



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

FIRST AMENDMENT TO OUTSIDE LANDS MUSIC AND ARTS FESTIVAL USE PERMIT

THIS FIRST AMENDMENT To Outside Lands Music and Arts Festival Use Permit (the "Amendment"), dated for reference purposes only as of December 5, 2012, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Recreation and Park Department (the "Department"), and ANOTHER PLANET ENTERTAINMENT, LLC, a Delaware limited liability company ("Permittee").

RECITALS

A. City and Permittee entered into that certain Use Permit, dated for reference purposes as of April 1, 2009 (the "Permit"), pursuant to which City granted to Permittee the right to hold an annual three-day music and arts festival in Golden Gate Park during 2010 and 2011, with an option to hold the festival in 2012 and 2013, all as more particularly described in the Use Permit.

B. Permittee exercised the options to hold the festival under the Permit in both 2012 and 2013. The annual festivals held pursuant to the Permit were extremely successful and provided revenue to benefit the park system, and the "Outside Lands Festival" has become an iconic event that is representative and resonant of both San Francisco and Golden Gate Park.

C. City and Permittee presently desire to amend the terms and conditions of the Permit to extend the term, modify provisions regarding the fees payable, and modify certain other provisions, all on the terms and conditions set forth below.

D. The Department has made only limited sections of the bleachers in the Polo Fields available for Permittee's use during prior Festivals and does not plan or intend to increase access to the bleachers for Permittee's use for future Festivals under this Permit unless renovations to the bleachers are made. Permittee has stated it is willing to consider renovating the bleachers at no cost to City in order to make the bleachers available for Festival seating, and the Department is prepared to consider plans and specifications for such renovation. If Permittee offers to renovate the bleachers as a gift-in-kind to the City, then the City's acceptance of such gift offer will be subject to the prior approval of the Board of Supervisors in its sole discretion. Before the Department will consider accepting any such gift, Permittee will prepare detailed plans and specifications to describe the proposed work and any terms and conditions relating to the proposed gift.

AGREEMENT

NOW THEREFORE, City and Permittee hereby agree as follows:

1. Defined Terms.

a. Generally. Unless otherwise specified, capitalized terms contained herein shall have the same meaning as set forth in the Permit.

b. Festival. Effective as of the Effective Date, as used in the Permit, "Festival" shall mean a three-day music and arts festival open to the public upon purchase of tickets, similar to the Outside Lands Festival held on the Premises in calendar year 2012.

2. Extension of Term. Effective as of the Effective Date (as defined below), the term of the Permit is extended as follows. Permittee shall hold an additional Festival on the Premises during each year commencing with 2014 and continuing through 2021. Each annual Festival shall be held between June 1st and August 31st on such dates as shall be mutually agreed to by City and Permittee by the date which is 30 days after the end of the prior year's Festival. Permittee accepts the Premises in their "as is" condition for the extended term, and the terms and conditions of the Permit, as amended by this Amendment, shall apply throughout the extended term. The dates on which the Premises will be made available to Permittee for each annual Festival, including the load-in and load-out dates required for set-up and take-down of Festival fixtures and equipment, shall be confirmed by the parties in writing, either as a supplemental Exhibit B to the Permit or such other format as the parties shall agree. The Permit shall expire on the date on which the load-out is to be completed for the 2021 Festival.

3. Minimum Permit Fee. Effective as of the Effective Date, the Minimum Permit Fee for calendar years 2013-2018 shall be calculated as provided in the "Permit Fees and Financial Terms" section of Section 1 of the Permit. Notwithstanding the provisions of the Permit to the contrary, the Minimum Permit Fee payable for the 2019, 2020 and 2021 Festivals shall be \$1,400,000 per year.

4. Percentage Rent. Effective as of the Effective Date, Section 9(b) and the "Permit Fees and Financial Terms" section of Section 1 of the Permit shall be amended to provide for a Percentage Rent rate of 11% of Gross Revenue (as defined in Section 9(b) of the Permit) less the Minimum Permit Fee paid by Permittee for each Festival, commencing with the 2013 Festival. Accordingly, effective as the Effective Date, all references in Section 9(b)) and the "Permit Fees and Financial Terms" section of Section 1 of the Permit to "10%" shall be changed to "11%."

5. Additional Rent. Effective as of the Effective Date, Section 1 of the Permit shall be amended to provide that commencing with the 2013 Festival the Additional Rent shall be \$1.25 per each ticket sold by Permittee or its agents, in addition to the Minimum Permit Fee and Percentage Rent. For the purpose of calculating the Additional Rent, multiday tickets shall be calculated as if a single ticket had been sold for each day for which such ticket is valid.

6. Payment Schedule. Effective as of the Effective Date, the first sentence and the final sentence of the "Payment schedule" section of Section 1 of the Permit shall be deleted, and the following shall be substituted for the first sentence of such section:

"\$800,000 of the Minimum Permit Fee for the 2013 Festival shall be due by June 15, 2013 and the balance of the Minimum Permit Fee shall be due on the date that is ten (10) days prior to the start of the load-in for such Festival.

\$1,100,000 of the Minimum Permit Fee for the 2014 Festival shall be due by June 15, 2014 and the balance of the Minimum Permit Fee for the 2014 Festival shall be due on the date that is ten (10) days prior to the start of the load-in for such Festival.

Commencing in 2015 and continuing throughout the term of this Permit, the entire Minimum Permit Fee for each annual Festival shall be due no later than June 15."

7. Permitted Use. Effective as of the Effective Date, the final sentence of the Permitted Uses section of Section 1 of the Permit shall be deleted and the following shall be substituted therefor: "Permittee shall not allow more than 75,000 paid attendance per day total in all venues."

8. Annual Recreation and Park Department Fundraiser. Effective as of the Effective Date, the following provision shall be added to the Permit as Section 42:

"42. Annual Recreation and Park Department Fundraiser. Commencing in 2013 and continuing each calendar year thereafter through 2021, Permittee shall hold, at its expense, an annual fundraiser concert or similar event for the Recreation and Park Department (the "Annual Fundraiser"). The Annual Fundraiser shall either be at the Premises or at another appropriate venue and all net proceeds shall be donated to the Recreation and Park Department. If the Annual Fundraiser is held on property which is under the jurisdiction of the Recreation and Park Department, an additional use permit shall be required to govern the terms and conditions of Permittee's use of such property (unless the Annual Fundraiser is held on the Premises during a period in which the Permit applies). City and Permittee shall consult with Recreation and Park Department staff regarding the proposed location, marketing plan and operating plan for each Annual Fundraiser, and the parties shall cooperate to develop a plan that is acceptable to the General Manager of the Recreation and Park Department.

9. Endowed Gardener. Effective as of the Effective Date, the following provision shall be added to the Permit as Section 43:

"43. Endowed Gardner. Commencing in 2013 and continuing throughout the term of the Permit, in addition to the other sums payable under the Permit, Permittee shall contribute to the Recreation and Park Department an additional \$89,250 per year to endow a gardener to assist with maintaining the Festival site throughout the year. Such gardener shall be in addition to the gardeners already employed to work at the site, subject to the budgetary and fiscal requirements of the Charter of the City and County of San Francisco. Such payment shall be made to the Recreation and Park Department no later than July 15 of each year."

10. Polo Field Regeneration Fee. Effective as of the Effective Date, the following provision shall be added to the Permit as Section 44:

“44. Polo Field Regeneration Fee. Commencing in 2013 and continuing throughout the term of the Permit, in addition to the other sums payable under the Permit, Permittee shall contribute to the Recreation and Park Department \$15,000 annually to provide for materials and supplies to ensure that the condition of the Polo Fields does not deteriorate due to the impact of the Festival. Such payment shall be made no later than 10 days after the Festival each year.”

11. Promotion of Recreation and Park Department. Effective as of the Effective Date, the following provision shall be added to the Permit as Section 45:

“45. Promotion of Recreation and Park Department. Permittee shall, at its own expense, print and display a mutually agreeable limited number of Recreation and Park Department promotional signs throughout the Festival site each year. The design, size, number and placement of such signs shall be subject to the approval of the Recreation and Park Department.”

12. Donor Recognition. Effective as of the Effective Date, the following provision shall be added to the Permit as Section 46:

“46. Donor Recognition. Commencing with the 2013 Festival and continuing throughout the term of the Permit, Permittee shall donate a customary and reasonable number of complimentary tickets to the Festival to the San Francisco Parks Alliance, or such other non-profit as the Recreation and Park Department may designate in the future, for the purposes of recognizing donors to Park causes.”

13. Amplified Sound Terms. Effective as of the Effective Date, (i) the reference in the Amplified sound terms section of Section 1 of the Permit shall be deleted, (ii) Paragraph 4 of Appendix B to the Permit shall be deleted, and (iii) the following provision shall be added to the Permit as Section 47:

“47. Amplified Sound Terms. There will be no amplified music permitted prior to opening of gates on any day of event, except for agreed upon limited sound checks one day prior to the concert and for line checks prior to opening of gates. Unless otherwise agreed upon in writing by the General Manager of the Recreation and Park Department, hours for sound checks will be limited to noon to 5 PM the day prior to the first Festival day; and line checks will not commence prior to 10 AM on the days of the Festival. Sound will commence at noon on each Festival day. Sound will end Friday and Saturday evening at 10:00 PM and at 9:40 PM on Sunday. Any alteration to the sound check schedule outlined above shall be subject to the approval of the General Manager.

Permittee shall use commercially reasonable best efforts to limit sound to the close environs of the concert grounds. Such efforts shall include reviewing the sound system plans in advance of the Festival each year to minimize any sound impact in the surrounding neighborhood and to ensure that the sound system can be modified to respond to sound complaints from the neighborhood. Additionally, when attendance exceeds 40,000 on any Festival day, Permittee shall build and use one set of delay

speakers on the main Polo Fields stage to limit sound in the surrounding neighborhood. When attendance exceeds 55,000 on any Festival day, Permittee shall build and use two sets of delay speakers on the main Polo Fields stage to limit sound in the surrounding neighborhood.

Permittee shall coordinate with the San Francisco Park Rangers to deploy monitors in the neighborhood who will measure sound pressure levels and record the data. Data will be promptly transmitted to the production staff at the Festival, who will use it to adjust sound pressure levels as required.”

14. Insurance Requirements. Effective as of the Effective Date, the following provision shall be added to the Permit as Section 17.11:

“17.11. Review of Insurance Requirements. Commencing in 2014, Permittee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Permittee with respect to risks comparable to those associated with holding the Festival at the Premises, then, at City's option, Permittee shall increase at its sole cost the amounts or coverages carried by Permittee to conform to such general commercial practice.”

15. Prevailing Wages for Theatrical Workers. Effective as of the Effective Date, references in Section 32 of the Permit to San Francisco Administrative Code “Section 21.25C” shall be deleted and a reference to San Francisco Administrative Code “Section 21C.4” shall be substituted for each such reference.

16. First Source Hiring. Effective as of the Effective Date, references in Section 41 of the Permit to “Contractor” shall be deleted a reference to “Permittee” shall be substituted for each such reference.

17. License Only. Notwithstanding the use of the terms “Percentage Rent,” “Additional Rent” and “Premises” in the Permit, the Permit gives Permittee a license only, and the Permit does not constitute a grant by City of any leasehold or other property interest or estate whatsoever in the Premises, or any portion thereof.

18. Effective Date. The effectiveness of this Amendment is subject to the following conditions precedent (such date on which all of the following conditions precedent are satisfied is referred to herein as the “Effective Date”): (i) the San Francisco Recreation and Parks Commission shall have adopted a resolution approving the terms and conditions hereof in its sole discretion; and (ii) the Board of Supervisors of the City and County of San Francisco shall have adopted a resolution approving the terms and conditions hereof in its sole discretion; and (iii) City and Permittee shall have executed and delivered this Amendment.

19. Attorneys Fees. In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the

other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

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

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

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

23. Local Hire. Permittee shall hold an annual job fair in the neighborhoods surrounding Golden Gate Park to attempt to hire qualified San Francisco residents to fill vacant positions for the Festival. The scope of the job fair shall be subject to the approval of the General Manager which shall not be unreasonably withheld or delayed.

24. Transportation Study. Permittee shall at its own expense fund a transportation study in 2013 to inform the development of the annual Transportation Management Plan required under Section 3 of Appendix B to the Permit, which study shall specifically include recommendations for minimizing the effect of Festival traffic on the surrounding neighborhoods. The scope of the transportation study shall be subject to the approval of the General Manager which shall not be unreasonably withheld or delayed.

25. Community Benefit Funds. In addition to the Minimum Permit Fee, Percentage Rent, Additional Rent and other sums payable under the Permit, Permittee shall expend \$10,000 annually to fund improvements or benefit programs benefitting the neighborhoods surrounding Golden Gate Park in accordance with the provisions of this Paragraph 25. Permittee and the Department shall work with the members and representatives of the surrounding communities annually to develop funding priorities for such funds, and following such process Permittee and Department staff shall develop a joint list of eligible improvements or programs, which list shall be subject to the approval of the General Manager, which shall not be unreasonably withheld or delayed. Permittee shall contribute \$10,000 annually toward the cost of one or more improvements or programs on the eligibility list. Inclusion of an improvement, program or project on the eligibility list shall not in any manner serve as regulatory approval of such improvement, program or project by City or any City department or agency, and the person or

entity performing the improvement or providing the program shall be required to procure all required permits and approvals.

[No further text this page.]

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


CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: 
PHILIP GINSBURG, General Manager
Recreation and Park Department

PERMITTEE:

ANOTHER PLANET ENTERTAINMENT, LLC,
a Delaware Limited Liability Company

By: 
Name: Greg W. Perbit
Title: CEO


**APPROVED BY
RECREATION AND PARK COMMISSION
PURSUANT TO RESOLUTION NO. 211-011**

DATED: 11/29/12


Margaret McArthur, Commission Liaison

APPROVED AS TO FORM:

DENNIS HERRERA,
City Attorney

By: 
Anita L. Wood
Deputy City Attorney