

File No. 221247

Committee Item No. 3

Board Item No. 7

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee
Board of Supervisors Meeting

Date February 8, 2023
Date February 14, 2023

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER (Use back side if additional space is needed)

- Request for Proposals 6/21/2022
- RPC Resolution No. 2210-004 10/20/2022
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Brent Jalipa Date February 2, 2023

Completed by: Brent Jalipa Date February 9, 2023

1 [Lease and Operating Agreement - Golden Gate Park Golf Development Foundation - Golden
2 Gate Park Golf Management and Operation - Annual Base Rent \$275,000]

3 **Resolution approving and authorizing a Lease and Operating Agreement between the**
4 **City and County of San Francisco, acting by and through its Recreation and Park**
5 **Department (RPD), and Golden Gate Park Golf Development Foundation for the**
6 **management and operation of the clubhouse and golfing operations at Golden Gate**
7 **Park Golf, located at 970-47th Avenue, for an initial term of six years, with one option to**
8 **extend the term for an additional nine years, with an annual base rent of \$275,000 plus**
9 **a share of revenues, effective upon approval of this Resolution; determining that the**
10 **rental rate under the Agreement is appropriate and that the Agreement will serve a**
11 **public purpose in accordance with Administrative Code, Sections 23.30 and 23.33;**
12 **adopting findings declaring that the Property is "exempt surplus land" under the**
13 **California Surplus Lands Act; and to authorize the RPD General Manager to enter into**
14 **amendments or modifications to the Lease that do not materially increase the**
15 **obligations or liabilities to the City and are necessary to effectuate the purposes of the**
16 **Lease or this Resolution.**

17
18 WHEREAS, The Golden Gate Park Golf Course (the "GGP Golf Course") is a nine-hole
19 golf course located at 970-47th Avenue, with a pro-shop, driving range, and food service
20 facilities, under the jurisdiction of the Recreation and Park Department ("RPD"); and

21 WHEREAS, The clubhouse and golfing operations at the GGP Golf Course have
22 historically been administered under a lease and operating agreement; and

23 WHEREAS, On June 21, 2022, RPD issued a Request for Proposals ("RFP") for a new
24 agreement for the lease, management and operation of the GGP Golf Course; and

1 WHEREAS, Golden Gate Park Golf Development Foundation, a California nonprofit
2 public benefit corporation (“GGPGDF”), a nonprofit affiliate of the First Tee and the current
3 operator of the GGP Golf Course, responded to the RFP and was selected by RPD to serve
4 as the official leaseholder and operator for the GGP Golf Course; and

5 WHEREAS, The parties seek to enter into a Lease and Operating Agreement (“Lease
6 and Operating Agreement”), a copy of which is on file with the Clerk of the Board of
7 Supervisors in File No. 221247 and is incorporated herein by reference; and

8 WHEREAS, The Lease and Operating Agreement includes the following key terms and
9 conditions:

10 (a) Term. The initial term shall be approximately six (6) years, subject to GGPGDF’s
11 option to the extend the term for one (1) additional nine (9) year extension period,
12 commencing on the date immediately following the Expiration Date provided that
13 the GGPGDF has completed the Minimum Required Capital Improvements
14 described below.

15 (b) Rent. GGPGDF shall pay Base Rent, Share of Green Fee Receipts, the Equipment
16 Subsidy and Share of Concessions Revenue, as defined below.

17 1. Base Rent. For the first Calendar Year following the completion of the rebuild
18 of the clubhouse and every Calendar Year thereafter annual Base Rent shall
19 be \$275,000, payable monthly.

20 2. Shared Green Fee Receipts. In addition to the Base Rent, GGPGDF shall
21 pay a Share of Greens Fee Receipts in accordance with the following
22 schedule:

23 Annual Greens Fee Receipts: City’s Share of Greens Fee Receipts:

24 Less than \$450,000	0%
25 \$450,000 to \$500,000	100%

1	\$500,000 to \$700,000	0%
2	Above \$700,000	50% if the operator has met the Minimum
3		Maintenance Standards

- 4 3. Equipment Subsidy. GGPGDF shall pay City an equipment subsidy of
- 5 \$53,000 per year to be used to purchase and lease equipment to maintain
- 6 the GGP Golf Course.
- 7 4. Concession Revenue Share. GGPGDF shall pay City 33% of all Concession
- 8 Revenues in excess of \$300,000, each Calendar Year.
- 9 5. Adjustment Prior to Reopening of the Clubhouse: RPD is in the process of
- 10 rebuilding the clubhouse which was destroyed by fire with an expected
- 11 completion date in Fall 2023. The above amounts are adjusted to lower
- 12 amounts until the Clubhouse is rebuilt and reopened reflecting the limited
- 13 facilities.
- 14 6. Annual Adjustments: All of the above amounts and limits are subject to
- 15 adjustment for cost of living changes.

16 (c) Use and Operations. GGPGDF shall operate the GGP Golf Course as a fee-based,

17 public nine-hole golf course and practice facility together with a related learning

18 center, golf pro-shop and food and beverage operation. All golf fees shall comply

19 with the Park Code.

20 (d) Minimum Required Capital Improvements. As a condition precedent to GGPGDF's

21 exercise of the Extension Option, GGPGDF will have completed not less than

22 \$2,000,000 of capital Improvements within three (3) years of the commencement of

23 the Lease and Operating Agreement to improve the irrigation system, drainage,

24 pathways and other elements of the Golf Course with changes to be approved by

25 the General Manager.

1 (e) Golf Course Maintenance. City personnel shall continue to maintain the Golf
2 Course; and

3 (f) Instruction and Portable Classroom Trailer. GGPGDF has the sole right and
4 authority to provide golf instruction at the GGP Golf Course and must offer
5 programs and instruction to the general public at reasonable rates and use efforts to
6 include economically disadvantaged youth in all junior golf programs and camps,
7 either through reduced rates or scholarship programs. GGPGDF shall offer
8 classroom instruction in a mobile classroom trailer unit described in the Lease and
9 Operating Agreement that will be placed at the northernmost end of the parking lot,
10 which will not be affixed to the premises by any means whatsoever and which will
11 be removed at the end of the term.

12 WHEREAS, The market rent for the GGP Golf Course in light of the terms and
13 conditions of the Lease and Operating Agreement and available and relevant data is less than
14 \$45 per square foot, and the rent furthers the public purpose of allowing the GGP Golf Course
15 to be operated as a golf course open to the public, with recreational programs benefiting youth
16 and the general community, and with greens fees and discounted rates as set forth in the
17 Park Code; and

18 WHEREAS, On October 20, 2022, RPD presented a term sheet for the Lease and
19 Operating Agreement along with the foregoing information to the Recreation and Park
20 Commission, and the Recreation and Park Commission adopted Resolution No. 2210-004,
21 approving the terms of the Lease and Operating Agreement, and recommending that the
22 Board of Supervisors approve the Lease and Operating Agreement; and

23 WHEREAS, The execution of the Lease and Operating Agreement requires the
24 approval of the Board of Supervisor's under Section 9.118 (a) and (c) of the San Francisco
25 Charter; now, therefore, be it

1 RESOLVED, That the Board of Supervisors hereby authorizes the RPD General
2 Manager, or their designee, to take all actions on behalf of the City to execute, enter into, and
3 perform its obligations under the Lease and Operating Agreement substantially in the form
4 filed with the Clerk of the Board of Supervisors in File No. 221247, and any other documents
5 that are necessary or advisable to effectuate the purpose of this Resolution and the Lease
6 and Operating Agreement; and, be it

7 FURTHER RESOLVED, That the rent for the GGP Golf Course, taking into account the
8 terms and conditions of the Lease and Operating Agreement, is sufficient to meet the
9 requirements of Administrative Code, Section 23.30; and, be it

10 FURTHER RESOLVED, That the Lease and Operating Agreement serves a proper
11 public purpose sufficient to meet the requirements of Administrative Code, Section 23.33; and,
12 be it

13 FURTHER RESOLVED, That the GGP Golf Course is “exempt surplus land” as defined
14 by California Government Code, Section 542221, for the reasons set forth above; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors authorizes the RPD General
16 Manager, or their designee, to enter into any further modifications, additions and amendments
17 to the Lease and Operating Agreement, including to any of its exhibits, that the RPD General
18 Manager determines, in consultation with the City Attorney, are in the best interests of the
19 City, do not materially increase the obligations or liabilities of the City, are necessary or
20 advisable to effectuate the purposes of the Lease, and are in compliance with all applicable
21 laws including the City’s Charter; and, be it

22 //

23 //

24 //

25 //

<p>Item 3 File 22-1247</p>	<p>Department: Recreation & Parks (REC)</p>
--	--

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve a lease and operating agreement between the City and the Golden Gate Park Golf Development Foundation, a non-profit, for the management and operations of Golden Gate Park Golf Course for an initial term of six-years with one option to extend for an additional nine years.

Key Points

- The Golden Gate Park Golf Course is a nine-hole course located in Golden Gate Park near 47th Avenue and Fulton Street. Under a prior management agreement, the Golden Gate Park Golf Foundation, a non-profit, has been managing and operating the golf course. The Recreation and Parks Department (REC) is responsible for maintenance of the Golden Gate Park Golf Course. The prior agreement expired in November 2020, and the Golden Gate Park Golf Foundation has been operating on a month-to-month basis until REC could issue a new RFP.
- In June 2022, REC issued an RFP to identify an operator for the Golden Gate Park Golf Course. REC selected Golden Gate Park Golf Foundation, which was the only organization that submitted a proposal, to continue operating the golf course.
- The proposed lease and operating agreement provides for an initial term of six-years with one option to extend for an additional nine years and annual base rent of \$275,000 plus a share of revenues. REC is currently rebuilding the clubhouse, which was damaged by fire in 2018.

Fiscal Impact

- REC projects lease revenues of \$484,200 in Year 2 of the proposed agreement once the clubhouse reopens, resulting in a net loss of approximately \$20,000 after accounting for REC maintenance costs. REC would incur an estimated net loss of approximately \$88,000 over the five-year period following clubhouse reopening with additional losses anticipated in Year 1 due to expected golf course closure during capital improvements.
- The operator must complete \$2 million of capital improvements prior to lease extension.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

City Charter Section 9.118(c) states that any sale of real property owned by the City and County of San Francisco is subject to Board of Supervisors approval.

Administrative Code Section 23.30 states that Recreation and Park leases of City property that require Board of Supervisors approval may be awarded for less than market rent if the Board of Supervisors finds that doing so would serve a public purpose.

BACKGROUND

Golden Gate Park Golf Course

The Golden Gate Park Golf Course is a nine-hole course located in Golden Gate Park near 47th Avenue and Fulton Street. The Recreation and Parks Department (REC) contracts with a third-party operator to manage and operate the golf course. Management of the operations includes taking reservations, registering players, collecting greens fees, providing golf instruction, operating a golf shop and driving range, providing building maintenance, providing food and beverage services and developing an annual Management Plan. REC is responsible for maintenance of the Golden Gate Park Golf Course.

Existing Management Agreement

Based on a Request for Proposals (RFP) process, REC entered into a management agreement with the Golden Gate Park Golf Foundation (the operator) to manage and operate the Golden Gate Park Golf Course, for the seven-year term (including one two-year option to extend) from December 1, 2013 through November 30, 2020 (File 13-0776). The agreement provided for a five-year term and one two-year option to extend, conditioned upon the operator's completion of \$150,000 in capital improvements. Under the agreement, Golden Gate Park Golf Foundation paid REC \$225,000 annually in base rent and greens fee revenues were shared between the operator and REC as follows:

- The operator received the first \$350,000 in revenues (of which \$225,000 was used to pay rent)
- REC received revenues between \$350,000 and \$500,000
- The operator and REC each received half of all revenues greater than \$500,000.

In addition to base rent and a share of greens fee revenues, the City also receives maintenance fees, which are collected by the operator and deposited by REC into a Maintenance Fund for course improvements or special maintenance repairs according to the Parks Code Section 12.12(f). Currently, the maintenance fee is \$2 per player per nine holes of golf.

Since December 2020, the Golden Gate Park Golf Foundation has been operating on a month-to-month basis because conducting an RFP was infeasible at the time due to the pandemic according to Dana Ketcham, REC Director of Property Management, Permits and Reservations. REC changed the payment structure over the month-to-month period because the operator was operating at a loss. The operator is currently paying REC: (a) base rent of \$242,476; (b) \$50,000 of greens fee revenues below \$525,000 and half of revenues greater than \$525,000; and (c) 20 percent of concessions revenue above \$650,000.

Procurement

In June 2022, REC issued an RFP to identify an operator for the Golden Gate Park Golf Course. The Golden Gate Park Golf Foundation was the only organization that submitted a proposal to REC. According to Director Ketcham, REC did not score the proposals because there was only one respondent. Director Ketcham also reports that the RFP pre-submittal meeting was attended by more than 10 people, including representatives from nearby and nationwide golf management companies.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a lease and operating agreement between the City and the Golden Gate Park Golf Development Foundation, a non-profit, for the management and operations of Golden Gate Park Golf Course for an initial term of six-years with one option to extend for an additional nine years. The proposed agreement provides for an annual base rent of \$275,000 plus a share of revenues. The proposed resolution would also: (i) determine that the rental rate is appropriate and that the agreement will serve a public purpose in accordance with Administrative Code 23.30 and 23.33; (ii) adopt findings declaring that the property is “exempt surplus land” under the California Surplus Lands Act; and (iii) authorize the REC General Manager to modify the agreement as needed to effectuate the purposes of the lease, in consultation with the City Attorney, provided that modifications do not materially increase the obligations or liabilities to the City.

Under the proposed agreement, REC would continue to perform maintenance of the golf course, and the Golden Gate Park Golf Development Foundation (the operator) would operate and manage the golf course. Exhibit 1 below shows the proposed lease and operating agreement terms.

Exhibit 1: Proposed Lease and Operating Agreement Terms

Leased Premises	Clubhouse, patio around the clubhouse, driving range, practice area, and a portion of the parking lot, and access over the Golf Course as needed to allow tenant to meet lease obligations
Initial Term	Six Years (Estimated January 15, 2023 to December 31, 2028)
Options to Extend	One nine-year option to extend conditioned on operator completing \$2 million of capital improvements
Utilities	City pays utilities
Annual Adjustments to Rent	Base rent, equipment subsidy, and thresholds for shared greens fee receipts and concessions revenue to be increased by CPI annually.
<i>Base Rent, Equipment Subsidy, and Shared Revenues Years Following Clubhouse Reopening*</i>	
Base Rent	\$275,000
Shared Greens Fee Receipts	City receives revenues between \$450,000 and \$500,000 and half of revenues above \$700,000. Remaining revenues accrue to the Operator.
Equipment Subsidy	\$53,000
Shared Concessions Revenue	City receives 33% of concessions revenues in excess of \$300,000 of the calendar year; Remaining revenues accrue to the operator.

Source: Draft Lease and Operating Agreement

*Year 1 of the proposed lease would continue the existing base rent and revenue sharing amounts and thresholds with the operator

Clubhouse Renovations

REC is currently rebuilding the clubhouse, which was damaged by fire in 2018. The new 1,560 square foot clubhouse will provide a food and beverage concession, a golf pro shop, a public restroom, and storage and is expected to be completed in Fall 2023. Base rent and shared revenues paid to the City are adjusted to lower amounts under the proposed lease until the clubhouse is completed due to the construction impact and limited facilities.

Base Rent, Equipment Subsidy, and Shared Revenues

The operator is required to pay annual base rent of \$242,000 in the first year plus a share of green fee receipts, and a share of concessions revenue to the City based on the existing revenue sharing amounts and thresholds. Once the clubhouse reopens, the operator will also pay an equipment subsidy to REC, and annual base rent will increase to \$275,000 and will increase in subsequent years by the Consumer Price Index (CPI), as advertised in the solicitation. REC did not conduct an appraisal to determine base rent because the agreement is an operating agreement and lease with a share of greens fees split between the parties to cover the costs, and because the Real Estate Division determined that the rent was less than \$45 per square foot (i.e., an appraisal was not required by Administrative Code Section 23.30). As discussed below, base rent

to the extent it is less than market rent furthers the public purpose of keeping access fees below market rate.

Under the proposed agreement, the City would continue to receive a share of greens fee receipts but at a lower rate than under the existing agreement. This would be at least partially offset by the new equipment subsidy and new concessions revenue. Once the clubhouse reopens, the operator would pay the City revenues received between \$450,000 and \$500,000 and half of revenues above \$700,000 provided the City meets maintenance standards.¹ To receive a share of revenues above \$700,000, the City must meet the following conditions of the Maintenance Standard Incentive: (a) the City submits the Minimum Maintenance Standards Report to the operator and maintenance standards have been reasonably met; (b) the operator meeting has occurred; and (c) a meeting between the operator and REC General Manager has occurred, if requested by the operator.

Concessions Revenue

The operator would also pay the City a share of concessions revenue, including revenues from food and beverage, merchandise, practice and rentals, events, and percentage of lessons paid to the operator. Once the clubhouse reopens, the operator would pay the City 33 percent of concessions revenues in excess of \$300,000 of the calendar year.²

Equipment Subsidy

The operator would pay the City an equipment subsidy annually for course maintenance once the clubhouse reopens. According to the proposed resolution, the subsidy would be \$53,000 in the first year after reopening and would be adjusted annually by CPI.

Minimum Required Capital Improvements

To exercise the nine-year option to extend the lease, the operator would have to complete at least \$2 million in capital improvements within three years of commencement of the lease. Improvements would address the irrigation system, which was installed in 1998 and frequently breaks according to REC staff, as well as drainage, pathways, and other course elements with changes approved by the REC General Manager. The tenant intends to raise private funds to pay for these improvements.

Sole Right to Provide Golf Instruction

The operator would have the sole right to provide golf instruction at the Golden Gate Park Golf Course. The operator must offer instruction to the general public at reasonable rates and provide reduced rates or scholarship programs to include economically disadvantaged youth in junior golf programs and camps.

¹ In the first year, the operator would pay the City revenues received between \$475,000 and \$525,000 and half of all revenues in excess of \$525,000.

² In the first year, the operator would pay the City 20 percent of concessions revenue above \$650,000.

Maintenance

Under the proposed agreement, REC would provide 100 hours of weekly course maintenance labor, including two full-time gardeners (80 hours), one part-time Teamster (16 hours), and one part-time lead Agronomy manager (4 hours). This amount of time is covered by current budgeted staff. The agreement also specifies initial minimum maintenance standards for REC staff. For example, REC staff must mow tees and fairways two to three times per week. According to REC staff, weekly maintenance requirements in the agreement are subject to incidences of employee leave (vacation, sick, workers compensation, etc.) and subject to the City's applicable policies and procedures and the budget and fiscal provisions of the City Charter.

The agronomy manager is responsible for creating and implementing an annual maintenance plan in support of the minimum maintenance standards and must review the plan each calendar year with the operator.

Performance of the Golden Gate Park Golf Foundation

The existing lease does not have performance metrics. Director Ketcham reports that REC maintenance staff monitor operator performance through weekly site visits but do not formally document performance.

FISCAL IMPACT**Estimated Revenues**

Over the most recent year of the existing lease (December 2021 to November 2022), residents and non-residents played a total of 40,134 rounds of golf, and the operator paid a total of \$407,427 in rent and shared revenues to REC, including base rent (\$242,476), greens fee revenue (\$147,670), and concessions revenue (\$17,280). Based on an estimated 40,000 rounds of golf, REC projects lease revenues of \$484,200 in Year 2 of the proposed agreement once the clubhouse reopens, as shown in Exhibit 2 below.

Exhibit 2: Estimated REC Lease Revenues and Maintenance Costs in Year 2 after Reopening

	Year 2 (2024)
REC Revenues	
Annual Base Rent	\$275,000
Equipment Subsidy	53,000
Greens Fee Revenue	110,000
Concessions Revenue	46,200
Total Revenue to RPD	\$484,200
REC Expenditures ^a	
Salaries & Benefits	\$455,196
Utilities	6,877
Non-Personnel Services	585
Materials & Supplies	41,000
Total Costs	\$503,659
RPD Net (Cost)/Revenue	(\$19,459)

Source: REC

^a Annual costs are based on FY 2022-23 projected costs, increased annually by 3%

Parks & Recreation Maintenance Costs

Approximately 90 percent of costs support salaries and benefits for 3.05 full-time equivalent (FTE) positions. Remaining maintenance costs include the cost of utilities, non-personnel services, and materials and supplies. Assuming an average increase of three percent per year in REC maintenance costs and estimated revenues shown in Exhibit 2 above, REC would incur a net loss of approximately \$20,000 in Year 2 of the agreement and an estimated net loss of approximately \$88,000 over the five-year period following clubhouse reopening with additional losses anticipated in Year 1 due to expected golf course closure during capital improvements. According to REC staff, using a non-profit to deliver services to Golden Gate Park golf course as well as REC’s subsidy to operations allows the City to keep rates lower for residents and non-residents compared to private golf courses.³ REC maintenance costs that exceed golf revenues are supported by the General Fund.

Golf Course Revenues & Expenditures

Based on projected revenues and operator expenses, the operator would generate \$56,750 in net income after making payments to REC in Year 2 and a total of approximately \$234,000 over the five-year period following clubhouse reopening with potential reduced net income or a net loss in Year 1 due to an expected golf course closure. However, the lease also requires the operator to make at least \$2 million in capital improvements within three years of

³ For example, weekday Golden Gate Park Gold Course green fees are \$18 for adult residents, compared to \$70 at the Presidio Golf Course, another public golf course. Rates for the Olympic Club, a private membership-only golf course, are not published.

commencement of the lease in order to be eligible for the lease extension. Exhibit 3 below shows operator net income in Year 2.

Exhibit 3: Golden Gate Park Golf Course Revenues & Expenditures in Year 2 after Reopening

	Year 2 (2024)
Revenue	
Greens Fee Revenue	820,000
Food & Beverage Revenue	240,000
Other Revenue	200,000
Total Revenue	1,260,000
Expenditures	
Cost of Goods Sold	123,750
Labor Expenses	455,080
Insurance Expenses	63,500
Other Expenses	76,720
Total Expenditures	719,050
Income Before Payments to REC	540,950
Payments to REC (Exhibit 2)	\$484,200
Net Operator Income	\$56,750

Source: REC

According to REC staff, the expenses for the golf course have increased due to additional staff and insurance costs. REC reports that the operator added 1.0 FTE staff to serve the new clubhouse when it opens, and the operator is increasing insurance coverage to reduce the possibility of losses in the event of another fire.

Operator labor expenses funded by the proposed agreement support approximately 6.92 FTEs annually, including 4.0 FTE full-time staff (General Manager, Clubhouse Manager, Chef, Kitchen staff) and 2.92 FTE part-time staff (additional Kitchen staff and Pro Shop staff). Part-time staffing levels are approximately 1.0 FTE higher in the Spring and Summer (April through October) compared to the Fall and Winter (November through March). The Operator is required to have the facility open 365 days per year from sunrise to sunset.

RECOMMENDATION

Approve the proposed resolution.



London Breed, Mayor
Philip A. Ginsburg, General Manager

LEASE AND OPERATING AGREEMENT

between

CITY AND COUNTY OF SAN FRANCISCO, Landlord

and

GOLDEN GATE PARK GOLF DEVELOPMENT FOUNDATION, Tenant

For the Lease and Operation of a Portion of the

Golden Gate Park Golf Course

**located in Golden Gate Park
near the intersection of 47th Avenue and Fulton Street,
San Francisco, California**

_____ , 2023

**CITY AND COUNTY OF SAN FRANCISCO
London Breed, Mayor**

SAN FRANCISCO RECREATION and PARK COMMISSION

Mark Buell, President

Kat Anderson, Vice President

Laurence Griffin, Commissioner

Joe Hallisy, Commissioner

Annie Jupiter-Jones, Commissioner

Vanita Louie, Commissioner

Larry Mazzolo, Commissioner

Philip A. Ginsburg, General Manager



**RECREATION AND PARK DEPARTMENT
LEASE AND OPERATING AGREEMENT
Table of Contents**

1.	BASIC LEASE INFORMATION	1
2.	DEFINITIONS	6
3.	PREMISES	12
4.	TERM	16
5.	RENT	17
6.	TAXES, ASSESSMENTS AND OTHER EXPENSES	21
7.	USE; COVENANTS TO PROTECT PREMISES AND DEPARTMENT FACILITIES	22
8.	ALTERATIONS AND IMPROVEMENTS	29
9.	REPAIRS AND MAINTENANCE	32
10.	UTILITIES	35
11.	LIENS	36
12.	COMPLIANCE WITH LAWS	36
13.	FINANCING; ENCUMBRANCES; SUBORDINATION	37
14.	DAMAGE OR DESTRUCTION	38
15.	EMINENT DOMAIN	40
16.	ASSIGNMENT AND SUBLETTING	41
17.	DEFAULT; REMEDIES	42
18.	WAIVER OF CLAIMS; INDEMNIFICATION	44
19.	INSURANCE	45
20.	ACCESS BY CITY	48
21.	ESTOPPEL CERTIFICATES	49
22.	SURRENDER	49
23.	HAZARDOUS MATERIALS	50
24.	SECURITY DEPOSIT	51
25.	HOLDING OVER	52
26.	GENERAL PROVISIONS	52
27.	QUALITY OF SERVICES AND PRODUCTS OFFERED	66
28.	PARTICIPATION IN CITY CUSTOMER SATISFACTION PROGRAM	66
29.	SIGNS AND ADVERTISING	66
30.	SUSTAINABLE FOODS	66
31.	LIMITED ABATEMENT RIGHT IN CONNECTION WITH GOLF COURSE DISRUPTION	67
32.	CONTRACTOR VACCINATION REQUIREMENTS	68

EXHIBITS

- Exhibit A – General Depiction of Premises
- Exhibit B – Recreation and Park Department Rules and Regulations
- Exhibit C – Golf Course Rules
- Exhibit D – Baseline Maintenance Schedule
- Exhibit E – Guidelines for Minimum Required Capital Improvements
- Exhibit F – Mobile Classroom Dimensions and Specifications
- Exhibit G—Clubhouse Site Furnishings

Exhibit H—Flood Risk Disclosure
Exhibit I –First Source Hiring Agreement

RECREATION AND PARK DEPARTMENT

LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT (this "**Lease**") dated for reference purposes only as of _____, 2023, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Landlord**"), acting by and through its Recreation and Park Commission (the "**Commission**"), and GOLDEN GATE PARK GOLF DEVELOPMENT FOUNDATION, a California nonprofit public benefit corporation ("**Tenant**" or "**Operator**"), and with reference to the following facts and circumstances:

RECITALS

A. This Lease was competitively procured through Request For Proposals Golden Gate Park Golf Course, issued by the Department (as defined herein) on June 21, 2022 ("**RFP**"), for the lease, management and operation of the Golf Course (as defined herein).

B. Tenant responded to the RFP and was selected by the Department, and this Lease was approved by Commission Resolution No. ____, adopted by the Commission on ____, and subsequently authorized by the San Francisco Board of Supervisors in accordance with San Francisco City Charter Section 9.118 by Resolution No. _____, adopted by the Board of Supervisors on ____202__, and approved by the Mayor on ____, 202__.

C. Landlord and Tenant now desire to enter into this Lease to allow Tenant to lease, manage and operate the Golf Course on the terms and conditions contained herein.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the mutual covenants and obligations of the Parties contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Tenant hereby agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "**Basic Lease Information**"). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Article and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date: _____ __, 2023

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

Tenant: GOLDEN GATE PARK GOLF DEVELOPMENT FOUNDATION,
a California nonprofit public benefit corporation

Golf Course: The Golden Gate Park Golf Course, located in Golden Gate Park near the intersection of 47th Avenue and Fulton Street, San Francisco, California (the "**Golf Course**"). The Golf Course is owned by City, is under the jurisdiction of the Commission, and is operated by the San Francisco Recreation and Park Department (the "**Department**").

Premises (Section 3.1): The Premises are comprised of only those portions of the Golf Course more particularly described in **Section 3.1** and generally delineated on Exhibit A. Among other areas, the Premises include the clubhouse, patio around the clubhouse, the driving range, the practice area, and a portion of the parking lot on which Tenant's portable classroom trailer is installed, all as generally shown on Exhibit A, and access over the Golf Course but only as required to permit Tenant to meet its obligations under this Lease.

Term (Section 4.1): The initial term of this Lease shall be approximately six (6) years, as described in **Section 4.1**, subject to Tenant's option to the extend the term as set forth in **Section 4.5**.

Estimated commencement date: January 15, 2023
Estimated expiration date: December 31, 2029

Extension Term (Section 4.5): Tenant shall have the option to extend the term of this Lease for one (1) additional nine (9) year extension period, commencing on the date immediately following the Expiration Date, on the terms and conditions set forth in **Section 4.5**, provided that Tenant has completed the Minimum Required Capital Improvements described in **Section 8.4**.

Rent (Article 5): Tenant shall pay Base Rent and City's Share of Green Fee Receipts, the Equipment Subsidy and City's Share of Concessions Revenue, as defined below.

Base Rent (Section 5.1):

(a) **Initial Base Rent.** Until the start of the first Calendar Year following the Reopening Date, annual Base Rent shall be \$242,000 per Calendar Year, payable monthly in accordance with the following schedule:

Monthly Base Rent Schedule:
Jan, Feb, Nov, Dec: \$ _____ per month
March through October: \$ _____ per month

Notwithstanding the foregoing, Tenant will pay no Base Rent to City during the period the Golf Course is closed due to the installation of the Minimum Required Capital Improvements.

(b) **Base Rent Following Reopening.** For the first Calendar Year following the Reopening Date and every Calendar Year thereafter while the Lease remains effective, annual Base Rent shall

be \$275,000, payable monthly in accordance with the following schedule:

Monthly Base Rent Schedule:

Jan, Feb, Nov, Dec: \$ [redacted] per month

March through October: \$ [redacted] per month

Base Rent Adjustment for Extension Term (Section 5.2):

Commencing January 1st of the Calendar Year following the first anniversary of the Reopening Date and each January 1st thereafter (each, an "**Adjustment Date**"), the annual and monthly Base Rent, payable hereunder shall increase according to **Section 5.2**.

Shared Greens Fee Receipts (Section 5.3):

In addition to the Base Rent, Tenant shall pay to City City's Share of Greens Fee Receipts in the manner described in **Section 5.3** and in accordance with the following schedule:

(a) Initial City's Share of Greens Fee Receipts.

Until the start of the first Calendar Year following the Reopening Date:

Annual Greens Fee Receipts: City's Share of Greens Fee Receipts:

Less than \$475,000	0%
\$475,000 to \$525,000	100%
Above \$525,000	50% of such portion above \$525,000

(b) City's Share of Greens Fee Receipts Following

Reopening. For the first Calendar Year following the Reopening Date, and every Calendar Year thereafter while this Lease is effective:

Annual Greens Fee Receipts: City's Share of Greens Fee Receipts:

Less than \$450,000	0%
\$450,000 to \$500,000	100%
\$500,000 to \$700,000	0%
Above \$700,000	In accordance with the Maintenance Standard Incentive (as defined in Section 2 below)

The amounts set forth in the Annual Greens Fee Receipts schedule set forth above shall be adjusted on the Adjustment Date at the rate of increase applicable to Base Rent under **Section 5.2**

Equipment Subsidy
(Section 5.4):

In addition to Base Rent and City's Share of Greens Fee Receipts, Tenant shall pay City the Equipment Subsidy to be paid annually, commencing on July 1, 2023, and on each July 1 thereafter while the Lease is effective.

The Equipment Subsidy shall be adjusted on the Adjustment Date at the rate of increase applicable to Base Rent under **Section 5.2**

Shared Concessions Revenue
(Section 5. 5):

In addition to Base Rent, the City's Share of Greens Fee Receipts and the Equipment Subsidy, Tenant shall pay City City's Share of Concessions Revenue as follows:

(a) Initial City's Share of Concessions Revenue. Until the start of the first Calendar Year following the Reopening Date, Tenant shall pay to City twenty percent (20%) of all Concession Revenues following Tenant's receipt of Gross Receipts of \$650,000 for the Calendar Year.

For the avoidance of doubt, once Tenant has received Gross Receipts of \$650,000 for the Calendar Year, Tenant shall then be obligated to pay 20% of Concessions Revenue starting the next day, through the end of that Calendar Year such that if Tenant reaches Gross Receipts of \$650,000 on June 21st, Tenant shall pay 20% of Concessions Revenue starting on June 22nd through December 31st of the Calendar Year.

(b) City's Share of Concessions Revenue Following Reopening. For the first Calendar Year following the Reopening Date and every Calendar Year thereafter while the Lease is effective, Tenant shall pay to City thirty-three percent (33%) of all Concession Revenues in excess of \$300,000 for the Calendar Year; provided, that in calculating Concessions Revenues for purposes of this subparagraph (b), Tenant shall include thirty-three percent (33%) of revenues from lessons paid to Tenant.

The Concessions Revenue threshold of \$300,000 set forth above shall be adjusted on the Adjustment Date at the rate of increase applicable to Base Rent under **Section 5.2**.

Use; Exclusive Use (Section 7.1):

Exclusive right to operate the Golf Course as a fee-based public nine-hole golf course and to operate associated facilities, including collecting greens fees for the Golf Course and managing the tee sheet, providing paid professional golf lessons, operating a practice

facility, related learning center, golf pro shop, and providing food and beverage service, as more particularly described in **Section 7.1**.

Security Deposit (Section 23):

\$_____

Notice Address of City
(Section 26.1):

Recreation and Park Department
Property Management
501 Stanyan Street
San Francisco, CA 94117

with a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Real Estate/Finance Team

Key Contact for City:

Director Property Management

San Francisco Recreation and Park Department
501 Stanyan, Street
San Francisco, CA 94117

Telephone No.:

(415) 831-6868

Address for Tenant
(Section 26.1):

Golden Gate Park Golf Development Foundation
99 Harding Road
San Francisco, California 94132
Attn: Dan Burke

Key Contact for Tenant:

Dan Burke

Telephone No.:

() ___-___

With a copy to:

Rueben, Junius & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104
Attn: Kevin Rose

Telephone No.:

(415) 567-9000

Brokers (Section 27.8):

None.

Minimum Required Capital
Improvements (Section 8.4):

As a condition precedent to Tenant's exercise of the Extension Option set forth in **Section 4.5**, Tenant will have completed not less than \$2,000,000 of Minimum Required Capital Improvements (as described in **Section 8.4**) within three (3) years of the Commencement Date of the Lease.

Maintenance of Golf Course Other than Premises (Section 9.2):	City shall maintain the Golf Course other than the Premises in accordance with the provisions of Section 9.2 .
Waste Reduction and Sustainable Foods (Section 26.43 and Section 30):	Without limiting the other provisions of this Lease, Tenant's food and beverage operations on the Premises shall comply with the provisions of the City's Food Service Waste Reduction Ordinance, as described in Section 26.43 , and the provisions of Section 30 requiring Tenant to attempt to incorporate sustainable food concepts into Tenant's everyday operations.
Limited Abatement Right (Section 31):	Tenant has certain limited rights to Rent abatement and a limited early termination right on the terms and conditions described in Section 31 .

2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

"**Additional Charges**" means any and all real and personal property taxes, possessory interest taxes, insurance premiums and other costs, impositions and expenses described herein or otherwise payable by Tenant under this Lease.

"**Adjustment Date**" means the first anniversary of the Commencement Date and each anniversary thereof, as specified in Basic Lease Information and **Section 5.2** hereof.

"**Adjustment Index**" means the Index which is published most immediately preceding a particular Adjustment Date.

"**Agents**" means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

"**Alterations**" means any alterations, installations or additions to any Improvements or to the Premises, including, but not limited to, any interior alterations or renovations.

"**Anniversary Date**" means the annual anniversaries of the Commencement Date.

"**Assignment**" has the meaning given in **Section 16.1** hereof.

"**Award**" means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

"**Base Index**" means the Index published most immediately preceding the first anniversary of the Commencement Date.

"**Base Rent**" means the annual Base Rent specified in the Basic Lease Information and described in **Section 5.1** hereof, as increased pursuant to **Section 5.2** hereof, if applicable.

"**Basic Lease Information**" means the information with respect to this Lease summarized in **Article 1** hereof.

"**Calendar Year**" means a year commencing at 12:00 a.m. on January 1 and ending at 11:59 p.m. on December 31.

"**City**" means the City and County of San Francisco, a municipal corporation.

"**City's Share of Greens Fee Receipts**" means a sum equal to the stated percentage of the Greens Fee Receipts during each Calendar Year, or portion thereof, of the Term in the respective percentage amounts, as further described and set forth in Basic Lease Information.

"**City's Share of Concession Revenues**" means the City's share of Concessions Revenues that are to be paid by Tenant to City during the Lease Term as further described and set forth in the Basic Lease Information.

"**Concession Operations**" means the sale and rental of merchandise, including, without limitation, the following: (a) women's and men's or non-gender specific apparel including, without limitation, polos, hats, shorts, quarter zips, winter caps, tee-shirts, rain jackets, and vests; (b) golf related supplies and equipment such as select TaylorMade golf clubs and putters, golf balls, golf shoes, towels, tees, ball-markers, spike tools, swing training aids, club brushes, and golf clubs and pull carts, which shall be offered for purchase and rental; (c) rental of practice facilities; (d) special events; and (e) lessons offerings.

"**Concessions Revenues**" means all categories of revenues received by Operator other than Greens Fee Receipts and Maintenance Fee, and shall include revenues from Food and Beverage Operations, and Concession Operations.

"**Commencement Date**" means the date on which the Term of this Lease commences as described in **Section 4.1** hereof.

"**Commission**" means the City and County of San Francisco Recreation and Park Commission or its successor.

"**Date of Taking**" means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

"**Department**" means City's Recreation and Park Department.

"**Department Facilities**" means any and all surface and subsurface facilities owned by the City and now or later located in, under, on or about the Golf Course, including, without limitation, sidewalks, plazas and street improvements.

"**Effective Date**" means the date on which this Lease becomes effective pursuant to **Section 4.4** hereof.

"**Encumber**" means create any Encumbrance; "**Encumbrance**" means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

"**Encumbrancer**" means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

"**Environmental Laws**" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

"**Equipment**" means one (1) greens triplex mower and extra reels; one (1) sand pro; two (2) fairway / tee mowers and extra reels; one (1) utility vehicle; one (1) greens sprayer; and (1) top dresser / spreader.

"**Equipment Subsidy**" means the equipment lease subsidy in the amount of \$53,000 to be paid by Tenant to City each Calendar Year in accordance with the Basic Lease Information, and adjusted on the Adjustment Date at the rate applicable to Base Rent under **Section 5.2**.

"**Event of Default**" means any one of the events of default described in **Section 17.1** hereof.

"**Expiration Date**" means the date on which the Term of this Lease expires as described in **Section 4.1** hereof.

"**Food and Beverage Operations**" means the sale of food and beverages, including both canned and bar alcoholic and non-alcoholic, which shall all be offered at market prices that reflect a standard restaurant markup.

"**General Manager**" means the General Manager of the Recreation and Park Department.

"**Golf Course**" has the meaning set forth in the Basic Lease Information.

"**Greens Fee Receipts**" means all amounts received and receivable from greens fees for play at the Golf Course, but excluding the Maintenance Fee.

"**Gross Receipts**" means all amounts received and receivable from all sales and business conducted in, from or attributable to the Premises by Tenant, or by any other person, firm, partnership or corporation conducting sales or performing services of any sort in, upon, or from any part of the Premises as a subtenant, licensee, concessionaire, contractor or subcontractor of Tenant, including Greens Fee Receipts and Concessions Revenues whether made by telephone, mail or online or through tour operators or third parties.

"**Hazardous Material**" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a

"hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 *et seq.*) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

"**Hazardous Material Claims**" means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the Department, their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

"**Improvements**" means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of Tenant pursuant to this Lease, (including, without limitation, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping) with the exception of any Department Facilities.

"**Indemnify**" means indemnify, protect, defend and hold harmless.

"**Indemnified Parties**" means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Department, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

"**Index**" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

"**Investigation**" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or

threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"**Invitees**" when used with respect to Tenant means the clients, customers, invitees, guests, members, contractors, licensees, assignees and subtenants of Tenant; provided, however, such term shall expressly exclude members of the general public, customers or any patrons of the Golf Course during the use of portions of the Golf Course other than the Premises, except when accompanied by an instructor or other employee or contractor of Tenant during a lesson or otherwise.

"**Landlord**" means the City and County of San Francisco, a municipal corporation.

"**Law**" means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

"**Lease**" means this Lease as it may be amended in accordance with its terms.

"**Tenant**" means the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Tenant shall also refer to the successors and assigns of Tenant's interests under this Lease, provided that the rights and obligations of Tenant's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

"**Tenant's Personal Property**" means the personal property of Tenant described in **Section 8.3** hereof.

"**Losses**" means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs but excluding any lost profits or consequential damages.

"**Maintenance Fee**" means a fee, currently in the amount of \$2 per nine (9) holes to be collected by Tenant from Greens Fee Receipts and paid to City. The amount of the Maintenance Fee is set forth in the San Francisco Parks Code Section 12.12 (f), and subject to amendment from time to time.

"**Maintenance Fund**" means the fund to be held by City, which consists of Maintenance Fees collected by Tenant and remitted to City and used in accordance with **Section 9.2**.

"**Maintenance Standard Incentive**" or "**MSI**" means an amount equal to fifty percent (50%) of all Greens Fee Receipts in excess of \$700,000, received by Tenant during the period commencing the first Calendar Year following the Reopening Date and every Calendar Year thereafter, which is payable by Tenant to City on March 1, subject to the following conditions: (a) the Minimum Maintenance Standards Report described in **Section 9.3** below shall have been submitted by City to Tenant and the Maintenance Standards shall have been reasonably met; (b) the Operator

Meeting shall have occurred; and (c) if requested by Tenant in writing, the meeting with the General Manager shall have occurred, as described in **Section 9.4**.

“**Minimum Maintenance Standards Report**” is defined in **Section 9.3**

“**Minimum Maintenance Standard Requirements**” means the set forth on **Exhibit D**.

“**Minimum Required Capital Improvements**” has the meaning given in **Section 8.4** hereof.

“**Mobile Classroom**” has the meaning given in **Section 8.3** hereof.

“**Party**” means City or Tenant; “**Parties**” means both City and Tenant.

“**Permitted Uses**” has the meaning given in **Section 7.1** hereof.

“**Premises**” has the meaning given in **Section 3.1** hereof. The Premises shall include any existing or permitted Improvements, together with any additions, modifications or other Alterations thereto permitted hereunder. Notwithstanding anything to the contrary in this Lease, the Premises do not include Department Facilities, nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

“**Release**” when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Tenant, or in, on, under or about the Premises or Department Facilities or any portion thereof.

“**Remediation**” when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material located in, on, under or about the Premises or Department Facilities or which have been, are being, or threaten to be Released into the environment. Remediate includes, without limitation, those actions included within the definition of “remedy” or “remedial action” in California Health and Safety Code Section 25322 and “remove” or “removal” in California Health and Safety Code Section 25323.

“**Rent**” means the Base Rent together with City’s Share of Green Fees Receipts and any and all Additional Charges, whether or not any such amounts are specifically characterized as rent.

“**Reopening Date**” means the first date on which the Premises are opened for operations following the completion of the rebuilding of the Golf Course clubhouse.

“**Sublease**” has the meaning given in **Section 16.1** hereof.

“**Taking**” means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

“**Term**” means the term of this Lease as determined under **Section 4.1** hereof.

"**Transfer**" means any Assignment or Sublease.

"**Transferee**" means any recognized assignee of any part of Tenant's leasehold interest hereunder or any recognized subtenant of any portion of the Premises, pursuant to a Transfer that complies with **Article 16** hereof.

"**Unmatured Event of Default**" means any default by Tenant under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder.

3. PREMISES

3.1. Leased Premises. Subject to the terms, covenants and conditions of this Lease, City leases to Tenant and Tenant leases from City, the real property shown delineated on **Exhibit A**, attached hereto, located in the City and County of San Francisco, State of California, together with the Improvements thereon (the "**Premises**").

3.2. Rights Reserved to City. Notwithstanding anything to the contrary in this Lease, but without limiting any specific rights of abatement Tenant may have pursuant to **Section 31**, City reserves and retains all of the following rights relating to the Premises at all times:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriate water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

(c) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and in such manner as not to damage the surface of the Premises or to interfere with the permitted use thereof by Tenant, without Tenant's prior written consent;

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct any Department Facilities, subject to Section 31;

(e) The right to grant future easements and rights of way over, across, under, in and upon the Premises as City shall determine to be in the public interest, provided that any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right of way, subject to Section 31;

(f) Without limiting the generality of **Section 3.2(e)** above, the right to grant future easements, rights of way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of (i) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs and/or advertising kiosks, provided that any such easement or right-of-way shall not materially interfere with Tenant's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right of way, subject to Section 31; and

(g) All rights of access provided for in **Article 20** below.

3.3. Subject to Public and Municipal Uses and Rules. Tenant acknowledges that the Premises is under the Commission's jurisdiction and must be used for recreational purposes under Section 4.113 of the City Charter and in compliance with the San Francisco Parks Code. Tenant's rights under this Lease shall be subject and subordinate to City's use of the Premises for such purposes. However, so long as there is no Event of Default on the part of Tenant outstanding hereunder and subject to the terms and conditions of this Lease, Tenant shall have the exclusive right to use the Premises for the operation of a golf course facility and the City shall use its best efforts to avoid interfering with Tenant's quiet use and enjoyment of the Premises. Tenant shall comply with, cause Tenant's Invitees to comply with, and use reasonable, good faith efforts to cause other customers and invitees using the Premises and Golf Course to comply with Section 4.113 of the City Charter and the San Francisco Parks Code and the Department's rules and regulations relating to its park property and to the Golf Course, as the same may change from time to time (the "**Rules and Regulations**"). Tenant may contact the Department's Park Patrol and, when warranted, the San Francisco Police Department for assistance in responding to a violation of the Rules and Regulations by parties other than Tenant's Agents and Invitees. A copy of the current Rules and Regulations can be downloaded from the City and County of San Francisco web address provided in the attached **Exhibit B**. Additionally, a separate list of Golf Course rules and regulations is attached to this lease as **Exhibit C**. The Golf Course rules are modified by City from time to time after consulting with the municipal golf course operators and considering Department input. Any changes in Golf Course rules must be approved by the Recreation and Park Commission prior to implementation. Tenant shall have the right to propose additional reasonable and non-discriminatory rules of fair play, conduct and behavior in connection with the operation of the golf course ("**Special Course Rules**") and shall have the right to require patrons of the Golf Course to follow the approved, implemented Golf Course rules as a condition to being permitted access to the Golf Course facilities. Without limiting the generality of the foregoing, City acknowledges that the proposed Special Course Rules may include (i) establishment of a reservation system for scheduling access to course facilities, including, establishment of scheduled periods for use of course facilities for Tenant's teaching activities and training by course professionals engaged by Tenant, and (ii) temporary restriction of access to portions of the course facilities to patrons enrolled in lessons sponsored by Tenant.

3.4. As Is Condition of Premises.

(a) **Inspection of Premises.** Tenant is in possession of the Premises and represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises and the Golf Course and the suitability of the Premises and the Golf Course for Tenant's intended use. Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises and Golf Course are suitable for its operations and intended uses.

(b) **Accessibility Disclosures.**

(1) California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“CASp”) to determine whether the property meets all applicable construction-related accessibility requirements.

Landlord discloses: (i) Landlord has not been issued a disability access inspection certificate, as described in California Civil Code (“CC”) Section 55.53(e); (ii) pursuant to CC Section 1938, that Landlord has not ordered, performed, or caused to be performed, a Certified Access Specialist (“CASp”) inspection of the Premises (sometimes referred to as “premises” or “subject premises” for the herein disclosures); and (iii) Landlord makes the following statutory disclosure per CC Section 1938 (the required “CASp Disclosure”):

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

Landlord and Tenant agree that Landlord will have the Premises inspected by a CASp prior to the Reopening Date at Landlord’s cost and expense, including fees for reports prepared by the CASp (collectively, the “CASp Reports”). City will deliver the CASp Reports to Tenant within five (5) business days of Tenant’s request. City will be solely responsible at City’s cost for making improvements, alterations, modifications, and/or repairs to or within the Premises to correct violations of construction-related accessibility standards disclosed by the CASp inspection. If the CASp inspection identifies any improvements, alterations, modifications, and/or repairs necessary to correct violations of construction-related accessibility standards relating to items located outside the Premises that are City's obligation to repair under this Lease, then City will

perform the improvements, alterations, modifications, and/or repairs as and to the extent required by applicable Laws.

(c) **As Is; Disclaimer of Representations.** Tenant acknowledges and agrees that the Premises are being leased and accepted, and the Golf Course is being accepted for operations, in their "**AS IS, WITH ALL FAULTS**" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises and the Golf Course, subject to City's obligations under this Lease. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, Golf Course, or any portion thereof, whether or not of record. Tenant acknowledges and agrees that, with the exception of City's obligations pursuant to **Section 9.2** and **Section 14.1** below, neither City, the Department, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises or the Golf Course, (ii) the physical, geological, seismological or environmental condition of the Premises or the Golf Course, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises or the Golf Course for Tenant's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Tenant's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or the Golf Course or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(d) **Energy Consumption Disclosure.** Tenant consents to Tenant's utility service providers disclosing energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as they may be amended from time to time ("**Energy Consumption Reporting Laws**"), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

(e) **Unique Nature of Premises.** Tenant acknowledges that on September 21, 2007, the Federal Emergency Management Agency ("**FEMA**") issued a preliminary Flood Insurance Rate Map ("**FIRM**") tentatively identified the shoreline in and along the San Francisco Bay area as a special flood hazard area subject to inundation during a flood having a 1% chance of occurrence in a given year (also known as a "base flood" or "100-year flood" and consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). This area and these zones generally affect the Premises. FEMA has not yet issued a final FIRM for the Francisco Bay area. City's Board of Supervisors has further adopted a floodplain management ordinance governing new construction and substantial improvements in flood-prone areas of San Francisco (as amended, the "**Floodplain Ordinance**"), including the Premises. The Floodplain Ordinance imposes requirements on any new construction or substantial improvement of structures in such City-designated flood areas to minimize or eliminate flood hazard risks.

Finally, Tenant acknowledges that according to the United States Geological Survey, roughly one-quarter of the San Francisco Bay region may be exposed to liquefaction. More information about the potential areas of liquefaction may be found at <http://geomaps.wr.usgs.gov/sfgeo/liquefaction/susceptibility.htm>.

Tenant assumes the risk of the Seawall failing, the Premises being inundated by floods, and the Premises being damaged by liquefaction and agrees City has no obligation under this Lease to protect the Premises from flooding or to repair any damage to the Premises caused by flooding or to maintain, repair, or replace the Seawall. This provision does not modify City's general maintenance obligations set forth in **Section 9.2** of this Lease.

(f) **Stormwater Flood Risk Disclosure.** Under San Francisco Police Code Article 51, property owners in San Francisco are required to disclose to transferees and prospective transferees (including tenants and prospective tenants) if the leased premises is susceptible to flooding in a 100-year storm, as shown on the San Francisco Public Utilities Commission's 100-Year Storm Flood Risk Map. The Premises are at risk for flooding in a 100-year storm. Please see Exhibit H to this Lease for additional information.

4. TERM

4.1. Term of Lease; Commencement Date and Expiration Date. The Premises are leased for a term (the "**Term**") commencing on the date specified in the Basic Lease Information as the estimated commencement date, subject to this Lease becoming effective pursuant to **Section 4.4** below. The Term of this Lease shall end on the expiration date specified in the Basic Lease Information (the "**Expiration Date**"), unless sooner terminated pursuant to the provisions of this Lease. The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "**Commencement Date**" and the "**Expiration Date**."

4.2. Reserved.

4.3. Reserved.

4.4. Effective Date. This Lease shall become effective on the date (the "**Effective Date**") that is the last to occur of the following: (i) the date the Commission passes a resolution approving this Lease, (ii) the effective date of a resolution by the City's Board of Supervisors approving this Lease and authorizing the City's execution, and (iii) the date the Parties hereto have duly executed and delivered this Lease.

4.5. Option to Extend. City grants to Tenant a one-time option (the "**Extension Option**") to extend the Term of this Lease for one additional nine (9) year period (the "**Extension Term**"), commencing upon the date immediately following the Expiration Date, upon the following terms and conditions. Tenant's exercise of the Extension Option granted under this **Section 4.5** shall be conditioned upon Tenant's completion of the Minimum Required Improvements within three (3) years of the Commencement Date. Tenant may exercise the Extension Option at any time during the Term following the date on which Tenant has completed construction and installation of the Minimum Required Capital Improvements, as provided in **Section 8.4**, by giving written notice to City of such exercise not less than one hundred eighty (180) days prior to the Expiration Date. Any such exercise notice by Tenant shall be irrevocable by Tenant. If any event of default by Tenant is outstanding hereunder either at the time of Tenant's exercise of the Extension Option or at any time following exercise of the Extension Option but prior to the first day of the Extension Term (or if any event shall have occurred would constitute an Unmatured Default, and such Unmatured Default is not cured within the applicable cure period provided in this Lease), then City may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void. City

shall also have the right to void the Extension Option if Tenant has assigned its interest or obligations hereunder or sublet part or all of the Premises. If Tenant exercises the Extension Option, then the lease for the Extension Term shall be upon all of the terms, covenants and conditions of this Lease.

5. RENT

5.1. Base Rent. Tenant shall pay to City monthly payments of Base Rent as specified in the Basic Lease Information during the Term of this Lease, beginning on the Commencement Date. Base Rent shall be payable monthly on or before the tenth (10th) day of each month, for the previous month's business operations, without prior demand and without any deduction, setoff or counterclaim whatsoever, except as provided in this Lease.

5.2. Adjustments in Base Rent. On the first anniversary of the Commencement Date and on each anniversary thereafter (each, an "**Adjustment Date**"), the Base Rent payable by Tenant shall be adjusted in the following manner. The Adjustment Index shall be compared with the Base Index, as such terms are defined in **Section 2** above. If the Adjustment Index has increased over the Base Index, then the Base Rent payable on and after such Adjustment Date shall be set by multiplying Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index. In no event shall the Base Rent on or after the Adjustment Date be less than the Base Rent in effect immediately prior to the Adjustment Date.

5.3. Monthly Greens Fee Receipts Statement; City's Share of Greens Fee Receipts. On or before the tenth (10th) business day of each full calendar month of the Lease Term and the tenth (10th) business day of the calendar month immediately following the expiration or termination of this Lease, Tenant shall deliver to City a statement certified as correct by an officer or owner of Tenant and otherwise in form reasonably satisfactory to City, showing the Greens Fee Receipts during the last preceding calendar month and the cumulative Green Fees Receipts for such Calendar Year (a "**Monthly Greens Fee Receipts Statement**"). Such statement shall detail the number of rounds played each day of the previous month by specific rate category and total revenue derived from said rounds.

(a) Tenant shall pay City as additional rent hereunder City's Share of Greens Fee Receipts for Greens Fee Receipts in excess of \$475,000 in each Calendar Year until the start of the first Calendar Year following the Reopening Date, as follows: if the cumulative Greens Fee Receipts for such Calendar Year exceeds \$475,000, then City's Share of Greens Fee Receipts shall be calculated for such calendar month based on the Monthly Gross Receipts Statement and together with delivery of the Monthly Greens Fee Receipts Statement, Tenant shall pay City City's Share of Greens Fee Receipts calculated as provided in the Basic Lease Information above.

(b) For the first Calendar Year following the Reopening Date and for every Calendar Year during the Lease Term thereafter, Tenant shall pay City as additional rent hereunder City's Share of Greens Fee Receipts for Greens Fee Receipts in excess of \$450,000 in each Calendar Year, as follows: if the cumulative Greens Fee Receipts for such Calendar Year exceeds \$450,000, then City's Share of Greens Fee Receipts shall be calculated for such calendar month based on the Monthly Gross Receipts Statement and together with delivery of the Monthly Greens Fee Receipts Statement, Tenant shall pay City City's Share of Greens Fee Receipts calculated as provided in the Basic Lease Information.

5.4. Equipment Subsidy. Commencing the first Calendar Year following the Reopening Date, and every Calendar Year thereafter while the Lease is effective, Tenant shall

pay City as additional rent hereunder the Equipment Subsidy as provided in the Basic Lease Information.

5.5. City's Share of Concessions Revenue. Tenant shall pay to City as additional rent hereunder City's Share of Concessions Revenues, as provided in the Basic Lease Information.

5.6. Payment; Generally. Rent shall be paid in lawful money of the United States, at Revenue Unit, Recreation and Park Department, McLaren Lodge Annex, 501 Stanyan Street, San Francisco, California 94117, or such other place as City may designate in writing. If Tenant pays by check and such check is not honored, then City may charge Tenant a late payment charge as provided in **Section 5.9** below; provided, however, following a Chronic Monetary Default (as defined below) City may require Tenant to make all future payments in cash or by cashier's check. If the Commencement Date occurs on a day other than the first day of a calendar month, or if the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month. In order to expedite payments, City reserves the right to direct Tenant, upon thirty (30) days' written notice, to deposit all payments required under this Lease from Tenant's account into the City designated revenue account by bank transfer or, at Tenant's election, wire transfer. As used herein, the term "Chronic Monetary Default" shall mean Tenant's failure to pay any Rent when due on more than three (3) occasions during any consecutive twenty-four (24) month period.

5.7. Cash Register Requirements.

(a) Tenant shall use a system that registers every transaction made in, on, about or from the Premises, including every type of Gross Receipts, and the tape or digital record of each such cash register shall be accessible to and subject to inspection by the General Manager or his/her agent, provided that such inspection shall be conducted in a manner reasonable designed to minimize interference with the conduct of Tenant's business at the Premises, and City shall not perform such inspection unless a manager of Tenant's business is present. Tenant shall make a manager available to City for such inspection during business hours upon request (which may be oral) by City.

(b) Mechanical cash register(s) must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit capacity or grater, as determined by the General Manager based on the type of business, with a four-digit overrun counter. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales on the Premises and be no more subject to tampering than mechanical cash register(s).

(c) Each sale or other transaction on the Premises must be recorded at the time of each sale or other transaction, in the presence of the customer, and Tenant shall present a receipt from such sale or other transaction to the customer. Each customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register types. All cash receipts must include Tenant's identification thereon. Each cash register (including computerized cash registers or other similar electronic devices) shall be serviced by an established contractor approved by General Manager. At General Manager's request, Tenant must furnish to City a statement from an established contractor that

the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by General Manager.

(d) Upon the installation or removal of any cash register (including computerized cash registers or other similar electronic devices) used on the Premises, Tenant must immediately furnish to General Manager notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s) (including computerized cash registers or other similar electronic devices). Any repair contractor employed to repair or replace any cash register (including computerized cash registers or other similar electronic devices if used) on the Premises is hereby authorized and directed to disclose and furnish to City or its auditors any information obtained by the contractor in the course of making such repair or replacement pertaining to such cash register (including computerized cash registers or other similar electronic devices if used). City shall have the right during business hours to examine the totals of the cash register(s) (including computerized cash registers other similar electronic devices if used) used on the Premises and to inspect for compliance with this Section.

5.8. Reporting; Books and Records; Audits

(a) **Monthly Reporting.** Along with each monthly rent payment, Tenant shall be responsible for submitting via email to the City contact listed in the Basic Lease Information section a copy of a "Concessionaires' Payment Statement", detailing a true and factual accounting of all Greens Fee Receipts and rent figures calculated for that month.

(b) **Books and Records.** Tenant agrees to keep accurate books and records according to generally accepted accounting principles. For purposes herein "books and records" shall include, but not be limited to, daily sales journals, cash register tapes, pre-numbered receipts, guest checks, sales tickets, monthly sales summaries summarizing daily sales, general ledgers, income statements, sales tax returns, income tax returns and any other bookkeeping documents Tenant utilizes in its business operations. Tenant shall not co-mingle personal funds with business funds. Tenant shall use cash registers which segregate sales by categories and shall have separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals.

(c) **Gross Receipts Statement; Review of Gross Receipts Records.** On or before the date which is 365 days prior to the last day of the Term or Extension Term of this Lease, Tenant shall deliver to City a statement (the "**Gross Receipts Statement**"), certified as correct by an officer or owner of Tenant, and otherwise in form reasonably satisfactory to City. The Gross Receipts Statement shall set forth the Gross Receipts, as defined above and shown on Tenant's books, for the entirety of the Term and Extension Term (if applicable), broken down by category, by month and year. Further, on or before the date which is thirty (30) days following the close of each Calendar Year during the Term and any Extension Term, Tenant shall make available for inspection by City all documents relating to Gross Receipts for the previous Calendar Year, including a summary by category and month, in a format sufficient for City to verify that Tenant is complying with the record keeping requirements of this Lease. If, upon any such inspection, City determines that Tenant is not complying with the record keeping requirements of this Lease, then, without limiting any other rights or remedies of City in connection with such failure, City may provide Tenant with written notice of such deficiency (a "**Gross Receipts Records Deficiency Notice**") and Tenant shall thereupon promptly correct any

identified deficiencies. Following receipt of a Gross Receipts Records Deficiency Notice, Tenant shall make all documents relating to Gross Receipts available for inspection by City from time to time on demand, until such time as City shall be satisfied that Tenant is complying with the record keeping requirements of this Lease, at which time such inspections shall be performed on an annual schedule. If City delivers a second Gross Receipts Records Deficiency Notice with respect to any Calendar Year, or delivers a Gross Receipts Records Deficiency Notice with respect to two (2) consecutive Calendar Years, then upon City's written request, Tenant shall deliver to City a written Gross Receipts Statement, as described above for such Calendar Year and a **Gross Receipts Statement** monthly thereafter.

(d) **Audit.** Tenant agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City, for the purpose of examining such books and records to determine the accuracy of the Monthly Greens Fee Receipts Statements submitted by Tenant. Such books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts; except that, if an audit is made within such four-year period and City claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If an audit reveals that Tenant has understated its Greens Fee Receipts, Tenant shall pay City, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to City. If Tenant understates its Greens Fee Receipts by three percent (3%) or more, the cost of the audit shall be borne by Tenant. If Tenant understates its Greens Fee Receipts actually collected with actual knowledge of such understatement or by reason of gross negligence, then, in addition to paying for the cost of the audit, on the first such occasion Tenant shall pay City four (4) times the amount of the difference between the amount City should have received and amount City actually received. A second such understatement by Tenant of its Greens Fee Receipts by at least one percent (1%) made with actual knowledge of such understatement or by reason of gross negligence shall be considered an Event of Default.

(e) **Patrons Audit.** Tenant shall participate in the City's Patrons Audit program whereby signs provided by the City will be clearly posted at each point of sale, stating that receipts are to be given for each purchase, and that if a receipt is not given, the patron shall be allowed some form of compensation as mutually agreed upon by the City and Tenant.

5.9. Late Charge. If Tenant fails to pay any Rent and/or fails to submit a Monthly Greens Fee Receipts Statement by the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to five percent (5%) of the amount due, in each instance. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Tenant shall promptly pay such charge to City together with such unpaid amount.

5.10. Default Interest. If any Rent is not paid on the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total

interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

5.11. Costs of Collection. In addition to any interest or late charges, if Tenant does not pay Rent in immediately available funds or by good check (if Tenant is permitted to pay by personal or business check), then Tenant will pay to City immediately upon demand as Additional Charges the amount of any fees, charges, or other costs incurred by City, including, but not limited to, dishonored check fees and any costs of collection.

5.12. Net Lease. This Lease is a "net lease." Accordingly, Tenant shall pay to City all Rent (including the Base Rent, City's Share of Green Fees Receipts, City's Share of Concessions Revenue, the Equipment Subsidy and Additional Charges and any other payments hereunder) free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff, except as provided by the terms of this Lease. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Tenant's use or occupancy of the Premises and any permitted Improvements, Tenant's operation of the Golf Course, or this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, except as may otherwise be expressly set forth herein, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of its estate or interests in the Premises and any Improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any permitted Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in this Lease, including, without limitation, **Section 31** of this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Except as may be specifically and expressly provided otherwise in this Lease, Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

6.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) **Payment Responsibility.** Tenant shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Tenant's Personal Property, the leasehold estate or any sub leasehold estate, or Tenant's use of the Premises or any Improvements. Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Tenant's right to contest the validity of such charge pursuant to **Section 6.1(c)** below. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, Tenant shall

reimburse City for payment of such sums within five (5) business days after receipt of such tax bill.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Tenant shall not allow or suffer a lien for any taxes payable by Tenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Tenant may have a reasonable opportunity to contest the validity of any such taxes provided Tenant, before commencement of any proceeding or contest, furnishes to City a cash deposit in the amount due and / or a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should Tenant be unsuccessful in any such contest. Tenant shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) **Reporting Requirement.** San Francisco Administrative Code Sections 23.38 and 23.39 require that City report certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to such matters to City within thirty (30) days after the applicable transaction. Tenant agrees to provide such information as may be requested by City to enable City to comply with any tax reporting requirements applicable to this Lease.

6.2. Other Expenses. Except as provided for in this Lease, Tenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Tenant's use.

6.3. Evidence of Payment. Tenant shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

7. USE; COVENANTS TO PROTECT PREMISES AND DEPARTMENT FACILITIES

7.1. Operator's Permitted Use. Operator shall have the exclusive right to operate the Golf Course and associated facilities located within the Golf Course during the Term and any Extension Term. Operator shall continuously use the Premises and Improvements and operate the Golf Course as a fee-based public nine-hole golf course and practice facility together with a related learning center, golf pro-shop and food and beverage operation (collectively, the "**Permitted Uses**"), including the uses and subject to the conditions described below.

(a) **Golf Activities.** Operator shall supervise all golf activities on the Golf Course, including, but not limited to, the collection of all greens fees paid for the use of the Golf

Course, starter and player activity functions, registration of players, marshalling, and taking daily and tournament reservations. Operator's staff shall handle the day-to-day business operations, including, without limitation, the following: (i) managing a smooth flow of play by coordinating all tee times; (ii) implementing an online booking system of the highest quality to ensure excellent customer service and satisfaction, that allows for accurate bookkeeping, and the ability to market, and to perform other efficiencies at all times; (iii) managing smaller and larger tournaments; and (iv) ordering, merchandising and marketing.

(1) **Youth Reservations.**

(A) Operator shall not reserve more than 10,000 tee times on an annual basis for the exclusive use of youth programming without the prior written approval of the General Manager. Operator may from time to time during the course of the Term or Extension Term of this Lease submit to City written requests for additional tee times for youth programming in increments of 2,000. Approval of any such requested increases shall be at the sole discretion of the General Manager.

(B) Operator shall provide access to high school golf teams Monday through Friday during the hours of 3 p.m. to 5 p.m. for golf practices, matches and tournaments, with starting tee times between 3 p.m. and 5 p.m. No fee shall be charged of high school students of the San Francisco Unified School District.

(2) **Greens Fees.** Rates for all greens fees in all available categories offered by the Golf Course shall be as set forth in the San Francisco Park Code. Operator shall post for public view all pertinent greens fees and shall charge the approved rates at all times.

(b) **Pro Shop.** Operator shall operate a golf shop in the clubhouse for, including, but not limited to, the promotion and sale of golf-related items, the rental of golf equipment, the rental of buckets of balls for the driving cage, and the advertising, promotion and offering of quality golf instruction. The hours of operation of the pro shop shall be subject to the reasonable approval of the General Manager. Operator will carry on its business diligently and continuously at the pro shop throughout the Term. Operator shall carefully supervise and control the operation of its business in the pro shop, and shall employ a competent and adequate staff therefor, all of whom shall be Operator's employees and none of whom shall be deemed for any purpose whatsoever to be City's employees. All displays in the pro shop which are visible to the public, including advertising matter, signs, merchandise and fixtures, shall be attractive, dignified and uncluttered and shall be maintained in a first-class manner in keeping with the character and standards of the Golf Course. Operator shall make rental equipment available for parties taking lessons and for group and tournament outings.

(c) **Driving Cage.** Operator shall operate the day-to-day business operations of the driving cage.

(d) **Food and Beverage Operation.** Operator shall operate a Food and Beverage Operations for golfing and non-golfing clientele. Operator shall propose minimum hours of operation of the Food and Beverage Operations from time to time, which minimum hours shall be subject to the approval of the General Manager, which shall not be unreasonably withheld. Operator shall strive to maintain valid beer or beer and wine licenses in compliance with all applicable Laws, subject to Operator obtaining the insurance required pursuant to item (i) of **Section 19.1** below. City shall reasonably cooperate with Operator in connection with

Operator's application for such license. All food and beverages sold on the Premises will be properly prepared and served in compliance with all applicable health and sanitary standards, including, without limitation, all applicable rules, regulations and codes including, without limitation, San Francisco Department of Public Health regulations. The quality of food and service and maintenance of the preparation and serving areas shall be commensurate with comparable courses. Operator shall carefully supervise and control the Food and Beverage Operations, and shall employ a competent and adequate staff therefor, all of whom shall be Operator's employees and none of whom shall be deemed for any purpose whatsoever to be City's employees. Operator shall keep the food site free of debris and in a neat, clean, orderly and attractive condition at all times and shall, as necessary, provide and empty garbage, compost and recycling receptacles serving such area.

(e) **Instruction.** City hereby grants Operator the sole right and authority to promote and conduct golf instruction at the Golf Course. Operator shall offer programs and instruction to the general public at reasonable rates and every effort shall be made to include economically disadvantaged youth in all junior golf programs and camps, either through reduced rates or scholarship programs. All payments for instruction, whether made to Operator, the pros, or any other party, shall be made in the pro shop and shall be properly recorded in Operator's books. Operator shall offer classroom instruction in the Mobile Classroom.

(f) **Maintenance Duties.** Except for the gardeners' and City crew maintenance areas of the Golf Course, which will be maintained by City staff, Operator will provide minor building and janitorial maintenance services to all structures that are part of the Premises, as provided in **Section 9.1**. Operator shall make reasonable efforts to regularly inspect, clean and maintain all such areas.

(g) **Other Uses: Change in Manner of Operation.** If Operator desires to engage in an additional use not enumerated above, or desires to materially change the manner in which Operator conducts a Permitted Use, Operator shall request such additional use or modification in writing, and such addition or modification shall be subject to the approval of the General Manager, which may be withheld in his or her sole discretion.

(h) **Public Restrooms.** The restrooms within the Premises shall remain open for customary public use for any visitor to Golden Gate Park during the hours of operation of the Golf Course.

7.2. Days and Hours of Operation. Operator shall actively operate the Premises and Golf Course and use commercially reasonable business efforts to further the operations thereof and maximize its potential revenue and to serve the public. Except as otherwise permitted by the General Manager in his or her sole discretion, Operator shall not schedule in advance any youth programming on the Golf Course to commence before 9:30 A.M. on Saturdays, Sundays or holidays recognized in the San Francisco Municipal Golf Courses Policies and Rules for Play, attached hereto as **Exhibit C**, during the Term or any Extension Term of this Lease. The hours of operation for all municipal golf courses under the jurisdiction of the Commission are sunrise to sundown. The schedule is approved by the Commission and may not be altered in any manner without prior written approval from the Commission. Closures due to course or weather conditions are the sole right of the City course superintendent.

7.3. Rates and Charges. The rates and charges for goods sold and services offered at the Premises shall be reasonable and competitively priced with similar businesses in San Francisco. The Department reserves the right to review and approve the increases in rates and charges for rentals and food and beverage items, such approval not to be unreasonably withheld or delayed. Prices for greens fees are as set forth in the San Francisco Park Code, as amended, and may not be altered in any manner without prior written approval.

7.4. Branded Product.

(a) Operator may, at Operator's expense, and with Department's consent, develop and sell products including clothing that are "branded" with some form of artwork, logos, trademarks or service marks, related to Golden Gate Park Golf Course or similar/related logo, artwork and/or words (collectively "**Logo**").

(b) Alternatively, the Department may decide to develop a master logo for Golden Gate Park and require the Park's concessionaires to participate in the cost of the development of the logo in return for the right to sell the Park logo products.

(c) Operator shall not use the Logo until it has been approved in writing by the Department, such approval not be unreasonably withheld or delayed. The Logo and any other original works of authorship or designs (including any domain names or website designs, source code, and content) related to the facility, or Operator's services or operations in or for the facility ("**Works**") shall be works for hire under Title 17 of the United States Code, and all copyrights in such Logo and other Works are the City's property. If the Department or Operator's use of the Logo or Works creates trademark, service mark or trade dress rights in connection with the Logo or Works, the City shall also have an exclusive and irrevocable right in such trademark, service mark, or trade dress. If any Logo or Works created by Operator or its subcontractors under this Lease are not works for hire under federal law, the Operator hereby assigns all copyrights to such Logo and Works to the City and further agrees to provide any material and execute any documents necessary to effectuate such assignment.

(d) The Department shall have the right to pre-approve or disapprove all products that are to receive the Logo, including the use and placement of such Logo on the products.

7.5. Covenants Regarding Use. As a material inducement to City to enter into this Lease, Operator covenants with City as follows:

(a) **No Unlawful Uses or Nuisances.** Operator shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. Operator shall take all reasonable precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder.

(b) **Covenant Against Waste.** Operator shall not cause or knowingly permit any waste, damage or injury to the Premises.

(c) **Covenant to Protect Premises and Department Facilities.** At all times during the Term of this Lease, Operator shall take all reasonable steps to protect the Premises, the Golf Course and the Department Facilities, if any, from any damage, injury or disturbance caused by Operator or its Agents or Invitees. If Operator or any of its Agents or Invitees damages, injures or disturbs any of the Premises, the Golf Course or the Department Facilities, or any portion thereof, Operator shall notify City upon Tenant's awareness of the occurrence and shall notify the San Francisco Police Department of any criminal, wrongful or other activity or occurrence warranting a call to 911. Without limiting any of its other rights hereunder, if Operator or any of its Agents or Invitees cause any damage, injury or disturbance, then the City may immediately take all actions it deems proper to repair the Department Facilities or Golf Course at Operator's sole expense, and, following notice and a reasonable opportunity to cure (except in the event of an emergency in which case no notice or cure period is required), City may take all actions it deems proper to repair the Premises at Operator's sole expense; provided, however, that ordinary divots, scuffs or similar type wear upon the greens and/or Golf Course shall not constitute damage or injury for which Operator has liability hereunder. Operator shall promptly, upon City's request, remove or alter to City's satisfaction and at Operator's sole cost, any Improvements, Alterations or Tenant's Personal Property placed on the Premises by or on behalf of Operator as necessary to avoid interference with City's use of the Premises for municipal purposes; provided, such removal shall be at City's sole cost if the applicable Improvements or Alterations were approved by City in writing pursuant to the terms of this Lease. City approves the location of Operator's Mobile Classroom. Subject to the provisions of **Section 20.1(e)** and **Section 31**, City may adopt from time to time such rules and regulations with regard to Operator's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard the Department Facilities and City's interests in the Premises. Operator shall comply with all such rules and regulations upon receipt of a copy thereof. City acknowledges that for the purposes of this Subsection (c) members of the public using the Golf Course shall not be deemed to be Invitees of Tenant while using portions of the Golf Course other than the Premises unless such individuals are engaged in lessons or other activities managed, supervised or sponsored by Tenant, and Tenant's mere scheduling of tee times, acceptance of reservations, or collection of greens fees from such individuals shall not make such individuals Tenant's Invitees hereunder.

(d) **Covenant Against Dumping; Waste Disposal.** Operator shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment. Organic wastes from the Premises shall be composted on-site to the extent reasonably possible. Operator shall use its best efforts to reduce the amount of trash and waste generated from the Premises, to acquire products for use on the Premises which reuse or recycle packaging, and to recycle all materials used on the Premises to the extent reasonably possible.

(e) **Covenant to Protect Trees or Other Native Vegetation.** Operator shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the prior written approval of the General Manager.

(f) **No Tree Planting.** Operator shall not plant any trees on the Premises, nor shall Operator plant any other vegetation on the Premises without the prior written approval of the General Manager.

(g) **Covenant Against Hunting.** Operator shall not engage in or permit any hunting or, trapping on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the General Manager in writing, provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Operator shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Operator use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

(h) **Pesticides Prohibition.** Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or “**IPM Ordinance**”) describes an integrated pest management (“**IPM**”) policy to be implemented by all City departments. Operator shall not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City’s written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Operator may need to apply to the Premises during the term of this Lease, (ii) describes the steps Operator will take to meet the City’s IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Operator’s primary IPM contact person with the City. Operator shall comply, and shall require all of Operator’s contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Operator were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City’s Department of the Environment), (c) impose certain notice requirements, and (d) require Operator to keep certain records and to report to City all pesticide use at the Premises by Operator’s staff or contractors. If Operator or Operator’s contractor will apply pesticides to outdoor areas at the Premises, Operator must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation (“**CDPR**”) and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City’s current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>. Notwithstanding the foregoing, Operator shall not be obligated to verify City’s compliance with the Pesticide Ordinance in connection with City’s performance of its obligations pursuant to **Section 9.2** below. For the avoidance of doubt, Operator is not maintaining the Golf Course.

(i) **Weed Control.** Operator shall not introduce any noxious weeds on or about the Premises or the Golf Course. Operator’s use of chemical herbicides to control noxious weeds shall comply with the requirements of **Section 7.5(viii)** above. For the avoidance of doubt, Operator is not maintaining the Golf Course.

(j) **Covenant Against Burning.** Operator shall not burn any weeds, debris or other substances on or about the Premises.

(k) Sewerage System. City shall maintain at its sole cost and expense, and in accordance with the direction and to the satisfaction of the General Managers of the Recreation and Park Department and the SFPUC, the sewerage system now installed on the Premises. Operator shall not permit any sewage or fouled wastewater to be disposed of on the Premises, except as provided for and as customary per such sewage system.

(l) Soil Erosion. Operator shall not cause any material erosion of soil on or around the Premises. Operator shall not engage in any activity that causes a material change, disturbance, fill, alteration or impairment to the topography of the Premises by placing on it any soil, dredging, spoils, landfill, or other material, nor shall Operator engage in any activity that would change, disturb, alter or impair the significant relatively natural ecological features and values of the Premises, without the prior written approval of the General Manager.

(m) Operating Covenants. Operator shall use the Premises and Golf Course continuously for the permitted use specified in the Basic Lease Information and shall not allow the Premises to remain unoccupied or unused without City's prior written consent, which City may give or withhold in its sole discretion. shall use and operate its business on the Premises in a first class and professional manner, and shall take all commercially reasonable steps to maximize revenue (and Greens Fee Receipts) from its operations on the Premises.

(n) Recycling and Resource Conservation. The City of San Francisco has set ambitious recycling and composting goals for City Departments including 75% landfill diversion by 2010 and maximum participation the City's municipal composting program at all City Department locations where there is food service. In addition, the City has recently passed the Food Service Waste Reduction Ordinance (see Section 26.43) which, in part, "Prohibits the use of polystyrene foam dispensable food service ware and requires the use of recyclable or compostable food service ware by restaurants, retail food vendors, City Departments and the City's contractors and Tenant." City contractors and Tenants may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease. City contractors and Tenants using any Disposable Food Service Ware shall use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while performing under a City contract or lease unless there is no suitable Affordable Biodegradable/Compostable or recyclable product available as determined by the City Administrator in accordance with Subsection 1604(a). Operator shall 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. Operator shall submit a recycling and composting plan at Commencement of Lease, and provide an annual report on each anniversary date of this Lease outlining their progress toward meeting the recycling and composting goals described above and their success toward a zero-waste goal.

(o) Americans with Disabilities Act. Operator acknowledges that the Americans with Disabilities Act (the "ADA") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Operator further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Without limiting the provisions of **Section 8.1** and **Article 12** below, Operator warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Lease. City shall bear all responsibility and cost for

mandated physical changes to the Property resulting from disability access laws; provided, however, Operator shall be responsible, at its sole cost and expense, for mandated physical changes to the Property resulting from disability access laws to the extent such mandated physical changes arise in connection with and as a result of any of Operator's Alterations or Improvements.

(p) **Security Measures.** Before Operator or Operator's employees leave the Premises each day, Operator shall see that the doors of the clubhouse, Mobile Classroom, pro shop, and restrooms are closed and locked or otherwise secured, that all water faucets and water apparatus servicing the Premises and utilities servicing the Premises are shut off, and that the alarm to the pro shop is activated, so as to minimize the risk of vandalism, waste or damage.

8. ALTERATIONS AND IMPROVEMENTS

8.1. Construction of Alterations and Improvements. Tenant shall not construct, install or otherwise place any Improvements or make or permit any Alterations in, to or about the Premises, without the General Manager's prior written consent in each instance, which the General Manager may give or withhold in its sole and absolute discretion. Subject to the General Manager's consent as provided above, any permitted Improvements or Alterations shall be done at Tenant's sole expense (i) in strict accordance with designs, plans and specifications approved in advance by the General Manager in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the General Manager, (iii) in a good and professional manner, (iv) in strict compliance with all Laws (including, without limitation, all health, disabled access and building codes and ordinances), and (v) subject to all other conditions that the General Manager or the Commission may reasonably impose, including, without limitation, provision of such completion security as is acceptable to City. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of Department Facilities (if any), or any portion thereof, or the Department's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, Tenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to City. No material change from the plans and specifications approved by City may be made without City's prior written consent. City and its Agents shall have the right to inspect the course of such construction at all times; provided, that City's inspections shall be in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Upon completion of such Improvements or Alterations, Tenant shall furnish City with a complete set of final as-built plans and specifications. Tenant shall require from each contractor and subcontractor performing any work on or about the Premises a policy of commercial general liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 19.2**.

8.2. Ownership of Improvements. Any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of Tenant above shall be and remain Tenant's property during the Term. Upon the Expiration Date or any earlier termination hereof, Tenant shall, upon City's request, remove all such Improvements and Alterations from the Premises in accordance with the provisions of **Section 22.1** hereof, unless City, at its sole option and without limiting any of the provisions of **Section 8.1** above, specifies at the time of City's approval of any such Improvements or Alterations that such Alterations or Improvements may remain on the Premises following the expiration or termination of this Lease.

8.3. Tenant's Personal Property; Mobile Classroom. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises and paid for by Tenant that can be removed without structural or other material damage to the Premises (all of which are herein called "**Tenant's Personal Property**") shall be and remain the property of Tenant and may be removed by it subject to the provisions of **Section 22.1** hereof. At least ten (10) days prior to delinquency, Tenant shall pay all taxes levied or assessed upon Tenant's Personal Property and, if requested by City, shall deliver satisfactory evidence of such payment to City. City hereby acknowledges that City has approved Tenant's operation of the one (1) existing mobile classroom trailer unit having the dimensions and specifications as shown in **Exhibit F** attached hereto ("**Mobile Classroom**") currently placed at the northernmost end of the parking lot in the location generally depicted in the photographs attached as part of **Exhibit A**. The Mobile Classroom shall continue to be the site for golf instruction courses. In no event shall the Mobile Classroom be affixed to the Premises by any means whatsoever, including, but not limited to, poured fittings, a concrete pad or asphalt. Tenant shall remove the Mobile Classroom and restore the area occupied by the Mobile Classroom to its initial condition at the end of the Lease Term, unless earlier terminated in accordance with this Lease.

8.4. Minimum Required Capital Improvements. Tenant and City acknowledge that the Premises and the balance of the Golf Course could benefit from a number of capital improvements and capital upgrades. As a material consideration for City's granting the Extension Option set forth in **Section 4.5** above, and as a condition precedent to Tenant's exercise thereof, Tenant will, at Tenant's sole cost, design, which plans and designs shall be subject to the review and approval of the Commission, within its sole and absolute discretion, and complete the installation of the capital improvements and upgrades to the Golf Course or its improvements or facilities as further described on **Exhibit E** (collectively, the "**Minimum Required Capital Improvements**") within three (3) years of the Commencement Date. The aggregate cost of the Minimum Capital Improvements shall be at least \$2,000,000, shall benefit the Golf Course and its facilities, not merely Tenant or Tenant's programs, and be subject to the following conditions. Upon notice to City, Tenant will commence the installation of the Minimum Required Capital Improvements, subject to obtaining the necessary approvals and the issuance of all required permits. The exact site for, and the size and design of any improvements or installations hereunder shall be subject to the mutual agreement of Tenant and the General Manager in writing. All plans and specifications for such Minimum Required Capital Improvements shall be reviewed and approved by the City prior to commencement of any work at the site. City and Tenant understand, acknowledge and agree that prior to commencing the work required to construct and install Minimum Required Capital Improvements, Tenant shall be required to obtain the approval of any other regulatory agency that may have jurisdiction. City shall, in its proprietary capacity as owner of the Premises and the Golf Course, cooperate in good faith with such efforts. Tenant and City agree that any such work shall be performed at times mutually agreed to by Tenant and the General Manager and that, subject to receipt of approval of all applicable regulatory agencies, such work shall be completed as soon as reasonably possible, and in no event later than [_____, 2026], which is the third anniversary of the Commencement Date, except as otherwise approved by the General Manager. Tenant understands that Tenant was selected to enter into this Lease, in part, on account of Tenant's agreement to perform improvements to the Golf Course and if Tenant does not complete the Minimum Required Capital Improvements in the manner and by the date provided herein, such failure shall automatically void Tenant's Extension Option set forth at **Section 4.5** above. City shall not pursue any damages claims against Tenant if Tenant does not elect to undertake the

Minimum Required Capital Improvements, provided, that if Tenant commences the Minimum Required Capital Improvements, Tenant shall have completed such improvements in a good workman like manner, in accordance with the plans and specifications and to the reasonable satisfaction of City, and Tenant shall have restored the Golf Course to at least its prior condition. Tenant shall provide City with invoices and other appropriate documentation for the costs of performing the Minimum Required Capital Improvements as required to evidence that Tenant satisfied the \$2,000,000 minimum threshold for such work.

8.5. Prevailing Wages. Tenant shall comply with the applicable requirements of San Francisco Administrative Code Section 6.22(E) in the performance of Minimum Required Improvements, Proposed Improvements, Alterations, demolition, installation, and repair work at the Premises, as set forth in **Section 26.19** below.

8.6. Local Hire Requirements. Tenant and its subtenants shall comply with the applicable provisions of the Local Hiring Policy set forth in San Francisco Administrative Code Section 6.22(G) (the "**Local Hiring Policy**") in the performance of the Minimum Required Capital Improvements, the Proposed Improvements, or any Alterations, as set forth in **Section 26.20** below.

8.7. Notice to Proceed with Improvements. Tenant agrees that the Alterations, Improvements and repairs to be made by Tenant pursuant to the terms and conditions of this Lease shall not commence until this Lease has been approved by the Board of Supervisors of the City and County of San Francisco and the Tenant obtains from City written approval to proceed.

8.8. Arts Commission Approval. With respect to any Alterations or Improvements which would be visible from the exterior of the building, Tenant shall obtain the prior written approval of City's Arts Commission to the extent the Arts Commission has jurisdiction over the design of such proposed alterations under City's Charter Section 5.103.

8.9. Improvements or Alterations that Disturb or Remove Lead Based Paint. Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the San Francisco Building Code, Section 3407, and all other applicable present or future federal, state, local and administrative laws, rules, regulations, orders and other governmental requirements, the requirements of any board of fire underwriters or other similar body, any directive or occupancy certificate issued pursuant to any law by any public officer or officers acting in their regulatory capacity (collectively, "**Laws**"), including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). Tenant and its Agents or Invitees shall give to City three (3) business days' prior written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("**HEPA**") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code,

demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to City under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code.

9. REPAIRS AND MAINTENANCE

9.1. Tenant's Maintenance and Repair Obligations.

(a) Except as provided in **Section 9.2** below, City shall not under any circumstances be responsible for the performance of any Alterations or Improvements to the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost thereof.

(b) Tenant shall maintain the Premises and any existing and permitted Improvements at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction, subject to City's obligations under **Section 9.2** below; provided, however, that, except as provided below in this **Section 9.1(b)**, Tenant's obligation for maintenance and repair shall not include the obligation to make any capital repairs, replacements or improvements to the Premises and/or any structural repairs or replacements, except with respect to the Minimum Required Capital Improvements and where such repair, replacement or improvement is triggered by or required as a result of any Improvements or Alterations made by Tenant. If any portion of the Premises or any of City's personal property located on or about the Premises is damaged by any of the activities conducted by Tenant or its Agents or Invitees hereunder, Tenant shall immediately, at its sole cost, repair any and all such damage and restore the Premises or City's personal property to its previous condition. Provided that Tenant has acquired insurance covering vandalism and other intentional activities at the Premises, Tenant shall not have any obligation to repair damages to the Premises or City's personal property caused by intentional activities, to the extent (i) the damages are not covered by the insurance proceeds, or (ii) caused by the gross negligence of City.

(c) Tenant shall keep all fixtures and equipment on the Premises clean, neat, safe, sanitary and in good order at all times. Tenant shall remove all waste, trash, rubbish, papers, cartons and refuse from the Premises, pick up trash and debris in the immediate vicinity of the Premises and dispose of trash in containers provided by Tenant that are large enough to adequately serve the needs of the facility. Tenant shall provide a dumpster and shall keep it in clean and orderly condition.

(d) **Fire Extinguishers.** Tenant shall subject the fire extinguishers in the Premises to inspection in accordance with the manufacturer's recommendations found on the label or in the user manual, shall ensure that access to extinguishers is not obstructed, and shall provide a minimum of routine annual professional maintenance of the fire extinguishers. Tenant shall also subject any other fire suppression systems to maintenance as required by manufacture's recommendation or the San Francisco Fire Department.

(e) **Food Service and Seating Areas.** During the hours Tenant is open for business and at the close of business each day, Tenant shall keep the food service and seating

areas and any furniture free of dishes, utensils, debris and spills and in a neat, clean, orderly and attractive condition at all times and shall, as necessary, provide and empty garbage receptacles serving such area. The tables and chairs in any seating areas shall be configured so that there are walkways and sufficient area for pedestrian ingress and egress on either side of the tables and to minimize any potential tripping or other hazards.

(f) **Public Restrooms.** Tenant shall be responsible for the regular cleaning of the public restrooms located on the Premises. The restrooms shall be open to the public at all times the Premises are open to the public. The restrooms shall be kept clean and neat at all times. Tenant, at its own expense, shall provide all necessary items for the restrooms, including, but not limited to, toilet tissue, paper towels, seat covers and hand soap. Tenant shall provide, at its sole expense, all cleaning materials and supplies necessary to maintain the public restrooms in the condition as described above. Restrooms shall be thoroughly cleaned daily and inspected for supplies and neatness a minimum of two (2) times during each day Tenant's business is open to the public.

(g) **Golf Course Trash Cans; Divot Repairs.** Operator shall be responsible for emptying trash cans on the course at the end of each day Tenant's business is open and for filling divots on the Golf Course based on a customary golf course schedule.

9.2. City's Maintenance and Repair Obligations; Minimum Required Equipment; Maintenance Fund.

(a) **City's Maintenance and Repair Obligations.** Notwithstanding **Section 9.1**, City shall maintain, repair and keep in good condition the portions of the Golf Course other than the Premises, including the gardening landscaping, and other services described in the Minimum Maintenance Standard Requirements attached to this Lease as Exhibit D. Tenant shall provide City with prompt written notice of any required repair or maintenance item. Further, City shall maintain, repair and replace if necessary all structural elements of the Premises, excepting the Mobile Classroom and any Improvements or Alterations made by Tenant. Without limiting the foregoing, City shall be responsible for maintaining in good condition and repair the roof, including the roof membrane, structural walls (both interior and exterior), structural floors (but not flooring), doors and windows and the plumbing, electrical and HVAC (if applicable) systems for the buildings on the Premises (other than Mobile Classroom), except to the extent repairs are necessitated due to the negligence or willful misconduct of Tenant or Tenant's Agents or Invitees. City shall also maintain the parking lot that services the Golf Course and the Premises in a usable condition.

(b) **Equipment Subsidy.** City shall use the Equipment Subsidy to replace the Equipment by way of purchase or lease. The Equipment will be replaced every four (4) years provided there is sufficient funding, provided, that in the event of a shortfall, City shall notify Tenant of such shortfall and Tenant and City shall meet to discuss potential solutions, including, without limitation, the deferral of certain Equipment purchases until additional funds are made available or the increase in contributions to the Equipment Subsidy from Tenant and / or City, to the extent feasible.

(c) **Maintenance Fund.** A portion of funds existing in the Maintenance Fund as of the Commencement Date will be used by City, in an amount deemed necessary by the City, to purchase site furnishings needed to complete the clubhouse, as required by Civic Design

Review and as further described on the attachment entitled “Clubhouse Site Furnishings” attached hereto as **Exhibit G**; provided, however, that, the use of any funds remaining or deposited into the Maintenance Fund after the Reopening Date shall be determined by City and Tenant, after consultation of such use with the Community, annually no later than February 1 of each year in accordance with the Maintenance Fund review process set forth in Section 9.4 below and as required by Section 12.12 (f) of the San Francisco Park Code.

9.3. Minimum Maintenance Standards Report Review Process. The City’s agronomy manager shall document the City’s compliance or noncompliance with the Minimum Maintenance Standard Requirements in the form of a report and City shall submit a copy to Tenant by December 15 of each Calendar Year (the “**Minimum Maintenance Standards Report**”).

9.4. Annual Maintenance Plan Review. The City and the Tenant shall meet annually by February 1 of each Calendar Year (“**Operator Meeting**”) to review the Minimum Maintenance Standards Report to discuss the following matters: Identification of the changes that should be made to the Minimum Maintenance Standards Requirements to address issues that developed during the prior year and that can be addressed with existing resources. Such issues to include, but not be limited to, the following: (a) issues concerning the management of vegetation, including trees, weeds, turf and grass; (b) irrigation issues; (c) use of the Maintenance Fund and how these funds can be used to best address maintenance needs; (d) modifications to the Minimum Maintenance Standards Requirements; (e) and other matters warranting discussion and action. In the event the parties have reached an impasse and are unable to resolve the matters raised and discussed at the Operator Meeting to the reasonable satisfaction of the Tenant after continued good faith discussions, Tenant shall submit a written request to City to hold a meeting with a General Manager. Tenant and the General Manager will meet within thirty (30) days of such written request to discuss the unresolved matters and develop a plan and course of action to rectify the matters, the Parties acknowledging and agreeing that any such resolutions will be subject to the limitations of the City’s applicable policies and procedures and the budget and fiscal provisions of the City’s Charter.

9.5. No Right to Repair and Deduct. Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City’s expense, or, except as may be specifically and expressly provided otherwise in Section 31 and other specific provisions in this Lease, to terminate this Lease because of City’s failure to keep the Premises, Golf Course or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, or, except as may be specifically and expressly provided otherwise in this Lease, to abate or reduce any of Tenant’s obligations hereunder on account of the Premises, Golf Course, or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Tenant to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost thereof from Rent.

10. UTILITIES

10.1. Utilities and Services. City shall pay for water, gas and electricity to the Premises. If Tenant desires any upgrades to water, gas or electricity services in connection with the operation of Tenant's business at the Premises, such upgrades shall be subject to City's prior written consent, and shall be made at Tenant's sole cost and expense. Tenant shall fully cooperate with City and any utility service provided selected by City. Tenant shall permit City and the utility service provider to have reasonable access to the Premises and the utility equipment serving the Premises, including lines, feeders, wiring, pipes and meters. Tenant shall pay for sewer charges billed to Tenant by the Water Department, charges for garbage and recycling disposal and all telephone, fax and internet connection charges, including the cost of bringing any such service(s) to locations in the Premises.

10.2. Interruption of Services. City's obligation to provide utilities and services for the Premises are subject to applicable Laws (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to acts of nature, fire, other casualty, accidents, epidemics and related governmental orders and requirements, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials, or other causes beyond the control of City. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Law permitting the termination of this Lease due to such interruption, failure or inability. Notwithstanding the foregoing, in the event that such disruption in services or utilities results in City's failure to maintain the Golf Course in the manner required hereunder, then the provisions of this **Section 10.2** shall not act as a waiver or limitation of any rights of abatement of Tenant set forth in **Section 31** below.

10.3. Water and Energy Conservation; Mandatory or Voluntary Restrictions. In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or if City is required or elects to make alterations to any part of the Improvements on the Premises in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Rent and Additional Charges reserved under this Lease or to perform each of its other covenants under this Lease or constitute or be construed as a constructive or other eviction of Tenant. City shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises, and the cost of any corrective measures and the installation and maintenance thereof due to Tenant's failure to comply with any such restrictions or requirements shall be paid for by Tenant. Notwithstanding the foregoing, in the event that the application of any such law, ordinance, code or governmental or regulatory guideline results in City's failure to maintain the Golf Course in the manner required hereunder, then the provisions of this **Section 10.3** shall not act as a waiver or limitation of any rights of abatement of Tenant set forth in **Section 31** below.

10.4. Antennae. No antennae or telecommunication dish may be installed on the Premises without the advance written approval of City. No such antennae or telecommunications dishes shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City. Tenant agrees, at the request of City, to permit City to install, at City's sole cost, transmission equipment for City's emergency or 800 MHz City wide radio system communications facilities (or its successor) at a location on top of the Improvements acceptable to Tenant.

11. LIENS

Tenant shall keep the Premises and all of City's property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not, within thirty (30) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and materialmen's liens. Tenant shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Tenant shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case, City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within thirty (30) days after final determination of the validity thereof. Tenant shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

12. COMPLIANCE WITH LAWS

12.1. Compliance with Laws. Tenant shall not do or permit anything to be done in or about the Premises which will in any way conflict with any Laws now in force or which may hereafter be enacted, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility, including, without limitation, the Americans with Disabilities Act, 42 U.S.C.A. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements, except to the extent of Landlord's obligations, as provided for in this Lease. The Parties acknowledge and agree that Tenant's obligation to not do or permit anything to be done in or about the Premises in conflict with any Laws as provided herein is a material part of the bargained-for consideration under this Lease. Except as otherwise provided in this Lease, Tenant shall promptly, at its sole expense, maintain the Premises, any Improvements and Alterations permitted hereunder and Tenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Notwithstanding the foregoing, Tenant's obligation under this Section shall not include the obligation to make substantial or structural repairs and alterations to the Premises (including any Improvements), except to the extent any noncompliance or violation of Laws arises in connection with and as a result of any of Tenant's Alterations or Improvements.

12.2. Regulatory Approvals

(a) **Responsible Party.** Tenant understands and agrees that Tenant's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of the General Manager. Tenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

(b) **City Acting as Owner of Real Property.** Tenant further understands and agrees that City, acting by and through the Commission, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above; provided, however, that City shall, acting in its proprietary capacity, reasonably cooperate and support Tenant's efforts to obtain any such required approvals or permits.

12.3. Compliance with City's Risk Management Requirements. Tenant shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. Tenant shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder; provided, however, that the foregoing shall not require Tenant to assume responsibility for any of City's obligations under this Lease.

12.4. Reports. Tenant shall submit a report and provide such documentation to City as City may from time to time request regarding Tenant's operations and evidencing compliance thereof with this Lease and all Laws. In the event that Tenant prepares or obtains any report or other informational document relating to the Premises or any Improvements thereon, Tenant shall promptly deliver a copy of such report or document to City.

13. FINANCING; ENCUMBRANCES; SUBORDINATION

13.1. Encumbrance of City's Fee Interest. The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) **Encumbrance by City.** To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Tenant to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder. City shall insure that any such purchaser assumes all of City's obligations under this Lease.

(b) **Encumbrance By Tenant.** Tenant shall not under any circumstances whatsoever Encumber in any manner City's estate in the Premises or any adjoining property, or City's interest under this Lease, or any portion thereof.

13.2. Leasehold Encumbrances. Without limiting **Article 16** hereof, Tenant shall not Encumber this Lease or Tenant's interest in this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

14. DAMAGE OR DESTRUCTION

14.1. Damage or Destruction to the Improvements. If the Golf Course, Premises or the Improvements are damaged, then City shall repair the same (subject to the provisions of **Section 14.2** below) provided that funds for such repairs are appropriated by City's Board of Supervisors, in its sole discretion, for such purpose and provided further that such repairs can be made within two hundred ten (210) days after the date of such damage, as may be extended by mutual agreement of the Parties (the "**Repair Period**"). In the event such conditions are satisfied, this Lease shall remain in full force and effect except that Tenant shall be entitled to a proportionate reduction of Base Rent and Additional Charges during the period commencing on the date of such damage and continuing through and including the completion of such repairs based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises (except to the extent that the damage or destruction was caused by the negligence or intentional misconduct of Tenant or its Agents) City hereby acknowledging that the Premises is used in conjunction with a 9 hole golf course and any interference that renders one or more holes of the Golf Course unusable may effectively render the entire Premises unusable during the continuation of such interference. City shall use good faith efforts to notify Tenant within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period and may, within its sole discretion, request an extension; provided, that City's good faith determination of whether the repairs may be made within the 210-day period shall be binding on Tenant. If City determines that such repairs cannot be made within the Repair Period, City shall have the option to notify Tenant of: (a) City's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to the Board of Supervisor's appropriation of all necessary funds, in which event this Lease shall continue in full force and effect and the Base Rent and Additional Charges shall be reduced as provided herein; or (b) City's election to terminate this Lease as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by City. In addition, Tenant shall have the right to notify the City within thirty (30) days of receipt of the notification described in (a) above to elect to terminate this Lease. In case of termination, the Base Rent and Additional Charges

shall be reduced as provided above, and Tenant shall pay such reduced Base Rent and Additional Charges up to the date of termination. If at any time during the last twelve (12) months of the Term of this Lease, the Premises or the Improvements are damaged or destroyed, then either City or Tenant may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use of the Premises for the uses permitted hereunder. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

14.2. Tenant's Obligations. Notwithstanding anything to the contrary in this Lease, City shall have no obligation to repair the Golf Course, the Premises or the Improvements in the event the damage or destruction is attributable to the negligence or willful misconduct of Tenant or its Agents. In no event shall City be required to repair any damage to Tenant's Personal Property (including the Mobile Classroom) or any Improvements or Alterations installed or made on the Premises by or at the expense of Tenant. With respect to any damage to or destruction by fire or any other casualty to any Alterations or Improvements on the Premises permitted hereunder made by or on behalf of Tenant during the Term hereof, Tenant shall, at its sole cost, restore, repair, replace or rebuild such Alterations or Improvements to the condition such Alterations or Improvements were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of **Section 8.1** above, unless this Lease is terminated as provided in **Section 14.1** above. If this Lease is terminated as provided in **Section 14.1** above, then at City's written request Tenant shall promptly, at its sole cost, demolish such damaged Alterations and damaged Improvements or Alterations that were installed or made on the Premises by or at the expense of Tenant and remove them (including all debris) from the Premises in compliance with the provisions of **Section 22.1** below.

14.3. Insurance Coverage of Damage. Notwithstanding the provisions of Sections 14.1 and 14.2 above, Tenant shall be required to use such proceeds of insurance required under Section 19.1(h) below to repair any damage or loss to the Premises, provided that Tenant shall commence the repair or rebuilding of the Premises, as the case may be, within one hundred twenty (120) days of the event of damage or loss (which shall be extended up to an additional 360 days if needed for review and issuance of any required permits, provided that Tenant has submitted the applications for such permits in a complete manner within the initial one hundred (120) days of the event of damage or loss) and, provided that sufficient insurance proceeds are available, return the Premises to its pre-loss condition, including any required code upgrades or other regulatory changes to fully restore the Premises, within 18 months of the date Tenant has commenced repairs or replacement, and provided further that Tenant shall comply with all applicable City building or contracting requirements or policies in the replacement or repair of the Premises. Notwithstanding the foregoing, if Tenant has failed to commence repairs or to rebuild the Premises, as the case may be, within the 120-day period (as may be extended) set forth herein, then City may step in and use the insurance proceeds to repair or replace the Premises to its pre-loss condition.

14.4. Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Improvements, and City and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and

1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

15. EMINENT DOMAIN

15.1. General. If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties hereunder shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

15.2. Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

15.3. Partial Taking; Election to Terminate.

(a) If a Taking of any portion (but less than all) of the Premises or Golf Course occurs, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, City hereby acknowledging that the Premises is used in conjunction with a 9 hole golf course and any taking of one or more holes of the Golf Course may effectively render the entire Premises unsuitable for continued use by Tenant where sufficient area (as reasonably and in good faith determined by Tenant) cannot be made available on the remainder of the Golf Course for construction of a replacement hole or holes, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) City shall have the right to terminate this Lease in the event of a partial Taking of a substantial portion of any of City's adjoining real property, even if the Taking does not directly affect the Premises.

(c) Either Party electing to terminate under the provisions of this **Article 15** shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

15.4. Rent; Award. Upon termination of this Lease pursuant to an election under **Section 15.3** above, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced to the extent, if any, as provided in **Section 15.5** below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and

Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

15.5. Partial Taking; Continuation of Lease. If a partial Taking of the Premises or the Golf Course occurs and this Lease is not terminated in its entirety under **Section 15.3** above, then this Lease shall terminate as to the portion of the Premises so taken, if applicable, but shall remain in full force and effect as to the portion not taken, and each Party shall be entitled to seek a separate Award in connection therewith (including, but not limited to, an Award made for the value of the leasehold estate created by this Lease), or upon the mutual written agreement of Tenant and City, Base Rent shall be reduced in an amount agreed by the Parties at the time of such Taking and City shall be entitled to the entire Award. Tenant shall have no claim against City, in its proprietary capacity as Landlord under this Lease, for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

15.6. Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises or Golf Course for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award.

16. ASSIGNMENT AND SUBLETTING

16.1. Restriction on Assignment and Subletting. Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any interest in Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Improvements or its leasehold estate hereunder (collectively, "**Assignment**"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon (collectively, "**Sublease**"). Any Assignment or Sublease shall be voidable at the option of the City in its sole and absolute discretion; and the City shall have the right to terminate immediately this Lease by sending written notice to Tenant.

16.2. Effect of Transfer. No Sublease or Assignment by Tenant shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment shall constitute a material Event of Default by Tenant under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section.

16.3. Indemnity for Relocation Benefits. Without limiting **Section 16.2** above, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits

payable to any Transferee. Tenant's obligation to Indemnify City under this Section will survive the termination of this Lease and any Assignment or Sublease.

17. DEFAULT; REMEDIES

17.1. Events of Default. Any of the following shall constitute an event of default ("**Event of Default**") by Tenant hereunder:

(a) **Rent.** Any failure to pay any Rent or other sums as and when due, provided Tenant shall have a period of three (3) days from the date of written notice of such failure from City within which to cure any default in the payment of Rent or other sums; provided, however, that City shall not be required to provide such notice regarding Tenant's failure to make such payments when due more than twice during any Calendar Year, and any such failure by Tenant after Tenant has received two such notices in any Calendar Year from City shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided Tenant shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Tenant uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two (2) defaults of the same obligation during any consecutive twenty-four (24) month period City shall not be required to provide any notice regarding Tenant's failure to perform such obligation, and any subsequent failure by Tenant after Tenant has received two such notices shall constitute a default by Tenant hereunder without any requirement on the part of City to give Tenant notice of such failure or an opportunity to cure;

(c) **Vacation or Abandonment.** Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days, excluding periods of closure due to repairs, casualty or other City mandated closures; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

17.2. Remedies. Upon the occurrence of an Event of Default by Tenant, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

(a) **Terminate Lease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises

and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Tenant's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) Continue Lease and Enforce Rights. The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Tenant's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Tenant specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof on Tenant's behalf for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 17.2(b)** shall be deemed a waiver of any default by Tenant and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) Appointment of Receiver. The right to have a receiver appointed for Tenant upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

17.3. City's Right to Cure Tenant's Defaults. If Tenant defaults in the performance of any of its obligations under this Lease, then City may at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Tenant's account and at Tenant's expense. Tenant shall pay to City, as Additional Rent, promptly upon demand, all sums reasonably expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Tenant's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any rights or remedies of City on account of such Event of Default.

18. WAIVER OF CLAIMS; INDEMNIFICATION

18.1. Waiver of Claims. Tenant covenants and agrees that City shall not be responsible for or liable to Tenant for, and, to the fullest extent allowed by Law, Tenant hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever. The foregoing shall not relieve City from providing Tenant with the abatement rights under Article 31 below. Further, nothing herein shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages. In addition, absent incidences of fraud or intentional acts that violate applicable laws, Tenant's employees, directors and officers shall have no personal liability to City under this Lease. Without limiting the foregoing:

(a) Tenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages, including, but not limited to, lost profits arising out of disruption to the Improvements or Tenant's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Tenant or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents. The releases contained herein shall survive any termination of this Lease.

18.2. Tenant's Indemnity. Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, Agents and Invitees of Tenant, or loss of or damage to property (including, without limitation, the Department Facilities) howsoever or by whomsoever caused, occurring in or on the Premises or any other City property; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises, Golf Course or any Improvements; (d) the condition of the Premises, Mobile Classroom or any Improvements constructed by or on behalf of Tenant, or Tenant's failure to properly repair or maintain the Mobile Classroom or any Improvements on the Premises; (e) any construction or other work undertaken by Tenant on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, or of any trespassers, in, on or about the Premises, Golf Course, or any Improvements; all regardless of the active or passive negligence of, and regardless of whether

liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that (i) such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease, or (ii) such Losses as are caused exclusively by the gross negligence or intentional wrongful acts or omissions of the Indemnified Parties, or (iii) such losses are caused by the misconduct of trespassers. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the expiration or sooner termination of the Lease. City acknowledges that for the purposes of this Section members of the public using the Golf Course shall not be deemed to be Invitees of Tenant while using portions of the Golf Course other than the Premises unless such individuals are engaged in lessons or other activities managed, supervised or sponsored by Tenant, and Tenant's mere scheduling of tee times, acceptance of reservations, or collection of greens fees from such individuals shall not make such individuals Tenant's Invitees hereunder.

19. INSURANCE

19.1. Tenant's Insurance. Tenant, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows

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

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

(c) Sexual molestation and abuse coverage with minimum limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Coverage may be held as a separate policy or included by endorsement in the Commercial General Liability or Errors and Omissions policy.

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

(e) Business Interruption Insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Tenant is unable to operate its business at the Premises. Such insurance shall also cover business interruptions due to failures or interruptions in

telecommunications services, strikes, employee lockouts, riots, or other civil commotion. To calculate Rent during any such interruption of business, the Rent for the 12-month period immediately preceding the incident causing the business interruption shall be used. In the event Business Interruption Insurance is available to cover Rent, no provision of this Lease, including Section 31, shall allow for reduction of Rent to the extent covered by the Business Interruption Insurance.

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

(g) Licensed professionals (i.e., architects, engineers, certified public accountants, etc.) shall provide professional liability insurance with limits not less than One Million Dollars (\$1,000,000) each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Lease or to the Premises.

(h) Tenant shall have the obligation, to maintain property insurance on an all-risk basis, provided, that such insurance shall be in an amount equal to the full replacement value of the Premises, including any required code upgrades or other regulatory changes to fully restore the Premises. Tenant's procurement of the property insurance shall be at Tenant's sole cost and expense (including all premiums and deductibles) and Tenant shall maintain the policy for the duration of the Lease Term, as may be extended. City shall be named sole loss payee, as City's interest may appear.

19.2. General Requirements. All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

(a) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

i. Name Tenant as the insured and the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

ii. That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as

to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

iii. All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in the Basic Lease Information.

(d) Each insurance policy required hereunder shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

19.3. Proof of Insurance. Tenant shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

19.4. Review of Insurance Requirements. Tenant 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 Tenant with respect to risks comparable to those associated with the Premises, then, at City's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant to conform to such general commercial practice.

19.5. No Limitation on Indemnities. Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's indemnification obligations under **Sections 18.2** and **23.2** hereof, or any of Tenant's other obligations or liabilities under this Lease.

19.6. Lapse of Insurance. Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to Tenant.

19.7. Tenant's Personal Property and Alterations and Improvements. Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property (including the Mobile Classroom) and any Improvements and/or Alterations installed or made on the Premises by or at the expense of Tenant.

19.8. City's Self Insurance. Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third-party insurance with respect to the Premises or otherwise.

19.9. Waiver of Subrogation. Notwithstanding anything to the contrary contained in this Lease, City and Tenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises or other City

property and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, other City property or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises or other City property carried by Tenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Tenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

20. ACCESS BY CITY

20.1. Access to Premises by City.

(a) **General Access.** City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours' oral or written notice to Tenant (except in the event of an emergency) for any of the following purposes:

1. To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);
2. To determine whether Tenant is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of **Section 17.3** hereof;
3. To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;
4. To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder; and
5. To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" or "coming soon" signs in connection therewith.

(b) **Emergency Access.** In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove Tenant's Personal Property on or about the Premises. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Tenant, its Agents or Invitees. Any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

(c) **No Liability.** City shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the active negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Tenant, its Agents or Invitees.

(d) **No Abatement.** Except as may be specifically and expressly provided otherwise in this Lease, Tenant shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

(e) **Minimize Disruption.** City shall use its reasonable, good faith efforts to conduct any activities on the Premises allowed under this Lease in a manner that, to the extent practicable, will minimize any disruption to Tenant's use hereunder.

20.2. Department Facilities and Utility Installations. Without limiting Section 20.1 above, City shall have the right at all times, to enter upon the Premises upon forty-eight (48) hours' advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the Department Facilities, if any, or any public park or utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the wrongful acts, omissions or negligence of Tenant, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Tenant's use of the Premises occasioned by any such facility installations or other activities, except as may be specifically and expressly provided otherwise in this Lease.

20.3. Roadways. City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City desires.

20.4. Rights of Public. Tenant shall keep the Premises open to the public at all times consistent with the uses permitted hereunder, subject to the Rules and Regulations or as otherwise approved by the General Manager in writing.

21. ESTOPPEL CERTIFICATES

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge and deliver any such certificates of the City.

22. SURRENDER

22.1. Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Tenant shall surrender to City the Premises, in good condition, order and repair, normal wear and tear excepted, free from debris and hazards, and free and clear

of all liens, easements and other Encumbrances created or suffered by, through or under Tenant. On or before the Expiration Date or any earlier termination hereof, or later upon City's request, Tenant shall, at its sole cost, remove any and all of Tenant's Personal Property (including, without limitation, the Mobile Classroom) from the Premises and demolish and remove any and all Improvements and Alterations installed or made on the Premises by or at the expense of Tenant requested by City to be removed (except for any such Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above). In addition, Tenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of such Improvements or Alterations. In connection therewith, Tenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property (including, without limitation, the Mobile Classroom) remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case, City may dispose of such property in accordance with Section 1980 *et seq.* of the California Civil Code or in any other manner allowed by Law. If Tenant fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Tenant shall Indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Tenant resulting from Tenant's failure to surrender the Premises.

22.2. Automatic Reversion. Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Tenant shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 8.2** above.

23. HAZARDOUS MATERIALS

23.1. No Hazardous Materials. Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements, other than customary amounts of cleaning materials used for the Premises to the extent permitted by law. Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Tenant to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Tenant shall promptly provide all such information. Without limiting **Article 20** hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency).

23.2. Tenant's Environmental Indemnity. If Tenant breaches any of its obligations contained in **Section 23.1** above, or, if any act or omission or negligence of Tenant or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any adjacent City property, without limiting Tenant's general Indemnity contained in **Section 18.2** above, Tenant, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any adjacent City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or adjacent City property. Without limiting the foregoing, if Tenant or any of Tenant's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other adjacent City property, Tenant shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

23.3. Hazardous Substance Disclosure. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, cleaning fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Premises, which are described in _____, copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

24. SECURITY DEPOSIT

Tenant has deposited the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants and conditions of this Lease. Tenant agrees that City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises, the Improvements, or the Department Facilities (if any) caused by Tenant, its Agents or Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained in this Lease, without waiving any of City's other rights and remedies hereunder or at Law or in equity. Should City use any portion of the security deposit to cure any Event of Default by Tenant hereunder, Tenant shall immediately replenish the security deposit to the original amount, and Tenant's failure to do so within fifteen (15) days of City's notice shall constitute a material Event of Default under this Lease. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Tenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease.

Within thirty (30) days following the expiration of the Term or earlier termination of this Lease and Tenant's performance of all of its obligations under this Lease, the Security Deposit or any remaining balance (i.e., after deduction of all amounts to which Landlord is entitled under the provisions of this Lease) will be returned to Tenant.

25. HOLDING OVER

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a monthly Base Rent equal to one hundred ten percent (110%) of the amount set forth in **Section 5.1** or **Section 5.2**, hereof, as applicable, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease. Any holding over after the expiration of the Term without the City's consent shall be at a monthly Base Rent rate equal to one hundred twenty-five percent (125%) of the rate in effect at the end of the Term of this Lease, provided, that Tenant shall continue paying the other charges comprising Rent. Tenant's obligations under this Section will survive the termination of this Lease.

26. GENERAL PROVISIONS

26.1. Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this **Section 26.1** and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by email to the email number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by email unless consented to by the receiving party after receipt of the particular notice. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of an email copy of the notice.

26.2. No Implied Waiver. No failure by City to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such

breach, or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

26.3. Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto. Whenever this Lease requires or permits the giving by City of its consent or approval, the General Manager of the Department shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Tenant, and City's agreement may be made upon the sole approval of the General Manager of the Department provided such amendment or modification does not (i) decrease the amount of rental income payable by Tenant to City, (ii) materially increase City's liabilities or financial obligations under this Lease, (iii) materially increase the size of the Premises, (iv) change the Term of this Lease, or (v) materially change the permitted uses of the Premises. Any proposed amendment which falls into the above specified categories shall require the approval of the Commission, and, if required under the City's Charter or Administrative Code, the Mayor, and the Board of Supervisors.

26.4. Tenant's Representations and Warranties. Tenant hereby represents and warrants that (i) Tenant is duly organized, validly existing, in good standing with the California Secretary State; (ii) Tenant is qualified to do business in the State of California (and covenants to maintain such status during the Term of this Lease); (iii) Tenant has full right and authority to enter into this Lease; and (iv) each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant will provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

26.5. Joint and Several Obligations. The word "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several.

26.6. Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by Tenant hereunder, City may give or

withhold such consent in its sole and absolute discretion. All such consents may be made by the General Manager acting alone, unless stated to the contrary herein.

26.7. Successors and Assigns. Subject to the provisions of **Article 16** hereof relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by Landlord named herein (or by any subsequent landlord) of its interest in the Premises as owner or Tenant, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

26.8. Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

26.9. Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

26.10. Governing Law. This Lease shall be subject to, and construed and enforced in accordance with, the Laws of the State of California and the City's Charter and Administrative Code.

Any legal suit, action, or proceeding arising out of or relating to this Lease shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

26.11. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving

this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

26.12. Time of Essence. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

26.13. Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

26.14. Survival of Indemnities. Termination of this Lease shall not affect the right of either party to enforce any and all indemnities, waivers and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Tenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Tenant has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter.

26.15. Relationship of Parties. City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third-party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by Tenant on, in or relating to the Premises.

26.16. Transfer by City. If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Tenant shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Tenant shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Tenant, with regard to any future sale or other disposition of the Premises, or any portion thereof.

26.17. Recording. Tenant agrees that it shall not record this Lease in the official records.

26.18. Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Lease or otherwise.

26.19. Wages and Working Conditions.

(a) **Generally.** Any undefined, initially-capitalized term used in this subsection shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant will require its Contractors and Subcontractors performing (i) labor in connection with a “public work” as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). Tenant agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements. Notwithstanding the foregoing, City hereby acknowledges and agrees that the obligations of this Section do not apply to volunteer services provided to or for the benefit of or on behalf of Tenant.

Tenant shall include, and shall require its subtenants and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor’s or Subcontractor’s failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see www.sfgov.org/olse/prevailingwages or call the City’s Office of Labor Standard Enforcement at 415-554-6235.

(b) **Prevailing Wages for Theatrical Workers, Trade Shows and Special Event Work, and Off-Street Parking Lot, Garage or Storage Automobile Facility.** Tenant shall pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, prevailing wages, including fringe benefits or the matching equivalents thereof, to persons performing services for the following activity on the Premises to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Storage Automobile Facility (as defined in Section 21C.3) a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), and Broadcast Services (as defined in Section 21C.9).

If Tenant, or its subtenants, contractors, and subcontractors fail to comply with the applicable obligations in San Francisco Administrative Code Chapter 21C, City shall have all available remedies set forth in Chapter 21C and the remedies set forth in this Lease. City may inspect and/or audit any workplace, job site, books and records pertaining to the applicable services and may interview any individual who provides, or has provided, such services. Tenant shall provide to City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to City) immediate access to all workers’ time sheets, payroll records, and paychecks for inspection on request to the extent they relate to such services.

- The types of covered services related to a Show includes individuals engaged in theatrical or technical services, including rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services.
- The types of covered services related to a Special Event includes individuals engaged in on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property.
- The types of covered services related to Broadcast Services includes individuals engaged in the electronic capture and/or live transmission of on-site video, digital, and/or video content for commercial purposes through the use of a remote production or satellite trust on-site, including any technical director, video controller, assistant director, and stage manager, and individuals engaged in audio, camera, capture and playback, graphics and utility functions

26.20. Local Hiring Requirements for Improvements and Alterations. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Improvements and Alterations are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Improvement or any Alteration, Tenant shall contact City's Office of Economic Workforce and Development ("**OEWD**") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "**Covered Project**").

Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third-party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

26.21. Intellectual Property; Music Broadcasting Rights. Tenant shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Premises, including, but not limited to musical or other performance rights. (Note to Tenant: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers ("**ASCAP**") at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time).)

26.22. Supervision of Minors. Tenant shall comply and shall require its subtenants, contractors and subcontractors to comply with the obligations in California Public Resources Code Section 5164 if Tenant, or any subtenant, contractor, or subcontractor is providing services at a City park, playground, recreational center or beach. Tenant shall not hire, and shall prevent any subtenant, contractor or subcontractor from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Tenant or any subtenant, contractor or subcontractor, is providing services to the City involving the supervision or discipline of minors, Tenant and any subtenant, contractor or subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for positions involving the supervision of minors. Tenant acknowledges and agrees that failure by Tenant or any of its subcontractors to comply with any provision of this Section of this Lease shall constitute an Event of Default. Tenant further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Lease, partially or in its entirety, to recover from Tenant any amounts paid under this Lease, and to withhold any future payments to Tenant. The remedies provided in this Section shall not limit any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. In the event of a conflict between this Section and **Section 26.47**, "Criminal History in Hiring and Employment Decisions," of this Lease, this Section shall control.

26.23. Employee Signature Authorization Ordinance. City has enacted an ordinance at Chapter 23, Article VI of its Administrative Code, commencing at Section 23.50 (the "**Ordinance**"), which may apply to employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees. The terms of the Ordinance are expressly incorporated herein by reference. To the extent Tenant or its successors or assigns employs employees in a hotel or restaurant in the Premises within the scope of the Ordinance, Tenant hereby agrees as a material condition of this Lease to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent Tenant's employees, if and as required by the Ordinance, and to otherwise fully comply with the requirements of the Ordinance. Tenant recognizes that, if the Ordinance applies to Tenant's operations on the Premises, Tenant must enter into a Card Check Agreement with a Labor Organization(s) as specified by the Ordinance before executing this Lease, and that being party to such a Card Check Agreement(s) is a condition precedent of rights or obligations under this Lease.

26.24. Tenant's Compliance with City Business and Tax Regulations Code. Tenant 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 Tenant 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 Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

26.25. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) or association with members of protected classes, or in retaliation for opposition to discrimination against protected classes, against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) Subleases and Other Subcontracts. Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Condition to Lease. As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division. Tenant hereby represents that before execution of this Lease, (i) Tenant executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved such form.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including, but not limited to, the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

26.26. No Relocation Assistance; Waiver of Claims. Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 *et seq.*), except as otherwise specifically provided in this Lease with respect to a Taking.

26.27. MacBride Principles - Northern Ireland. The provisions of San Francisco Administrative Code Section 12F are incorporated herein by this reference and made part of this Lease. By signing this Lease, Tenant confirms that Tenant has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

26.28. Conflicts of Interest. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of such provisions, and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately notify City.

26.29. Tropical Hardwood and Virgin Redwood Ban. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide or permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of any alterations or improvements in or on the Premises or otherwise in the performance of this Lease. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. In the event Tenant fails to comply with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

26.30. Tobacco Product Advertising Prohibition. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. 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, Tenant 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.

26.31. Prohibition of Alcoholic Beverage Advertising. Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises, except for those portions of the Premises used for the operation of a restaurant or other facility where the sale, production or consumption of alcohol is permitted. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

26.32. First Source Hiring Ordinance. The provisions of San Francisco Administrative Code Chapter 83, the First Source Hiring Program, are incorporated in this Section by reference, and are made a material part of this Lease as though fully set forth herein. Tenant and City are parties to the First Source Agreement attached to this Lease as **Exhibit I** pursuant to San Francisco Administrative Code, Chapter 83 (the "**First Source Agreement**"). Any default by Tenant under the First Source Agreement shall be a default under this Lease. Tenant shall keep, and provide to the City, accurate records demonstrating its compliance with the First Source Hiring Program. Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the Office of Economic and Workforce Development.

26.33. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

26.34. Counterparts. This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Signatures may be delivered by facsimile transmission or by e-mail in a portable document format (pdf).

26.35. Vending Machine/Non-alcoholic Beverage Contract. Tenant hereby agrees to abide by any and all provisions of any contract entered into by City for the purpose of the sales of non-alcoholic beverages at City-owned facilities.

26.36. No Light, Air or View Easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises shall in no way affect this Lease or impose any liability on City as landlord under this Lease.

26.37. City's Inability to Perform. If City is unable to perform or is delayed in performing any of City's obligations under this Lease, by reason of acts of nature, accidents, breakage, epidemics and related governmental orders and requirements, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an

eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby, except as may otherwise be provided in this Lease. Nothing contained in this Section shall limit the rights of Tenant pursuant to **Section 31** below.

26.38. Notification of Limitations on Contributions. 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, Tenant 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. Tenant 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. Tenant further acknowledges that (i) the prohibition on contributions applies to Tenant, each member of Tenant’s board of directors, Tenant’s chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Tenant, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Tenant, 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, Tenant 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.

26.39. Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Lease.

26.40. Preservative-Treated Wood Containing Arsenic. As of July 1, 2003, Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing

preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

26.41. Resource Efficiency. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of buildings owned or leased by City. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

26.42. Food Service and Packaging Waste Reduction Requirements. Tenant will comply with and is 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, Tenant 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 Tenant and City) in the previous sentence are defined in San Francisco Environment Code Section 1602.

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

26.44. Prohibition of the Sale of Lottery Tickets. The selling of any lottery tickets on the Premises is expressly prohibited.

26.45. San Francisco Bottled Water Ordinance. Unless exempt, Tenant will comply with San Francisco Environment Code Chapter 24 ("**Chapter 24**"). Tenant 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 Tenant obtains a waiver from City's Department of the Environment. If Tenant 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.

26.46. Criminal History in Hiring and Employment Decisions

(a) Unless exempt, and subject to the provisions of **Section 26.22** above, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions), as may be amended ("**Chapter 12T**"), which are hereby incorporated by reference, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions, subject to the provisions of **Section 26.23** of this Lease. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

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

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

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

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

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

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the Department for additional information. The Department may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

26.47. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent

with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Tenant shall promptly notify City of any graffiti on the Golf Course discovered by Tenant. Tenant shall remove all graffiti from the Mobile Classroom within forty-eight (48) hours of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of Tenant to comply with this Section of this Lease shall constitute an Event of Default of this Lease.

26.48. Vending Machines; Nutritional Standards. Tenant shall not install or permit any vending machine on the Premises without the prior written consent of the General Manager. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this **Section 26.50** shall be deemed a material breach of this Lease. Without limiting Landlord's other rights and remedies under this Lease, Landlord shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any restaurant located on the Premises is encouraged to ensure that at least 25% of Meals offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code Section 4.9-1(e), as may be amended.

26.49. All-Gender Toilet Facilities. If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City 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 this Section. If Tenant has any question about applicability or compliance, Tenant should contact the General Manager for guidance.

26.50. Cooperative Drafting. This Lease has been drafted through a cooperative effort of both Parties, and has been negotiated at arm's length between persons sophisticated and

knowledgeable in the matters dealt with herein. Both Parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No Party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Lease.

27. QUALITY OF SERVICES AND PRODUCTS OFFERED.

Tenant hereby agrees that any food and refreshments offered for sale hereunder shall be of good quality and that the service shall be prompt, clean, courteous, and efficient. Department shall have the right to raise reasonable objections to the quality of the food, beverages, and service(s) provided and Tenant shall have the obligation to address those objections by modifying the causes of those objections until corrected to the satisfaction of the Department.

28. PARTICIPATION IN CITY CUSTOMER SATISFACTION PROGRAM.

Tenant hereby agrees to participate in any customer satisfaction program developed by the City, provided that the participation requirements of the Customer Satisfaction Program shall be reasonable.

29. SIGNS AND ADVERTISING.

Tenant hereby agrees not to erect or maintain, nor permit to be erected or maintained, upon any part of the Premises, any signs without obtaining City's written consent in advance, such consent not to be unreasonably withheld.

30. SUSTAINABLE FOODS.

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

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

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

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

Tenant shall also provide an annual report on each anniversary date of this Lease outlining how Tenant incorporated these sustainable food concepts into everyday operations of the food and beverage concession and how Tenant informed customers and the youth employed by the Tenant, if any, regarding sustainable foods. This report shall include the percentage of total sales that were products certified as sustainably produced.

31. LIMITED ABATEMENT RIGHT IN CONNECTION WITH GOLF COURSE DISRUPTION.

(a) **City-Triggered Abatement Condition.** City hereby acknowledges that the Premises are used in conjunction with the operation of the balance of the Golf Course and any interference or circumstance that renders one or more holes of the Golf Course unusable may effectively render the entire 9 holes of the Golf Course and the Premises unusable during the continuation of such interference or circumstance. Accordingly, in the event that Tenant is prevented from using, and does not use, the Premises or one or more holes of the Golf Course or a material portion of the Premises or the Golf Course as a result of an event, circumstance or condition that is within City's reasonable control that renders one or more holes of the Golf Course unusable (a "**City-Triggered Abatement Condition**"), and if such City-Triggered Abatement Condition continues for a period of ten (10) business days after Tenant's delivery of any such notice (the "**Eligibility Period**"), then the Base Rent shall be abated or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises or one or more holes of the Golf Course or a material portion of either, in the proportion to the loss of revenue that Tenant reasonably demonstrates is attributable to such City-Triggered Abatement Condition and could not have been reasonably avoided by Tenant.

(b) **Non-City-Triggered Abatement Condition.** In the event that Tenant is prevented from using, and does not use, the Premises or one or more holes of the Golf Course or a material portion of the Premises or the Golf Course as a result of an event, circumstance or condition that is outside City's reasonable control that renders one or more holes of the Golf Course unusable (a "**Non-City-Triggered Abatement Condition**"), and if such Non-City-Triggered Abatement Condition continues for a period of thirty (30) days after Tenant's delivery of any such notice, then the Base Rent shall be abated or reduced, as the case may be, after expiration of the such period for such time that Tenant continues to be so prevented from using, and does not use, the Premises or the balance of the Golf Course or a material portion of either, in the proportion to the loss of revenue that Tenant reasonably demonstrates is attributable to such Non-City-Triggered Abatement Condition and could not have been reasonably avoided by Tenant.

This Subsection (b) and Subsection (a) above, are inapplicable to disruptions that result from damage caused by fire or other casualty where such damage is governed by **Article 14**.

(c) **Termination Upon Abatement Conditions.** If a City-Triggered Abatement Condition or a Non-City-Triggered Abatement Condition shall continue for more than one hundred fifty (150) days, then Tenant shall have the right to terminate this Lease on written notice to City given at any time prior to the date on which such condition has improved sufficiently to

allow Tenant to resume normal operations of the Golf Course and its business in the Premises. If any abatement resulting from a Non-City-Triggered Abatement Condition shall continue for more one hundred fifty (150) consecutive days where the interruption is outside City's reasonable control, City may terminate this Lease by notice to Tenant prior to the cessation of such interruption.

32. CONTRACTOR VACCINATION REQUIREMENTS.

(1) Tenant acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency (“**Emergency Declaration**”), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator (“**Contractor Vaccination Policy**”), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in the Contractor Vaccination Policy.

(2) A “Contract”, as defined in the Emergency Declaration, is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the contractor or subcontractor work in-person with City employees at a facility owned, leased, or controlled by the City. A Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. A Contract does not include an agreement with a state or federal governmental entity or agreements that does not involve the City paying or receiving funds.

(3) Tenant has read the Contractor Vaccination Policy. In accordance with the Emergency Declaration, if this Lease is (or becomes) a Contract, as defined in the Contractor Vaccination Policy, Tenant agrees that:

(I) Tenant shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are fully vaccinated for COVID-19 or obtain an exemption based on medical or religious grounds; and

(II) If Tenant grants Covered Employees an exemption based on medical or religious grounds, Tenant will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form (“**Exemptions Form**”), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

[No further text this page.]

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL A RESOLUTION OF THE COMMISSION SHALL HAVE BEEN DULY PASSED AND CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION OR ENACTED AN ORDINANCE APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS LEASE ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION [OR ORDINANCE], AND THIS LEASE SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION OR ORDINANCE WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

City and Tenant have executed this Lease as of the date first above written.
TENANT:

GOLDEN GATE PARK GOLF DEVELOPMENT FOUNDATION,
a California nonprofit public benefit corporation

By: _____
Board Member

CITY:

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: _____

Margaret McArthur, Commission Liaison

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By _____
Vincent L. Brown
Deputy City Attorney

EXHIBIT B- DEPARTMENT RULES AND REGULATIONS

Please see following link for San Francisco Recreation and Park Department Park Code:

<http://library.municode.com/index.aspx?clientId=14138&stateId=5&stateName=California>

EXHIBIT C- GOLF COURSE RULES

SAN FRANCISCO MUNICIPAL GOLF COURSES POLICIES AND RULES FOR PLAY

General Access:

1. All courses shall be open 365 days a year, with the exception of course or weather emergencies.
2. All courses shall be open for play from sunrise to sundown, unless special accommodations are necessary for course maintenance.
3. No play is allowed on any golf course or portion thereof which has been closed for any reason by the City.
4. The following holidays shall be observed and charged weekend rates: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day following, and Christmas Day. When a holiday is officially observed on a different day, the holiday rate will be charged for the observed date only.

Course Rules:

5. USGA and local rules govern all play.
6. All golfers with a reserved tee time must check in with the pro shop at least 20 minutes prior to their start time.
7. No warming up or practicing is allowed on the first tee or any tee surface; no chipping on any practice surface or putting green.
8. Sharing equipment is strictly prohibited; each player must have a set of clubs and bag.
9. All rounds must begin on the first tee unless otherwise specified by the starter.
10. No practicing or use of more than one ball per golfer is allowed on the course.
11. Groups of more than four persons are not allowed on the course unless directed by the pro shop.
12. Pace of play for each course shall be determined by the Course Manager. Golfers unable to keep that pace must let others play through.
13. Metal spikes on shoes are prohibited anywhere on the property.
14. Golfers are required to repair their own divots and ball marks with provided divot mix and must rake bunker sand upon exiting the bunker.
15. Pull carts and golf bags must be left off greens, collars and tees at all times.
16. Unless approved by the Course Manager, golf instruction on the course or any other area of the facility is strictly prohibited.
17. Alcoholic beverages consumed on the course must be purchased on the premises.

18. Dogs or other pets are not allowed on the course or in the clubhouse at any time. (Service dogs are allowed with prior approval from the pro shop.)
19. Non-golfers are not allowed on the course at any time unless:
- a person is accompanying a golfer on a cart and the applicable fee for such has been paid
 - a golfer requires special assistance and pre-approval has been obtained through the pro shop
 - local tournaments request additional presence on the course, which will require a waiver of liability to be signed by the tournament sponsor or the individual, in the case of spectators at high school tournaments. The Course Manager shall have the final authority administering this rule to allow for maximum public safety on his particular course.
20. Golfers may be refused playing privileges or may be removed from the course for:
- Submitting false information for the purpose of securing golfing privileges or discounts;
 - Playing without paying a green fee or for not registering with the starter;
 - Obvious inability to play golf;
 - Failure to comply with existing rules and regulations;
 - Intentionally hitting balls off the course into park areas or private property adjacent to the course;
 - Flagrant violation of rules of etiquette, such as obnoxious behavior, intoxication, damaging to the course and facilities or failure to follow course design on a hole-to-hole basis.

Motorized Carts:

21. Golfers must be at least 18 years old and have a valid driver's license available at the time of renting a golf cart.
22. On course, carts must stay on cart paths at all times.
- "90 degree rule" is applicable only with approval from Course Manager. Daily status shall be posted at each course.
 - Sharp Park shall never invoke the "90 degree rule" for any reason due to environmental concerns.
 - For safety reasons, carts at Sharp Park are not allowed in the parking lot.

High School Teams:

23. AAA San Francisco public school teams must present a request for scheduled playing times at least 60 days prior to the beginning of the school golf season and that request shall be subject to the course manager's approval. If approved, the high school teams may have

free access on weekdays at a time negotiated with the Course Manager during the school golf season. The teams must be accompanied by their coach.

24. When not accompanied by their coach, individual team members may practice on a space available basis and shall be given a special rate, provided that (a) they are listed on the team roster and (b) they have identification. These policies apply only to Sharp Park, Lincoln Park and Golden Gate Park.
25. All practice range/cage time must be approved in advance by the course manager on a space-available basis. Only one stall may be used per bucket of balls, Standard fees shall apply.

EXHIBIT D- MINIMUM MAINTENANCE STANDARD REQUIREMENTS

- The Department to provide 100 hours of weekly course maintenance labor - including 2 full-time gardeners (80 hours), 1 Teamster (16 hours), and lead SFRP Agronomy Manager (4 hours). The foregoing shall be subject to incidences of vacation/sick/workers comp, provided, that in the event of an incidence of long-term disability of a laborer (e.g. a disability event causing a laborer to be unavailable for a period exceeding 30 days), and to the extent fiscally able, City will use reasonable efforts to replace as many hours as possible of the hours lost due to the absence resulting from the long-term disability to ensure the continued maintenance of the Golf Course, subject to the City's applicable policies and procedures and the budget and fiscal provisions of the City Charter.
- SFRP Agronomy Manager to create, manage, and implement Annual Maintenance Plan in support of the Minimum Maintenance Standard Requirements and will review it with the Operator each Calendar Year as described under Annual Maintenance Plan Review. The initial minimum maintenance standard requirements shall include the following:
 - Tees and Fairways mowed 2x to 3x per week at .500 inch, subject to rain and season
 - Greens mowed 6 / week at .125 to .150 inches and maintained consistently at 9-11 feet on stimpmeter subject to rain and season
 - Native sand areas to be groomed 1x per week, subject to rain
 - Bunkers raked / smoothed 3x per week subject to rain
 - Light sand top dressing to be performed every 21 days to green surfaces to match up with the blade replacement
 - Moderate sand top dressing to be performed to tees and green 2x per year
 - Soluble fertilizer to be applied (sprayed) every 21 days for greens. Tee boxes and fairways will be treated with slow-release fertilizer every 14-16 weeks for fairways, rough and tees.
 - Aerification to be performed 2 x per year to tees and greens, 1x per year for fairways
 - Bulk soil amendments to be applied quarterly to all surfaces based on soil test samples
 - Minimum of 2 hours per week of agronomic oversight/supervision to be provided by SFRP Agronomy Manager

EXHIBIT E – GUIDELINES FOR MINIMUM REQUIRED CAPITAL IMPROVEMENTS

The Operator will have the right to extend the term of the agreement as provide above if by no later than three years after the commencement date, the Operator has made capital improvements to repair the irrigation system, improve and restore the course and improve the practice facilities with an expected cost of \$2 million. See Section 8.4

The capital repair primarily centers around the need for a new irrigation system. While replacing the current system, the Operator will take the opportunity to refine the existing 9 holes to improve playability for players of all skill levels. The Operator will re-grass the entire course, add teeing grounds to improve accessibility, maintain less punishing rough on the golf-course, and expose naturally beautiful sand in areas outside of play to reduce environmental footprint. The Operator will also enhance the practice area, creating distinct putting and chipping greens.

A course map of the revised course is included below, which shows the exposed sandy areas to reduce mowing footprints, the reduction in length of the 5th hole to improve safety and allow for both a putting green and a chipping green, and the rerouting of the course so the 1st holes starts adjacent to the clubhouse.



EXHIBIT F – MOBILE CLASSROOM DIMENSIONS AND SPECIFICATIONS

The current existing mobile classroom trailer unit dimensions and specifications are as follows:

40ft long x 8ft wide x 9.5ft tall.

EXHIBIT G – CLUBHOUSE SITE FURNISHINGS EXTERIOR ONLY

GOLDEN GATE PARK GOLF COURSE CLUBHOUSE PROJECT
Furniture Fixtures and Equipment
Cost Estimate
21-Nov-22

FFE Cost Estimate Notes:
 1. Unit selection based on SF Rec Park durability and maintenance standards and SF Arts Commission Civic Design Review Phase 3 project approval in November 2020.
 2. Unit Cost includes delivery, material and installation.
 3. Unit Costs are based on manufacture list price. Pricing sheets and specifications available upon request.
 4. Alternative contracting may be available to reduce unit cost.
 5. Substitutions to be reviewed and approved by SF Rec Park and Project Architect.

Line	Component Description	Quantity	Unit	Unit Cost	Estimated Cost	NOTES
Exterior Furnishings						
1	Exterior Picnic Table	4	EA	\$ 1,795.00	\$ 7,180.00	
2	Exterior Benches	8	EA	\$ 1,295.00	\$ 10,360.00	
3	Exterior Side Table	4	EA	\$ 1,969.00	\$ 7,876.00	
4	Exterior Coffee Table	1	EA	\$ 4,480.00	\$ 4,480.00	
5	Exterior Stool	8	EA	\$ 495.00	\$ 3,960.00	
6	Exterior High Table	2	EA	\$ 3,048.00	\$ 6,096.00	
7	Exterior Adirondack Chair	12	EA	\$ 895.00	\$ 10,740.00	
SUB TOTAL					\$ 50,692.00	
Interior Furnishings						
8	High stools	6	EA	\$ 1,136.00	\$ 6,816.00	
9	ADA stools	6	EA	\$ 1,487.00	\$ 8,922.00	
10	Chairs	4	EA	\$ 1,051.00	\$ 4,204.00	
11	Long table	1	EA	\$ 4,659.00	\$ 4,659.00	
12	Short ADA table	2	EA	\$ 4,103.00	\$ 8,206.00	
13	Desk	1	EA	\$ 2,000.00	\$ 2,000.00	
14	Executive Chair	1	EA	\$ 800.00	\$ 800.00	
15	Guest Chair	1	EA	\$ 650.00	\$ 650.00	
SUB TOTAL					\$ 36,257.00	
TOTAL					\$ 86,949.00	

EXHIBIT H-FLOOD RISK DISCLOSURE

STORMWATER FLOOD RISK DISCLOSURE

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AT THE FOLLOWING STREET ADDRESS: 970 47th AVENUE, SAN FRANCISCO, CALIFORNIA. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED PROPERTY IN COMPLIANCE WITH ARTICLE 51 OF THE SAN FRANCISCO POLICE CODE. IT IS NOT A WARRANTY OF ANY KIND BY THE CITY, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE TENANT MAY WISH TO OBTAIN.

I

The City discloses the following information with the knowledge that even though this is not a warranty, prospective transferees may rely on this information in deciding whether and on what terms to rent or lease the subject property. City authorizes any agent(s) representing any tenant in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated rental or lease of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE CITY AS REQUIRED BY THE CITY AND COUNTY OF SAN FRANCISCO AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE CITY AND TENANT.

The City and County of San Francisco recognizes that it is in the public interest to ensure that persons who own properties at risk of flooding have information about their flood risk so they can take steps to mitigate the risk, such as flood-proofing their property or purchasing flood insurance. It is also in the public interest to ensure that before persons purchase, rent, or lease real property they have notice regarding the stormwater flood risk to their property. Mandatory disclosure before sale, rent, or lease is an effective tool for ensuring that transferees (including buyers and tenants) of real property in San Francisco have access to this important information.

*Accordingly, the San Francisco Public Utilities Commission has adopted the 100-Year Storm Flood Risk Map. **The above-referenced property is located in a “100-year storm flood risk zone” as shown on the 100-Year Storm Flood Risk Map. Accordingly, the property may be subject to deep and contiguous flooding during a 100-year storm event due to stormwater flow and drainage, and you may experience inconveniences, costs, and governmental requirements related to that flooding.***

A 100-year storm event means a storm that has a 1% probability of occurring at a particular location in a given year.

If the property is in a “100-year storm flood risk zone” as shown on the 100-Year Storm Flood Risk Map, that does not mean the property is subject to flooding only during a 100-year storm event. The property may also flood at other times and from other causes.

The 100-Year Storm Flood Risk Map shows only areas subject to flood risk in a 100-year storm event due to precipitation and related stormwater runoff. It does not show all areas of San Francisco that are subject to flood risk due to inundation, storm surge, high tides, stormwater systems blockages, or other causes of flooding, and should not be relied upon to provide a complete assessment of a property’s risk of flooding.

The 100-Year Storm Flood Risk Map may be found at <https://www.sfwater.org/index.aspx?page=1229> and is on file with the San Francisco Public Utilities Commission at 525 Golden Gate Avenue, San Francisco, CA 94102. For additional information pertaining to this disclosure and the 100-Year Storm Flood Risk Map, please contact the San Francisco Public Utilities Commission at RainReadySF@sfwater.org or (415) 695-7326.

The person signing below on behalf of the City certifies that the information in this disclosure is true and correct to the best of such person’s knowledge as of the date below.

*City and County of San Francisco,
a municipal corporation*

By: _____

Print Name: Phil Ginsburg

Print Title: General Manager

Date _____

II

TENANT MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Tenant _____ Date _____

Tenant _____ Date _____

Agent for Tenant _____ By _____

Date _____

(Please Print)

(Associate Licensee or Broker-Signature)

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

EXHIBIT I FIRST SOURCE HIRING AGREEMENT
For Business, Commercial, Operation and Lease Occupancy of the Building

This First Source Hiring Agreement (this “Agreement”), is made as of _____, 2023, by and between GOLDEN GATE PARK GOLF DEVELOPMENT FOUNDATION, a California nonprofit public benefit corporation (“**Tenant**” or “**Operator**” or “**Lessee**”), and the First Source Hiring Administration, (the “FSHA”), collectively the “Parties”:

i. RECITALS

WHEREAS, Lessee has plans to occupy portions of the Golf Course including the clubhouse, patio around the clubhouse, the driving range, the practice area, and a portion of the parking lot on which Tenant’s portable classroom trailer is installed (the “Premises”) which required a First Source Hiring Agreement between the project sponsor and FSHA due to the issuance of building permit for 25,000 square feet or more of floor space or constructed ten or more residential units; and,

WHEREAS, the project sponsor was required to provide notice in leases, subleases and other occupancy contracts for use of the Premises (“Contract”); and

WHEREAS, as a material part of the consideration given by Lessee under contract, Lessee has agreed to execute this Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

-
- a. **Entry Level Position:** Any position that requires less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.
- b. **Workforce System:** The First Source Hiring Administrator established by the City and County of San Francisco and managed by the Office of Economic and Workforce Development (OEWD).



- c. Referral: A member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.

Lessee: Tenant, business operator and any other occupant of the building requiring a First Source Hiring Agreement as defined in SF Administrative Code Chapter 83. Lessee shall include every person tenant, subtenant, or any other entity occupying the building for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

- a. Lessee shall notify OEWD's Business Team of every available Entry Level Position and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire. Lessee will also provide feedback on reasons as to why referrals were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.
- b. This Agreement shall be in full force and effect throughout the Lessee's occupancy of the building.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Lessee will make good faith efforts to comply with its obligations under this Agreement. Determination of good faith efforts shall be based on all of the following:

- a. Lessee will execute this Agreement and attachment *Exhibit B-1* upon entering into leases for the commercial space of the building. Lessee will also accurately complete and submit *Exhibit B-1* annually to reflect employment conditions.
- b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this Agreement.
- c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions 10 business days prior to posting with the general public. The Lessee must identify a single point of contact responsible for communicating Entry-Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team



- d. Lessee accurately completes and submits Exhibit B-1, the “First Source Employer’s Projection of Entry-Level Positions” form to OEWD’s Business Services Team upon execution of this Agreement.
- e. Lessee fills at least 50% of open Entry Level Positions with First Source referrals. Specific hiring decisions shall be the sole discretion of the Lessee.
- f. Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement.

Lessee’s failure to meet the criteria set forth in Section 3 (a.b.c.d.e.) does not impute “bad faith” and shall trigger a review of the referral process and compliance with this Agreement. Failure and noncompliance with this Agreement will result in penalties as defined in SF Administrative Code Chapter 83, Lessee agrees to review SF Administrative Code Chapter 83, and execution of the Agreement denotes that Lessee agrees to its terms and conditions.

4. NOTICE

2. ALL NOTICES TO BE GIVEN UNDER THIS AGREEMENT SHALL BE IN WRITING AND SENT VIA MAIL OR EMAIL AS FOLLOWS:

- a.
 - b. ATTN: Business Services, Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Email: Business.Services@sfgov.org
5. This Agreement contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected. If Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several. Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This Agreement shall be governed and construed by laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103



☎ (415)701-4848 📠 (415)701-4897 🌐 oewd.org
✉ workforce.development@sfgov.org



London Breed, Mayor
Philip A. Ginsburg, General Manager

REQUEST FOR PROPOSALS
for the
Management and Operation of the Pro Shop Concession
at
Golden Gate Park Golf Course



CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

SAN FRANCISCO RECREATION and PARK COMMISSION

Commissioner MARK BUELL *President*
Commissioner KAT ANDERSON *Vice President*
Commissioner LAURENCE GRIFFIN
Commissioner JOE HALLISY
Commissioner ANNIE JUPITER JONES
Commissioner VANITA LOUIE
Commissioner LARRY MAZZOLA



NOTICE

In order to directly receive any possible amendments to or additional information regarding this RFP you must e-mail eric.k.jue@sfgov.org to register as a potential applicant. Please include all contact information: name, email, address, phone number and cell phone.

All proposals must be received by Property Management of the Recreation and Park Department no later than 3 p.m. on July 27, 2022.
Late proposals will not be accepted.

Issued: Tuesday, June 21, 2022

Due: July 27, 2022

Summary of the RFP Golden Gate Park Golf Course

Opportunity:	Management of the pro shop, food and beverage operation, 8-station driving cage, starter functions and golf lessons at the 9-hole golf course in Golden Gate Park.
Location:	Off 47 th Avenue (from Fulton Street) in the western end of Golden Gate Park.
Financial Requirements	<p>Respondents should propose the following annual rent which will be the higher of:</p> <ul style="list-style-type: none"> • Minimum annual guarantee to be paid on a monthly basis of not less than \$275,000 to be increased annually by CPI. • Percentage of greens fees and other concession revenues (can be different percentage for each) <p>The Department is also seeking proposals where the tenant would make capital improvements to the golf course including a new irrigation system and provide equipment and supplies for future maintenance. See below for more information.</p>
Suggested Lease Term:	Up to six (6) years with a possible option term of up to an additional nine (9) years for any significant capital improvements or enhancements that are approved by City and Lessee-funded within the first two (2) years of the lease.
Selection Process:	Responses will be evaluated by a selection committee and ranked on how well they meet the project objectives and selection criteria described in this RFP. The Department may request additional information from respondents during this process. Final approval of the lease must be approved by the Recreation and Park Commission and is also expected to be approved by the San Francisco Board of Supervisors.
Pre-submittal Meeting:	Wednesday, June 29, 2022, 10:00 a.m. on a virtual zoom meeting. Please contact Eric Jue at Eric.k.jue@sfgov.org to receive an invite to the meeting.
Proposal Due Date:	No later than 3:00pm on Wednesday, July 27, 2022 Responses must be submitted to the below contact and should include two hard copies (one of which can be easily duplicated) and a flash drive.
Contact:	Eric Jue Recreation and Park Department 501 Stanyan Street San Francisco, CA 94117 415-831-2783 eric.k.jue@sfgov.org

Request for Proposals for Golden Gate Park Golf Course

Table of Contents

	Page
I. INTRODUCTION.....	5
II. THE OPPORTUNITY AND GENERAL INFORMATION	6
III. PROPOSED RENT AND KEY LEASE TERMS.....	12
IV. RFP SCHEDULE AND SELECTION.....	15
V. PROPOSAL FORMAT AND CONTENT.....	16
VI. EVALUATION OF PROPOSALS AND AWARD.....	21
VII. TERMS AND CONDITIONS FOR RECEIPT OF PROPOSAL	23

APPENDICES

- A – 5-year usage and revenue actuals
- B – Standard City Lease

I. INTRODUCTION

The Recreation and Park Department (“Department”) thanks you for your interest in this Request for Proposals (“RFP”) to manage the golfing and food and beverage operations at Golden Gate Park Golf Course (“GGP Golf Course”). The Department believes that this 9-hole course serves certain segments of the golfing public and hopes to receive unique and innovative proposals for programming ideas. It is the perfect location for beginning players, for operating a junior golf program, for senior golfers, for more accomplished players to hone their game and for the golfer who wants to sneak in a few rounds after work.

The successful respondent (“Lessee”) will be responsible for all aspects of the day-to-day operations of the course, except for the golf course maintenance duties, which will continue to be performed by City personnel. We are seeking responses from individuals or entities (partners whose collective experience totaling the required minimum will be accepted) with at least:

- 3 years in golf management experience
- 2 years in food service experience
- \$100,000 in liquid assets
- a proven track record in developing and implementing a wide variety of golf programs - especially for youth, families and seniors.

The lease (“Lease”), will be negotiated with the City using the City’s standard lease. The standard lease is attached as Appendix B to this RFP. The Lease terms contains a more detailed description of applicable terms and conditions. Respondents to this RFP should carefully review all of the standard lease terms before preparing their proposals.

II. THE OPPORTUNITY AND GENERAL INFORMATION

A. The Facility and Surrounding Environment

Golf Course: Golden Gate Park Golf Course is a nine-hole par 27 course that is 1,357 yards long and is within one of the country’s most magnificent urban park settings. The course is located in the western end of Golden Gate Park near 47th Avenue and Fulton Street in San Francisco. The course was originally opened in 1949 as a “Pitch and Putt” course. The course also has a putting green and an 8-station driving cage.



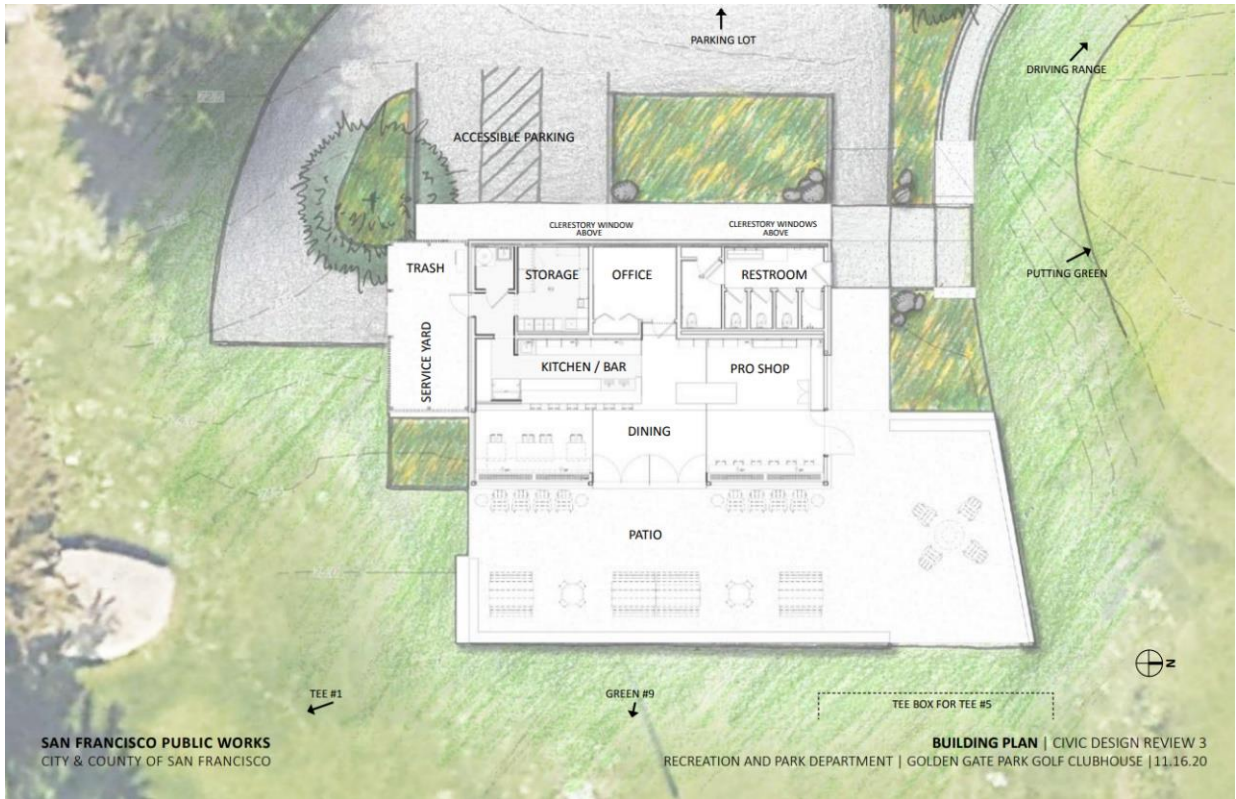
The course is popular with the community and had the following rounds of golf played over the past 5 years.

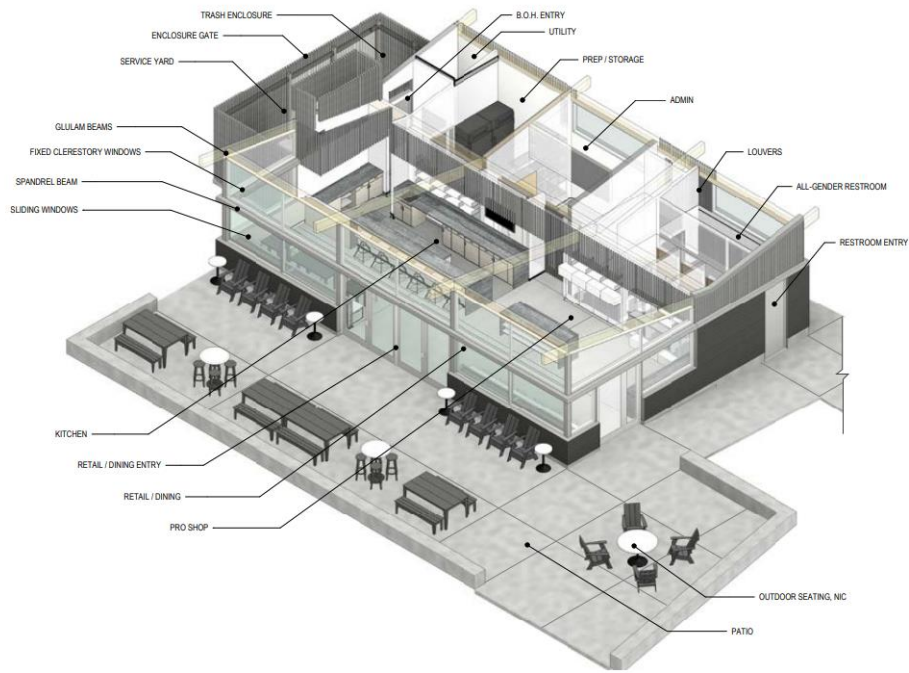
Calendar Year	Weekday					Weekend					Overall
	Resident Adult	Resident Senior	Junior	Standard	Twilight	Resident Adult	Resident Senior	Junior	Standard	Twilight	Total
2017	2,612	2,827	2,134	4,805	3,478	3,004	878	1,518	8,058	2,686	32,000
2018	3,060	2,644	1,884	4,475	2,784	3,079	939	1,392	7,768	2,474	30,499
2019	3,266	2,807	2,482	4,894	3,643	3,466	863	1,693	7,494	2,338	32,946
2020	4,401	4,542	4,207	5,093	2,041	3,415	1,017	2,277	4,741	1,637	33,371
2021	6,249	4,778	3,019	8,614	3,361	4,473	1,192	2,351	8,431	2,296	44,764
Total	19,588	17,598	13,726	27,881	15,307	17,437	4,889	9,231	36,492	11,431	173,580
5 year AVG	3,918	3,520	2,745	5,576	3,061	3,487	978	1,846	7,298	2,286	34,716
% of total rounds	11.28%	10.14%	7.91%	16.06%	8.82%	10.05%	2.82%	5.32%	21.02%	6.59%	

Clubhouse: In addition to the golf course, there will be a new 1,560 square foot (1,330 square foot of usable space) Clubhouse building designed to replace and improve the old Clubhouse building (damaged by a fire in 2018).

The Clubhouse has been designed to provide a golf pro shop, a food and beverage concession, a public restroom, back-of-the house spaces for required utilities and storage. The site improvements will provide two accessible parking spaces and an accessible pathway to connect the building patio to the putting greens and driving range, an 8-station driving cage, located in the western end of Golden Gate Park near 47th Avenue and Fulton Street in San Francisco.







SAN FRANCISCO PUBLIC WORKS
CITY & COUNTY OF SAN FRANCISCO

PROGRAM AXONOMETRIC | CIVIC DESIGN REVIEW 3
RECREATION AND PARK DEPARTMENT | GOLDEN GATE PARK GOLF CLUBHOUSE | 11.16.20



SAN FRANCISCO PUBLIC WORKS
CITY & COUNTY OF SAN FRANCISCO

ELEVATIONS | CIVIC DESIGN REVIEW 3
RECREATION AND PARK DEPARTMENT | GOLDEN GATE PARK GOLF CLUBHOUSE | 11.16.20

B. Goals of RFP:

The goals of this RFP are to ensure that the Lessee will activate this vibrant community space, maintain the continued operation as an important regional recreational resource, improve accessibility for the general public and to avoid the displacement of the diverse user groups that rely upon the well-established recreational and cultural opportunities that the Golf Clubhouse and course provides. In addition, the RFP should provide access for all youth of San Francisco to learn golf.

Another goal of the RFP is to provide funding to improve the golf course. The golf course irrigation system was installed in 1998 and while functional, it is subject to frequent breakage and limitations. The Department is also seeking proposals where the tenant would provide capital to improve the golf course including a new irrigation system, putting surfaces and resculpting of the golf course. The new irrigation system should allow for proper irrigation of site and provide Hunter irrigation control and heads. The new installation will require PVC purple pipe installation for use of recycled water.

The Department will perform all maintenance of the golf course. However, in addition to golf course improvements, the tenant should consider providing the Department additional equipment to ensure proper maintenance of the course going forward including 2 reel master 4500 reelmaster mowers with extra reels, 2 trimax 3100 mowers with extra reels, 1 multipurpose sand pro, and 1 toro workman.

C. Current Operator:

In 2011, the Department conducted a Request for Proposals for a new operator. First Tee of San Francisco, operating through the Golden Gate Park Golf Development Foundation, was selected and has operated the facility since December 1, 2013. The lease provided that the operator would pay rent of \$225,000 (subject to CPI) plus a percentage share of Green Fee Receipts. Since December 1, 2020, First Tee has been operating on a month-to-month basis reflecting the limited clubhouse and expected construction impact and has paid a percentage of greens fees and concessions.

Total Rent paid for the past 5 years is listed below:

GOLDEN GATE PARK GOLF RENT PAYMENTS					
LEASE YEAR		PERCENTAGE			MAINTENANCE
Dec-Nov	BASE RENT	RENT	TOTAL RENT		FEES Remitted*
2016-17	\$225,000.00	\$150,075.00	\$375,075.00		n/a
2017-18	\$225,000.00	\$151,550.00	\$376,550.00		\$7,994.00
2018-19	\$234,810.76	\$204,974.00	\$439,784.76		\$58,344.00
2019-20	\$242,476.16	\$159,283.00	\$401,759.16		\$51,594.00
2020-21	\$242,476.16	\$207,352.20	\$449,828.36		\$79,588.00

***Maintenance Fees are remitted directly to the department and are not included in rent. See section G below for Greens Fees information.**

D. Use of the Facility

The Lessee shall be expected, at a minimum, to provide the following services:

- Pro Shop. Hiring and managing a competent staff to handle the day-to-day business operations of a 9-hole course and 8-station driving cage, managing a smooth flow of play by coordinating all tee times, managing tournaments, teaching individual and group golf lessons, ordering product, merchandising and marketing.
- Food and Beverage. Developing a varied food and beverage offering comparable to that offered at similar golfing facilities.
- Equipment rentals. Offering a variety of golf clubs for rental and pull carts.

E. Web Presence

To effectively market the course and its offerings, Lessee will be expected to develop a web page detailing pertinent information for golfers and provide online Tee Times. The website will be able to be linked to the Department web page to better access potential users of the course.

F. Branded Products

The Lessee may develop, in conjunction with the Department, golf products, including items of clothing that are “branded” with a “Golden Gate Park Golf” logo, artwork or words (collectively “Logo”). The Department must approve all products that are to receive the Logo. At the termination of the lease, any Logo shall become the property of the City.

G. Greens Fees

The Lessee will be required to charge greens fees that have been approved by the City. The current fees in effect on the date of this RFP are:

FEE SCHEDULE for GOLDEN GATE PARK GOLF COURSE			
		Weekdays	Weekends & Holidays
Standard		23.00	27.00
Resident		18.00	20.00
Senior Resident		15.00	18.00
Junior		8.00	10.00
Twilight		15.00	17.00
Tournament		39.00	43.00

- Fees in the schedule above include a maintenance fee of \$2 per 9 holes for all but the Junior fees. The entire maintenance fee will be required to be remitted to the Department in full on a monthly basis and will not be considered part of any rent payment.
- Resident fees are set by the Park Code and are subject to annual cost of living increases. Any other changes to Resident fees require approval of the San Francisco Board of Supervisors.

- Nonresident fee changes may be approved with the Department’s permission based on market conditions.
- The Tournament rate only applies only to the San Francisco Family tournament.

Flexible Pricing Option

Temporary fee increases and/or decreases in fees may be made from time to time, based on one or more of the following factors: the type of use, fluctuations in customer demand at particular times or on particular days or dates or as among different Golf Courses, rates at comparable courses, and course conditions subject to the following limitation for resident rates:

- (1)¹ discounts of up to 50% for Resident Rates;
- (2)¹ increases of up to 50% for Tournament Rates; and
- (3)¹ increases of up to 25% for Resident Rates.

H. Golf Instruction

The Lessee will be required to develop a comprehensive instruction program offering golf lessons to the general public. Lesson fees are to be set at market rate.

I. Revenue History

Attached as Appendix A are charts detailing rounds and greens fee revenues as well as reported ancillary income for the past 5 years.

J. Days and Hours of Operation

Currently, the City guidelines for operation of its golf courses state the courses shall be open 365 days per year from sunrise to sundown. An amended schedule may be proposed by the respondent but must be approved by the Department prior to implementation.

K. Prohibited Items

Lottery tickets and tobacco products may not be sold on the premises.

III. PROPOSED RENT AND KEY LEASE TERMS

Upon successful completion of negotiations with the selected Respondent, the Department anticipates entering into a lease for the operation opportunity at Golden Gate Park Golf Course as described above. This section briefly describes key lease terms required by the Department. Respondents will be required to indicate acceptance of these key lease terms, and to submit a proposal that is consistent with these terms. The actual terms of the Lease will be negotiated with Department staff and are subject to final approval by the San Francisco Recreation and Park Commission (the “Commission”) and, if required, the San Francisco Board of Supervisors.

A. Form of Agreement

The form of this lease will be the City’s standard lease requiring the Lessee to collect and retain all revenues from the business operations at Golden Gate in exchange for a base rent lease payment and possible participation rent to the City. The maintenance fee will collected by the Lessee and will be required to be remitted monthly to the City and is not considered to be rent. Please see

Appendix B for the City's standard form lease.

B. Minimum Annual Guarantee

Respondent shall propose a minimum annual guarantee lease payment to cover a portion of the Department's course maintenance costs and overhead. The City expects the minimum annual guarantee payment to be at least \$275,000 (to be increased annually by CPI), to be paid on a schedule, as determined in the lease negotiations.

C. Percentage Rent

Respondent shall propose a shared revenue plan for a percentage of revenue received from greens fees (excluding the maintenance fee) and other concessions. Rent due will be the higher of this percentage rent or the minimum annual guarantee described above. The Department recommends a different proposal for greens fee revenue and other revenue. This shared revenue plan will be a primary component in the proposal evaluation for Proposed Financial Terms.

D. Capital Improvements

The Department is also seeking proposals where the tenant would provide improvements to the golf course. The golf course irrigation system was installed in 1998 and while functional, it is subject to frequent breakage and limitations. The Department is also seeking proposals where the tenant would provide capital to improve the golf course including a new irrigation system, putting surfaces and resculpting of the golf course. The new irrigation system should allow for proper irrigation of site and provide Hunter irrigation control and heads. The new installation will require PVC purple pipe installation for use of recycled water.

The Department will perform all maintenance of the golf course. However, in addition to golf course improvements, the tenant should consider providing the Department additional equipment to ensure proper maintenance of the course going forward including 2 reelmaster 4500 reelmaster mowers with extra reels, 2 trimax 3100 mowers with extra reels, 1 multipurpose sand pro, and 1 toro workman.

E. Term

The term is for up to six (6) years. The City is prepared to offer a possible option to extend the term of lease by up to an additional nine (9) years, for a lease of up to fifteen (15) years to account for any significant capital investment to the property. The Department will entertain proposals for any enhancements that will result in increased customer experience, revenue and quality of programming. Respondents must demonstrate financial capability to undertake any proposed enhancements above and beyond funds necessary to start and continue the normal day-to-day golf operations. The respondent will be expected to make the improvements within the first two years of the lease in order to exercise the option.

F. Books and Records

The Lessee will be responsible for collecting all greens fees and all other revenues generated from the course. Lessee must demonstrate experience in implementing and following effective and safe cash handling procedures. Lessee will be expected to maintain accurate and complete records,

reports and audits and properly store this information. Lessee will be expected to complete all daily, monthly and annual revenue and utilization reports in a format pre-approved by the City.

G. Maintenance/Repairs

Lessee will be responsible for providing minor building maintenance and janitorial services to the clubhouse and surrounding patio areas and driving cage area including daily care of and supplies for the public restrooms. Major plumbing and electrical repairs and repairs to the clubhouse structural integrity will be performed by City personnel. Lessee may also propose a fund to assist the City with renting additional equipment to maintain the golf course.

H. Utilities

City pays for water, electricity, sewer and gas. Lessee will pay for telephone, internet, garbage and recycling and any other utilities necessary as a result of the specific operation, including the cost of installing said additional utilities.

I. As-Is Condition of the Premises

The Premises will be leased to the Lessee on a strictly "As-Is" basis, without representation or warranty by the City.

J. Subordination

The City's fee ownership and rental income stream will not be subordinated.

K. Security Deposit/Performance Bond

In connection with the Lease, the selected Lessee, upon signing the lease, will be required to provide a security deposit equal in the amount \$50,000. This may be in the form of a Time Certificate of Deposit or an Irrevocable Letter of Credit. All employees of Lessee shall be bonded.

L. Assignment and Subletting

Lessee shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Lessee), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, the business, any Improvements or its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon (collectively, "Sublease") without prior written approval from the Department. Any Assignment or Sublease shall be voidable at the option of the City in its sole and absolute discretion; and the General Manager shall have the right to immediately terminate the Lease by sending written notice to Lessee.

IV. RFP SCHEDULE AND SELECTION PROCESS

A. Submission of Proposals

All proposals must be delivered no later than 3:00pm Wednesday, July 27, 2022, to the Department to: Eric Jue, Recreation and Park Department, 501 Stanyan Street, San Francisco, CA 94117, 415-831-2783. Responses should include two hard copies (one of which can be easily duplicated) and one searchable, non-password-protected USB drive.

B. Evaluation by Selection Committee

After the deadline for submission of proposals, a selection committee appointed by the City ("Committee") will review all conforming proposals. The criteria for evaluating the proposals are described in Section VI of this RFP. Each proposal will be initially reviewed by City staff for completeness, responsiveness to minimum qualifications, and adequacy of documentation. Proposals with significant deficiencies in these areas may receive no further consideration. Respondents that fail to meet the minimum qualifications will be deemed non-responsive and their proposals will not be scored or ranked. All proposals meeting minimum qualifications will be forwarded by City staff to the Committee to determine which proposals best meet the selection criteria. In arriving at its determination, the Committee will evaluate the contents of each proposal and may conduct oral interviews with the respondents. Dates and times of any such interviews will be coordinated by Department staff.

C. Approval by the Commission and Board of Supervisors

The recommendations of the Committee and the negotiated lease will be presented to the Commission by Department staff for its approval or disapproval or such other further direction as the Commission may give in its sole and absolute discretion. If approved it is expected that the negotiated lease will be required to be presented to the San Francisco Board of Supervisors for its approval, which may be given or withheld in its sole and absolute discretion.

D. Partial Estimated Timetable Summary

The City expects to proceed with the RFP selection process on the following schedule:

Anticipated Timeline	
Publish RFP on Department website	June 21, 2022
Pre-submittal Meeting via Zoom at 10:00am	June 29, 2022
Deadline to submit questions by 5:00pm	July 18, 2022
Responses to RFP due by 3:00pm	July 27, 2022
RFP selection complete and Lease Negotiation	August 31, 2022
Operations Committee approval	October 14, 2022
Approval of Lease by Recreation and Park Commission	October 20, 2022
Approval of Lease by Board of Supervisors	November 2022

E. Pre-Submittal Conference and Questions

Although attendance is not required, a pre-submittal meeting will be held at 10:00 a.m. on Wednesday, June 29, 2022, via Zoom. Please contact Eric Jue at Eric.k.jue@sfgov.org to receive an invite to the meeting.

Department staff will address questions and provide any new information then available at the pre-submittal conference. Questions may be answered verbally at the conference. Department staff also will provide written responses to substantive and procedural questions raised at the pre-submittal conference, which may clarify verbal responses previously given. Only written responses will be deemed final.

Any requests for information or clarification of this RFP other than those raised at the pre-submittal meeting must be submitted in writing by email to Eric Jue at Eric.k.jue@sfgov.org before Monday, July 18, 2022. Except for inquiries at the pre-submittal conference, no verbal inquiries will be answered.

Written responses to all questions directed to Department staff at the pre-submittal conference or in writing by the specified date will be posted on the department's web page for this RFP and notice of the posting will be sent to all interested parties who register with the department before the deadline specified above. Therefore, the Department strongly recommends that interested parties register for this RFP on the department's website and consult the website frequently to determine if new information regarding the RFP is available.

F. Limitation on Communications During Solicitation

From the date this RFP is issued until the date the competitive process of this RFP is completed (either by cancelation or final Award), Respondents and their subcontractors, vendors, representatives and/or other parties under Respondent's control, shall communicate solely with Eric Jue at Eric.k.jue@sfgov.org (the "RFP Administrator"). Any attempt to communicate with any party other than the RFP Administrator including any City official, members of the Commission, representative or employee is strictly prohibited. Failure to comply with this communications protocol may, at the sole discretion of Department, result in the disqualification of the Respondent or potential Respondent from the competitive process. This protocol does not apply to communications with the City regarding business not related to this RFP.

V. PROPOSAL FORMAT AND CONTENT

Submittal Requirements – The Proposal

The proposal must demonstrate the vision, qualifications, competence, and ability to lease the Department's property and serve the public. The selection committee will evaluate proposals according to the RFP's submittal requirements. Proposals must include all information requested and must follow the numbering scheme provided. Non-compliance with the outline below will reduce the score.

Respondents must submit two 2 printed copies (in a format that allows them to be copied) of their proposal and one searchable, non-password-protected USB drive.

The title page and up to five-pages of the executive summary may be posted on the Department's website immediately after the proposal due date. Although other portions of the proposal will not be made public during the review process, proposals are subject to the City's Sunshine Ordinance; once a lease agreement is executed, proposals and other communications from interested parties are available to the public upon request. Respondents must clearly mark financial materials that they believe to be proprietary and protected from disclosure. To the extent permitted by law, the Department will attempt to maintain the confidentiality of financial materials marked proprietary.

In order to be eligible for evaluation, respondents must satisfy the Minimum Qualification Requirements (MQRs) stated below. If a respondent is proposing lease terms to be satisfied and/or operations to be performed by more than one entity, all proposed entities must meet the MQRs.

1. Title Page

Provide the RFP title; the respondent's name; the name, address, telephone number, and email of respondent's main point of contact; and the date of the submittal.

2. Table of Contents

Include clear identification of the submittal material by numbered sections that follow the RFP outline.

3. Executive Summary

The respondent must submit an executive summary of up to five (5) pages that highlights those aspects of the proposal that make it responsive to the Department's objectives. Include the vision for the public-serving operation, the proposed general management philosophy, and customer service strategy. The executive summary must, at a minimum, describe the proposed services, the backgrounds and pertinent experience of each of the parties comprising the management team, and the respective responsibilities of the sales and/or service team.

4. Minimum Qualification Requirements (MQR)

Each respondent must individually or collectively, in the case of an entity or joint venture, possess and demonstrate the following minimum qualifications to be considered as a possible candidate for this opportunity:

- 3 years in golf management experience
- 2 years in food service experience
- \$100,000 in liquid assets for set up and initial operating expenses
- A proven track record in developing and implementing a wide variety of golf. Any proposal that does not demonstrate that the Respondent meets these minimum requirements by the deadline for submittal of proposals will be considered non-responsive and will not be eligible for an award of the contract.

Respondents must demonstrate that they meet both the experience and financial ability thresholds for this proposal by providing formal documentation and signed letters of reference.

5. Experience

Provide a robust discussion of the following:

1. Experience operating a concession of a similar size, business model, and setting, including concessions located on public lands or at tourist locations.
2. Ability of respondent and key personnel, including suppliers, vendors, partners, etc., to sustain a consistently high quality of products, services, and all aspects of proposed operations.
3. Describe the individual(s), companies, or other entities that make up the “respondent” to this RFP, including the size, business structure, and range of activities. Particular emphasis should be given to how the respondent’s collective experience will be brought to bear to achieve the Department’s objectives.

6. Operations Plan

Describe your management and operational approach.

1. Identify strategies to ensure that facilities are fully staffed by gracious professionals who are knowledgeable and welcoming.
2. Describe daily operations, with a discussion of the following:
 - Staffing plan, with emphasis on how peak periods are identified and staffed
 - System for accommodating a fluctuating volume of customers including customer seating, with emphasis on peak periods
 - Hiring plan to create jobs and career opportunities for economically disadvantaged persons
 - Training plans
 - Customer service training, including strategies for ensuring that staff are knowledgeable about the GGP Golf Course
 - Staff training to assist customers who speak different languages
 - Diversity training
 - Cultural competency training
 - Formal safety policies and procedures, including onsite emergency and first aid response
 - Harassment prevention training
 - Other training
 - Background checks
 - Proposed hours of operation, including holidays
 - Involvement of principals in daily operations
 - Management plan, including qualifications of onsite management staff
 - System for handling payments, including in-store point of sale and web-based systems, as well as processes for managing receipts, cash handling, reporting, and audits
 - How proposed concession reflect the best of San Francisco: products and / or services, include pricing
 - Retail sales (with inventory summary), include pricing (if applicable)
 - Regular cleaning and maintenance plan, including products used
 - Best practices that are not included in the above categories
 - The difference between startup operations and full implementation

3. A business and marketing plan (“Plan”) describing respondent’s specific ideas for operating the course on an on-going basis in a way that achieves the City’s goals should be included. At a minimum, the Management Plan should describe how respondent plans to:
 - Promote maximum utilization of the golf course: daily play, tournaments, other special events, program development for the entire golfing public.
 - Develop marketing plans and other means of attracting golfers from San Francisco and the greater Bay Area.
 - Interact with various community groups such as golf clubs and neighborhood associations with an interest in Golden Gate.
 - Develop food and beverage, merchandising, instruction, and other collateral activities. Respondents must provide a prototype brochure or advertisement outlining various lesson programs that might be offered. Respondents must also enclose a sample menu for food and beverage offering and a description of the types of merchandise to be offered in the pro shop.
 - Monitor, inspect, maintain and clean the clubhouse and surrounding patio areas and driving cage and restrooms.
 - Create or retain jobs for San Francisco residents, especially encouraging locally owned business enterprises with an equal opportunity to compete for and participate in project development and operations.
 - Describe in detail a plan for marketing Create opportunities for all youth of San Francisco to learn the game of golf
 - The Plan should include a description of cash handling procedures and reporting methods.

7. Business Plan/Pro Formas

Provide a Business Plan with financial projections and five-year pro formas, including, but not limited to:

1. Methodology for determining products and services offerings, as well as general pricing strategy for products and services
2. Marketing and communications strategies
3. Anticipated income from all revenue sources
4. Anticipated expenses by category and rate
5. Start-up investments, including but not limited to tenant improvements, FF&Es (furniture, fixtures, equipment), supplies, and materials

8. Financial Ability

Submit evidence of financial ability to fulfill commitments, including the ability to fund start up needs. Show the source of funds for improvements and start-up expenses.

Provide copies of insurance certificates for current coverage of similar operations including a proposal for providing commercial property insuring the clubhouse for up to \$5 million.

9. Proposed Term and Financial Terms

Propose rent structure/revenue sharing plan:

1. Minimum Monthly Guarantee (MMG) Base Rent, which may vary by month
2. Percentage Rent based upon percentage of gross revenues, which may vary by type of revenue, year, and total revenue
3. Investment required for proposed capital improvements
4. Any additional proposed lease terms upon which respondent's business operations are contingent

Proposed term of the lease and any proposed capital improvements together with extensions.

10. Past Performance (References)

Respondents must provide at least three (3) references from persons in senior level management positions with entities that have done business with respondent. The Department will contact at least the three (3) of the references provided. Respondents must provide the following information for each of the references identified.

1. Name of company/agency, with phone number and email address for the specific reference contact
2. Description of the reference's association with the respondent
3. Type and size of concessions managed and operated, including dates of operation and annual revenues

The reference questions will be sent via email. Make sure that the references provided are aware that they will be receiving a Reference Form from the City of San Francisco that must be returned by a specified date.

11. Respondent's Identification and Qualifications

1. State whether your organization is national, regional, or local; provide the legal address of the respondent's headquarters.
2. Describe the legal structure of the entity submitting the proposal (i.e. sole proprietor, limited liability company (LLC), partnership, corporation, etc.). If a partnership, LLC or corporation, indicate the ownership, rights, and roles of each member of the LLC, partner of the partnership or shareholder of the corporation. Single proposers, consisting of consortiums, joint ventures, or other partnership ventures must clearly establish that lease negotiation responsibilities will rest solely with one individual within the respondent's firm or legal entity. List the principals of submitting entities, identify the designated contact person, and provide the contact's address, phone number, and email.
3. Explain if the respondent, principals, members of the management team or partners have been involved in litigation within the last five (5) years, or if there is pending litigation.
4. Describe the proposed management and operations team, detailing roles and responsibilities, expertise, and estimated weekly work hours of each member.
5. Provide relevant experience of principals including number of years, type of business, positions held, special training, education, certifications, and level of authority.

6. Describe your most recent experience in managing public golf courses and operating the type of concession proposed. Provide evidence of a verifiable track record of success in similar or related business operations.
7. Provide the name and location of existing operations and any operations managed in the past five (5) years.
8. Describe any failures to manage and operate the type of concession being proposed. Where were these concessions located, what services were offered, and why did the venture fail? If a contract was terminated, explain why.

12. Project Feasibility

Delineate how the proposed improvements are consistent with Department's objectives and how the respondent will achieve the vision presented in the proposal.

13 Earnest Money Deposit

Each respondent must submit with the proposal an earnest money deposit in the amount of a \$5,000 cashier's check payable to the Department. Submittals without the earnest money deposit will be deemed non-responsive. Earnest money deposits will be refunded, without interest, to respondents not selected for exclusive negotiations. The earnest money deposit of the respondent selected for exclusive negotiations is nonrefundable, whether or not negotiations result in an operating agreement.

VI. EVALUATION OF PROPOSALS AND AWARD

A. Selection Process Generally

All proposals will be evaluated by the Department in accordance with the criteria and procedures identified in this RFP. Without limiting any of its rights described in Section VII below, the Department reserves the right in its discretion to make a selection based directly on the proposals submitted or to negotiate further with one or more of the respondents. The respondent selected under this RFP will be chosen on the basis of its apparent ability to best meet the overall objectives of the City, as ultimately determined by the Recreation and Park Department in their sole and absolute discretion.

Each proposal will be initially reviewed by the Department staff for demonstration of meeting minimum qualifications, completeness, responsiveness, and adequacy of documentation. Proposals with significant deficiencies in these areas may receive no further consideration.

A selection panel shall assist staff with this review and shall score the proposals according to the point system and criteria listed below. Interviews with individual respondents and/or public presentations may be required. In addition, staff may, at its sole discretion, independently investigate the qualifications of certain respondents and/or conduct interviews with members of certain respondents' teams. The Department reserves the right to request clarification or additional information from a respondent.

B. Selection Criteria

1. Minimum Qualifications. Each respondent must individually or collectively, in the case of an entity or joint venture, possess and demonstrate the following minimum qualifications to be considered as a possible candidate for this opportunity:

- 3 years in golf management experience
- 2 years in food service experience
- \$100,000 in liquid assets for set up and initial operating expenses
- a proven track record in developing and implementing a wide variety of golf programs - especially for youth, families and seniors.

Any proposal that does not demonstrate that the Respondent meets these minimum requirements by the deadline for submittal of proposals will be considered non-responsive and will not be eligible for award of the contract.

2. Evaluation Criteria. The selection committee will use the following weighted criteria to evaluate proposals:

- 1. Experience (20 Points)**
- 2. Operations Plan (20 Points)**
- 3. Business Plan and Financial Projections (15 Points)**
- 4. Financial Ability (15 Points)**
- 5. Proposed Financial Terms (20 Points)**
- 6. Project Feasibility (10 Points)**

C. Selection Committee

Following the Department's receipt of submittals, the Department will implement the evaluation process of timely, complete and responsive submittals from qualified respondents. A Selection Committee will evaluate the submittals of each respondent based on the minimum qualifications and selection criteria as outlined above. Selected respondents may be interviewed by the Selection Committee. Those submittals meeting the minimum qualifications will be scored and ranked by the Selection Committee.

The Department reserves the right to request clarification or additional information from individual respondents and to request that some or all respondents make presentations to Department staff, the Recreation and Park Commission, community groups and/or others. The City further reserves the right to make an award without further clarification of proposals received.

A selection panel shall assist staff with this review and shall score the proposals according to the point system and criteria listed under "Selection Criteria" above. Interviews with individual respondents and/or public presentations may be required. In addition, staff may, at its sole discretion, independently investigate the qualifications of certain respondents and/or conduct interviews with members of certain respondents' team. The Department reserves the right to request clarification or additional information from a respondent.

The Selection Committee will be instructed to score the proposals based upon how completely respondents responded to the requested information outlined in this RFP, the quality, professionalism, vision and appropriateness of such responses, and the level of experience and expertise demonstrated by the responses.

Following the submittal process, Respondents may be invited to interviews with a selection panel. Interviews will consist of standard questions asked of Respondents and clarifying questions regarding individual submissions. The lead staff of the Respondent should be present for the interview as well as the lead staff of any partners and parties authorized to negotiate a contract. Information provided to the panel from the interviews may be used during the scoring process and evaluated using the same evaluation criteria that the selection panel will use to score the written proposals.

D. Exclusive Negotiations

For an exclusive negotiating period of up to 30 days, after the Department finalizes the selection, the City will attempt to negotiate with the selected Lessee, a Lease that is consistent with the standard form of lease, containing the standard lease attached as **Appendix B**, the terms of this RFP and the successful respondent's proposal. Upon successful agreement to all terms of the Lease, the proposed lease will be taken to the Commission for approval.

The period of exclusive negotiations may be extended solely at the City's option. In the event the General Manager of the Department determines that such negotiations are not proceeding satisfactorily due to the fault of the selected respondent, the City may commence negotiations with another respondent or begin the selection process anew. All fees and deposits made to City by respondent are nonrefundable.

VII. TERMS AND CONDITIONS FOR RECEIPT OF PROPOSAL

A. Errors and Omissions in RFP

Respondents are responsible for reviewing all portions of this RFP. Respondents are to promptly notify the Department, in writing, if the respondent discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the Department promptly after discovery, but in no event later than five (5) working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

B. Inquiries Regarding RFP

Inquiries regarding the RFP and all verbal notifications of intent to request written modification or clarification of the RFP, must be directed via email to: eric.k.jue@sfgov.org

C. Change Notices

The Department may modify the RFP, prior to the proposal due date, by issuing Change Notices, which will be posted on the website. The respondent shall be responsible for ensuring that its proposal reflects any and all Change Notices issued by the Department prior to the proposal due date regardless of when the proposal is submitted. Therefore, the City recommends that the respondent consult the website frequently, including shortly before the proposal due date, to determine if the respondent has downloaded all Change Notices.

D. Term of Proposal

Submission of a proposal signifies that the proposed services and prices are valid for 120 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

E. Revision of Proposal

A respondent may revise a proposal on the respondent's own initiative at any time before the deadline for submission of proposals. The respondent must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any respondent.

At any time during the proposal evaluation process, the Department may require a respondent to provide oral or written clarification of its proposal. The Department reserves the right to make an award without further clarifications of proposals received.

F. Responsible Proposals

No proposals will be accepted from any person, firm, partnership, corporation or other entity that is in arrears upon any obligation to the City or that otherwise may be deemed irresponsible, unreliable or unqualified by the City.

G. One Proposal per Respondent

Only one proposal will be accepted from any one firm or corporation, or affiliated entities; however, several alternatives may be included in one proposal, and as noted above, joint ventures or similar arrangements are permitted.

H. Grounds for Rejection

Any false, incomplete, or unresponsive statements in connection with a proposal may be cause for its rejection at the City's discretion. Any judgment as to the significance of any falsity, incompleteness, or unresponsiveness associated with a proposal shall be the prerogative of the City and its judgment shall be final.

I. Invitation to Submit Proposals, no Obligations by City to Contract

This RFP is only an invitation to submit proposals and does not commit the City in any way to enter into a Lease or other agreement or to proceed with the RFP. In addition, the issuance of this RFP does not obligate the City to pay any costs incurred by any Respondent in connection with (i) the preparation of a response to this RFP, (ii) any supplements or modifications of this RFP or (iii) negotiations with the City or other party arising out of or relating to this RFP. All costs incurred in the preparation and presentation of any proposal in response to this RFP shall be borne solely by the respondent.

J. Proposal as a Public Record

All documents under this solicitation process are subject to public disclosure per the California Public Records Act (California Government Code Section §6250 et. Seq) and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Chapter 67). Contracts, Proposals, responses, and all other records of communications between the City and Proposers shall be open to inspection immediately after a

contract has been awarded. Nothing in this Administrative Code provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. The Respondent will clearly designate those financial records which it in good faith determines to be a trade secret or confidential propriety information protected from disclosure under applicable law. To the extent permitted by law, the City will attempt to reasonably maintain the confidentiality of such financial information consistent with the City's general practices for maintaining the confidentiality of such information, as discussed below. However, the City will not under any circumstances be responsible for any damages or losses incurred by a Respondent or any other person or entity because of the release of such financial information.

If the City receives a Public Records Request ("Request") pertaining to this solicitation, City will use its best efforts to notify the affected Proposer(s) of the Request and to provide the Proposer with a description of the material that the City deems responsive and the due date for disclosure ("Response Date"). If the Proposer asserts that some or all of the material requested contains or reveals valuable trade secret or other information belonging to the Proposer that is exempt from disclosure and directs the City in writing to withhold such material from production ("Withholding Directive"), then the City will comply with the Withholding Directive on the condition that the Proposer seeks judicial relief on or before the Response Date. Should Proposer fail to seek judicial relief on or before the Response Date, the City shall proceed with the disclosure of responsive documents.

K. Return of Materials

The City will not return proposals, or any information submitted in connection with a proposal unless the Respondent has properly designated financial portions of the proposal as confidential at the time of proposal in accordance with the terms above and has then clearly requested that such information be returned, and provided that the City is legally permitted to return such documents.

L. Right to Disqualify

The City reserves the right to disqualify any Respondent to this RFP based on any real or apparent conflict of interest that is disclosed by the responses submitted, misrepresentation or false statements in proposal, or other data available to the City. This disqualification is at the sole discretion of the City.

M. Waiver of Claims Against City

The Respondent shall not obtain by its response to this RFP any claim against the City by reason of any or all of the following: any aspect of this RFP, the selection process or any part thereof, any informalities of defects in the selection process, the rejection of any offer or all such offers, the acceptance of any offer, entering into any lease, the failure to enter into any such lease, any statement, representations, acts or omissions of the City or its agents, the exercise of any discretion set forth in or concerning any of the foregoing; and any other matters arising out of all or any of the foregoing.

N. Objections to RFP Terms.

Should a Respondent object on any ground to any provision or legal requirement set forth in this RFP, the respondent must, not more than ten (10) calendar days after the RFP is issued, provide written notice to the City setting forth with specificity the grounds for the objection. The failure of a respondent to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

Without limiting the generality of the foregoing, the information presented in or in

connection with this RFP is provided solely for the convenience of the interested parties. It is the responsibility of interested parties to assure themselves that any information contained in or related to this RFP is accurate and complete. No representations, assurances, or warranties pertaining to the accuracy of such information are or will be provided by the City or its consultants and no claim may be brought against the City or any of their respective consultants as a result of the presentation of such information, irrespective of its accuracy, completeness or general utility.

O. Errors and Omissions in Proposal

Failure by the Department to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the vendor from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

P. Financial Responsibility

The City accepts no financial responsibility for any costs incurred by a firm in responding to this RFP. Submissions of the RFP will become the property of the City and may be used by the City in any way deemed appropriate.

Q. Respondent's Obligations under the Campaign Reform Ordinance

Respondents must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a respondent is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the respondent is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. Criminal. Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
2. Civil. Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. Administrative. Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, respondent should contact the San Francisco Ethics Commission at (415) 581-2300.

R. Public Access to Meetings and Records

If a respondent is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the respondent must comply with Chapter 12L. The respondent must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to respondent's meetings and records, and (2) a summary of all complaints concerning the respondent's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the respondent shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in respondent's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

S. Reservations of Rights by the City

The issuance of this RFP does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right at any time to:

1. Waive or correct any defect or technical error in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue a Request for Proposals;
4. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
5. Request that certain or all respondents to this RFP supplement or modify all or certain aspects of the information or proposals submitted;
6. Procure any materials, equipment or services specified in this RFP by any other means; or
7. Determine that no project will be pursued.

T. No Waiver

No waiver by the City of any provision of this RFP shall be implied from any failure by the City

to recognize or take action on account of any failure by a respondent to observe any provision of this RFP.

U. Protests

Within five (5) working days of the City's issuance of a notice of non-responsiveness, any firm that has submitted a proposal and believes that the City has incorrectly determined that its proposal is non-responsive may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day following the City's issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the respondent, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

- **Protest of Contract Award**

Within five (5) working days of the City's issuance of a notice of intent to award the contract, any firm that has submitted a responsive proposal and believes that the City has incorrectly selected another respondent for award may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day after the City's issuance of the notice of intent to award.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the respondent, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

- **Delivery of Protests**

All protests must be received by the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the City received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered. Protests must be delivered to:

San Francisco Recreation and Park Department, Attn: Eric Jue
501 Stanyan Street
San Francisco, CA 94117

Appendix A- 5-Year Usage and Revenue Actuals

1. Rent Payments

GOLDEN GATE PARK GOLF RENT PAYMENTS				MAINTENANCE FEES Remitted*
LEASE YEAR Dec-Nov	BASE RENT	PERCENTAGE RENT	TOTAL RENT	
2016-17	\$225,000.00	\$150,075.00	\$375,075.00	n/a
2017-18	\$225,000.00	\$151,550.00	\$376,550.00	\$7,994.00
2018-19	\$234,810.76	\$204,974.00	\$439,784.76	\$58,344.00
2019-20	\$242,476.16	\$159,283.00	\$401,759.16	\$51,594.00
2020-21	\$242,476.16	\$207,352.20	\$449,828.36	\$79,588.00

2. Operator Revenues

Calendar Year	2017	2018	2019	2020	2021
Food and Beverage	\$148,984.00	\$122,249.68	\$114,781.11	\$78,840.93	\$107,450.13
Merchandise	\$38,599.75	\$38,894.36	\$60,217.08	\$32,407.97	\$44,957.73
Practice Facility	\$26,742.00	\$25,738.75	\$30,757.00	\$20,800.01	\$49,460.75
Lesson	\$14,569.14	\$8,827.93	\$10,743.60	\$11,789.00	\$19,323.00
Equipment Rental	\$49,649.50	\$44,093.50	\$52,328.50	\$16,442.00	\$38,283.00
Green Fees	\$507,417.50	\$516,189.00	\$607,275.00	\$593,977.00	\$857,836.35
	\$785,961.89	\$755,993.22	\$876,102.29	\$754,256.91	\$1,117,310.96

3. Rounds of Golf Played

Calendar Year	Weekday					Weekend					Overall
	Resident Adult	Resident Senior	Junior	Standard	Twilight	Resident Adult	Resident Senior	Junior	Standard	Twilight	Total
2017	2,612	2,827	2,134	4,805	3,478	3,004	878	1,518	8,058	2,686	32,000
2018	3,060	2,644	1,884	4,475	2,784	3,079	939	1,392	7,768	2,474	30,499
2019	3,266	2,807	2,482	4,894	3,643	3,466	863	1,693	7,494	2,338	32,946
2020	4,401	4,542	4,207	5,093	2,041	3,415	1,017	2,277	4,741	1,637	33,371
2021	6,249	4,778	3,019	8,614	3,361	4,473	1,192	2,351	8,431	2,296	44,764
Total	19,588	17,598	13,726	27,881	15,307	17,437	4,889	9,231	36,492	11,431	173,580
5 year AVG	3,918	3,520	2,745	5,576	3,061	3,487	978	1,846	7,298	2,286	34,716
% of total rounds	11.28%	10.14%	7.91%	16.06%	8.82%	10.05%	2.82%	5.32%	21.02%	6.59%	

Appendix B

Standard City Lease

For a copy of the lease, please go to (INSERT LINK) or contact Eric Jue at eric.k.jue@sfgov.org

RECREATION AND PARK COMMISSION
City and County of San Francisco
Resolution Number 2210-004

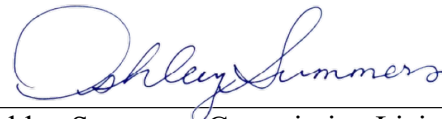
GOLDEN GATE PARK GOLF COURSE – GGPGDF AGREEMENT

RESOLVED, This Commission does 1) enter into exclusive negotiations with the Golden Gate Park Golf Development Foundation (the “GGPGDF”) to manage the golfing and food and beverage operations at the Golden Gate Park Golf Course, and 2) recommend that the Board of Supervisors approve a six year agreement with an option to extend for an additional nine years with the GGPGDF substantially in the form of the term sheet dated. September 30, 2022.

Adopted by the following vote

Ayes	7
Noes	0
Absent	0

I hereby certify that the foregoing resolution was adopted at the Recreation and Park Commission meeting held on October 20, 2022.



Ashley Summers, Commission Liaison

Golden Gate Park Golf Course Lease

BACKGROUND

Golden Gate Park Golf Course (“GGP Golf Course” or the “Course”) is a nine-hole par 27 course that is 1,357 yards long. The course is in the western end of Golden Gate Park near 47th Avenue and Fulton Street in San Francisco. The Course was originally opened in 1949 as a “Pitch and Putt” course, where the golf holes are shorter distances and are played with a number of smaller clubs. The Course has a putting green, an 8-station driving cage, and a clubhouse.

Current Status

Due to an arson fire in 2018, construction of a new clubhouse began in Winter 2022 with anticipated completion in Fall 2023/Winter 2024. Since the fire, the golf course has been run from a mobile container.

The new clubhouse will provide a golf pro shop, food and beverage concession, a public restroom, and back-of-the-house utilities and storage. Site improvements will also provide two accessible parking spaces and an accessible pathway to connect the building patio to the golf activities.

First Tee Program

First Tee began in 1997 as a partnership among the LPGA, the Masters Tournament, the PGA of America, the PGA TOUR, and the USGA to make golf affordable and accessible for all youth. While introducing the game, youth are also accessing a life skills curriculum that supported the development of values found within the game of golf, including honesty, integrity, perseverance and respect. First Tee reaches more than 3.6 million youth annually through national programs delivered at Chapter Program locations.



The First Tee Program - SF Chapter (First Tee SF) was founded in 2004 as part of the renovation of Harding Park. First Tee SF is unique with a driving range campus and classrooms at Harding Park Golf Course. First Tee SF is supported by a Volunteer Board that guides and leads the San Francisco Chapter (which also manages the Golden Gate Park Golf Course) with deep philanthropic roots and commitments to improve and enhance the offerings for the San Francisco youth through golf.

First Tee SF - Schools Program

- 72 SFUSD Elementary Schools: 8,000 students annually
- 1,500 participants transported annually to TPC Harding Park, GGP, and Visitacion Valley locations

TPC Harding Park (650 students yearly)	Golden Gate Park Golf Course (400 students yearly)	Visitacion Valley Middle School (480 students yearly)
Ulloa	Jefferson	El Dorado
Lakeshore	Francis Scott Key	Visitacion Valley
Diane Feinstein		Cleveland
Robert Louis Stevenson		Sheridan
Lawton		ER Taylor

First Tee SF - After-School/Summer Camps

- 800 participants annually at TPC Harding Park, GGP, Mariners Points and Visitacion Valley locations

Future Foursomes

First Tee SF's highest impact program develops participants from age 10-17 the skills necessary to compete/thrive and become positive contributors to their communities. 48 participants are selected through an application process with economic need as the primary criteria.

- 48 committed participants at no cost
- 80% of participants live under the poverty line
- 88% are on the free lunch program
- 92% of participants will be first-generation students
- \$120,000 in Scholarships awarded annually to Future Foursome alumni for higher education or vocational training



LEASE

First Tee, Lessee and Operator

First Tee of San Francisco (FTSF, or First Tee) is the current lessee and operator of the course, operating through the Golden Gate Park Golf Development Foundation (the "GGPGDF"). In 2011, RPD conducted a Request for Proposal (RFP) for a new operator. In 2013, First Tee was selected and subsequently approved by the Rec and Park Commission and Board of Supervisors. The lease expired in December 2020 and it has been operating on a month-to-month basis since that time.

On June 21, 2022, RPD launched a new RFP for the course. The RFP looked for a new operator and suggested that proposals could include a plan to renovate the irrigation infrastructure as the system is so old, many parts are hard to find and maintain.

The Department proposes to move forward with a response submitted by First Tee, operating through the GGPGDF.

PROPOSED LEASE AND MANAGEMENT AGREEMENT

Term: 6 years with an option to extend for 9 additional years if the Minimum Required Capital Improvements described below are completed within 3 years of the initial term.

Rent:

- \$275,000 annual Base Rent
- \$53,000 annually for maintenance equipment
- Green Fee Revenue Share Allocation structure:
 - **\$0 to \$475,000** in revenue, then it will go to GGPGDF (\$328,000 used to make the above payments be used to us)
 - **\$450,000 to \$500,000** in revenue, then it will go to RPD
 - **\$500,000 to \$700,000** in revenue, then it will go to GGPGDF
 - **Over \$700,000 in revenue**, then it will go to Maintenance Standard Incentive (50% of revenue > \$700K to RPD)
- 33% of all Concession Revenue > \$300K to RPD (food & beverage, lessons, events, rentals, merchandise)
- All amounts CPI-indexed

RPD anticipates revenues in the first year of reopening of approximately \$483,000 and expenses of \$503,000.

Maintenance and Operations

- RPD does all of the course maintenance.
- The First Tee will manage the day-to-day operations, welcoming guests, taking tee times, providing food and beverage and other services. They also have the right to maintain a classroom and use the course for their program. They like this location as it provides a good learning opportunity for children with a driving range and short course.
- The provisions provide certain maintenance standards must be met to share in revenue over \$700,000. The standards require a log of certain periodic maintenance and an annual meeting to discuss what is and what is not working.

Minimum Required Capital Improvements: The goal of this project is to replace the irrigation system which is outdated. Many of the irrigation parts cannot be repaired and coverage of the course is limited by irrigation requiring staff spend significant time to maintain it.

As part of the irrigation project, the course will be reseeded and other minor maintenance modifications will be made. All work will be performed by First Tee and will comply with city requirements including prevailing wage. Expected cost of \$2,000,000.

NEXT STEPS – LEGISLATIVE PROCESS**Recreation and Park Commission**

The Commission approved the Department's GGP Golf Course lease on October 20, 2022.

Board of Supervisors

Approval from the Board of Supervisors. First hearing on February 8, 2023 at Budget and Finance Committee.

From: [Conine-Nakano, Susanna \(MYR\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Paulino, Tom \(MYR\)](#); [Ng, Beverly \(REC\)](#)
Subject: Mayor -- Resolution -- Golden Gate Park Development
Date: Tuesday, December 6, 2022 4:12:29 PM
Attachments: [Mayor -- Resolution -- Golden Gate Park Development.zip](#)

Hello Clerks,

Attached for introduction to the Board of Supervisors is a Resolution 1) approving and authorizing a Lease and Operating Agreement between the City and County of San Francisco, acting by and through its Recreation and Park Department, and Golden Gate Park Golf Development Foundation for the management and operation of the clubhouse and golfing operations at Golden Gate Park Golf, located at 970 47th Avenue, for an initial term of six years, with one option to extend the term for an additional nine years, with an annual base rent of \$275,000 plus a share of revenues; 2) determining that the rental rate under the Agreement is appropriate and that the Agreement will serve a public purpose in accordance with Administrative Code Sections 23.30 and 23.33; and 3) adopting findings declaring that the Property is "exempt surplus land" under the California Surplus Lands Act.

Best,
Susanna

Susanna Conine-Nakano
Office of Mayor London N. Breed
City & County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 200
San Francisco, CA 94102
415-554-6147