



London N. Breed, Mayor
Philip A. Ginsburg, General Manager

SECOND AMENDMENT TO OUTSIDE LANDS MUSIC AND ARTS FESTIVAL USE PERMIT

THIS SECOND AMENDMENT To Outside Lands Music and Arts Festival Use Permit (the "Second Amendment"), dated for reference purposes only as of _____, 20__, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through its Recreation and Park Department (the "Department"), and ANOTHER PLANET ENTERTAINMENT, LLC, a Delaware limited liability company ("Permittee").

RECITALS

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

B. In 2012, City and Permittee executed a First Amendment to the Permit (the "First Amendment"), to amend the terms and conditions of the 2009 Permit to extend the term so that Permittee could hold additional events commencing 2014 and continuing through 2021, and to modify provisions regarding the fees payable and certain other provisions, all as set forth therein. The term "Permit" as used hereafter means the original 2009 Permit, as amended by the First Amendment, unless otherwise specified.

C. The annual festivals held pursuant to the Permit have been extremely successful and have provided revenue to benefit the park system, and the "Outside Lands Festival" has become an iconic event that is representative and resonant of both San Francisco and Golden Gate Park.

D. City and Permittee presently desire to amend the terms and conditions of the Permit to extend the term for an additional 10 years, and to update certain provisions related to rents and cost reimbursements based on cost of living and other increases, which updates shall take effect commencing with the 2019 Festival, all on the terms and conditions set forth below.

AGREEMENT

NOW THEREFORE, City and Permittee hereby agree as follows:

1. Defined Terms.

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

b. Festival. As used in the Permit, “Festival” shall mean a consecutive three-day music and arts festival open to the public upon purchase of tickets, similar to the Outside Lands Festival held on the Premises in calendar year 2018.

2. Extension of Term. The term of the Permit is extended as follows. Permittee shall hold an additional Festival on the Premises during each year commencing with 2019 and continuing through 2031. Each annual Festival shall be held between June 1st and August 31st on such dates as are mutually agreed to by City and Permittee by the date which is 30 days after the end of the prior year’s Festival. Permittee accepts the Premises in their “as is” condition for the extended term, and the terms and conditions of the Permit, as amended by this Amendment, shall apply throughout the extended term. The dates on which the Premises will be made available to Permittee for each annual Festival, including the load-in and load-out dates required for set-up and take-down of Festival fixtures and equipment, shall be confirmed by the parties in writing, either as a supplemental Exhibit B to the Permit or such other format as the parties shall agree. The Permit shall expire on the date on which the load-out is to be completed for the 2031 Festival.

3. Minimum Permit Fee. The Minimum Permit Fee for calendar years 2019-2031 shall be calculated as provided in the “Permit Fees and Financial Terms” section of Section 1 of the Permit. Notwithstanding the provisions of the Permit to the contrary, the Minimum Permit Fee payable for the 2019 Festival shall be \$2,500,000, which shall be increased by \$75,000 each year thereafter.

4. Additional Rent. The “Permit Fees and Financial Terms” section of Section 1 of the Permit shall be amended to provide that the Additional Rent per ticket sold by Permittee or its agents shall be \$1.25 for the 2019 Festival; \$1.50 for the 2020-2023 Festivals; \$1.75 for the 2024-2027 Festivals, and \$2.00 for the 2028-2031 Festivals. Each year, the Additional Rent shall be paid in addition to the Minimum Permit Fee and Percentage Rent. For the purpose of calculating the Additional Rent, multiday tickets shall be calculated as if a single ticket had been sold for each day for which such ticket is valid.

5. Subject to Recreation and Park Department and City Uses. Section 8 of the Permit (“Subject to Recreation and Park Department and City Uses”) shall be amended so that the phrase “general admission tickets” is deleted and replaced with the phrase “tickets/passes.” Section 8 shall also be amended to add the following: “Permittee shall also donate to City, at no

charge to City, a booth in an agreed upon area, to be used by City or the City's designated not-for-profit partner for community and philanthropic engagement and/or membership outreach.”

6. Endowed Gardener. Section 43 of the Permit shall be amended to provide that Permittee shall contribute an additional \$107,201 to the Recreation and Park Department to endow a gardener to assist with maintaining the Festival site in 2019, which amount shall be adjusted each year commencing in 2020 and through 2031 for cost of living changes using the same multiplier as is used to adjust Park Code Fees by the Controller's office under Park Code Section 12.20. The City shall notify Permittee of the change by February 1 of each year.

7. Polo Field Regeneration Fee. Section 44 of the Permit shall be amended to provide that the annual \$15,000 contribution shall be adjusted each year commencing in 2019 and through 2031 for cost of living changes using the same multiplier as is used to adjust Park Code Fees by the Controller's office under Park Code Section 12.20. The City shall notify Permittee of the change by February 1 of each year.

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

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

10. Community Benefit Funds. Section 25 of the 2012 Amendment to the Permit (“Community Benefit Funds”) shall be amended to provide that Permittee shall expend a total of \$50,000 annually to fund improvements or benefit programs for the two supervisorial districts located adjacent to the Festival footprint (i.e., District 1 and District 4), allocated evenly between those two districts (\$25,000 each). Starting in 2026, this amount will increase to \$30,000 per district per year. The parties shall continue to follow the procedures for developing funding priorities for these funds as set forth in Section 25 of the 2012 Amendment.

11. Prevailing Wage. The following provision shall be added to the Permit as Section 32.1:

“32.1. Prevailing Wages and Working Conditions. To the extent required to do so as a result of having executed this 2018 Amendment, Permittee will also pay, and will require its contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities at the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined

in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11). The provisions of Chapter 21C are hereby incorporated by reference and made a part of this agreement. If Permittee or its contractors (or any subcontractors) fail to comply with these terms, to the extent applicable, then City will have all available remedies against Permittee to secure compliance and seek redress for workers who performed these activities, together with the remedies set forth in this Permit. Permittee shall cooperate fully with the Labor Standards Enforcement Officer (OLSE) and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Chapter 21C, including, without limitation, any investigation of noncompliance by Permittee or its Subcontractors. City may also inspect and/or audit any workplace, job site, books, and records pertaining to the performance of this Permit, and may interview any individual who is performing, or has performed, such activities at the Premises. Permittee will provide City (and will require any contractor or subcontractor who maintains those records to provide to City), on request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate such activities at the Premises. Permittee may obtain a copy of the current Prevailing Rate of Wages from City by contacting OLSE. Permittee acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Permittee and any Subcontractors shall be bound by and shall fully comply with any such amendments adopted by the Board of Supervisors."

12. Restriction on the Use of Pesticides. The following provision shall be added to the Permit as Section 48:

"48. Restriction on the Use of Pesticides. 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. Permittee will 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 Permittee may need to apply to the Premises during the term of this Permit, (ii) describes the steps Permittee 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 Permittee's primary IPM contact person with the City. Permittee will comply, and will require all of Permittee's contractors to comply, with the IPM plan approved by the City and will comply with the requirements of sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Permittee were a City department. Among other matters, those 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 Permittee to keep

certain records and to report to City all pesticide use at the Premises by Permittee's staff or contractors.

If Permittee or Permittee's contractor will apply pesticides to outdoor areas at the Premises, Permittee 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 pesticide application must 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>."

13. San Francisco Packaged Water Ordinance. The following provision shall be added to the Permit as Section 49:

"49. San Francisco Packaged Water Ordinance. Permittee will comply with San Francisco Environment Code Chapter 24 ("Chapter 24"). Permittee may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Permit or on City property unless Permittee obtains a waiver from the City's Department of the Environment. If Permittee violates this requirement, the City may exercise all remedies in this Permit and the Director of the City's Department of the Environment may impose administrative fines as set forth in Chapter 24. The City will continue to work with the Permittee to determine the adequacy and availability of potable water and will not unreasonably withhold any needed waivers."

14. Outreach. Section 6 of Exhibit B of the Permit ("Outreach") shall be amended as follows:

- a. To provide that the plan shall include a public meeting to be held in the Richmond District between 30 and 90 days after the event each year.
- b. To provide that the hotline shall be staffed during any time that there is amplified sound and that phone will be operational as soon as load in occurs with messages received and responses provided within 2 hours of all calls.

15. Interagency Cooperation. Section 8 of Exhibit B of the Permit ("Inter-Agency Cooperation") shall be amended to delete the reference in the second paragraph to "MTA, Police and DPT" and replace it with "SFMTA and Police"; and shall be further amended to delete the third paragraph and replace it with the following: "RPD, the Mayor's Office, the relevant City Agency and the Presenter will negotiate the costs for the services annually."

16. Local Hire. Section 23 of the 2012 Amendment ("Local Hire") shall be amended to provide that the Permittee shall annually hold one or more job fairs in the neighborhoods surrounding Golden Gate Park to attempt to hire qualified San Francisco residents to fill vacant positions for the Festival, with at least one job fair held each year in the Richmond District, and

that the scope of all such job fairs shall be subject to the approval of the General Manager which shall not be unreasonably withheld.

17. Transportation and Parking. Section 3 of Exhibit B or the Permit (Transportation and Parking). Shall be amended to add the following after the first bullet:

- A traffic enforcement plan in the neighborhoods to ensure drivers comply with traffic regulations.

18. Amplified Sound. Section 47 of the Permit shall be amended to add the following after paragraph 3. The number of sound monitors shall be no less than three (3) and will be adjusted annually. Following each annual concert, the Department shall review the number of complaints and the responsiveness and may require that the number of dedicated sound monitors be increased.

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

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

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

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

[No further text this page.]

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

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

By: _____
PHILIP GINSBURG, General Manager
Recreation and Park Department

PERMITTEE: ANOTHER PLANET ENTERTAINMENT, LLC,
a Delaware Limited Liability Company

By: _____
Name: _____
Title: _____

**APPROVED BY
RECREATION AND PARK COMMISSION
PURSUANT TO RESOLUTION NO. _____ DATED: _____**

Margaret McArthur, Commission Liaison

APPROVED AS TO FORM:

DENNIS HERRERA,
City Attorney

By: _____
Manu Pradhan
Deputy City Attorney