

## GARDENS OF GOLDEN GATE PARK

### LEASE AND MANAGEMENT AGREEMENT AMENDMENT

THIS AMENDMENT (this “**Amendment**”) is made as of \_\_\_\_\_, 20\_\_\_\_, in San Francisco, California, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**” or “**Landlord**”), acting by and through its Recreation and Park Commission (“**Commission**”) and SAN FRANCISCO BOTANICAL GARDEN SOCIETY AT STRYBING ARBORETUM, a California nonprofit public benefit corporation (“**SFBGS**” or “**Lessee**”).

### RECITALS

THIS AMENDMENT is made with reference to the following facts and circumstances:

A. City and Lessee previously entered into an existing agreement, dated as of December 11, 2013 (the “**2013 Agreement**”), for the lease and management of certain property in and around the San Francisco Botanical Garden (the “**SFBG**”) located along Martin Luther King Jr. Drive and Lincoln Way, between 9th Avenue and 19th Avenue, San Francisco, California.

B. SFBGS has successfully managed admission to SFBG since 2010, increasing visitors and improving visitor experience. Annual visitations have increased 135%. In addition, admissions have generated a total for the Garden Improvement Fund of over \$1.3 million.

C. City owns two other admission-gated specialty gardens within Golden Gate Park, the Conservatory of Flowers (“**COF**”) and Japanese Tea Garden (“**JTG**”). The COF is along John F Kennedy Drive and Conservatory Drive and west of Conservatory Access Road, and is shown on attached *Exhibit AM-A*. The COF has been managed under an existing license with The Friends of Recreation and Park Corporation, dated as of August 7, 2003, as amended and extended. The JTG is located west of Hagiwara Tea Garden Drive between Martin Luther King Jr. Drive and the de Young Museum, and is shown on attached *Exhibit AM-B*. SFBGS presently manages JTG admissions pursuant to a COVID-19 addendum dated July 14, 2020.

D. The COF and the JTG are within one mile of each other and with the SFBG constitute a museum dedicated to the horticultural world and continuing education. Since 2002, the San Francisco Parks Alliance has operated the COF providing similar public benefits to the City relating to the COF. The City believes that there would be significant benefits to having one not-for-profit partner help to provide services to all three gardens and is proposing that all services provided by the SFBGS to the SFBG will be expanded to include the COF and JTG under the terms of the 2013 Agreement.

E. The Commission desires to bring the COF and JTG under joint management with the SFBG. SFBG, COF, and JTG are collectively referred to as the “**Gardens of Golden Gate Park**.” Shared management will improve efficiency and help to avoid staffing shortages at any given garden and the model created by the 2013 Agreement will translate readily to the COF and JTG.

F. The parties desire to add the COF and JTG to the 2013 Agreement through this Amendment, creating funds for maintenance and capital work at the COF and JTG similar to the setup for SFBG.

G. The parties now desire to modify the 2013 Agreement on the terms and conditions set forth in this Amendment.

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the City and Lessee agree as follows:

1. Except as stated in this Amendment, all references to “Botanical Garden” in the 2013 Agreement are replaced with “Gardens of Golden Gate Park.”
2. Section 1. (Basic Lease Information) is amended to add new subsection entitled “**2021 Premises**,” with the text “The gift shop and kiosks at the COF as shown on *Exhibit AM-A*; and the admissions kiosk at the JTG as shown on *Exhibit AM-B*.”
3. As of the Effective Date of this Amendment, the 2021 Premises are added to the “Premises” as defined in the 2013 Agreement.
4. The definition of “Building” or “Buildings” in Section 2 (Definitions) is replaced with the following:  
  
“Building” or “Buildings” means the Library Building, the County Fair Building, the COF, the JTG, COF and JTG admissions kiosks, and the COF concessions kiosk, and, if applicable, the Nursery Building.
5. Section 3.4(a) (Inspection of Premises) is amended to include the 2021 Premises as applicable, and replaced with the following: “SFBGS represents and warrants that SFBGS has conducted a thorough and diligent inspection and investigation, either independently or through Agents of SFBGS’s own choosing, of the Initial Premises and 2021 Premises and the suitability of the Initial Premises and 2021 Premises for SFBGS’s intended use. SFBGS is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Initial Premises and 2021 Premises are suitable for its operations and intended uses. SFBGS presently occupies the Initial Premises and the portion of the Premises at the JTG.”
6. Section 5.4(xiv) is amended to remove references to outdated law and replaced with the following:  
  
SFBGS will develop a program to work toward a zero waste goal, including the implementation of a composting system for food waste, packaging and 100% biodegradable supplies whenever practical and in compliance with applicable law. SFBGS will submit a recycling and composting plan at Commencement of Lease, and provide an annual report on each anniversary date of this Lease outlining its progress toward meeting the recycling and composting goals described above and its success toward a zero waste goal.
7. Section 6.1(d)(i) and (iii) are amended to include specific information regarding COF and JTG (including limiting certain text to apply only to SFBG), and are replaced with the following:

(i) The staffing of the curation, planning, management and documentation of the plant collections is currently done by SFBGS with respect to SFBG and by the Department with the with respect to the JTG and COF. As of the Effective Date, the two parties will coordinate this work to determine if there are efficiencies and improvements for the future. With respect to the Department’s Primary Responsibilities, curatorial and plant collections management staff employed by SFBGS work with City staff under the leadership and guidance of the Garden Director in consultation with the Executive Director, and, because SFBGS’s curatorial and plant collections management staff also have responsibilities in support of SFBGS’s Primary

Responsibilities, the Garden Director and Executive Director will consult as needed on their work priorities. All staff employed by SFBGS are supervised by the Executive Director in accordance with SFBGS employee policies. The Department and the SFBGS will work over the next three years to develop and overall Gardens of Golden Gate Park Master Plan to replace the Botanical Garden Master Plan.

(iii) Pursuant to **Section 6.1(a)** above, maintenance of the Gardens of Golden Gate Park is within the Department's Primary Responsibilities.

**8.** Section 6.7(a) (Supplemental Funding by SFBGS) is amended to include the future master plan activities for the Gardens of Golden Gate Park. The section is replaced with the following:

SFBGS will use its reasonable efforts to raise private funds for the Gardens of Golden Gate Park for the purposes of (i) providing funds to supplement City appropriations for the Gardens of Golden Gate Park including, but not limited to, renovation and installation of gardens, maintenance of existing gardens, acquisition of special plant collections, procurement of special equipment and satisfaction of other capital improvement projects in accordance with the Botanical Garden Master Plan and future Gardens of Golden Gate Park Master Plan (or as may be mutually agreed upon through joint planning of SFBGS and the Department), and (ii) otherwise providing funds to enhance City funding for educational programs, other particular programs, ancillary mission- related activities, operations and services of the Gardens of Golden Gate Park. Such fundraising is intended to enhance the Gardens of Golden Gate Park and not to replace traditional sources or levels of City funding. As part of its fundraising responsibilities, SFBGS will be allowed free use of exterior Gardens of Golden Gate Park areas and the Buildings for fundraising and membership benefit events, subject to prior approval of scheduling and other arrangements by the Garden Director, and subject to the terms and conditions applicable to Special Events under **Section 5.1** above.

**9.** Section 6.9 (Operation of Botanical Garden; Days and Hours of Operation) is now entitled "Operation of Gardens of Golden Gate Park; Days and Hours of Operation." The section is replaced with the following:

The hours of public operation are approved, and may be amended, by the Commission and may not be altered in any manner without prior written approval from the Commission or from such person, if any, to whom the Commission has delegated authority to approve changes in the hours of operation.

**10.** Section 6.11 (Fees for Admission) is amended to rely solely on the Park Code for setting fees, and is replaced with the following:

(a) Fees for admission to the Gardens of Golden Gate Park are as stated in the San Francisco Park Code, as it may be amended from time to time by action of City's Board of Supervisors in its sole discretion.

(b) SFBGS will not be required to reimburse City for nonresidents receiving free admission (i) as part of the San Francisco and national Museums for All programs available to those receiving SNAP, Medi-Cal, or CalFresh benefits (ii) as a benefit provided to SFBGS members in recognition of their financial support of the Gardens of Golden Gate Park, (iii) as members of other botanical gardens participating with SFBGS in reciprocal member programs, and (iv) as a school group student, teacher or chaperone.

(c) As of the Commencement Date, the SFBG will be open without charge one day a month, plus Thanksgiving, Christmas and New Year's Day. Such free admission days may be amended from time to time by action of City's Board of Supervisors in its sole discretion.

(d) Every morning, between 7:30 and 9:00 am, the SFBG will be open to the public, including nonresidents, free of charge.

**11.** Section 7.5 (Cash Register Requirements) is amended to account for modern point of sale systems and replaced with the following:

SFBGS will use a system that registers every transaction made in, on, about or from the Premises, including every type of income, and the tape or digital record of each such cash register will be accessible to and subject to inspection by the RPD Manager or his/her agent, provided that such inspection will be conducted in a manner reasonable designed to minimize interference with the conduct of the SFBGS's business at the Premises, and City will not perform such inspection unless SFBGS is present. SFBGS will make a manager available to City for such inspection during business hours on request (which may be oral) by City. Each sale or other transaction generated in the Premises must be recorded at the time of each sale or other transaction, in the presence of the customer or by phone or internet order.

**12.** Section 10.1(e) (Restrooms) is amended to address restrooms across the Gardens of Golden Gate Park. It is replaced with the following:

City will be responsible for the regular cleaning of the public restrooms located in the Gardens of Golden Gate Park, except as provided below. The restrooms will be open to the public no later than 9:00 am. At City's election, City personnel may open the restrooms to the public at any time between 7:30 am and 9:00 am. The restrooms will be kept clean, neat, orderly and functioning properly at all times. Notwithstanding the foregoing to the contrary, SFBGS, at its own expense, will keep those restrooms located inside the headhouse of the Nursery Building, inside the Library Building in a clean, neat and orderly condition and will provide all necessary items for such restrooms, including, but not limited to, toilet tissue, paper towels, seat covers, hand soap, and cleaning materials and supplies necessary to maintain such restrooms in the condition as described above. Such restrooms will be inspected for supplies and neatness a minimum of two (2) times during each day the facility is open to the public and will be cleaned not less frequently than twice a week. The SFBGS will be responsible for cleaning any restrooms inside the COF that are not open to the public.

**13.** Section 20.1 (SFBGS's Insurance) is amended to increase the limit for commercial general liability insurance to \$2,000,000.

**14.** Section 27.30 (Tobacco Product Advertising Prohibition) is amended to comply with current law, including updating the heading to "Prohibition of Tobacco Sales and Advertising." The text is replaced with the following:

Lessee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the property that is the subject of this Lease. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Lessee acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

**15.** Section 27.37 (Notification of Limitation on Contributions) is amended to comply with current law and replaced with the following:

For the purposes of this Section, a “**City Contractor**” is a party that contracts with, or seeks to contract with, the City for the sale or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves. Through its execution of this Agreement, Lessee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits a City Contractor from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. Lessee 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 \$100,000 or more. Lessee further acknowledges that (i) the prohibition on contributions applies to Lessee, each member of Lessee’s board of directors, Lessee’s chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Lessee, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Lessee, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Lessee certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

**16.** Section 27.42 (Food Service Waste Reduction Requirements) is amended to comply with current law and replaced with the following:

Lessee will comply with and be bound by all of the applicable provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. Accordingly, Lessee acknowledges that City contractors and lessees may not use Food Service Ware for Prepared Food in City Facilities and while performing under a City contract or lease (1) where the Food Service Ware is made, in whole or in part, from Polystyrene Foam, (2) where the Food Service Ware is not Compostable or Recyclable, or (3) where the Food Service Ware is Compostable and not Fluorinated Chemical Free. The capitalized terms (other than Lessee and City) in the previous sentence are defined in San Francisco Environment Code Section 1602.

**17.** Section 27.47 (San Francisco Packaged Water Ordinance) is added to comply with current law, with text as follows:

Lessee will comply with San Francisco Environment Code Chapter 24 (“**Chapter 24**”). Lessee may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Lease or on City property unless Lessee obtains a waiver from City’s Department of the Environment. If Lessee violates this requirement, City may exercise all remedies in this Lease and the Director of City’s Department of the Environment may impose administrative fines as set forth in Chapter 24.

**18.** Section 27.48 (Criminal History in Hiring and Employment Decisions) is added to comply with current law, with text as follows:

**a.** Unless exempt, Lessee will comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions), as amended from time to time (“**Chapter 12T**”), which are incorporated into this Lease as if fully set forth, with respect to applicants and employees of Lessee who would be or are performing work at the Premises.

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

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

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

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

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

**g.** Lessee and subtenants understand and agree that on any failure to comply with the requirements of Chapter 12T, City will have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant, or other person as to whom a violation occurred or continued, or termination of this Lease in whole or in part.

**h.** If Lessee has any questions about the applicability of Chapter 12T, it may contact City’s Real Estate Division for additional information. City’s Real Estate Division may consult with the Director of City’s Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

**19.** Section 27.49 (All Gender Toilet Facilities) is added to comply with current law, with text as follows:

If applicable, Lessee will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of the Building where extensive renovations are made. An “all-gender toilet facility” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and “extensive renovations” means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by Administrative Code Section 4.1-3. If Lessee has any question about applicability or compliance, Lessee should contact the Department’s Real Estate Director for guidance.

**20.** Section 27.50 (Lessee’s Compliance with City Business and Tax and Regulations Code) is added to comply with current law, with text as follows:

Lessee acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Lessee under this Lease is withheld, then City will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Lessee, without interest, late fees, penalties, or other charges, upon Lessee coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

**21.** Section 27.51 (Consideration of Salary History) is added to comply with current law, with text as follows:

Lessee will comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” For each employment application to Lessee for work that relates to this Lease or for work to be performed in the City or on City property, Lessee is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Lessee will not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Lessee is subject to the enforcement and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

**22.** Section 27.52 (GASB 87 Lease Accounting) and *Exhibit AM-C* are added to comply with current City practices, with text as follows:

The Governmental Accounting Standards Board (GASB), an independent organization that establishes accounting and financial reporting standards for U.S. state and local governments, issued Statement 87 to improve certain reporting and accounting practices. In connection with GASB 87, Lessee agrees to complete the checklist set forth in *Exhibit AM-C* and provide the same to City within thirty (30) days of the Effective Date in order to facilitate the City’s collection and evaluation of information for City’s financial reporting purpose.

**23.** *Exhibit E* is updated to address the COF and JTG. It is replaced with the version attached to this Amendment.

**24.** Section 27.53 (Conflicts of Interest) is added to comply with current City practices, with text as follows:

By executing this Agreement, Lessee certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s

Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement. For example, Lessee will notify Department if it becomes aware that any Department employee or officer participates in a decision in which the employee or officer, or a member of their family, has a financial interest. In addition, the Parties agree and acknowledge that Lessee's or its donors' fiscal support of Department, or lack thereof, will have no bearing on and will not be relevant towards any future contracting, leasing, or permitting decisions by Department.

**25.** Section 27.54 (Statement of Incompatible Activities) is added to comply with current City practices, with text as follows:

Department's Statement of Incompatible Activities (SIA) was adopted under the provisions of San Francisco Campaign & Governmental Conduct Code section 3.218 on October 8, 2008. In general, Department's SIA (1) prohibits outside activities that are incompatible with Department's mission; (2) restricts the use of City resources, City work-product and prestige for any non-City purpose, including any political activity or personal purpose; and (3) prohibits receipt/acceptance of gifts in exchange for doing the employee's job. A copy of the SIA is attached as ***Exhibit AM-D***. Lessee agrees that it will not knowingly cause Department staff to violate the SIA. In addition, Lessee will ensure that no employee or officer of Department is a member of Lessee's board of directors or otherwise holds a fiduciary position with Lessee, and that no employee or officer of Department and no member of a Department employee or officer's immediate family receives income from Lessee.

**26.** Section 27.55 (Disclosure Obligations; Recordkeeping and Auditing) is added to comply with current City practices, with text as follows:

The parties will also comply with the additional provisions regarding disclosures, recordkeeping, and auditing attached hereto as ***Exhibit AM-E*** which are fully incorporated herein.

**27. Transition with San Francisco Parks Alliance Required.** To facilitate the addition of the COF to the Premises, SFBGS and the City agree to work cooperatively with the San Francisco Parks Alliance (the "SFPA"), the entity managing the COF under an existing license, to (A) transfer ownership of all furniture, fixtures, and equipment used by the COF to the City or the SFBGS, and (B) arrange to transfer books and accounts as necessary.

**28. No Joint Venture.** This Amendment or any activity by the City hereunder does not create a partnership or joint venture between the City and Lessee relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by the City of any activity conducted by Lessee, and the City will in no way be responsible for the acts or omissions of Lessee on the Premises or otherwise.

**29. Attorneys' Fees.** In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute will pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, 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 will 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.



**30. References.** No reference to this Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease will be deemed a reference to such document as amended hereby.

**31. Applicable Law.** This Amendment will be governed by, construed and enforced in accordance with the laws of the State of California.

**32. Taxes, Assessments, Licenses, Permit Fees, and Liens.** San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Lessee must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Lessee to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. Lessee will also timely provide any information that City may request to ensure compliance with this or any other reporting requirement.

**33. Further Instruments.** The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

**34. Effective Date.** The date of which this Amendment will become effective as of the date this Amendment is duly executed and exchanged by the parties hereto.

**35. Operations Commencement Date.** Lessee will commence operation of the COF as of the date agreed to in writing by the Department and the SFBGS, which date will be no later than 90 days after the Effective Date.

**36. Miscellaneous.** Except as expressly modified herein, the terms, covenants and conditions of the Lease will remain unmodified and in full force and effect. The Lease as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and cancels any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment will not constitute a waiver of relinquishment of any rights that City may have relating to the Lease. Lessee and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AMENDMENT, SFBGS ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL A RESOLUTION OF CITY'S BOARD OF SUPERVISORS WILL HAVE BEEN DULY ENACTED APPROVING THIS AMENDMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY, WHICH RESOLUTION WILL THEN BE DULY APPROVED BY THE CITY'S MAYOR. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ENACTMENT OF SUCH AN RESOLUTION AND THE APPROVAL THEREOF BY THE MAYOR, AND THIS AMENDMENT WILL BE NULL AND VOID UNLESS CITY'S MAYOR AND THE BOARD OF SUPERVISORS APPROVE THIS AMENDMENT, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS AMENDMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

In witness whereof, the parties hereto have executed this Amendment as of the date written above.

LESSEE: SAN FRANCISCO BOTANICAL GARDEN SOCIETY AT STRYBING ARBORETUM, a California nonprofit public benefit corporation

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

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

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

By: \_\_\_\_\_  
Philip A. Ginsburg  
General Manager  
Recreation and Park Department

APPROVED BY:

RECREATION AND PARK COMMISSION  
PURSUANT TO RESOLUTION NO.

\_\_\_\_\_ DATED: \_\_\_\_\_

\_\_\_\_\_  
Ashley Summers, Commission Liaison

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Shari Geller Diamant  
Deputy City Attorney

## EXHIBIT E

### ALLOCATION AND DISTRIBUTION OF ADMISSIONS RECEIPTS

Fees paid for admission to the Gardens of Golden Gate Park pursuant to Section 6.11 of the Lease (“**Admission Receipts**”) will be solely for the benefit of the Gardens of Golden Gate Park and will be allocated and distributed pursuant to the terms of Article 7 of the Lease and this Exhibit E. It is understood and agreed by the Parties that the charging of admissions to the Gardens of Golden Gate Park, the rate of such admissions and the terms of such allocation are subject to amendment by action of City’s Board of Supervisors, in its sole discretion at any time, and in the event of such an amendment Article 7 of the Lease and this Exhibit E will be revised to the extent required to reflect such amendment.

1. Allocation. Admission Receipts will be allocated and paid out on a monthly basis as described below:

a. Admission Receipts will first be used to reimburse SFBGS for its approved “Authorized Collection Expenses” during such period. As used in this Exhibit E, “**Authorized Collection Expenses**” means all costs and expenses incurred by SFBGS in connection with its collection of Admission Receipts, including, without limitation, personnel costs, rent or related fees for equipment, telephone and data charges, office supplies, training, visitor maps and publications, and advertising and publicity costs in connection with the collection of Admissions Receipts. “Authorized Collection Expenses” will not include capital expenses, penalties, late charges or interest on any late payments, or taxes or other amounts withheld from wages or salaries which have not actually been paid by SFBGS during the month for which reimbursement is being made. The SFBGS will submit annually a budget for Authorized Collection Expenses by December 15 for the next Fiscal Year.

b. Secondly, following the payment of the amounts specified in Paragraph 1(a) above, the Admissions Receipts will be paid to the Department until the Department has received an aggregate amount of \$4,400,000 per Fiscal Year pursuant to this Paragraph 1(b) (such amount subject to adjustment as provided in Paragraph 1(e) below) (the “**Annual RPD Allocation Cap**”); provided, however, that before the allocation is used for any other Gardens of Golden Gate Park purpose, the Department will use the allocation to fund three (3) gardeners who are dedicated solely to the care and maintenance of the SFBG and \$250,000 (as adjusted) of which will be dedicated to cover materials and supplies for the COF.

c. Thirdly, following the payment of the amounts specified in Paragraphs 1(a) and 1(b) above, the Admission Receipts will be paid to SFBGS until SFBGS has received an aggregate of \$650,000 per Fiscal Year pursuant to this Paragraph 1(c) (such amount subject to adjustment as provided in Paragraph 1(e) below) (the “**Annual SFBGS Allocation Cap**”). SFBGS will expend Admissions Receipts received pursuant to this Paragraph 1(c) for its “Education and Community Outreach Expenditures.” As used in this Exhibit E, “Education and Community Outreach Expenditures” means costs and expenses incurred by SFBGS for education, community outreach, public programs and other initiatives agreed upon by SFBGS and the Garden Director and approved in writing by the Garden Director. “Education and Community Outreach Expenditures” may include, without limitation, costs and expenses for implementation of free days for the general public, organization and management of volunteer and docent programs, organization and implementation of programs for seniors and school groups, administration of a community education program providing related classes and activities for minimal or no cost, and operation of the Library and Bookstore, including ordering and stocking books.

d. Finally, following the payment of the amounts specified in Paragraphs 1(a), 1(b), and 1(c) above, the balance of Admission Receipts will be paid into the “Gardens of Golden Gate Park Improvement Fund,” which will be maintained by City without charge and will not be commingled with other City funds. Any interest accruing on the funds in the Gardens of Golden Gate Park Garden Improvement Fund will be added to the Gardens of Golden Gate Park Improvement Fund. Expenditures from the Gardens of Golden Gate Park Improvement Fund will be used by City and SFBGS only for the payment of costs and expenses for maintenance, renovation and improvement of the Gardens of Golden Gate Park and will not be used for any other purpose unless the Parties otherwise agree in writing. Expenditures from the Gardens of Golden Gate Park Improvement Fund are intended to enhance the Gardens of Golden Gate Park and not to replace traditional sources or levels of City funding. Expenditures from the Gardens of Golden Gate Park Improvement Fund must be agreed upon by the Garden Director after consultation with the Executive Director and are subject to approval by the General Manager.

e. The Annual RPD Allocation Cap and the Annual SFBGS Allocation Cap will each be subject to adjustment as follows:

i. Both the Annual RPD Allocation Cap and the Annual SFBGS Allocation Cap will be adjusted annually by the consumer price index (CPI) increase used by the City and County of San Francisco Controller’s Office for labor projections.

ii. Either or both may be adjusted every three (3) years based on agreement of the parties in order to provide additional support or continuing support (in the event of cost increase not covered by (i) above) for or services to the Gardens of Golden Gate Park

f. CPI Formula. The Adjustment Index will be compared with the Base Index. If the Adjustment Index has increased over the Base Index, then the Annual RPD Allocation Cap and the Annual SFBGS Allocation Cap on and after such Adjustment Date will each be set by multiplying the then-current Annual RPD Allocation Cap and the Annual SFBGS Allocation Cap by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index.

Notwithstanding the foregoing,

2. With respect to any Fiscal Year as to which the aggregate amount of Admission Receipts available for distribution pursuant to Paragraphs 1(b) and 1(c) above (after deduction of any amount payable with respect to such Fiscal Year pursuant to Paragraph 1(a)) exceeds \$500,000 but is less than the amount needed to distribute the fully-adjusted Allocation Amount to the Department and SFBGS pursuant to Paragraphs 1(c) above, the Allocation Adjustment will be reduced dollar for dollar so that the amount is distributed to each Party under Paragraph 1(b) above and Paragraph 1(c) above are each reduced equally.

3. Admission Account. SFBGS will establish, fund and maintain a bank account for the deposit of Admission Receipts (the “**Admission Account**”) with a depository institution reasonably acceptable to City in accordance with Section 7.6 of the Lease. SFBGS will use the Admission Account for all Admission Receipts prior to disbursement to City as required under this Lease. Any interest accruing on the funds in the Admission Account will be added to the Admission Account. Funds from the Admission Account will not be commingled with other funds. SFBGS will cause each person who has authority to withdraw or transfer funds from the Admission Account to be bonded or otherwise insured. The Admission Account will be subject to a mutually-agreed control agreement pursuant to which City will be granted a perfected

security interest therein. Upon the occurrence of either an Event of Default, or the expiration or earlier termination of this Lease, City will have the immediate right of possession of the funds in Admission Account.

4. Distributions.

a. On or before the thirtieth (30th) day following its receipt of a Monthly Admission Receipts Statement, City will pay to SFBGS via check the amount of its Authorized Collection Expenses for such month.

b. Once City has received the amounts specified in Paragraph 1(b) above in any given Fiscal Year, City will begin to pay to SFBGS the amounts described in Paragraph 1(c), and to the Gardens of Golden Gate Park Improvement Fund the amounts described in Paragraph 1(d), such payments to be made on a monthly basis and on or before the thirtieth (30<sup>th</sup>) day following City's receipt of the applicable Monthly Admissions Receipts Statement.

c. In the event this Lease terminates during any given month, (i) payment of Admission Receipts to City for that portion of the month during which SFBGS was in occupancy of the Premises will be determined and reported by SFBGS to City within twenty (20) days after SFBGS ceases to collect Admission Receipts on the Premises, and (ii) SFBGS's and City's payment obligations under this Exhibit E will remain in effect.

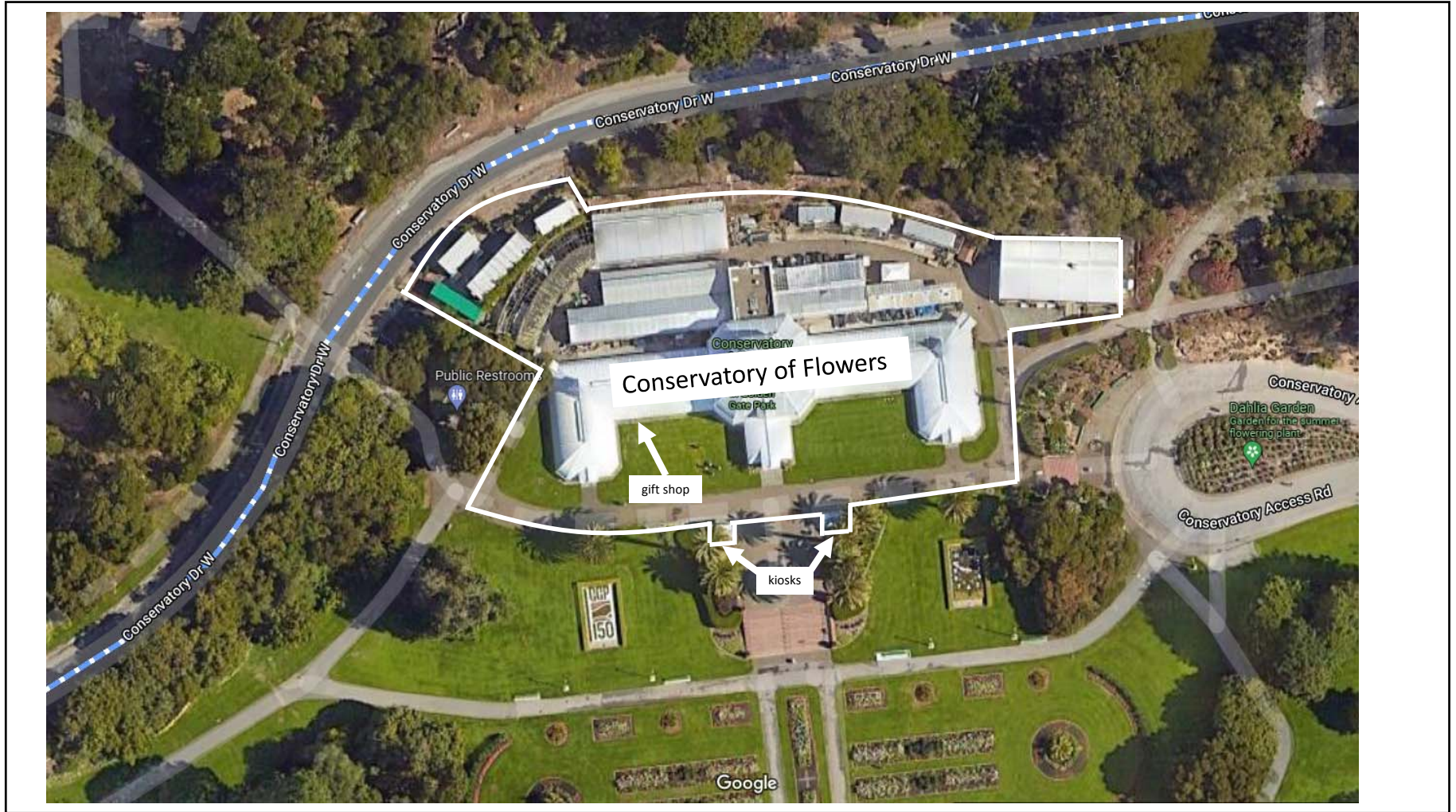
5. Annual True-Up. In the event that the payments made by SFBGS and City in respect of Admission Receipts and Authorized Collection Expenses during the Fiscal Year described by an Annual Admission Receipts Report have not been properly made in accordance with this Exhibit E, City and/or SFBGS, as the case may be, will make payments to each other, or the Gardens of Golden Gate Park Improvement Fund, as appropriate, so as to properly allocate the Admissions Receipts for such Fiscal Year. Such payments will be made within thirty (30) days of City's receipt of such Annual Admission Receipts Statement.

**EXHIBIT AM-A**

Conservatory of Flowers

*[attached]*

Exhibit AM-A Premises of COF



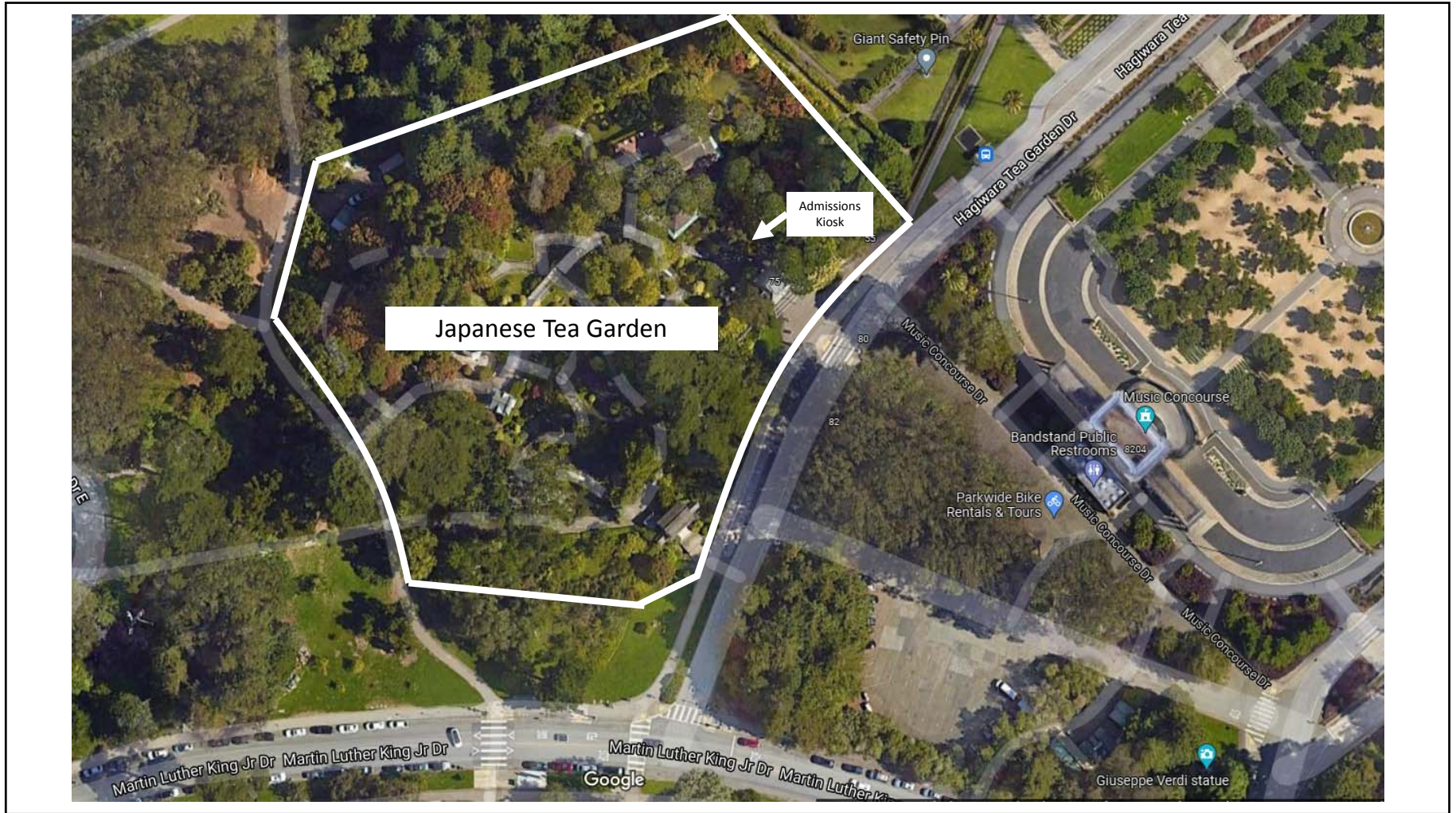
**EXHIBIT AM-B**

Japanese Tea Garden

*[attached]*



Exhibit AM-A Premises of JTG



## EXHIBIT AM-C

### GASB 87 Lease Accounting Checklist

#### Checklist for Supplier Lease Contracts

<b>Lease Term and Provision</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
1. Is this an amendment of existing lease?	<input type="checkbox"/>	<input type="checkbox"/>	
2. Confirm the lease agreement date	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Confirm the lease commencement date and end date	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Include payment frequency (such as one time, monthly, quarterly, annually or event based)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Identify the based amount per payment frequency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is lease payment rate adjustment applicable?  <i>Note: For example, reference index, specific rate or of calculation method.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Any variable payments by performance is applicable?  <i>Note: For examples, retail space rent includes calcula based on gross sales or copier charges for per-page fee.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is lease incentives applicable?  <i>Note: Lease incentives refer to incentives provided by for lease improvements or moving expenses. For example, rei credits or free rent during constructions.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Any security deposit required? (Please include the amount)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Is the lease cancelable?  <i>Note: please include when and who can request to can agreement. Also, identify any penalties.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Does this lease contain Renewal options?  <i>Note1: Please include terms, rent calculation, and any lease procedure of renewal</i> <i>Note2: Indicate the date that the lessor is required to b notified by in order to renew the lease.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Does this lease contain a purchase option?  <i>Note: is the lessee reasonably certain to exercise this purchase option?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**EXHIBIT AM-D**

Statement of Incompatible Activities

*[attached]*



**RECREATION AND PARK DEPARTMENT**  
**STATEMENT OF INCOMPATIBLE ACTIVITIES**

**I. INTRODUCTION**

This Statement of Incompatible Activities is intended to guide officers and employees of the San Francisco Recreation and Park Department (“Department”) and the Recreation and Park Commission (“Commission”) about the kinds of activities that are incompatible with their public duties and therefore prohibited. For the purposes of this Statement, and except where otherwise provided, “officer” shall mean the Appointing Officer (“General Manager”) and/or a member of the Commission; and “employee” shall mean all employees of the Department.

This Statement is adopted under the provisions of San Francisco Campaign & Governmental Conduct Code (“C&GC Code”) section 3.218. Engaging in the activities that are prohibited by this Statement may subject an officer or employee to discipline, up to and including possible termination of employment or removal from office, as well as to monetary fines and penalties. (C&GC Code § 3.242; Charter § 15.105.) Before an officer or employee is subjected to discipline or penalties for violation of this Statement, the officer or employee will have an opportunity to explain why the activity should not be deemed to be incompatible with his or her City duties. (C&GC Code § 3.218.) Nothing in this document shall modify or reduce any due process rights provided pursuant to the officer’s or employee’s collective bargaining agreement.

In addition to this Statement, officers and employees are subject to Department policies and State and local laws and rules governing the conduct of public officers and employees, including but not limited to:

- Political Reform Act, California Government Code § 87100 *et seq.*;
- California Government Code § 1090;
- San Francisco Charter;
- San Francisco Campaign and Governmental Conduct Code;
- San Francisco Sunshine Ordinance; and
- Applicable Civil Service Rules.

Nothing in this Statement shall exempt any officer or employee from applicable provisions of law, or limit his or her liability for violations of law. Examples provided in this Statement are for illustration purposes only, and are not intended to limit application of this Statement. Nothing in this Statement shall interfere with the rights of employees under a collective bargaining agreement or Memorandum of Understanding applicable to that employee.

Nothing in this Statement shall be construed to prohibit or discourage any City officer or employee from bringing to the City’s and/or public’s attention matters of actual or perceived malfeasance or misappropriation in the conduct of City business, or from filing a complaint alleging that a City officer or employee has engaged in improper governmental activity by violating local campaign finance, lobbying, conflicts of interest or governmental ethics laws, regulations or rules; violating the California Penal Code by misusing City resources; creating a specified and substantial danger to public health or



safety by failing to perform duties required by the officer's or employee's City position; or abusing his or her City position to advance a private interest.

No amendment to any Statement of Incompatible Activities shall become operative until the City and County has satisfied the meet and confer requirements of State law and the collective bargaining agreement.

If an employee has questions about this Statement, the questions should be directed to the employee's supervisor, General Manager or designee. Similarly, questions about other applicable laws governing the conduct of public employees should be directed to the employee's supervisor or the General Manager/designee, although the supervisor or General Manager/designee may determine that the question must be addressed to the Ethics Commission or City Attorney. Employees may also contact their unions for advice or information about their rights and responsibilities under these and other laws.

If a City officer has questions about this Statement, the questions should be directed to the officer's appointing authority, the Ethics Commission or the City Attorney.

## **II. MISSION OF THE RECREATION AND PARK DEPARTMENT**

*The mission of the Recreation and Park Department is to provide enriching recreational activities, maintain beautiful parks and preserve the environment for the well-being of our diverse community.*

## **III. RESTRICTIONS ON INCOMPATIBLE ACTIVITIES**

This section prohibits outside activities, including self-employment, that are incompatible with the mission of the Department. Under subsection C, an officer or employee may seek an advance written determination whether a proposed outside activity is incompatible and therefore prohibited by this Statement. Outside activities other than those expressly identified here may be determined to be incompatible and therefore prohibited. For an advance written determination request from an employee, if the General Manager delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the General Manager.

### **A. RESTRICTIONS THAT APPLY TO ALL OFFICERS AND EMPLOYEES**

#### **1. ACTIVITIES THAT CONFLICT WITH OFFICIAL DUTIES**

No officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that conflicts with his or her City duties. An outside activity conflicts with City duties when the ability of the officer or employee to perform the duties of his or her City position is materially impaired. Outside activities that materially impair the ability of an officer or employee to perform his or her City duties include, but are not limited to, activities that disqualify the officer or employee from City assignments or responsibilities on a regular basis. Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section.

**[RESERVED.]**

## 2. ACTIVITIES WITH EXCESSIVE TIME DEMANDS

Neither the General Manager nor any employee may engage in outside activity (regardless of whether the activity is compensated) that would cause the General Manager or employee to be absent from his or her assignments on a regular basis, or otherwise require a time commitment that is demonstrated to interfere with the General Manager's or employee's performance of his or her City duties.

*Example.* An employee who works at the Department's front desk answering questions from the public wants to take time off every Tuesday and Thursday from 2:00 to 5:00 to coach soccer. Because the employee's duties require the employee to be at the Department's front desk during regular business hours, and because this outside activity would require the employee to be absent from the office during regular business hours on a regular basis, the General Manager or his/her designee may, pursuant to subsection C, determine that the employee may not engage in this activity.

## 3. ACTIVITIES THAT ARE SUBJECT TO REVIEW BY THE DEPARTMENT

Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, no officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that is subject to the control, inspection, review, audit or enforcement of the Department. In addition to any activity permitted pursuant to subsection C, nothing in this subsection prohibits the following activities: appearing before one's own department or commission on behalf of oneself; filing or otherwise pursuing claims against the City on one's own behalf; running for City elective office; or making a public records disclosure request pursuant to the Sunshine Ordinance or Public Records Act. Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section.

a. Assistance in Responding to City Bids, Request for Qualifications (RFQs) and Request for Proposals (RFPs). No officer or employee may knowingly provide selective assistance (i.e., assistance that is not generally available to all competitors) to individuals or entities in a manner that confers a competitive advantage on a bidder or proposer who is competing for a City contract. Nothing in this Statement prohibits an officer or employee from providing general information about a bid for a City contract, a Department RFQ or RFP or corresponding application process that is available to any member of the public. Nothing in this Statement prohibits an officer or employee from speaking to or meeting with individual applicants regarding the individual's application, provided that such assistance is provided on an impartial basis to all applicants who request it.

***b. Other than in his or her official capacity, no officer or employee may assist private individuals or entities in securing permits for the use of Recreation and Park facilities.***

***Notwithstanding the above prohibitions, officers and employees are not prohibited from providing general information about the contracting process or about how to apply for permits to any member of the public.***

## **B. RESTRICTIONS THAT APPLY TO EMPLOYEES IN SPECIFIED POSITIONS**

In addition to the restrictions that apply to all officers and employees of the Department, unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section for individual employees holding specific positions.

### **1. OFFICERS OR EMPLOYEES RESPONSIBLE FOR THE PROCUREMENT OF SUPPLIES, MATERIALS, CONTRACTS OR SERVICES**

*No officer or employee who is responsible for the procurement of supplies, materials, contracts or services may receive compensation or anything of value from any person or entity from which such materials, contracts or services were procured, if such compensation or thing of value is received as a result of the officer's or employee's duties with the Department.*

*Example: An employee whose duties include the procurement of supplies or materials for the Department authorizes the purchase of sporting goods from a local retail sporting goods store. After such purchase, the sporting goods store offers the employee a discount on any future purchases he or she wishes to make for him or herself. The employee may not accept the discount offer because the employee may not benefit materially from a purchase with the sporting goods store made in the course of his or her employment with the Department. This prohibition is also covered under section V of this Statement.*

### **2. OFFICERS OR EMPLOYEES RESPONSIBLE FOR THE DISTRIBUTION OR ALLOCATION OF SUPPLIES, MATERIALS, CONTRACTS OR SERVICES**

*No officer or employee whose duties include the distribution or allocation of supplies, materials, contracts or services for the Department may receive compensation or anything of value from any person or entity to which such materials, contracts or services were distributed or allocated, if such compensation or thing of value is received as a result of the officer's or employee's duties with the Department.*

*Example: An employee provides swimming lessons to the public as part of his or her City duties. At the swimming facility, a member of the public offers compensation or a thing of value to the employee. The employee may not accept the compensation or anything of value for services rendered as part of his or her official duties. This prohibition is also covered under section V of this Statement.*

*Example: An employee coaches softball at a City playground as part of his or her duties for the Department. The employee may not solicit or receive anything of value from any member of the public, who utilizes the services of the playground, for performing his or her City job duties. This prohibition is also covered under section V of this Statement.*

## **C. ADVANCE WRITTEN DETERMINATION**

As set forth below, an employee of the Department or the General Manager or a member of the Commission may seek an advance written determination whether a proposed outside activity conflicts with the mission of the Department, imposes excessive time demands, is subject to review by the



Department, or is otherwise incompatible and therefore prohibited by section III of this Statement. For the purposes of this section, an employee or other person seeking an advance written determination shall be called “the requestor”; the individual or entity that provides an advance written determination shall be called “the decision-maker.”

## 1. PURPOSE

This subsection permits an officer or employee to seek an advance written determination regarding his or her obligations under subsections A or B of this section. A written determination by the decision-maker that an activity is not incompatible under subsection A or B provides the requestor immunity from any subsequent enforcement action for a violation of this Statement if the material facts are as presented in the requestor’s written submission. A written determination cannot exempt the requestor from any applicable law.

If an individual has not requested an advance written determination under subsection C as to whether an activity is incompatible with this Statement, and the individual engages in that activity, the individual will not be immune from any subsequent enforcement action brought pursuant to this Statement.

Similarly, if an individual has requested an advance written determination under subsection C as to whether an activity is incompatible with this Statement, and the individual engages in that activity, the individual will not be immune from any subsequent enforcement action brought pursuant to this Statement if:

- (a) the requestor is an *employee* who has not received a determination under subsection C from the decision-maker, and 20 working days have not yet elapsed since the request was made; or
- (b) the requestor is an *officer* who has not received a determination under subsection C from the decision-maker; or
- (c) the requestor has received a determination under subsection C that an activity is incompatible.

In addition to the advance written determination process set forth below, the San Francisco Charter also permits any person to seek a written opinion from the Ethics Commission with respect to that person's duties under provisions of the Charter or any City ordinance relating to conflicts of interest and governmental ethics. Any person who acts in good faith on an opinion issued by the Commission and concurred in by the City Attorney and District Attorney is immune from criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. Nothing in this subsection precludes a person from requesting a written opinion from the Ethics Commission regarding that person's duties under this Statement.

## 2. THE DECISION-MAKER

Decision-maker for request by an employee: An employee of the Department may seek an advance written determination from the General Manager or his or her designee. The General Manager or his or her designee will be deemed the decision-maker for the employee’s request.



Decision-maker for request by the General Manager: The General Manager may seek an advance written determination from his or her appointing authority. The appointing authority will be deemed the decision-maker for the General Manager's request.

Decision-maker for request by a member of the Commission: A member of the Commission may seek an advance written determination from his or her appointing authority or from his or her commission, or the Ethics Commission. The appointing authority, Commission or Ethics Commission will be deemed the decision-maker for the member's request.

### **3. THE PROCESS**

The requestor must provide, in writing, a description of the proposed activity and an explanation of why the activity is not incompatible under this Statement. The written material must describe the proposed activity in sufficient detail for the decision-maker to make a fully informed determination whether it is incompatible under this Statement.

When making a determination under this subsection, the decision-maker may consider any relevant factors including, but not limited to, the impact on the requestor's ability to perform his or her job, the impact upon the Department as a whole, compliance with applicable laws and rules and the spirit and intent of this Statement. The decision-maker shall consider all relevant written materials submitted by the requestor. The decision-maker shall also consider whether the written material provided by the requestor is sufficiently specific and detailed to enable the decision-maker to make a fully informed determination. The decision-maker may request additional information from the requestor if the decision-maker deems such information necessary. For an advance written determination request from an employee, if the General Manager delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the General Manager.

The decision-maker shall respond to the request by providing a written determination to the requestor by mail, email, personal delivery, or other reliable means. For a request by an employee, the decision-maker shall provide the determination within a reasonable period of time depending on the circumstances and the complexity of the request, but not later than 20 working days from the date the request *is received*. If the decision-maker does not provide a written determination to the employee within 20 working days from the date *the request is received*, the decision-maker shall be deemed to have determined that the proposed activity does not violate this Statement.

The decision-maker may revoke the written determination at any time based on changed facts or circumstances or other good cause, by providing advance written notice to the requestor. The written notice shall specify the changed facts or circumstances or other good cause that warrants revocation of the advance written determination.

### **4. DETERMINATIONS ARE PUBLIC RECORDS**

To assure that these rules are enforced equally, requests for advance written determinations and written determinations, including approvals and denials, are public records to the extent permitted by law.

#### **IV. RESTRICTIONS ON USE OF CITY RESOURCES, CITY WORK-PRODUCT AND PRESTIGE**

##### **A. USE OF CITY RESOURCES**

No officer or employee may use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies, for any non-City purpose, including any political activity or personal purpose. No officer or employee may allow any other person to use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies, for any non-City purpose, including any political activity or personal purpose. Notwithstanding these general prohibitions, any incidental and minimal use of City resources does not constitute a violation of this section. Nothing in this subsection shall be interpreted or applied to interfere with, restrict or supersede any rights or entitlements of employees, recognized employee organizations, or their members under state law or regulation or pursuant to provisions of a collective bargaining agreement to use City facilities, equipment or resources, as defined herein.

*Example.* An officer or employee may use the telephone to make occasional calls to arrange medical appointments or speak with a child care provider, because this is an incidental and minimal use of City resources for a personal purpose.

*Example.* While arborist technicians are removing a large tree from a neighborhood park, a nearby resident asks one of the staff to remove a tree from his or her front yard. Although the arborist technician may perform work for the resident, the employee may do so only on his or her own time and only when using equipment that does not belong to the City.

Nothing in this Statement shall exempt any officer or employee from complying with more restrictive policies of the Department regarding use of City resources, including, without limitation, the Department's e-mail policy.

##### **B. USE OF CITY WORK-PRODUCT**

No officer or employee may, in exchange for anything of value and without appropriate authorization, sell, publish or otherwise use any non-public materials that were prepared on City time or while using City facilities, property (including without limitation, intellectual property), equipment and/or materials. For the purpose of this prohibition, appropriate authorization includes authorization granted by law, including the Sunshine Ordinance, California Public Records Act, the Ralph M. Brown Act as well as whistleblower and improper government activities provisions, or by a supervisor of the officer or employee, including but not limited to the officer's or employee's appointing authority. Nothing in this subsection shall be interpreted or applied to interfere with, restrict or supersede any rights or entitlements of employees, recognized employee organizations, or their members under state law or regulation or pursuant to provisions of a collective bargaining agreement to use public materials for collective bargaining agreement negotiations.

##### **C. USE OF PRESTIGE OF THE OFFICE**

No officer or employee may use his or her City title or designation in any communication for any private gain or advantage. The following activities are expressly prohibited by this section.

**1. USING CITY BUSINESS CARDS**

No officer or employee may use his or her City business cards for any purpose that may lead the recipient of the card to think that the officer or employee is acting in an official capacity when the officer or employee is not.

*Example of inappropriate use.* An employee's friend is having a dispute with his new neighbor who is constructing a fence that the friend believes encroaches on his property. The friend invites the employee over to view the disputed fence. When the neighbor introduces herself, the employee should not hand the neighbor her business card while suggesting that she could help resolve the dispute. Use of a City business card under these circumstances might lead a member of the public to believe that the employee was acting in an official capacity.

*Example of acceptable use.* An employee is at a party and runs into an old friend who has just moved to town. The friend suggests meeting for dinner and asks how to get in touch with the employee to set up a meeting time. The employee hands the friend the employee's business card and says that he can be reached at the number on the card. Use of a City business card under these circumstances would not lead a member of the public to believe that the employee was acting in an official capacity. Nor would use of the telephone to set up a meeting time constitute a misuse of resources under subsection A, above.

**2. USING CITY LETTERHEAD, CITY TITLE, OR E-MAIL**

No officer or employee may use City letterhead, City title, City e-mail, or any other City resource, for any communication that may lead the recipient of the communication to think that the officer or employee is acting in an official capacity when the officer or employee is not. (Use of e-mail or letterhead in violation of this section could also violate subsection A of this section, which prohibits use of these resources for any non-City purpose.)

*Example.* An officer or employee is contesting a parking ticket. The officer or employee should not send a letter on City letterhead to the office that issued the ticket contesting the legal basis for the ticket.

**3. HOLDING ONESELF OUT, WITHOUT AUTHORIZATION, AS A REPRESENTATIVE OF THE DEPARTMENT**

No officer or employee may hold himself or herself out as a representative of the Department, or as an agent acting on behalf of the Department, unless authorized to do so.

*Example.* An employee who lives in San Francisco wants to attend a public meeting of a Commission that is considering a land use matter that will affect the employee's

neighborhood. The employee may attend the meeting and speak during public comment, but should make clear that he is speaking in his private capacity and not as a representative of the Department.

## **V. PROHIBITION ON GIFTS FOR ASSISTANCE WITH CITY SERVICES**

State and local law place monetary limits on the value of gifts an officer or employee may accept in a calendar year. (Political Reform Act, Gov't Code § 89503, C&GC Code §§ 3.1-101 and 3.216.) This section imposes additional limits by prohibiting an officer or employee from accepting any gift that is given in exchange for doing the officer's or employee's City job.

No officer or employee may receive or accept gifts from anyone other than the City for the performance of a specific service or act the officer or employee would be expected to render or perform in the regular course of his or her City duties; or for advice about the processes of the City directly related to the officer's or employee's duties and responsibilities, or the processes of the entity they serve.

*Example.* A member of the public who regularly works with and receives assistance from the Department owns season tickets to the Giants and sends a pair of tickets to an employee of the Department in appreciation for the employee's work. Because the gift is given for the performance of a service the employee is expected to perform in the regular course of City duties, the employee is not permitted to accept the tickets.

*Example.* A member of the public requests assistance in resolving an issue or complaint that is related to the City and County of San Francisco, but that does not directly involve the Department. The employee directs the member of the public to the appropriate department and officer to resolve the matter. The member of the public offers the employee a gift in appreciation for this assistance. The employee may not accept the gift, or anything of value from anyone other than the City, for providing this kind of assistance with City services.

As used in this Statement, the term gift has the same meaning as under the Political Reform Act, including the Act's exceptions to the gift limit. (See Gov't Code §§ 82028, 89503; 2 Cal. Code Regs. §§ 18940-18950.4.) For example, under the Act, a gift that, within 30 days of receipt, is returned, or donated by the officer or employee to a 501(c)(3) organization or federal, state or local government without the officer or employee taking a tax deduction for the donation, will not be deemed to have been accepted. In addition to the exceptions contained in the Act, nothing in this Statement shall preclude an employee's receipt of a bona fide award, or free admission to a testimonial dinner or similar event, to recognize exceptional service by that employee, and which is not provided in return for the rendering of service in a particular matter. Such awards are subject to the limitation on gifts imposed by the Political Reform Act and local law.

In addition, the following gifts are de minimis and therefore exempt from the restrictions on gifts imposed by section V of this Statement:

- i. Gifts, other than cash, with an aggregate value of \$25 or less per occasion; and

- ii. Gifts such as food and drink, without regard to value, to be shared in the office among officers or employees.

*Example.* A member of the public who regularly works with and receives assistance from the Department sends a \$15 basket of fruit to an employee as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the employee is expected to perform in the regular course of City duties, the employee may accept the fruit because the value is de minimis. (Because the reporting requirement is cumulative, an employee may be required to report even de minimis gifts on his or her Statement of Economic Interests if, over the course of a year, the gifts equal or exceed \$50.)

*Example.* A member of the public who regularly works with and receives assistance from the Department sends a \$150 basket of fruit to the Department as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the Department is expected to perform in the regular course of City duties, the Department may accept the fruit basket because it is a gift to the office to be shared among officers and employees.

## **VI. AMENDMENT OF STATEMENT**

Once a Statement of Incompatible Activities is approved by the Ethics Commission, the Department may, subject to the approval of the Ethics Commission, amend the Statement. (C&GC Code § 3.218(b).) In addition, the Ethics Commission may at any time amend the Statement on its own initiative. No Statement of Incompatible Activities or any amendment thereto shall become operative until the City and County of San Francisco has satisfied the meet and confer requirements of State law and the collective bargaining agreement.

## EXHIBIT AM-E

### Disclosure Obligations; Recordkeeping and Auditing

A. **Acknowledgment of Disclosure Obligations under City Law.** San Francisco Administrative Code Section 67.29-6 requires the Department to disclose on its website the amount and source of all money, goods or services worth more than \$100 in the aggregate for the purpose of carrying out or assisting any City function. For all gifts, grants, and other donations received under the “**Lease**” (defined for purposes of this Exhibit AM-E as the 2013 Agreement as amended by this Amendment) or otherwise for the benefit of the Gardens of Golden Gate Park, the disclosure must identify SFBGS as the contributor, the amounts contributed, and a statement as to any financial interest SFBGS has involving the City, including a contract, grant, lease, or request for license, permit, or other entitlement for use. Under the Administrative Code, the Department must post this information on its website within 30 days of the date of any such donation. If required by City law, the Department must also disclose this or other information about donations from SFBGS in any related resolution or ordinance submitted to the Board of Supervisors for approval.

#### B. **SFBGS’s Reporting & Disclosure Obligations.**

1. **Donor and Grant Information.** SFBGS agrees to comply with San Francisco Administrative Code Section 67.29-6 by posting on its website the names of all individuals or organizations that contribute \$100 or more to SFBGS, by gift, grants, or other instruments, in the form of money, goods, or services, for the purpose of carrying out or assisting the Department’s performance of its City functions; the amounts contributed; and a statement as to any financial interest the donor contributing to the SFBGS has involving the City, including any donor’s contract, grant, lease, or request for license, permit, or other entitlement for use. SFBGS will post this information on its website within 30 days of receipt of any gift, grant or other instrument, and will also provide this information to the Department each year by no later than July 15 for the preceding fiscal year. SFBGS will maintain this donor information on its website until at least the end of the fifth fiscal year after the donation. To ensure compliance with this requirement and to maximize public transparency, SFBGS will not accept anonymous donations from a single source aggregating more than \$100 for purposes covered under the Lease. These provisions shall also apply to any grants received by SFBGS, if those grant funds are transferred to the City for the purpose of carrying out or assisting any City function.

2. **Financial Reports.** SFBGS will provide to the Department and the Department will upload a PDF (searchable text) copy of SFBGS’s annual audited financial report and IRS Form 990 annual tax return into the City’s financial system as part of the Lease documentation and prior to City’s execution of the Lease. The annual audited financial report filings provided by SFBGS must include detailed information about SFBGS’s total sources and uses of funds and also the sources and uses of funds dedicated to support the Department covered under the Lease, the names of SFBGS’s Board of Directors and Officers, and the names of any and all payees of funds covered by the Lease, including consultants, contractors and subcontractors and any current or past City employees paid and any funds provided directly to the Department to support the Department’s functions including but not limited to employee recognition and public events. Additionally, SFBGS will post its audited financial report and

its IRS Form 990 and all related tax return schedules on its website annually within 60 days of the completion of each.

3. **Links to SFBGS Website.** The Department will provide a link on its website to SFBGS's website for the public to readily access the information required under this Amendment. SFBGS will also post the Lease on its website along with copies of any other copies of Grant Awards or other City Contracts and MOU Agreements with any City Department including the Department covered by this Lease.

4. **SFBGS's Supplier Registration.** As part of the Amendment execution, SFBGS must register and submit an IRS Form W-9 through the SF City Partner portal, a complete copy of their most recent IRS Form 990 tax return and complete their Approved Supplier set up through the Controller's Supplier Management Unit.

5. **SFBGS's Invoices through SF City Partner Online (eSettlements) site.** If the Lease includes invoicing by SFBGS to the City Department, all invoices must be submitted online with any/all required supporting documentation through the SF City Partner portal's Online eSettlements site.

**C. Recordkeeping and Auditing.**

1. **Recordkeeping.** SFBGS will maintain books and records relating to Lease, in accordance with generally accepted accounting practices consistently applied, that contain all information required to allow the Department and/or the City's Controller, at their discretion, to audit SFBGS's records and to verify contributions and expenditures in accordance with the Lease.

2. **Auditing.** SFBGS shall make such books and records relating to the Lease available to the Department and/or the City's Controller (or their representatives) upon commercially reasonable prior written notice, but in no event more than ten (10) days after such notice is provided to conduct an audit. SFBGS shall retain and shall allow the Department and/or the City's Controller to access such books and records for a period of the later of (i) five (5) years after the end of each year to which such books and records apply, (ii) five (5) years after the issuance date of the SFBGS's audited financial statement or the IRS Form 990 annual tax return to which such books and records apply, or (iii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the contributions or expenditures hereunder, until such audit or controversy is terminated.