

CONCESSION AGREEMENT
between
THE CITY OF SEATTLE
Department of Parks and Recreation
and
EarthCorps

THIS AGREEMENT is made and entered into as of _____, 2017 (the “Effective Date”) by and between THE CITY OF SEATTLE, a municipal corporation (“the City”), acting by and through its Department of Parks and Recreation and its Superintendent (“DPR” and “Superintendent”, respectively), and EARTHCORPS, a Washington not-for-profit corporation (“Concessionaire”).

RECITALS

WHEREAS, the City owns certain land totaling 93.1 acres, obtained from the United States of America (hereinafter referred to as the “USA”), as surplus property, known as Naval Station Puget Sound, Sand Point / Warren G. Magnuson Park (“Magnuson Park”), and conveyed to the City on March 17, 1999 by quitclaim deed recorded by the King County Recorder’s Office under recording number 9905041194 (the “USA Deed”) a copy of which is attached as Exhibit D; and

WHEREAS, condition No. 3 of the USA Deed provides that “[t]he property shall not be sold, leased, assigned, or otherwise disposed of, except to another eligible governmental agency...However, nothing in this provision shall preclude the Grantee from providing recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior;” and

WHEREAS, the Secretary of the Interior’s delegated representative, the National Parks Service (“NPS”), has concurred; and

WHEREAS, Concessionaire has used space at Magnuson Park since 2000; and

WHEREAS, DPR and Concessionaire have similar missions to restore parks and natural areas and strengthen community through hands-on environmental service; and

WHEREAS, DPR and Concessionaire have a history of working together to restore City parks using and training volunteers of all ages and abilities; and

WHEREAS, Concessionaire broadens DPR’s mission by working to build a global community of leaders through environmental service; and

WHEREAS, it is in the best interests of both DPR and Concessionaire to enter into a long-term Agreement to headquarter Concessionaire’s program in Building 30 in Magnuson Park;

NOW, THEREFORE, in consideration of the mutual promises, terms, conditions and performances described herein, the parties hereby agree as follows:

1. PREMISES AND ADJACENT AREA

1.1 Premises Description, Right to Use, and Condition

As used in this Agreement, “Premises” means portions of the building commonly referred to as Building 30 located on the land legally described on Exhibit A-5, in Magnuson Park, Seattle, Washington. The Premises are depicted on the floor plans attached as Exhibits A-1 and A-2 and described in Exhibit A-4, and comprise approximately 7,114 square feet. The City grants Concessionaire the right to use and occupy the Premises for the Permitted Use as described below, subject to the terms and conditions herein. Concessionaire accepts the Premises in their AS IS condition.

1.2 Adjacent Area

1.2.1 License to Use. In addition to use and occupancy of the Premises, the City grants Concessionaire an exclusive and revocable license to install and maintain storage facilities, including a fuel shed, in the location depicted on Exhibit A-3 as “Adjacent Area”. Fuel storage is limited to the area marked as “Fuel Storage” on Exhibit A-3, and Concessionaire may store therein the quantity of fuel allowed by Concessionaire’s fuel storage permit, but not to exceed sixty (60) gallons of gasoline. All terms and conditions of this Agreement that are applicable to the Premises shall also be applicable to the Adjacent Area unless otherwise expressly provided herein. Concessionaire’s right to use the Adjacent Area is limited to the purposes described in this Subsection unless otherwise approved in writing by DPR. The City makes no guarantee that the Adjacent Area is code compliant, and Concessionaire accepts the Adjacent Area in its AS IS condition.

1.2.2 Termination of License. The City reserves the right to terminate the Concessionaire’s license to use the Adjacent Area, without reduction in Concession Fee or liability of any kind, if the Superintendent determines, in his or her discretion, that the Adjacent Area is needed for another City purpose. To terminate the license, the City shall provide Concessionaire written notice of not less than seventy-five (75) days before the effective termination date. In such event, the City may, but is not obligated to, offer the Concessionaire an alternative area. If the City does not offer a replacement area, or if the offered replacement area is not acceptable to the Concessionaire, the Concessionaire shall have the right to terminate this Agreement, without liability to either party, upon written notice of not less than seventy-five (75) days to the City. The City does not represent or guarantee that the Adjacent Area will remain available for use by the Concessionaire throughout the Term of this Agreement.

2. MAGNUSON PARK COMMON AREAS; PARKING AND LOADING ZONE

2.1 Magnuson Park Common Areas

Concessionaire may use those areas of Magnuson Park designated by the Superintendent for public use (the “Common Areas”), including the parking areas, in common with members of the general public during normal Magnuson Park hours and subject to the Superintendent’s rules and regulations. The City shall at all times have exclusive control and management of the Common Areas and no diminution thereof shall be deemed a constructive or actual eviction or entitle Concessionaire to compensation or a reduction or abatement of Concession Fee, provided such changes do not permanently and materially interfere with Concessionaire’s access to the Premises for the Permitted Use.

2.2 General Parking

Except as set forth below, no exclusive parking rights are associated with this Agreement. Parking shall be available on a first come/first served, unreserved basis. Access to such public parking by Concessionaire and its employees and customers shall be governed by Magnuson Park rules as they may be amended from time to time by the Superintendent.

2.3 Service Vehicle Parking

The City acknowledges that Concessionaire needs designated loading zones to allow access to its storage sheds and that Concessionaire has a number of service vehicles associated with its daily operation of service. The City hereby agrees to establish loading zones by appropriate signage in the area designated as “Reserved Fleet Parking/Loading Zone” on Exhibit A-3 (the “Parking/Loading Zone”). Additionally, Concessionaire is hereby granted the right to park its service vehicles in the Parking/Loading Zone. Upon request by the City and upon reasonable notice, Concessionaire shall temporarily move its service vehicles from the Parking/Loading Zone to another designated location within Magnuson Park. The City agrees to give Concessionaire as much notice as is reasonably possible under the circumstances but in any event, not less than three (3) business days’ notice, unless an unanticipated emergency situation arises. Additionally, the City agrees that it will not request that Concessionaire’s vehicles be moved more than five (5) times during any calendar month. The City reserves the right to take full possession of all or any portion of the Parking/Loading Zone for any length of time deemed necessary with sixty (60) days’ prior notice should the City require use thereof.

3. **TERM**

3.1 Initial Term.

This Agreement shall be for an initial term of ten (10) years (the “Initial Term”), beginning on the date when this Agreement is executed by an authorized representative of both parties (the “Commencement Date”) following an authorizing ordinance of Seattle City Council. Once fully executed, this Agreement shall supersede any prior agreements between the parties regarding the use and occupancy of Building 30.

3.2 Extended Terms.

Concessionaire shall have the option to extend the Initial Term for up to two (2) successive individual extended terms of five (5) years (each, an “Extended Term”) on the same terms and conditions set forth herein, except for the Concession Fee which shall be as provided under Section 5.4. To exercise its option to extend, Concessionaire must give the City written notice of Concessionaire’s intention to extend at least ninety (90) days prior to the expiration of the then-current Term. As used in this Agreement, any reference to the “Term” means the Initial Term and any and all Extended Term(s) exercised by Concessionaire hereunder.

4. PERMITTED USE

4.1 Permitted Use

Concessionaire shall use the Premises for classrooms, meeting rooms, storage and administrative offices related to the general operations of Concessionaire as a nonprofit organization dedicated to local environmental restoration, including trail work and the training of staff and volunteers (the “Permitted Use”). Concessionaire shall not use the Premises for any other purpose or make any use of the Premises that is inconsistent with the Permitted Use without the Superintendent’s prior written consent.

4.2 Conditions in USA Deed

This Agreement and the obligations of the parties hereto are subject to the terms and conditions set forth in the USA Deed and the current program of utilization which governs the use of the Premises. Concessionaire shall use the Premises in strict accordance with all the terms and conditions imposed by the USA as set forth in the USA Deed that pertain to the use of the Premises, including but not limited to the terms and conditions regarding hazardous materials, lead-based paints, asbestos, and historic resources contained in provisions in paragraphs 8, 9, 10, 11, 12 and 13 of the USA Deed. In the event of any conflict between the terms and conditions of the USA Deed and any provisions of this Agreement, the terms of the USA Deed shall control. Violations of said terms and conditions of the USA Deed may be grounds for termination of this Agreement and reversion of the Premises to the USA, in the discretion of the USA. Concessionaire-owned personal and real property improvements associated with the Premises, may be subject to seizure, without compensation, by the USA.

5. CONCESSION FEE

5.1 Concession Fee

Beginning on the Commencement Date, Concessionaire shall pay the City an annual fee (the “Concession Fee) at an initial rate of \$15.00 per square foot for the Premises (7,114 SF), which as of the Commencement Date is an annual amount of \$106,710. The square footage used for calculating the Concession Fee is based on a measurement of the Premises with adjustments for certain unusable area as set forth in Exhibit A-4. Concessionaire acknowledges that it has had the opportunity to measure the Premises and that the square footage amount is mutually agreed upon for purposes

of calculating the Concession Fee and is not subject to re-measurement. As a result, the Concession Fee shall not be subject to any adjustment during the Term based on the square footage of the Premises, including any change resulting from tenant improvements. The Concession Fee shall be paid in twelve (12) equal monthly installments (initially \$8,892.50 each month), subject to any offsets under Section 5.6, together with any applicable leasehold excise tax (“LET”) which may become due under Section 12.4.

5.2 Time and Manner of Payment

Concessionaire shall pay the annual Concession Fee in twelve equal monthly installments, along with any LET, in advance, on or before the first day of each month during the Term. All payments shall be by check or money order, and made payable to the City. All payments shall be delivered to:

The City of Seattle
Department of Parks and Recreation
6310 NE 74th St., Suite 109E
Seattle, WA 98115
ATTN: Manager

or to such other address as DPR may hereafter designate, in writing, or by electronic fund transfer or such other manner of payment as DPR may approve, which approval shall not be unreasonably withheld, conditioned or delayed.

5.3 Adjustments to Concession Fee.

Beginning on the first anniversary of the Commencement Date and annually thereafter during the Initial Term, the Concession Fee shall be adjusted upward by \$1.00 per square foot annually.

5.4 Concession Fee during Extended Term(s)

5.4.1 Market Rate Concession Fee. Effective on the first day of each Extended Term, if any, the Concession Fee shall be adjusted to “fair market rate” as determined in this Section 5.4. As used in this Agreement, “fair market rate” shall mean the rate per square foot that a willing concessionaire would pay in an arms-length transaction for use and occupancy and concession rights in comparable space in Building 30 and in comparable buildings in comparable locations pursuant to a comparable agreement. Notwithstanding the foregoing, the fair market rate adjustment shall not result in an increase of more than ten percent (10%) of the Concession Fee payable by Concessionaire in the last year of the immediately preceding Term. Within forty-five (45) days of City’s receipt of Concessionaire’s notice of its intention to extend the Term, the City shall propose to Concessionaire the fair market rate for the Extended Term. Concessionaire shall notify the City in writing within forty-five (45) days if Concessionaire disagrees with the City’s determination of the fair market rate, and shall provide Concessionaire’s determination of fair market rate. Thereafter, the parties shall attempt to agree upon the fair market rate, but if they are unable to agree within thirty (30)

business days, either party may initiate arbitration to determine the fair market rate using the process in Section 5.4.2. After the first year of each Extended Term, the Concession Fee shall be adjusted annually as provided under Section 5.3.

5.4.2 Arbitration of Fair Market Rate. After the expiration of the negotiation of fair market rate in Section 5.4.1, either party may initiate arbitration by giving the other party written notice of initiation of arbitration and designation of the initiating party's proposed arbitrator. Within ten (10) business days, the other party will also designate an arbitrator. Any arbitrator appointed under this Agreement must be a real estate broker licensed in the State of Washington who has been regularly engaged in the business of commercial leasing in the Puget Sound region for at least ten (10) years immediately preceding the appointment under this Agreement. If either party fails to select an arbitrator, the fair market rate will be determined by the arbitrator selected by the other party. Each arbitrator will independently make her or his determination of the fair market rate within twenty (20) days after the appointment of the second arbitrator. If the two arbitrators' determinations are not the same, but the higher of such two values is not more than one hundred five percent (105%) of the lower of them, then the fair market rate will be deemed to be the average of the two values. If the higher of such two values is more than one hundred five percent (105%) of the lower of them, then the two arbitrators will jointly appoint a third arbitrator within ten (10) days after the second of the two determinations described above has been rendered. The third arbitrator will independently make her or his determination of the fair market rate within twenty (20) days after her or his appointment. The highest and the lowest determinations of value among the three arbitrators will be disregarded and the remaining determination will be deemed to be the fair market rate. Within thirty (30) days after the fair market rate Concession Fee is determined, the parties will execute an amendment to this Agreement setting forth the adjusted Concession Fee, which shall be effective as of the first day of the applicable Extended Term. Thereafter, the Concession Fee shall be adjusted annually as provided under Section 5.3.

5.5 Late and Refused Payments

Concessionaire acknowledges that late payment to the City of any sum due the City hereunder will cause DPR to incur costs not contemplated by this Agreement including but not limited to processing and accounting charges and the cost of administering and enforcing this Agreement, the exact amount of which would be extremely difficult and impractical to ascertain. Therefore, if Concessionaire fails to pay any sum when such amount is due to the City, Concessionaire shall pay to the City a late charge of Fifty Dollars (\$50.00). In addition, Concessionaire shall pay the City a Twenty-Five Dollar (\$25.00) charge (or such larger amount as may be hereafter established by ordinance) for each check refused payment for insufficient funds or any other reason. Interest on late payments shall accrue at the rate of twelve percent (12%) per annum from the date due to the date paid.

5.6 Offsets

5.6.1 Concessionaire Improvement Allowance. The City will allow Concessionaire a one-time improvement allowance for improvements actually made to the Premises up to a maximum of \$485,000.00 (the “Allowance”). The Allowance will be in the form of an offset against the Concession Fee in an amount equal to actual costs associated with Concessionaire’s improvements which are pre-approved using the process in Section 5.6.2 and which are completed in compliance with Section 8. The Allowance shall only be available to offset the cost of improvements actually made under the terms and conditions of this Section 5.6 and Section 8, and Concessionaire shall not be entitled to any refund or Concession Fee offset for unused portions of the Allowance. Only payments expended for the categories of costs described in Exhibit C are eligible to be applied by Concessionaire towards its Allowance.

5.6.2 Superintendent’s Approval of Improvement Allowance. In order for improvements to qualify for an offset against the Concession Fee, Concessionaire shall identify which improvements it intends to include in its Allowance at the time Concessionaire seeks the Superintendent’s approval to make the improvements under Section 8.1, and Concessionaire shall also include its proposed budget. Within thirty (30) days after Concessionaire’s submission, the Superintendent shall provide Concessionaire a statement of the total amount of budgeted construction costs that are potentially eligible for credit against the Concession Fee under the Allowance. If the Superintendent disallows any proposed offset, the Superintendent will provide the reasons.

5.6.2.1 Required Tenant Improvement: Concessionaire shall make replacement of the exterior windows of the Premises the first priority for use of the Allowance, and no other improvements shall be eligible for the Allowance unless the window replacement is completed. If window replacement may be completed within the amount of the Allowance, any remaining balance may be used for improvements approved under Section 5.6.2. If the cost of total window replacement exceeds the Allowance, Concessionaire shall complete that portion which may be completed for the Allowance but shall not be required to expend more than the Allowance on the window replacement. However consistent with Concessionaire’s acceptance of the Premises in AS-IS condition, City shall have no responsibility for replacing any windows or completing any improvements to the Premises. Prior to installation the Concessionaire must submit design and operation specifications for the intended windows for approval by the Superintendent, whose approval will be granted, conditioned or withheld within that official’s reasonable discretion. As a condition of including the cost of window replacement in the Allowance, Tenant shall complete the installation of the windows (or, if the cost of total window replacement exceeds the Allowance, the installation of windows which may be completed within the Allowance) within one year of the Commencement Date, provided that if there is any delay beyond Concessionaire’s reasonable control (including without limitation delays due to the unavailability of contractors to complete the work within such time period or delay in the Superintendent’s approval unrelated to Tenant’s design submissions), the Superintendent shall extend the time period by the amount of such delay. Once installed according to the approved plans, and subject to inspection and acceptance by DPR, the windows shall become the property of the City

and Concessionaire shall assign all warranties to the City. Thereafter, the City shall assume responsibility for maintenance, operation and routine repairs of windows.

5.6.2.2 Periodic Offsets of Allowance: So long as Concessionaire has commenced installation of the windows, then beginning on the first day of the sixth month following the Commencement Date Concessionaire may provide DPR an accounting of expenses actually paid to date which are eligible for the Allowance, together with any supporting documentation the Superintendent may reasonably require. Within thirty (30) days of receipt of the accounting, DPR shall notify Concessionaire in writing of the amount of the approved offset. Thereafter, Concessionaire may apply the approved offset by stating in its monthly Concession Fee payment the amount of Concession Fee being offset; provided that the offset shall not exceed forty-five percent (45%) of the Concession Fee due in any single month. Thereafter, Concessionaire may continue to submit accountings of costs eligible for the Allowance from time to time, but no more frequently than monthly.

5.6.2.3 Final Accounting. Not later than six (6) months after Concessionaire completes the improvements which the Superintendent approved for the Allowance, Concessionaire shall provide the Superintendent with a final accounting of Concessionaire's actual costs associated with such capital improvements together with such supporting documentation as the Superintendent may reasonably request. The Superintendent shall approve the final amount of costs expended by Concessionaire in connection with such improvements and this amount shall constitute the amount of the eligible Concession Fee offset up to the full Allowance (less any portion of the Allowance previously applied pursuant to Section 5.6.2.2). Concessionaire shall remain solely responsible for all costs that exceed the Allowance and for all costs that are not approved by the Superintendent. Once the Superintendent approves the final amount of the Allowance, Concessionaire may apply the approved offset by stating in its monthly Concession Fee payment the amount of Concession Fee being offset; provided that the offset shall not exceed forty-five percent (45%) of the Concession Fee due in any single month. For example, if the monthly installment of the Concession Fee due is \$8,893.00, then the maximum offset amount is \$4,002.

5.6.3 Prevailing Wage. As a condition of any costs for construction, alterations, or improvements to the Premises or surrounding areas being eligible for the Allowance as an offset against Concession Fee, Concessionaire shall require its contractor to pay prevailing wages in accordance with Washington's Prevailing Wage Statute, RCW 39.12.

5.6.4 Improvements to become the City's Property. Unless otherwise provided in the Superintendent's approval, upon expiration or termination of this Agreement, title to all capital improvements to the Premises shall automatically transfer to the City. All improvements to the Premises shall be completed as required under Section 8. Nothing in this Section shall be construed to limit Concessionaire's general obligations to care for the Premises as provided under Section 7.

5.6.5 Public Benefit Offsets. In addition to offset of the Allowance against the Concession Fee, Concessionaire may offset up to 5% of the annual Concession Fee

through the “Public Benefit Offset”. As used in this Agreement, “Public Benefit Offset” means the value of Concessionaire’s delivery of programming and services to DPR or the public, as approved by the Superintendent according to the process in this Section 5.6.5. Examples of the types of programming and services which are generally eligible for inclusion in the Public Benefit Offset are described on Exhibit B-1 and Exhibit B-2. In order to obtain the Public Benefit Offset, within thirty days after the Commencement Date and thereafter on or before November 1st of each year during the Term, Concessionaire shall submit to the Superintendent (or its designee if so notified by the Superintendent) a proposal of public programming with measurable performance objectives it intends to provide during the coming calendar year. The proposal shall include an estimate of the value based on factors such as the estimated cost to Concessionaire of the labor and materials provided, the value of the public services to be provided, or other reasonable factors demonstrating the dollar value. The Superintendent will respond to the proposal within sixty (60) calendar days, approving or disapproving in whole or in part. If the Superintendent disallows any proposed public benefit or the estimated value, the Superintendent will provide the reasons. After receiving the Superintendent’s approval of the proposal for the coming year, Concessionaire may apply the offset in twelve (12) equal installments against the monthly amount of the Concession Fee for the applicable year. Within thirty (30) days after the end of each calendar year, Concessionaire shall submit to the Superintendent a Public Benefit Offset report outlining the pre-approved programs, benefits and services actually delivered in the prior year and including an itemized statement of time, labor rates, materials and other information supporting the dollar value of Concessionaire’s Public Benefit Offset applied to the Concession Fee in the prior year. The Superintendent will respond within sixty (60) days, and may request more information, deny the request, or approve the request. If the Superintendent determines that the value of Public Benefit Offset actually provided is less than the amount applied against the Concession Fee in the prior calendar year, Concessionaire shall pay the deficiency in cash within thirty (30) days. Concessionaire shall not be entitled to a Public Benefit Offset that exceeds five percent (5%) of the Concession Fee, even if the actual value of public benefit programming exceeds that amount. Concessionaire shall not be entitled to carry forward any excess public benefits provided, nor shall Concessionaire be entitled to any refund. Final approval of Public Benefit Offsets is at the sole discretion of the Superintendent. The following is an illustration of the Public Benefit Offset:

Space Type	Square Footage	Concession Fee Rate/SF	Total
Annual Concession Fee for the Premises	7,114. ft.	\$15.00	\$106,710.00
Possible Public Benefit Offset (5%)		(\$0.75)	(\$5,335.50)

Annual Concession Fee less Public Benefit Offset		\$14.25	\$101,374.50.
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6. UTILITIES

6.1 General.

So long as Concessionaire is not in default under this Agreement after notice and the passage of any applicable cure period, the City shall furnish and pay for electric, water, sewer, and garbage collection services to the Premises. Concessionaire may, at Concessionaire’s sole expense, elect to install natural gas service to the Premises. DPR shall cooperate with Concessionaire, at no cost to DPR, in applying for and obtaining all necessary permits and approvals associated with activation of such natural gas service; provided that Concessionaire shall remain responsible for obtaining all necessary permits. Additionally, DPR will cooperate in obtaining and recording any easements that may be required by the utility provider, subject to any required approvals from the National Park Service or Seattle City Council. Concessionaire shall be responsible for the cost of any telecommunications utilities or any other services necessary for Concessionaire’s Permitted Use of the Premises. Concessionaire shall obtain the Superintendent’s prior written consent before installing lights or equipment in the Premises that exceed the Premises’ standard mechanical loads. The Superintendent may refuse to grant consent unless Concessionaire agrees to pay (1) the costs incurred by the City for installation of supplementary air conditioning capacity or electrical systems as necessitated by Concessionaire’s equipment or lights and (2) in advance, on the first day of each month during the Term, the amount estimated by the Superintendent as the excess cost of furnishing electricity or utility service for the operation of equipment or lights above normal Building 30 levels.

6.2. Interruption.

City shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. The City shall perform periodic preventative maintenance on all electrical, plumbing, fire suppression, mechanical and enclosure systems of Building 30, and the elevator in service on the south end of Building 30, and maintain them in good operating condition. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements or due to accident, strike or conditions or events beyond City's reasonable control shall be deemed an eviction of Concessionaire or to relieve Concessionaire from any of Concessionaire’s obligations hereunder or to give Concessionaire a right of action against City for damages, so long as the City takes steps reasonable under the circumstances to cure such interruption or failure of such services. Concessionaire acknowledges its understanding that there may be City-planned utility outages affecting the Premises and

that such outages may interfere, from time to time, with Concessionaire's use of the Premises. City shall provide Concessionaire with not less than forty-eight (48) hours prior written notice of any City-planned electricity outage in the Premises. City has no obligation to provide emergency or backup power to Concessionaire. The provision of emergency or backup power to the Premises or to enable the equipment therein to properly function shall be the sole responsibility of Concessionaire. If utilities are interrupted at the Premises so as to render the Premises unfit for Concessionaire's Permitted Use for a period of more than forty-eight (48) hours, then the Concession Fee for the year shall be abated for the duration of the disruption in the proportion that the number of days of the disruption bears to the number of days of the year.

7. CARE OF PREMISES

7.1 General Obligation; Routine Maintenance.

Concessionaire shall take good care of the Premises and shall repair or reimburse City for all damage done to the Premises that results from any act or omission of Concessionaire or any of Concessionaire's officers, contractors, agents, invitees, licensees or employees, including, but not limited to, cracking or breaking of glass, reasonable wear and tear and damage not caused by Concessionaire and existing prior to the Commencement Date excepted. Concessionaire shall be responsible for all maintenance of Concessionaire's fixtures and shall be responsible for all routine maintenance of the Premises, except to the extent to be performed by the City pursuant to Section 7.3.

7.2 Custodial Service for Premises.

Concessionaire shall at its own expense, at all times, keep the Premises and Adjacent Area in a neat, clean, safe, and sanitary condition; and keep the glass of all interior windows and doors serving the Premises clean and presentable. Concessionaire shall provide all janitorial services and furnish all cleaning supplies and materials needed to maintain the Premises in the manner prescribed in this Agreement. Concessionaire shall be responsible for keeping the areas immediately adjacent to the perimeter of the Premises free of litter and clean of spills resulting from Concessionaire's operations.

7.3 City Maintenance.

All industry standard repairs and regular preventative maintenance necessary to maintain the structural and exterior components of Building 30 and the Premises, the Common Areas, and the heating, ventilation, utility, electric, sprinkler, elevator and plumbing and other systems and equipment serving Building 30 and the Premises in a reasonably good operating condition, as reasonably determined by City, shall be performed by City at its expense, including washing of all exterior windows and regular maintenance and janitorial service for the Common Areas. The foregoing sentence does not extend to maintenance occasioned by an act or omission of Concessionaire or its officers, agents, employees, or contractors. Except in the event of City's gross

negligence or intentional misconduct, there shall be no abatement or reduction of the Concession Fee arising by reason of City's making of repairs, alterations or improvements.

7.4 Refuse Collection; Recycling of Waste Materials.

Concessionaire shall provide all necessary housekeeping and janitorial services for the Premises to a level consistent with other similar DPR facilities and operations and to the Superintendent's reasonable satisfaction. Concessionaire shall be responsible for proper storage and removal of trash, litter pickup and recycling consistent with City standards.

7.5 Joint Annual Inspection of Premises; Remedial Action Obligation

Each year throughout the Term, Concessionaire shall participate in an annual inspection of the Premises with an DPR representative, and Concessionaire shall take any and all action that DPR may reasonably require to maintain and repair the Premises in accordance with the requirements of Section 7.1 and 7.2 of this Agreement. Likewise, the City shall take any and all action that the City is required to take in accordance with its maintenance and repair responsibilities as set forth in Section 7.3 of this Agreement.

7.6 City Remedy upon Concessionaire's Failure to Maintain Premises

If Concessionaire fails to maintain the Premises in a neat, clean and sanitary condition as required by this Agreement, DPR shall notify Concessionaire to undertake such work as is reasonably required to so maintain them. If Concessionaire fails to commence such work within fifteen (15) days after Concessionaire's receipt of the City's notice and to diligently prosecute it to completion, then DPR shall have the right, at its option and in addition to all other remedies, to undertake such work and to invoice Concessionaire for the costs incurred by the City in connection therewith. The City shall have the right to enter the Premises for such purposes, and the City shall have no liability to Concessionaire for any damage, inconvenience, or interference with Concessionaire's use of the Premises as a result of the City's performing any such work, except to the extent resulting from the negligence or willful misconduct of City or its agents, employees or contractors. Nothing in this Section shall be deemed to obligate the City to undertake repair or maintenance that is the obligation of Concessionaire under this Agreement.

7.7 Prohibition against Installation or Integration of Any Work of Visual Art on Premises without City's Consent.

City reserves to and for itself the right to approve or disapprove of the installation or integration on or in the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration. Concessionaire shall not install on or integrate into, or permit any other person or entity to install on or integrate into, the Premises any such work of visual art without City's prior,

express, written consent. City's consent to the installation of any such art work may be granted, granted upon one or more conditions, or withheld in City's discretion.

7.8 Concessionaire's Indemnification of City against Liability under Visual Artists Rights Act of 1990.

In addition to all indemnification obligations under Section 9, Concessionaire shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of any of the following by Concessionaire or any of its officers, employees or agents: (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Agreement.

8. IMPROVEMENTS BY CONCESSIONAIRE

8.1 Improvements. All approvals required by the Superintendent under this Section will be granted, conditioned or withheld in that official's reasonable discretion. Concessionaire shall not make any alterations, additions or improvements in or to the Premises that change the structural or mechanical systems of Building 30 or adjacent areas, or that impact the historic features of Building 30, or that exceed \$25,000 in cost without first submitting to DPR professionally-prepared plans and specifications for such work and obtaining the Superintendent's prior written approval thereof. Concessionaire covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Concessionaire's sole cost and expense by a contractor approved by the Superintendent and in a manner that (a) is consistent with the City-approved plans and specifications and any conditions imposed by City in connection therewith; (b) is in conformity with high quality commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the Premises or Building 30 or any of the Premises' or Building's systems; (e) does not disrupt the business or operations of any other occupant of Building 30; and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises or Building 30. Concessionaire shall secure all governmental permits and approvals required for the work; shall comply with all other applicable governmental requirements and restrictions; and shall reimburse City for any and all expenses incurred by the City in connection therewith. Concessionaire shall complete design and construction of all improvements and alterations within the Premises in compliance with all applicable building codes and permitting and legal requirements, including but not limited to compliance with applicable building codes and with the Americans with Disabilities Act (ADA). Concessionaire expressly acknowledges that the provisions of the ADA applicable to facilities in public buildings may exceed requirements contained in building codes and other regulations and that such instances, the ADA requirements shall

control. Except to the extent caused by the City's negligence or intentional acts or omissions, Concessionaire shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) arising from or out of Concessionaire's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Concessionaire's breach of its obligations under terms of this Section 8. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Concessionaire's moveable trade fixtures and appliances and equipment not affixed to the Premises (including without limitation furniture, computers, point of sale systems and registers) shall become the property of City at the expiration or termination of this Agreement without any obligation on its part to pay for any of the same. At City's request, Concessionaire shall execute a deed or bill of sale in favor of City with respect to such alterations and/or improvements. Notwithstanding the foregoing, at the termination or expiration of this Agreement, Concessionaire shall remove all its moveable trade fixtures, appliances and equipment, data services wires and equipment, and any other improvements identified for removal by the Superintendent at the time of approval under this Section, and leave the Premises in a broom clean condition on the expiration or termination of this Agreement. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises for which the Superintendent's approval is required under this Section, Concessionaire shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Concessionaire.

8.2 Additional Improvements. The City disclaims any representation or warranty that Building 30, the services to Building 30, the Common Areas or any other areas in or around the Premises are suitable for Concessionaire's intended improvements and use of the Premises. Subject to the Allowance in Section 5.6, Concessionaire shall be solely responsible for any costs necessary to make improvements to areas in, around, or outside the Premises as may be required for a permit and in order to complete Concessionaire's improvements or in order for Concessionaire to use the Premises for the Permitted Use. Any changes or improvements to Building 30 exterior must be submitted for historic review and approved by Landmarks Board.

9. INDEMNIFICATION

9.1 Indemnification

To the fullest extent provided by law and except as otherwise provided in this Section 9, Concessionaire shall indemnify, defend and hold the City harmless from and against any liability, claim, damage, cost or expense (including reasonable attorneys' fees) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to any property arising from or relating to: (i) Concessionaire's improvement, use and occupancy of the Premises and any portion thereof, or any use by Concessionaire's officers, employees, agents, contractors,

volunteers, or invitees; or (ii) any act or omission of Concessionaire or any of its officers, employees, agents, contractors, volunteers, or other third parties for whose acts Concessionaire is liable pursuant to Washington law on or about the Premises; or (iii) any breach of this Agreement. In furtherance of Concessionaire's indemnification obligations, Concessionaire hereby waives any immunity Concessionaire may have or any limitations on the amounts or types of damages under any industrial insurance, worker's compensation, disability, employee benefit or similar law, but such waiver shall apply only as to the City and to the extent necessary to fulfill Concessionaire's obligations under this Section 9. The City and Concessionaire acknowledge that the foregoing waiver of immunity was mutually negotiated. The foregoing notwithstanding, the Concessionaire shall not be obligated to indemnify, defend or hold the City harmless with respect to claims, damages, costs or expenses to the extent arising out of the City's negligence or intentional acts or omissions, and the City shall indemnify, defend and hold the Concessionaire harmless with respect to claims, damages, costs and expenses to the extent arising out of the City's negligence or intentional acts or omissions or that of its employees. The City's obligation under this Section 9.1 is not intended to and shall not be deemed a waiver of the City's immunity under RCW 4.24.210 as now existing or hereafter amended.

9.2 Survival of Indemnification Obligations

The provisions of Section 9.1 shall survive the expiration or earlier termination of this Agreement.

9.3 Assumption of Risk

The placement and storage of personal property in or on the Premises shall be at the sole risk of Concessionaire, provided that this assumption of risk shall not operate as a waiver of the Concessionaire's right to assert a claim against the City for damages caused by the City's negligence or intentional acts or omissions.

10. CITY'S CONTROL OF MAGNUSON PARK & VICINITY

All Common Areas and other facilities provided by the City in the vicinity of the Premises, including parking areas, are subject to the City's exclusive control and management. Accordingly, the City may do any and all of the following (among other activities in support of DPR or other municipal objectives):

10.1 Change of Vicinity: Increase, reduce, or change in any manner whatsoever the number, dimensions and locations of the walks, buildings, and parking areas in the vicinity of the Premises so long as such changes do not violate the express terms of this Agreement or materially and permanently render the Premises unfit for the Permitted Use;

10.2 Traffic Regulation: Regulate all traffic within and adjacent to the Premises, including the operation and parking of Concessionaire's vehicles and those of its invitees, employees, and patrons;

10.3 Display of Promotional Materials: Erect, display and remove promotional exhibits and materials and permit special events on property adjacent to the Premises;

10.4 Promulgation of Rules: Promulgate, from time to time, reasonable rules and regulations of general applicability to the use and occupancy of any DPR property including but not limited to the Premises;

10.5 Change of Businesses: Change the size, number, and type and identity of concessions, stores, businesses, and operations being conducted or undertaken in the vicinity of the Premises.

11. DAMAGE OR DESTRUCTION

If the Premises are destroyed or damaged by fire, earthquake, or other casualty, Concessionaire shall promptly notify the Superintendent of the extent of such destruction or damage and the extent of the Premises that remain usable, if any, for Concessionaire's purposes. If the damage is repairable within twenty-four (24) months from the date of the occurrence, then if insurance proceeds or self-insurance coverages are available to pay the full cost of the repairs (except for the deductible amounts) City shall repair the Premises with due diligence. However, City retains the sole option to not repair or replace Building 30 or Premises for any reason, in which case the City may elect to terminate this Agreement upon sixty (60) days written notice. The Concession Fee shall be abated in the proportion that the un-tenantable portion of the Premises bears to the whole thereof, as the Superintendent reasonably determines, for the period from the date of the casualty to the completion of the repairs. If the damage to the Premises is uninsured or cannot be repaired within twenty-four (24) months from the date of the occurrence, either City or Concessionaire may terminate this Agreement upon sixty (60) days' written notice to the other. If thirty percent (30%) or more of Building 30 is destroyed or damaged or the Premises are not damaged but damage or destruction to Building 30 materially and adversely impacts the Permitted Use and the damage is not insured or cannot be repaired within twenty-four (24) months, then regardless of whether the Premises are damaged or not, Concessionaire may elect to terminate this Agreement upon sixty (60) days written notice to City. In the event of damage by casualty, Concessionaire shall, at its sole cost and expense, be responsible for repair of damage to its own personal property and the City shall not be required to repair or restore any damage or injury or to replace any equipment, inventory, fixture, or other personal property of Concessionaire or others located on the Premises. Neither City nor Concessionaire shall be liable in damages to the other for terminating this Agreement in accordance with the provisions of this section.

12. COMPLIANCE WITH LAWS

12.1 General Requirements

Concessionaire shall not use or permit the Premises or any part thereof to be used for any purpose in violation of the environmental and usage controls set forth in the USA Deed or any municipal, county, state or federal law, ordinance or regulation.

Concessionaire shall promptly comply, at its sole cost and expense, with all laws, ordinances and regulations now in force or hereafter adopted applicable to Concessionaire's business operations or relating to or affecting the condition, use or occupancy of the Premises.

12.2 Licenses and Other Authorizations

Concessionaire, at no cost to the City, shall secure and maintain in full force and effect during the Term, all required licenses, permits and similar legal authorizations, and comply with all requirements thereof, and shall submit to DPR evidence of Concessionaire's satisfaction of all such requirements upon request. Concessionaire shall pay all fees and charges incurred in obtaining any required permits or other governmental approvals.

12.3 Nondiscrimination and Equal Employment Opportunity

Without limiting the generality of Section 12.1, Concessionaire shall comply with all applicable equal employment opportunity and nondiscrimination laws of the USA, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code, as they may be amended from time to time; and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

12.4 Taxes, Assessments and Other Governmental Impositions

Together with the Concession Fee required under Subsection 5.1, Concessionaire shall pay to the City whatever leasehold excise tax is assessed pursuant to RCW Ch. 82.29A as a consequence of Concessionaire's use and occupancy of the Premises under this Agreement. Concessionaire shall also remit to the appropriate taxing authority all other taxes, assessments, levies, and other impositions that may be due and payable with respect to property owned by Concessionaire on the Premises, Concessionaire's activities, and Concessionaire's interest in this Agreement, before the same become delinquent.

13. ENVIRONMENTAL STANDARDS

13.1 Definitions

As used in this Agreement, "Environmental Law" means any environmentally related local, state or federal law or regulation, ordinance or order, now or hereafter amended including, but not limited to: the Federal Clean Air Act; the Federal Clean Water Act; the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of 1980; the Federal Waste Management Recovery and Recycling Act; the Federal Toxic Substances

Control Act; the Washington Hazardous Waste Management Act; Washington Model Toxics Control Act; the Washington Water Pollution Control Act; the Washington Underground Petroleum Storage Tanks Act; the Washington Industrial Safety and Health Act; the Washington Worker and Community Right to Know Act; the Washington Oil and Hazardous Substance Spill Prevention and Response Act; and any regulations promulgated thereunder from time to time. As used in this Agreement, “Hazardous Substance” means any substance designated as, or containing any component designated as, hazardous, toxic, harmful or subject to regulation under any Environmental Law.

13.2 Concessionaire’s General Obligations

Concessionaire shall not keep any Hazardous Substance on or about the Premises, nor shall Concessionaire permit the Premises to be used to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process Hazardous Substances, without the Superintendent’s prior, written consent, except fuel storage as permitted under Section 1.2, and customary office and cleaning supplies in reasonable, normal quantities handled in compliance with applicable law and safety guidelines. With respect to the fuel storage and any other Hazardous Substance the Superintendent has approved for use or storage on the Premises, Concessionaire shall provide the City with Concessionaire’s USEPA Waste Generator Number, and with copies of all Material Safety Data Sheets, Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Concessionaire receives from, or provides to, any governmental unit or agency in connection with Concessionaire’s handling of any Hazardous Substance or the presence, or possible presence, of any Hazardous Substance on the Premises.

13.3 Environmental Testing

The City shall have access to the Premises upon reasonable notice to conduct environmental inspections. In addition, Concessionaire shall permit the City access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the City’s expense, provided the City makes reasonable efforts not to interfere with Concessionaire’s Permitted Use of the Premises. Concessionaire shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Superintendent’s written consent. Concessionaire shall promptly inform DPR of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to Concessionaire, and Concessionaire shall provide a copy of each of the same to DPR immediately following Concessionaire’s receipt of the same.

13.4 Concessionaire’s Obligation to Remove Hazardous Substances

Prior to Concessionaire vacating the Premises, in addition to all other requirements under this Agreement, Concessionaire shall remove any Hazardous

Substance stored or released on the Premises by Concessionaire or its agents or employees during the Term, and shall dispose of such Hazardous Substances in compliance with all applicable Environmental Laws. Concessionaire shall provide copies to the City of all required paperwork related to the characterization, transportation and disposal of Hazardous Substances from the Premises, within thirty (30) days after disposal of such Hazardous Substances.

13.5 Concessionaire's Obligations upon Violation of Environmental Standards; City's Remedial Rights

If Concessionaire violates any of the terms of this Article 13 concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Concessionaire shall within ten (10) days after notice from the City commence to take such action as is necessary to mitigate and correct the violation as required by Environmental Laws. If Concessionaire does not act within ten (10) days after notice from the City to commence to correct such violation, the City reserves the right, but not the obligation, to come onto the Premises and to take such action as the Superintendent deems necessary to ensure compliance or to mitigate the violation; provided that the City may take such action immediately and without prior notice to the Concessionaire if the City has a reasonable belief that Concessionaire is in violation of any law or regulation and that such violation presents an imminent threat of damage to the Premises or imminent risk to the public. All costs and expenses incurred by the City in connection with any such actions shall become due and payable by Concessionaire within ten (10) days after the City's presentation of an invoice therefor.

13.6 Additional City Remedies for Concessionaire's Violation of Environmental Standards

No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the City shall be entitled to full reimbursement from Concessionaire whenever the City incurs any costs resulting from Concessionaire's violation of the terms of this Section 13, including, but not limited to, remedial action costs, fines, penalties assessed directly against the City, injuries to third persons or other properties, and loss of revenues resulting from an inability to allow other persons or entities to use or occupy the Premises due to its environmental condition as the result of Concessionaire's violation of the terms of this Agreement (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).

13.7 Concessionaire's Environmental Indemnification Obligation

In addition to all other indemnities provided in this Agreement, Concessionaire shall defend, indemnify and hold the City free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup and other remedial action costs (including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation) (collectively, "Claims"), arising from the Concessionaire's use, release or disposal of any

Hazardous Substance on the Premises during the term of this Agreement, or the migration of any Hazardous Substance released by Concessionaire, its agents or employees during the term of this Agreement from the Premises to other properties or into the surrounding environment, whether (i) made, commenced or incurred during the Term of this Agreement, or (ii) made, commenced or incurred after the expiration or termination of this Agreement if arising out of Concessionaire's, or its employees, agents, contractors, licensees, or invitee's acts, omissions, or breach of this Agreement during the Term. Nothing contained in this Section 13 shall require Concessionaire to indemnify City for any such Claims resulting from the presence of Hazardous Substances that have come to be located on the Premises or in the soil or ground water prior to the Effective Date or resulting from Hazardous Substances released or disposed of by persons other than Concessionaire, its agents, employees, or other persons under the reasonable control of the Concessionaire, unless Concessionaire negligently exacerbates or contributes to the migration or continued release of such Hazardous Substances.

13.8 Survival of Environmental Obligations

The provisions of this Section 13 shall survive the expiration or earlier termination of this Agreement.

14. **LIENS AND ENCUMBRANCES**

Concessionaire shall keep the Premises free and clear of any liens and encumbrances arising or growing out of its improvement, use and occupancy of the Premises. At the City's request, Concessionaire shall furnish the City written proof of payment of any item that would or might constitute the basis for such a lien on the Premises if not paid.

15. **INSURANCE**

15.1 Concessionaire's Insurance Coverages and Limits

Concessionaire shall, at its sole cost and expense, maintain, and cause its Subtenant(s), if any, to maintain in full force and effect the following minimum limits of insurance throughout the entire Term:

15.1.1 **Commercial General Liability (CGL)** written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

\$1,000,000 per Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal/Advertising Injury Liability
\$1,000,000 Damage to Premises Rented to You

Employers Liability / Washington Stop
\$1,000,000 Each Accident / Each Disease / Policy Limit

Alternatively, may be evidenced as Employer's Liability insurance under Part B of a Workers Compensation insurance policy.

Coverage shall include: Premises and Operations; Broad Form Property Damage (Including Completed Operations); Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of Owner as required by contract; General Aggregate Limits of Insurance shall apply separately; "Claims Made" and "Modified Occurrence" policy forms are not acceptable.

The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by Concessionaire, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by Concessionaire as respects this Agreement, nor (2) construed as limiting the liability of any of Concessionaire's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

15.1.2 Automobile Liability insurance at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased or hired vehicles as applicable, with a minimum limit of \$1,000,000 each accident for bodily injury and property damage.

15.1.3 Workers' Compensation insurance securing Concessionaire's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington.

15.1.4 Umbrella or Excess Liability insurance if and as necessary to maintain total CGL and Automobile Liability insurance limits of \$5,000,000 Each Occurrence and be no less broad than coverages described above.

15.1.5 Property Insurance under which the Concessionaire's furniture, trade fixtures, equipment and inventory ("Business Personal Property") and all alterations, additions and improvements that Concessionaire makes to the Premises are insured throughout the Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (excluding earthquake), not less broad than provided by the insurance industry standard "Causes of Loss - Special Form" (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or

hereafter installed on the Premises; (iv) loss from business interruption or extra expense, with sufficient coverage to provide for the payment of the Concession Fee and other fixed costs during any interruption of Concessionaire's business. City shall be named as a loss payee as respects property insurance covering the alterations, additions and improvements under such policy.

15.1.6 **Pollution Legal Liability** is required if the Concessionaire will be using or storing hazardous materials or regulated substances, such as fuel. It is acceptable to add ISO endorsement CG 24 15 Limited Pollution Liability Extension or its equivalent to the CGL policy or obtain a separate pollution legal liability policy.

15.1.7 **Builder's Risk.** During such time as Concessionaire is engaged in the performance of tenant improvements or other renovation of the Premises, the Concessionaire shall maintain in full force and effect "All Risks" Builder's Risk Property insurance or equivalent for the portion of the Premises under renovation, including fire and flood, on a replacement cost new basis subject to a deductible of no more than \$50,000 each loss. It shall be Concessionaire's responsibility to properly coordinate with the City's Risk Management Division for the placement of Builder's Risk Property insurance prior to any new construction on, or structural alteration of, the Premises.

15.1.8 In the event that the City reasonably deems insurance to be inadequate to protect Concessionaire and the City, Concessionaire shall increase coverages and/or liability limits as the City shall deem reasonably adequate within sixty (60) days after the date of written notice.

15.2 City's Property Insurance Coverage and Limits

City will maintain at its expense Property Insurance or self-insurance under which the Premises, excluding Concessionaire's Business Personal Property and tenant improvements, are insured throughout the Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss, not less broad than provided by the insurance industry standard "Causes of Loss - Special Form" (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises. Concessionaire shall be responsible to pay the deductible to the proportional extent to which the loss or damage is attributable to Concessionaire's negligent acts.

15.3 General Requirements for Concessionaire's Insurance

15.3.1 The CGL insurance and, in addition, Excess and/or Umbrella liability insurance, if any, shall include “The City of Seattle, its officers, officials, employees, agents and volunteers” as additional insureds. Concessionaire’s insurance shall be primary and non-contributory to any insurance maintained by or available to the City. The term “insurance” in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.

15.3.2 Coverage shall not be cancelled without forty-five (45) day written notice of such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium, to the City at its notice address except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer.). The City and the Concessionaire mutually agree that for the purpose of RCW 48.18.290 (1) (e), for both liability and property insurance the City is deemed to be a “mortgagee, pledge, or other person shown by (the required insurance policies) to have an interest in any loss which may occur thereunder.”

15.3.3 Each insurance policy required hereunder shall be (1) subject to reasonable approval by City that it conforms with the requirements of this Section, and (2) be issued by an insurer rated A–: VII or higher in the then-current A. M. Best’s Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).

15.3.4 Any deductible or self-insured retention (“S.I.R.”) must be disclosed to, and shall be subject to reasonable approval by, the City. Concessionaire shall cooperate to provide such information as the City may reasonably deem to be necessary to assess the risk bearing capacity of the Concessionaire to sustain such deductible or S.I.R. The cost of any claim falling within a deductible or S.I.R. shall be the responsibility of Concessionaire. If a deductible or S.I.R. for CGL or equivalent insurance is not “fronted” by an insurer but is funded and/or administered by Concessionaire or a contracted third party claims administrator, Concessionaire agrees to defend and indemnify the City to the same extent as the City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.

15.4 Waiver of Subrogation

The City and Concessionaire waive all subrogation rights each may have against the other, or any subtenant, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Premises, or that would fall within the scope of a policy of property insurance or program of self-insurance for property loss that a party is required to maintain under this Agreement, whether or not the party suffering the loss actually maintained the insurance.

15.5 Evidence of Insurance

On or before the Commencement Date, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address as evidence of the insurance coverage required to be maintained by Concessionaire:

15.5.1 Certificates of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and

15.5.2 A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;

15.5.3 A copy of the CGL insurance policy provision(s) documenting the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement;

15.5.4 Pending receipt of the documentation specified in Section 15.5.3, Concessionaire may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

Original certificates of insurance shall be issued to:

The City of Seattle
Department of Parks and Recreation
6310 NE 74th St., Suite 109E
Seattle, WA 98115
ATTN: Manager

15.6 Assumption of Property Risk

The placement and storage of Concessionaire's Business Personal Property in or about the Premises shall be the responsibility, and at the sole risk, of Concessionaire.

15.7 Adjustments of Claims

The Concessionaire shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Concessionaire under this Agreement.

15.8 Concessionaire's Responsibility

The procuring of the policies of insurance required by this Agreement shall not be construed to limit the Concessionaire's liability under this Agreement.

16. RECORDS, BOOKS & DOCUMENTS FOR CITY ACCESS AND AUDIT

Concessionaire shall keep separate, accurate, complete and auditable records and receipts for each year, showing the programming offered at and from Magnuson Park. All such records shall be retained in King County, Washington, for at least six (6) years after the close of any fiscal year in which they were generated or issued. Concessionaire's books and records shall be subject at all reasonable times to inspection, review, or audit in King County by personnel duly authorized by DPR, the City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract. Concessionaire shall ensure that such inspection, audit and copying right of the City is a condition of any license, contract or other arrangement under which any other person who is not a Concessionaire employee or other entity is permitted to carry on a business or social service activity in, on or from the Premises.

17. ACCESS

DPR and NPS shall have the right, at all reasonable times and with prior notice to Concessionaire, to enter the Premises for purposes of inspecting, cleaning, repairing, altering, or improving the Premises or Building 30 to the extent required or permitted under this Agreement; provided that the City may not alter or improve the Premises for any reason other than for safety or code compliance without the Concessionaire's consent, and nothing contained in this Section 17 shall be construed so as to impose any obligation on DPR to make any repair, alteration, or improvement. If the City's activities prevent the Concessionaire from using the Premises the Concessionaire shall be entitled to a reasonable abatement of the Concession Fee. Concessionaire shall not install any lock or bolt or other security device on any portion of the Premises without DPR's written consent. Concessionaire shall provide DPR with a key to each lock installed on any portion of the Premises (other than keys to safes, filing cabinets and the like).

18. SIGNS OR ADVERTISING

18.1 Concessionaire's Signs

Concessionaire shall have the right upon prior written approval from DPR to install a sign on the Premises that identifies the same for Concessionaire's purposes. Any such sign shall be constructed in a style and size consistent with the City's sign code and DPR's then-current signage policy. DPR hereby approves Concessionaire's signage on the Premises existing as of the Commencement Date.

18.2 No Other Signage on Premises

Other than the signage permitted by Section 18.1, above, Concessionaire shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere in or about the Premises without first obtaining DPR's written consent thereto. Any such sign shall be constructed in a style and size consistent with the City's sign code and DPR's then-current signage policy. Any consent so obtained from DPR shall be with the understanding and agreement that Concessionaire will remove the same at the expiration or earlier termination of this Agreement and repair any damage or injury to the Premises caused thereby.

19. **WASTEFUL AND DANGEROUS USE**

Concessionaire shall not commit or suffer any waste upon the Premises and will not do or permit to be done in or about the Premises anything that is inconsistent with this Agreement or the Parks Code (Chapter 18.12 of the Seattle Municipal Code) as now existing or hereafter amended or any activity that is inconsistent with the use authorized by this Agreement or that will be dangerous to life or limb, or that will increase any insurance rate upon the Premises.

20. **DEFAULT; REMEDIES FOR DEFAULT; TERMINATION**

20.1 Concessionaire's Default; Definition

Each of the following shall, unless cured by Concessionaire within any applicable cure period set forth in Section 20.2 below, be an event of default ("Default") under this Agreement: (a) if Concessionaire violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of this Agreement; (b) if Concessionaire abandons, deserts, vacates, or otherwise removes its operations from the Premises without the Superintendent's prior consent; or (c) if Concessionaire files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Concessionaire's assets or if Concessionaire makes an assignment for the benefit of creditors, or if Concessionaire is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise..

20.2 City Remedies in the Event of Concessionaire's Default

If Concessionaire Defaults and such Default continues or has not been remedied to the Superintendent's reasonable satisfaction within thirty (30) days after written notice

of Default has been provided to Concessionaire, then City shall have the nonexclusive rights and remedies that follow: (i) to cure the Default on Concessionaire's behalf and at Concessionaire's sole expense and to charge Concessionaire for all actual and reasonable costs and expenses incurred by City in effecting such cure as an additional charge; (ii) to terminate this Agreement by written notice to Concessionaire; and (iii) to re-enter said Premises and take possession thereof without liability to Concessionaire of any kind. Notwithstanding the foregoing, for any Default other than monetary Default, failure to maintain required insurance, or vacation or abandonment of the Premises, if the nature of Concessionaire's Default is such that more than thirty (30) days is required for remedy, then Concessionaire shall not be in Default if it commences the remedy within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

Concessionaire shall be liable and shall reimburse the City upon demand for all actual and reasonable costs and expenses of every kind and nature incurred in retaking possession of the Premises. If the City retakes the Premises, the City shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located thereon and may exercise City's rights under Section 21. City's remedies under this Section 20.2 are cumulative and City does not waive its right to any remedy allowed at law or equity.

20.3 Termination for Reasons beyond the Parties' Control

Either party may terminate this Agreement without recourse by the other party upon five (5) days' written notice if performance is rendered impossible or impracticable for reasons beyond the terminating party's reasonable control such as, but not limited to, acts of nature; war or warlike operations; civil commotion; riot; labor disputes including strikes, walkouts, or lockouts; sabotage; or superior governmental regulation or control.

20.4 Termination for City's Convenience

Notwithstanding anything else in this Agreement to the contrary, City may, at any time and without liability of any kind to Concessionaire except as set forth in this Section 20.4, terminate this Agreement upon two hundred seventy (270) days' prior written notice to Concessionaire if the City determines that the Premises are required for a different public purpose. If City terminates for convenience, City will pay a Termination Fee to Concessionaire that is equal to the sum of (a) the dollar amount of the Concession Fees (excluding applicable offsets) Concessionaire actually paid to the City in the twelve (12) months prior to the termination date, and (b) the cost of capital improvements eligible for the Allowance pursuant to Section 5.6.2 to the extent not yet offset against the Concession Fee as of the termination date.

20.5. City's Default

City shall be in default if City fails to perform its obligations under this Lease within thirty (30) days after its receipt of notice of nonperformance from Concessionaire;

provided, that if the default cannot reasonably be cured within the thirty (30) day period, City shall not be in default if City commences the cure within the thirty (30) day period and thereafter diligently pursues such cure to completion. Upon City's default, Concessionaire may pursue any remedies at law or in equity that may be permitted from time to time by the laws of the State of Washington.

21. REMOVAL OF CONCESSIONAIRE'S PROPERTY FROM PREMISES

Upon the expiration or earlier termination of this Agreement, all of Concessionaire's right, title and interest in and to the Premises, including fixtures installed therein pursuant to this Agreement (other than moveable trade fixtures and appliances and equipment not affixed to the Premises), shall vest in the City, without any action of either party hereto. At such time, Concessionaire shall return the Premises to DPR in good order and condition, except for normal wear and tear, pre-existing defects and repairs necessitated by the City's default or damage by fire or other casualty excepted, and shall have removed from the Premises all items of personal property located thereon. If such personal property is not removed, then DPR shall have the right, but not the obligation, to remove all such personal property from the Premises and may store the same in any place selected by DPR, including but not limited to a public warehouse, at the expense and risk of the owner(s) of such property, with the right to sell such stored property, without notice to Concessionaire or such owner(s), after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied first, to the cost of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money that may be due from Concessionaire to the City. The balance, if any, shall be paid to Concessionaire.

22. NOTICES

All notices given under this Agreement by either party to the other shall be in writing and shall be sufficiently given if either personally served upon the other party delivered by recognized overnight courier service or sent via the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed as follows, unless either party hereafter designates a different address by notice to the other:

If to Concessionaire:	Steve Dubiel, Executive Director EarthCorps 6310 NE 74 th St, Suite 201E Seattle, WA 98115
-----------------------	--

If to the City, DPR or the Superintendent: Seattle Parks and Recreation
Magnuson Park Attn: Manager
6310 NE 74th Street #109E
Seattle, WA 98115

Notices are effective as follows: if personally delivered, on the date when delivered, or if delivered by overnight courier service, one (1) business day after deposit with the courier service, or if mailed, three (3) business days following the date of placement into U.S. Mail, postage pre-paid.

23. MISCELLANEOUS

23.1 Assignment; Subletting

Concessionaire may sublet or sublicense not more than ten percent (10%) of the area of the Premises for uses which are consistent with the Permitted Use and the USA Deed without prior written approval from the Superintendent. If Concessionaire charges a sublease or sublicense rent or use fee which exceeds the then-current per square foot Concession Fee rate under this Agreement, the excess shall be payable to DPR. Additionally, Concessionaire shall provide the Superintendent with written notice of any sublease or sublicense that Concessionaire enters into no later than thirty (30) days following the commencement of the subletting agreement, and the City shall have the right to review the agreement and any accounting of revenues received by Concessionaire for compliance with the terms of this Agreement. Except as expressly permitted in in this Section 23.1, Concessionaire shall not assign this Agreement or any interest therein, nor sublet all or any part of the Premises or any right or privilege appurtenant thereto, nor permit the occupancy or exclusive use of any part thereof by any other person without the prior written approval of the Superintendent. Any purported assignment, sublease or use without the approval of the Superintendent shall be grounds for termination of this Agreement by the City or possible reversion under the USA Deed in the discretion of the USA.

23.2 Captions

The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Agreement.

23.3 Time

Time is of the essence of this Agreement.

23.4 Partial Invalidity

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be found or held to be invalid or

unenforceable, the remainder of this Agreement, and the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

23.5 Binding Effect

The provisions, covenants, and conditions contained in this Agreement are binding upon the parties hereto and their legal representatives, successors, assigns and subsidiaries.

23.6 Applicable Law

This Agreement shall be interpreted under the laws of the State of Washington.

23.7 Jurisdiction & Venue

The jurisdiction and venue for any litigation between the parties regarding this Agreement or any question, claim, loss, or injury arising hereunder shall be in the Superior Court of the State of Washington for King County.

23.8 No Partnership or Joint Venture Created

This Agreement does not make Concessionaire the agent or legal representative of the City, nor is any partnership or joint venture created hereby. Concessionaire is not granted any express or implied right or authority to incur any obligation or responsibility in the name of the City or to bind the City in any manner or thing whatsoever.

23.9 City's Remedies Cumulative

The City's rights under this Agreement are cumulative; the City's failure to exercise promptly any rights given hereunder shall not operate to forfeit any such rights. The City shall also have any other remedy given by law. The use of one remedy shall not be taken to exclude or waive the right to use another.

23.10 Amendments

No modification of this Agreement shall be binding upon the City or Concessionaire unless reduced to writing and signed by each of their authorized representatives.

23.11 Consumption of Alcoholic Beverages

Concessionaire shall not permit the consumption of any alcoholic beverages anywhere on the Premises except for Concessionaire-sponsored events that have obtained any required State of Washington Liquor Control Board permits.

23.12 No Third-Party Rights

No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation that is not a party hereto nor shall any person, firm, organization or corporation other than a party hereto have any right or cause of action hereunder.

23.13 No Waivers

No action other than a written document from the Superintendent specifically so stating shall constitute a waiver by the City of any particular breach or default by Concessionaire, nor shall such a document waive any failure by Concessionaire to fully comply with any other term or condition of this Agreement, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance. The City's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

23.14 Entire Agreement

This Agreement, including its exhibits as listed below, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties with respect hereto. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's preparation of the same.

Exhibit A-1: Premises - Building 30 - First Floor Floorplan

Exhibit A-2: Premises - Building 30 - Second Floor Floorplan

Exhibit A-3: Adjacent Area and Parking/Loading Zone

Exhibit A-4: List of Spaces

Exhibit A-5: Legal Description

Exhibit B-1: Public Benefit Description

Exhibit B-2: Examples of Services

Exhibit C: Capital Improvement Categories Eligible for Allowance

Exhibit D: USA Deed

23.15 City’s Consent or Approval

Whenever the consent of the City or Superintendent to any act to be performed by Concessionaire is required under this Agreement, Concessionaire must obtain the consent or approval in writing expressly for purposes of this Agreement, regardless of whether a consent or approval shall have been granted by the City in its regulatory, public utility, or other capacity. No permission, consent, or approval of the City or the Superintendent contained herein or given pursuant to this Agreement is, or shall be construed as, a representation or assurance that the matter consented to or approved complies with applicable laws, regulations, ordinances or codes, nor shall any such consent or approval be construed to authorize any failure to comply with any of the foregoing.

23.16 Counterparts

This Agreement may be executed in counterparts for the convenience of the parties, and such counterparts shall together constitute one Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year indicated below.

**CITY:
THE CITY OF SEATTLE**

**CONCESSIONAIRE:
EARTHCORPS**

By: _____
Jesús Aguirre, Superintendent
Department of Parks and Recreation

By: _____
Steve Dubiel, Executive Director

Date: _____

Date: _____

EXHIBIT A-1 Premises - Building 30 - First Floor Floorplan

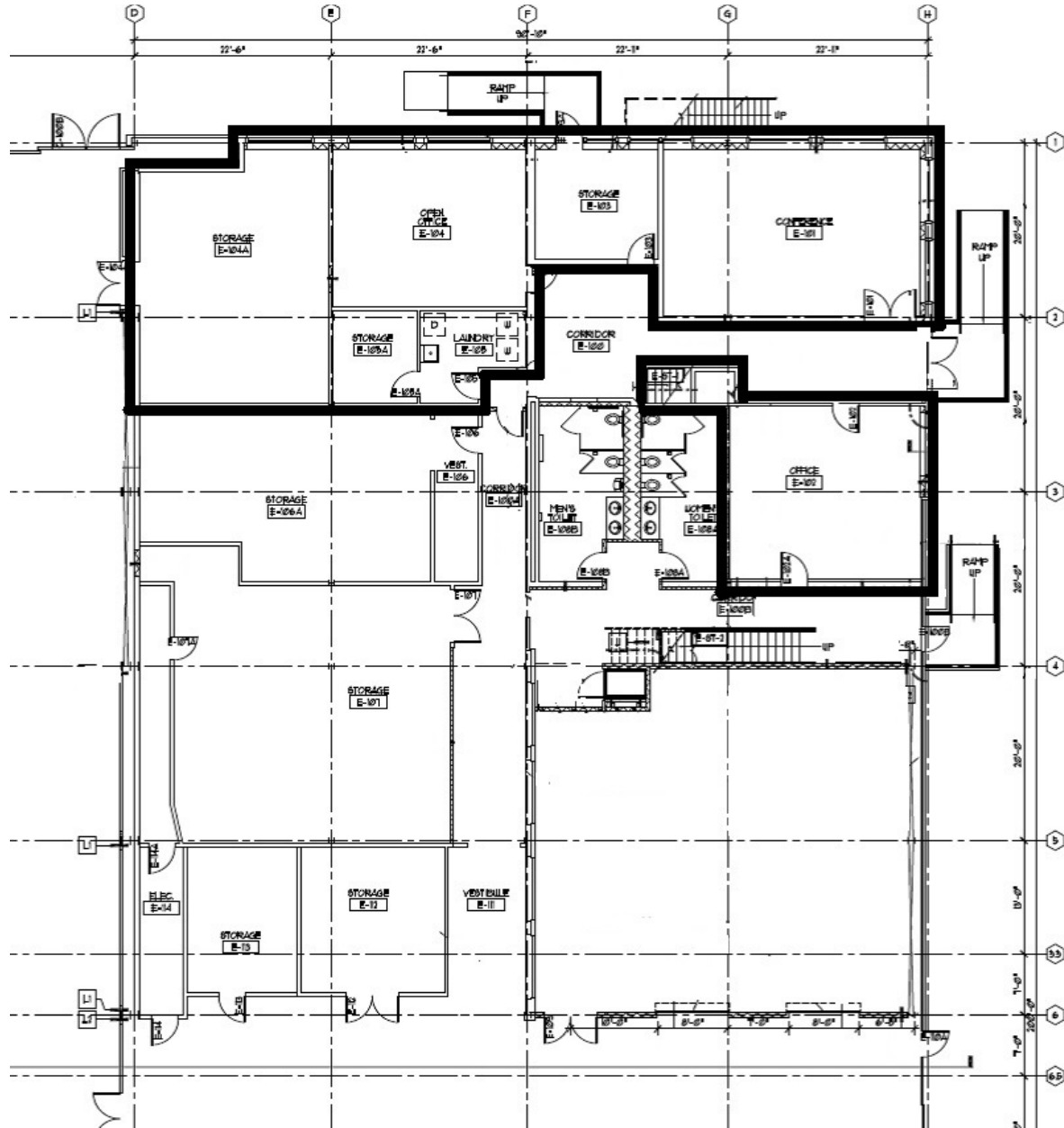


EXHIBIT A-2 Premises - Building 30 - Second Floor Floorplan

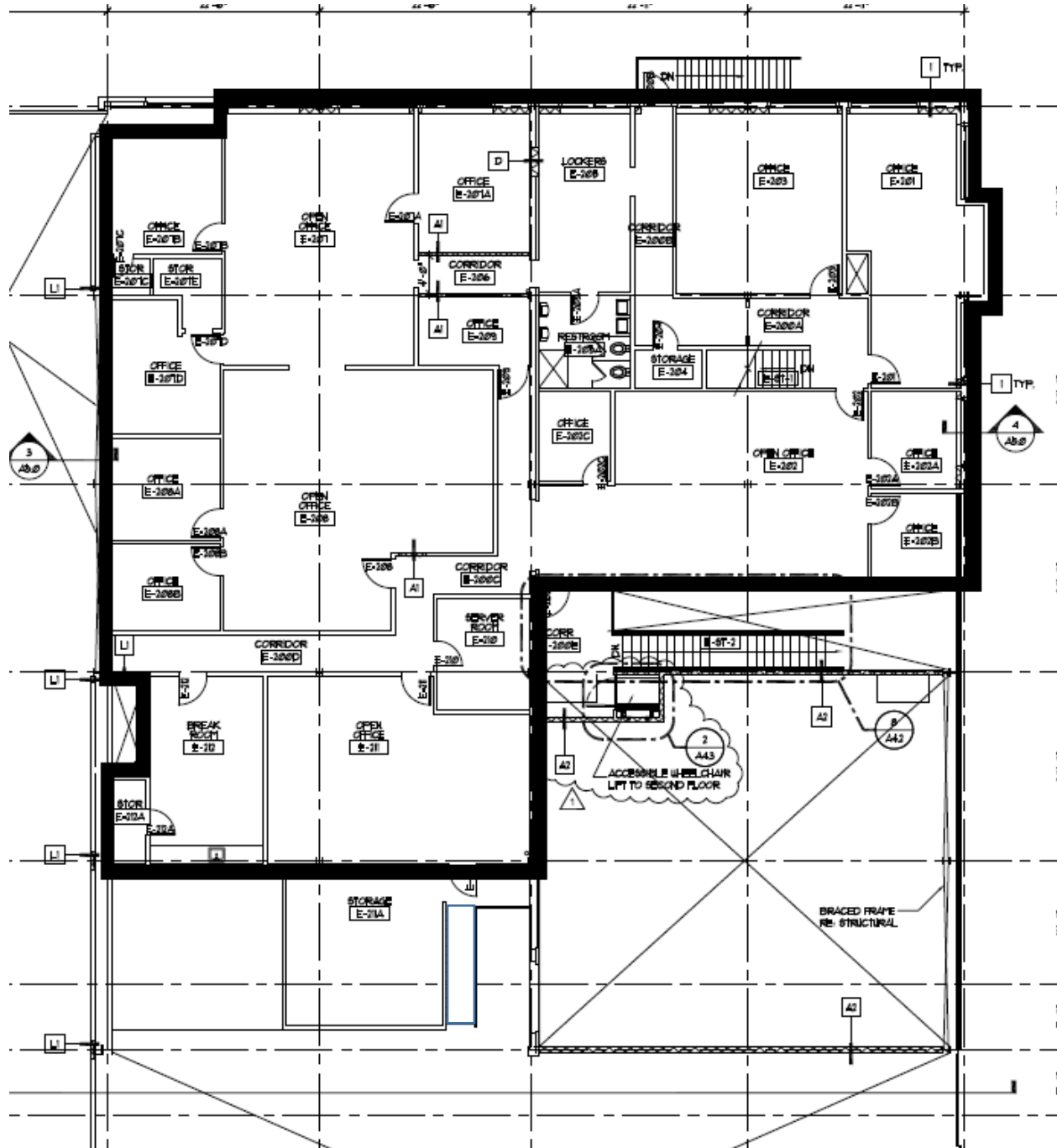
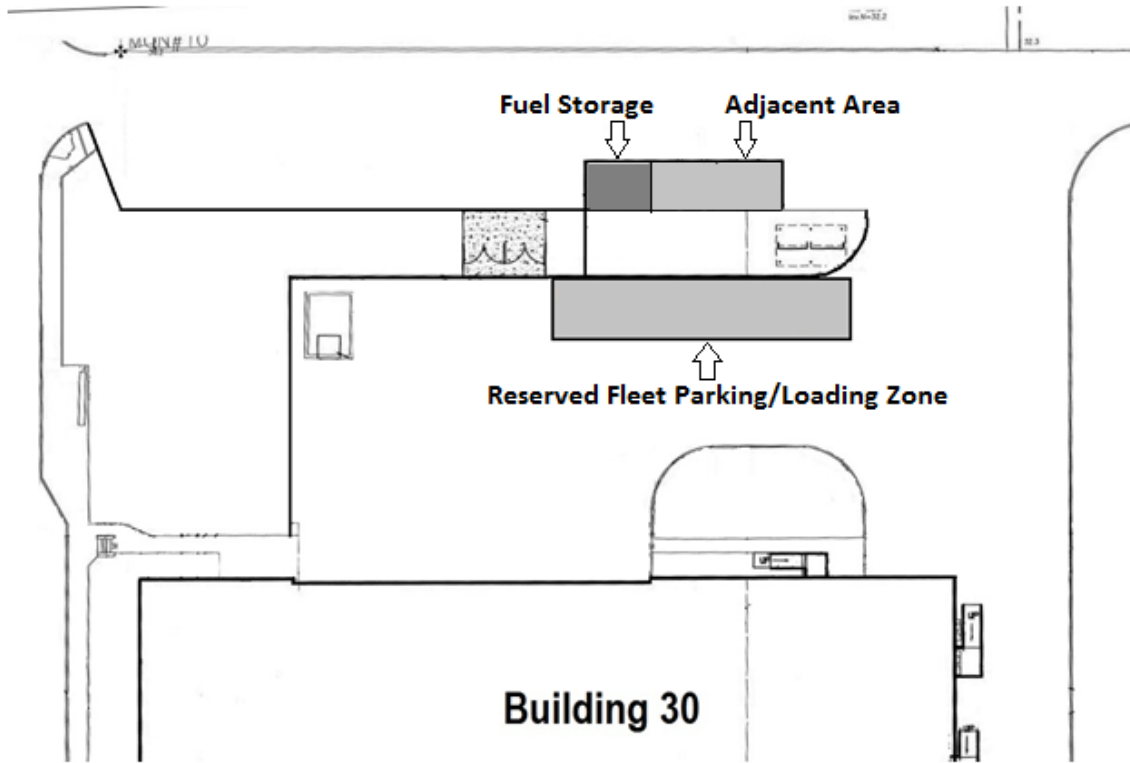


EXHIBIT A-3 Adjacent Area and Parking/Loading Zone



**EXHIBIT A-4
List of Spaces**

Room	Name	Room SF	Floor SF
E-101	Conference	549	
E-102	Office	431	
E-103	Storage	180	
E-104	Open Office	400	
E-104A	Storage	602	
E-105	Laundry	104	
E-105A	Storage	101	
Total First Floor			2367
E-201	Office	299	
E-202	Open Office	607	
E-202A	Office	93	
E-202B	Office	81	
E-202C	Office	72	
E-203	Office	336	
E-204	Storage	29	
E-205	Lockers	183	
E-206	Corridor	75	
E-207	Open Office	536	
E-207A	Office	171	
E-207B	Office	143	
E-207C	Storage	16	
E-207D	Office	147	
E-207E	Storage	43	
E-208	Open Office	701	
E-208A	Office	124	
E-208B	Office	105	
E-209	Office	83	
E-210	Server Room	117	
E-211	Open Office	515	
E-212	Break Room	239	
E-212A	Storage	32	
Total Second Floor			4747
Total Premises			7114

Excluded Rooms

Room	Name	Room SF	Floor SF
E-100	Corridor	486	
Total First Floor			486

E-200A	Corridor	201	
E-200B	Corridor	135	
E-200C	Corridor	185	
E-200D	Corridor	210	
Total Second Floor			731
Total Excluded Area			1217

EXHIBIT A-5

Legal Description

Bldg 30

W ½ Section 2, TWP 25, RNG 04E, W.M.

PARCEL 6 Lot A

That portion of the northeast quarter (NE4) of the southwest quarter (SW4), the southwest quarter (SW4) of the northwest quarter (NW4) and Govt. Lot 2 in Section 2, TWP 25N, RNG 04E, as acquired by the U. S. Navy on behalf of the United States of America by deed recorded in the records of King Co., Washington in Vol. 1306 at pg. 455, described as follows:

Commencing at the southwest corner of said Lot 2, accepted as being the same as the intersection of the centerline of Sand Point Way NE with the production east of the north margin of NE 75th Street, thence S 00° 48' 49" E on said centerline a distance of 171.45 feet, thence N 89° 11' 11" E a distance of 40.00 feet to the east margin of Sand Point Way NE, thence N 89° 57' 38" E a distance of 94.91 feet, thence S 00° 01' 23" E a distance of 95.37 feet, thence N 89° 42' 47" E a distance of 404.93 feet to the True Point of Beginning, thence continuing N 89° 42' 47" E a distance of 690.05 feet to the west boundary of a tract of land under the jurisdiction of the National Oceanic & Atmospheric Administration (NOAA), thence N 00° 02' 51" E on said NOAA boundary a distance of 460.89 feet to a concrete monument marking an angle point in the NOAA boundary, thence N 89° 57' 32" W on said NOAA boundary a distance of 690.63 feet to a concrete monument with metal disk stamped "U.S. NAVY #10", thence S 00° 01' 33" E a distance of 464.84 feet to the True Point of Beginning.

EXHIBIT B-1

Public Benefit Description

The categories of public benefits described in this exhibit are generally available for the Public Benefit Offset under Section 5.6 of this Agreement. Other types of programs or services will be eligible only if approved in advance by the Superintendent.

EarthCorps will provide Ecological Restoration services in DPR's parks. These services may include but are not limited to, invasive plant removal, native plant installation, volunteer management, trail construction, slope stabilization, monitoring, vegetation assessments, and project management. EarthCorps will work with Urban Forestry and/or Trails staff at DPR to determine the location and types of work needed each year. These services will be valued at standard billing rates charged by comparable entities for comparable services, which may change over time.

Exhibit B-2

Examples of Services

Crew of 5 – 6 persons including a crew leader

Crew includes transportation to and from the work site as well as hand tools to complete tasks such as invasive plant removal, installation of erosion control materials, planting, trail construction, and stewardship of sites. In addition, crews are trained to operate herbicide application equipment, brush cutters, and power wheelbarrows. The crew leader is qualified to operate chainsaws for bucking material and is a licensed Washington State Pesticide Applicator.

Crew of 3 – 4 persons including a crew leader (March - May ONLY)

Crew includes transportation to and from the work site as well as hand tools to complete tasks such as invasive plant removal, installation of erosion control materials, planting, trail construction, and stewardship of sites. In addition, crews are trained to operate herbicide application equipment, brush cutters, and power wheelbarrows. The crew leader is qualified to operate chainsaws for bucking material and is a licensed Washington State Pesticide Applicator.

Project manager

An EarthCorps project manager coordinates the communication and logistics to ensure crews are equipped with the knowledge and skills to perform the requested tasks. In addition, a project manager can develop restoration plans, purchase materials, coordinate project activities between various entities, and ensure the project goals and objectives are met to the partner's satisfaction. Furthermore, a project manager can write and/or collaborate on grant opportunities and provide reports.

Ecologist

An EarthCorps ecologist utilizes best available science and technology to provide clients with the tools needed to make informed management decisions. Services include habitat and invasive species mapping (GIS) and analysis; vegetation management plan development; monitoring of restoration/ mitigation projects; street tree and landscape area surveys; and restoration action plans.

Field truck

- 4 x 4 pickup truck or 3-ton capacity dump truck to move material
- Accommodations, when necessary, and food.

2017 Volunteer Management Services

Volunteer event management services include: volunteer recruitment, event coordination, event leadership, pre-event technical support, pre-event site visits and post-event reporting. EarthCorps supervises and educates volunteers with an average ratio of 20 volunteers per staff person. EarthCorps comes equipped with tools and hospitality items for volunteers. An EarthCorps project manager communicates with the project partner prior to the event and oversees the activities to implement the event work plan as

agreed. The project manager instructs volunteers and EarthCorps members so they are equipped with the knowledge and skills to perform the requested tasks. The Volunteer Recruiter works with the project partner to recruit community volunteers to attend the event. At events, volunteers are educated in safety, tool use, and environmental restoration techniques and philosophy.

Volunteer Event (up to 40 volunteers)

- Project Management (15 hours)
- 1 Event Assistant (9 hours)
- Volunteer Recruiter/ Coordination (1 hour)
- Hospitality and tools

Volunteer Event (41-60 volunteers)

- Project Management (15 hours)
- 2 Event Assistants (18 hours)
- Volunteer Recruiter/ Coordination (1 hour)
- Hospitality and tools

Volunteer Event (61-80 volunteers)

- Project Management (15 hours)
- 3 Event Assistants (27 hours)
- Volunteer Recruiter/ Coordination (2 hours)
- Hospitality and tools

Volunteer Event (81-100 volunteers)

- Project Management (20 hours)
- 1 Crew of 5-6 event assistants
- Volunteer Recruiter/ Coordination (3 hours)
- Hospitality and tools

Volunteer Event (101-200 volunteers)

- Project Management (28 hours)
- 2 Crews of 5-6 event assistants
- Volunteer Recruiter/ Coordination (3 hours)
- Hospitality and tools

Site Preparation

- 1 Project Manager (4-8 hours per day)
- 1 crew of 5 – 6 persons including a crew leader

A crew includes transportation to and from the work site as well as hand tools to complete tasks to prepare the site for volunteers and improve the safety and efficiency of volunteer events. Tasks include, but are not limited, to plant staging, invasive plant brush cutting, improving the safety of the site and delivering and staging materials.

Other Services

Project Manager

In addition to the volunteer event services project above, a project manager can develop restoration plans, purchase materials, coordinate project activities between various entities, and essentially ensure the project goals and objectives are met to the partner's satisfaction.

Volunteer Recruiter/Community Outreach

Volunteer recruitment comes standard with our volunteer events and includes posting on our website, posting on VolunteerMatch.com and the United Way websites. The Volunteer Recruiter also fields questions about the upcoming event, meeting location, and specific project information. Volunteers who sign up for EarthCorps projects will receive a reminder email with project location information the day prior to the event and a post-event thank you email. EarthCorps can do community outreach for DPR events as well including, but not limited to, tabling, festival participation, and community meetings.

Event Assistant

Additional EarthCorps staff to manage volunteers, lead registration or support general event logistics on the day of an event.

Field truck

- 4 x 4 pickup truck or 3-ton capacity dump truck to move material

EXHIBIT C
Capital Improvement Categories Eligible for Allowance

SITWORK:

Demolition
Parking lot improvements, pavement and repair
Site Lighting
Pedestrian Amenities
ADA Compliance & Repairs
Site Permits & Fees
Project Signage
Tenant Signage
Landscape Improvements

BUILDING CONSTRUCTION:

Environmental Remediation
Interior Repair
Electrical
ADA Compliance
Windows, Storefront, Canopies, Doors
Restroom
Interior Walls
Paint
Building Permits and Fees
Historic Preservation Review Fees
Mechanical System Upgrades

DEVELOPMENT COSTS:

Project Management Costs

TENANT IMPROVEMENTS:

Tenant Building Improvements
(Not cash allowances or payments)

EXHIBIT D
USA Deed