a resolution approving this Lease in accordance with all applicable laws and (ii) this Lease is duly executed by the parties hereto.

34.4 EBSL, FOSL and NEPA Documentation are attached as Exhibit "D". These documents contain restrictions to the Lease that must be strictly adhered to and are made a part hereof.

34.5 Sublease termination and tenant removal or relocation shall be at no cost to the Government. The government shall not be required to pay or reimburse the Lessee, its sublessee or any premises subtenants for any relocation costs relating to tenant removal or relocation. Lessee, sublessee and premises subtenants shall have no claim against the United States or any officer, agent, employee, contractor or subcontractor thereof on account of any sublease termination and subtenant removal or relocation.

35. LIST OF EXHIBITS:

The following exhibits are a part of this Lease:

- Exhibit A - Leased Premises
- Exhibit B - Inventory of Personal Property
- Exhibit C - Joint Inspection Report

All correspondence in connection with
this contract should include reference to:

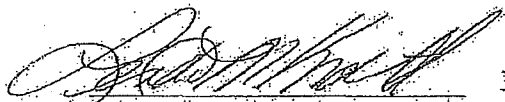
W6247499RP00B19

- Exhibit D - EBS, FOSL and NEPA Documentation
- Exhibit E - Utility Rates Schedule
- Exhibit F - Safety and Health Hazards to be Corrected
- Exhibit G - Government's Obligations to Abate Asbestos

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth below duly
executed this Lease as of the day and year first above written.

WITNESS


THE UNITED STATES OF AMERICA



By: Beverly Freitas
Real Estate Contracting Officer

Date: 9/11/99

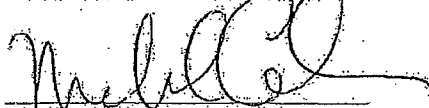
TREASURE ISLAND DEVELOPMENT AUTHORITY

By: 

Title: ANEMARE CONROY
Executive Director
Treasure Island Development
Authority Project

Date: _____

APPROVED AS TO FORM



CITY ATTORNEY

EXHIBIT B

INSTALLATION

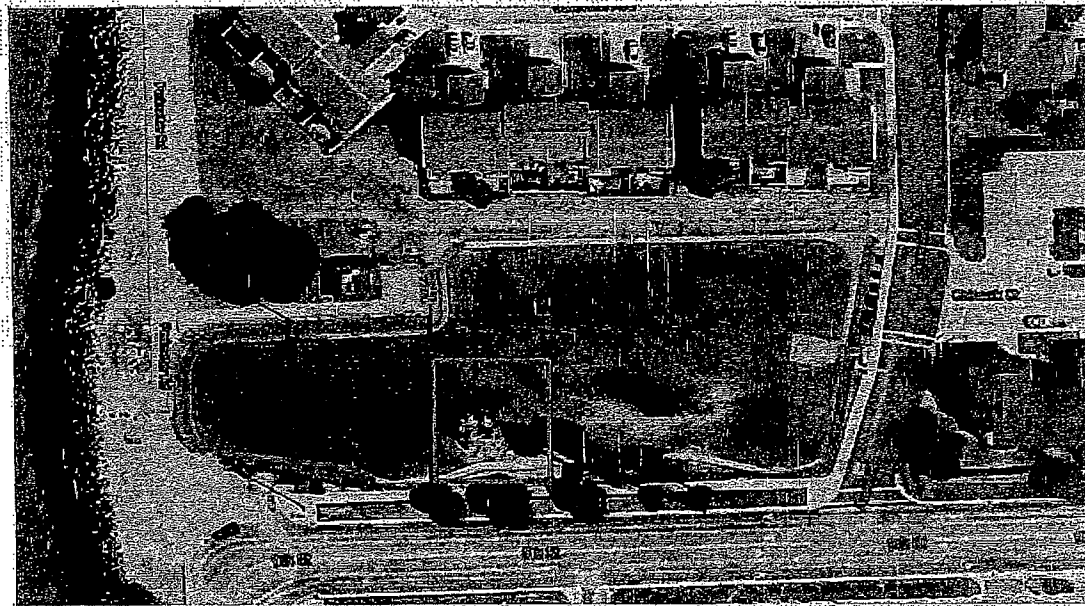
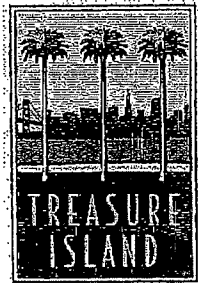
infINET play structure spacing required is 62' x 51'
(Please note: Playworld decides component product assortment, colors and exact orientation on site. Playworld has shared these with TIDA).

Note:

- All play equipment must be installed over an impact-absorbing surface.
- The Playworld grant does not include removal of the old, existing play structure.
- The Playworld grant does not consist of surfacing or installation of the surfacing.
- The Playworld grant does not include any site prep work that may be needed.

EXHIBIT C

PERMIT AREA
(see attached map)



Permit No. 1,172

Tenant: Playworld Systems Inc. a
a Pennsylvania corporation

Location: Land at Avenue of
palms & 9th Avenue

EXHIBIT D

PLAYWORLD INSURANCE

Playworld will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage:

A. Workers' Compensation, with Employer's Liability limits not less than \$1,000,000 each accident.

B. Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence, \$2,000,000 General Aggregate, Combined Single Limit for Bodily Injury and Property Damage.

C. Business Automobile Liability Insurance with not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage.

Comprehensive General Liability and Business Automobile Liability Insurance policies shall be endorsed to provide the following:

A. Name as Additional Insured (except with respect to the professional liability and workers' compensation coverage) the TREASURE ISLAND DEVELOPMENT AUTHORITY, CITY AND COUNTY OF SAN FRANCISCO, THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE DEPARTMENT OF THE NAVY, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS.

B. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the Contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.

EXHIBIT E:

ADDITIONAL CONTRACTOR TERMS

I. Insurance

- A. Workers' Compensation with Employer's Liability Limits not less than \$1,000,000 each accident, such policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors; and
- B. Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence, \$2,000,000 General Aggregate, Combined Single Limit for Bodily Injury and Property Damage; and
- C. Business Automobile Liability Insurance with not less than \$1,000,000 each occurrence, Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned, and Hired auto coverage, as applicable.

Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

- A. Name as Additional Insured the TREASURE ISLAND DEVELOPMENT AUTHORITY, CITY AND COUNTY OF SAN FRANCISCO, THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE DEPARTMENT OF THE NAVY, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, in TIDA's role as the owner / manager of the Property with respect to various liability arising from the negligence of Playworld.
- B. That such insurance applies separately to each insured against whom claim is made or suit is brought.

All policies shall provide thirty (30) days advance written notice to TIDA of cancellation mailed to the address provided in Section 9 of this Agreement (Contacts/Notices), provided, however, that in the event of cancellation for non-payment of premiums, only ten (10) days advance written notice to TIDA shall be provided.

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

Should any required insurance be provided under a form of coverage that includes a general aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such

general aggregate limit shall be double the occurrence or claim limits specified above.

Before the Contractor commences any operations under this Agreement, Playworld shall ensure that its contractors insurers shall have an AM Best rating of not less than A- VIII, and shall be authorized to do business in the State of California. Playworld shall also furnish to TIDA certificates of insurance and additional insured policy endorsements from its contractors; evidencing all coverages set forth above. Acceptance of insurance coverage shall not diminish the liability of Playworld.

2. Warranty:

Contractor warrants and guarantees to TIDA that materials and equipment provided under the Contract will be first-class in quality and new, that the work will be free from defects and of the quality specified, and that the work will conform to the requirements of the Contract documents. Contractor additionally warrants manufacturers' product warranties as may be required by the Contract documents.

3. Third Party Beneficiary:

Contractor agrees that in any contract it enters into for the Installation, TIDA shall be named as a third-party beneficiary, including, without limitation, of all warranties of the work, and as an additional obligee of all required performance and payment bonds.

4. Indemnification:

- A. Consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the TREASURE ISLAND DEVELOPMENT AUTHORITY, CITY AND COUNTY OF SAN FRANCISCO, THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE DEPARTMENT OF THE NAVY, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, from all claims, suits, actions, losses and liability of every kind, nature and description, including, but not limited to attorney fees, directly or indirectly arising out of, connected with or resulting from the performance of the Contract. This indemnification shall not be valid in the instance and to the proportion or extent where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.
- B. Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arises out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.

C. The TIDA shall provide Contractor with prompt written notice after receipt of any claim, action or demand ("claim") made by a third party against the TIDA and/or other indemnified party, provided, however, that no reasonable and immaterial delay on the part of the TIDA or other indemnified party shall relieve Contractor from any obligation hereunder. Contractor shall obtain the TIDA's and other indemnified parties' consent for Contractor's choice of counsel and such consent shall not be unreasonably withheld or delayed, such that any responsive pleadings may be timely filed and in every instance, within thirty (30) days after TIDA or other indemnified party has given notice of the claim, and provided further that TIDA and other indemnified party may retain separate counsel co-counsel at their expense and participate in the defense of the claim. If the interests of Contractor and the TIDA and/or other indemnified party conflict and counsel chosen by Contractor cannot, in TIDA's or other indemnified parties' reasonable opinion, adequately represent Contractor, TIDA and/or other indemnified party, then the cost and expense associated with the TIDA and/or other indemnified party retaining separate counsel shall be borne by Contractor, otherwise, the cost and expense of separate co-counsel retained by TIDA and/or other indemnified party shall be borne by the TIDA or other indemnified party, as applicable. Subject to Contractor's obligation to reimburse TIDA's and other indemnified parties' costs of same, TIDA and other indemnified parties will assist Contractor in the defense of the claim by providing cooperation, information and witnesses, as needed to the extent there is no material conflict of interest.

So long as Contractor has assumed and is conducting the defense of a claim in accordance with the preceding subparagraph, (i) Contractor will not consent to the entry of any judgment or enter any settlement with respect to the claim without the prior written consent of TIDA or other indemnified party, as applicable, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Contractor and does not impose any obligation upon the TIDA and/or other indemnified party in connection with such judgment or settlement and Contractor obtains the full and complete release of TIDA and/or other indemnified parties; and (ii) TIDA and/or other indemnified parties will not consent to the entry of judgment or enter into any settlement without the prior written consent of Contractor.

If Contractor does not assume and conduct the defense of claim as required above, (i) TIDA or other indemnified party may defend against and consent to the entry of any judgment or enter into any settlement with respect to the claim in any manner it reasonably may deem appropriate, and TIDA or other indemnified party need not consult with, or obtain any consent from, Contractor; and (ii) Contractor will remain responsible for any losses TIDA and/or other indemnified party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the claim to the fullest extent provided in this Section 4 (Indemnification).

5. Performance and Payment Bond.

A. At the time of execution of the Contract, Contractor shall provide the following bonds using the form provided by the TIDA:

- i. a corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the faithful performance of the Contract ("Performance Bond"); and

iii. a corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract ("Payment Bond").

B. Said Performance Bond shall cover all corrective work required during the correction period, all warranty and maintenance work required by the Contract, and any and all work required to correct latent defects.

C. Corporate sureties issuing these bonds and Bid bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than "A-, VIII" and shall be satisfactory to the City.

EXHIBIT F:

BILL OF SALE

For good and valuable consideration the receipt of which is hereby acknowledged, Playworld Systems Inc., a Pennsylvania corporation ("Playworld"), does hereby sell, transfer and convey to the TREASURE ISLAND DEVELOPMENT AUTHORITY, a California public benefit nonprofit corporation ("TIDA"), the personal property owned by Playworld and located on the Permit Area shown in Schedule 1, including without limitation the playground equipment described in Schedule 2. Playworld does hereby represent to TIDA that Playworld is the lawful owner of such personal property, that such personal property is free and clear of all encumbrances, and that Playworld has good right to transfer the same to TIDA.

DATED this _____ day of _____, 20__

Playworld:

Playworld Systems Inc., a Pennsylvania corporation

By: Steven J. Malvat

Its: V.P. Information Systems and
Operational Finance

[attach Schedule 1 (permit area) and Schedule 2 (the playground equipment description)]

EXHIBIT G:

WARRANTY

Warranty

For hassle-free maintenance, we guarantee to provide you with the best quality products crafted from the finest materials available.

For your peace of mind, we offer a Hassle-Free Warranty – the best warranty available – on all of our products, playgrounds and maintenance parts. An item will be replaced hassle-free, if a defect is discovered during a valid warranty period.

Please note: Playworld Systems, Inc. may request photographs to identify the type of maintenance concern and to prevent it from happening in the future.

Limited Warranty

Playworld Systems, Inc. warrants its products to the original customer to be free from structural failure due to defect in materials or workmanship during normal use and installation in accordance with our published specifications. The warranty shall commence on the date of the Playworld Systems, Inc. invoice and terminate at the end of the period stated here.

The warranty stated is valid ONLY if the products and structures are erected properly and in conformity with the layout plan and/or installation instructions furnished by Playworld Systems, Inc. using approved parts, maintained and inspected in accordance with Playworld Systems, Inc. instructions; subject to normal use for the purpose for which the goods were designed; not subject to vandalism, misuse, neglect, accident or unauthorized addition or substitution of parts; not moved, in whole or in part, after its initial installation; and not modified, altered, or repaired by persons other than Playworld Systems, Inc. or its designees in any respect which, in the sole judgment of Playworld Systems, Inc. affects the condition or operation of the structures.

This warranty does not cover: 1) cosmetic damage or defects, such as surface scratches, dents, marring, fading, discoloration, corrosion, warping of recycled plastic lumber, and cracking or peeling of Eco-Armor® polyethylene coating; 2) damage due to normal wear and tear; 3) damages due to "Acts of God", such as hail, flooding, lightning, tornadoes, sandstorms, earthquakes, and wind storms; and 4) damages due to "Environmental Factors", such as wind-blown sand, salt spray, or airborne emissions from industrial sources.

Limited Warranty Time Periods

LIFETIME on steel and aluminum posts, stainless steel hardware, clamps, deck hangers, post caps, and cast aluminum parts, except as otherwise specified below.

25 YEARS on Spring Mates® aluminum castings.

15 YEARS on all perforated steel decks and stairs, steel rails, stationary weldments, rotationally-molded and sheet plastic components, recycled plastic lumber, roof panels, stainless steel slides, aluminum slide, and PlayWeb® tubular steel parts, except as otherwise specified below by product family type.

10 YEARS on fiberglass signage, shade fabric and components, accessible swing seats, steel-core cable, all Fun Centers™ and FirstPlay™ play structures, and pre-cast PolyFiberCrete® or reinforced concrete products. The warranty for pre-cast concrete products does not cover minor chips, hairline cracks or efflorescence.

5 YEARS on all PlaySimple® play structures; DropZone Tower®, LiveWire Zip Line®, AeroGlider®, Border Timbers®, flex treads; steel coil and C springs; specialty wood and polycarbonate panels; and site amenities including all benches, tables, litter receptacles and bike racks. All motion/moving play components and parts, SMARTIE playground surfaces including impact attenuation characteristics per ASTM F1292-09 as required at time of installation.

2 YEARS on NEOS®, electronic based play products; swing chain; swing clevises; swing galvanized attachment hardware, molded rubber bumpers; handholds, swing seats, and any other materials not covered above. (*An extended 3-year NEOS parts-only warranty is available for purchase, providing a total coverage of five years.)

Design: Playworld Systems, Inc. will continue to improve the equipment available for your play area and therefore reserves the right to change the design specifications without notice.

Lewisburg, PA | 800.233.8404 | +1.570.522.9800 | Playworld.com



**Treasure Island Development Authority
City and County of San Francisco**

Resolution authorizing the Treasure Island Development Authority to enter into a gift agreement with Playworld Systems Inc. for the installation of new playground equipment at Treasure Island valued at \$110,000.

SUMMARY OF PROPOSED ACTION:

This item seeks approval and authorization to enter into a Grant Acceptance and Permit to Enter Agreement between the Treasure Island Development Authority (the "Authority") and Playworld Systems Inc., a Pennsylvania corporation (the "Playworld") for the acceptance of new playground equipment at Treasures Island valued at \$110,000.

BACKGROUND

Playworld is a commercial playground equipment manufacturer and surfacing provider based in Lewisburg, Pennsylvania since 1971. Playworld manufactures play structures and related products to promote aerobic exercise with the goal of bettering children's health and fitness.

In November 2016, Playworld contacted the Authority regarding the possibility of partnering to install a new infiNET play structure facility on Treasure Island. The Authority selected an area near 9th Street and Avenue of the Palms, commonly referred to as the Treasure Island Community Park, adjacent to a newly created dog park, to install the proposed play structure as this site currently has an outdated and underutilized play structure.

The proposed infiNET play structure will encompassing an area of approximately 62 feet by 51 feet, more than four times the area of the existing play structure it will replace. Advantages of the site include its proximity to the residential area, an existing accessible paved pathway and proximity to parking.

Playworld's gift shall include all costs to design and install the play structure, including the preparation of construction documents by a licensed professional, the procurement of permits, the freight to the site, and the donation of the play structure, estimated to total approximately \$110,000. Before Playworld begins work, the Authority will remove the existing equipment and ready the site for installation of the new play structure.

The Authority's Board of Directors approved the Grant Acceptance and Permit to Enter Agreement at its January 11, 2017 meeting. Under Administrative Code Section 10.100-305, any gift of cash or goods with a market value greater than \$10,000 must be approved by the Board of Supervisors, by resolution.

GRANT ACCEPTANCE AND PERMIT TO ENTER AGREEMENT TERMS AND CONDITIONS

The salient terms and conditions of the Grant Acceptance and Permit to Enter Agreement include the following:

Location: Treasure Island Community Park (9th Street and Avenue of the Palms)

Grant/Donation: Playworld to fund installation of a new play structure located on the Southwest corner in the Treasure Island Community Park at 9th Street and Avenue of the Palms with an estimated value of \$110,000.

Scope (Playworld): Designing, permitting, the infiNET play structure, installation of the infiNET, freight to the site.

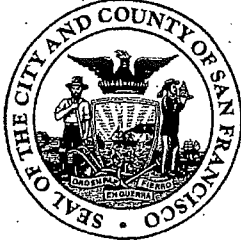
Scope (Authority): Removal of the existing play structure, site readiness including access to the play area and unitary safety surfacing.

RECOMMENDATION

Approve the Grant Acceptance and Permit to Enter Agreement between the Treasure Island Development Authority and Playworld Systems Incorporated.

Robert Beck, Treasure Island Directors

President, District 5
BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-7630
Fax No. 554-7634
TDD/TTY No. 544-5227

OS-11
JOB Aides
Captives, BPF
Clerk, GAO Clerk
Mayor's Office, Rep City Atty

London Breed

PRESIDENTIAL ACTION

Date: 7/27/17

To: Angela Calvillo, Clerk of the Board of Supervisors.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2017 JUL 27 PM 2:25

Madam Clerk,
Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No. _____
(Primary Sponsor)

Title.

Transferring (Board Rule No 3.3)

File No. 170824 Kim
(Primary Sponsor)

Title. Accept Gift - Playworld Systems Inc. - Treasure Island Development
Authority - New Playground Equipment - Valued at \$110,000

From: Budget & Finance _____ Committee

To: Government Audit & Oversight _____ Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor _____

Replacing Supervisor _____

For: _____ Meeting
(Date) (Committee)

London Breed, President
Board of Supervisors

Introduction Form

By a Member of the Board of Supervisors or Mayor

2017
Time stamp
or meeting date: 11
AK

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [redacted] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [redacted] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. [redacted]
- 9. Reactivate File No. [redacted]
- 10. Question(s) submitted for Mayoral Appearance before the BOS on [redacted]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Supervisor Kim

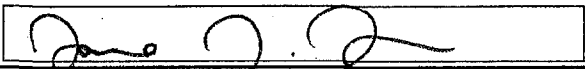
Subject:

Gift Acceptance - Treasure Island Development Authority

The text is listed:

Resolution authorizing the Treasure Island Development Authority to enter into a gift agreement with Playworld Systems Inc. for the installation of new playground equipment at Treasure Island valued at \$110,000.

Signature of Sponsoring Supervisor:



For Clerk's Use Only