

**LICENSE AGREEMENT**

**Between**

**The City of Seattle**

**and**

**Friends of Waterfront Seattle**

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**and**

**Friends of Waterfront Seattle**

This License Agreement (“Agreement”) is made this 16 day of September, 2020, by and between The City of Seattle, a municipal corporation of the State of Washington (“City”) and Friends of Waterfront Seattle, a public benefit non-profit corporation registered in Washington State (“Licensee”).

WHEREAS, in August 2012, the Seattle City Council (“Council”) adopted Resolution 31399, which endorsed the Central Waterfront Concept Design and Framework Plan, developed following broad and inclusive public engagement over two years; and

WHEREAS, in that same resolution, the Council recognized that other cities had successfully established relationships with non-profit organizations to provide consistent management of complex public spaces, and the Strategic Plan recommended developing such relationships; and

WHEREAS, in August 2014, Seattle voters approved creation of the Seattle Park District, and funds collected by the District pay for operations and maintenance of Seattle parks, including an annual \$3.5 million budget with cost inflation dedicated to operations and maintenance of the Central Waterfront parks and public spaces; and

WHEREAS, the Seattle Park District budget included \$1,102,551 and \$3,252,412 in 2019 and 2020, respectively, for Phase 1 Pier 62/63 Redevelopment and \$310,000 and \$315,250 in 2019 and 2020 to maintain and activate Seattle’s new Waterfront Park; and

WHEREAS, the City has a history of working successfully with non-profit entities to program and activate public spaces in a way that increases access, vibrancy, and safety for all users; and

WHEREAS, since July 2015, Licensee, with financial support in part from the City, has successfully led a pilot program to provide inclusive, free, community programming and activation along certain sections of the Central Waterfront, that has engaged more than 40,000 people; and

WHEREAS, Licensee has partnered with the Law Enforcement Assisted Diversion (“LEAD”) program, leading to a 30% decrease in arrests and citations and a 40% increase in attendance at family-friendly summer waterfront programming; and

WHEREAS, in September 2017, the Council adopted Resolution 31768, in which the City stated its intent to work with Licensee to reach an agreement for the long-term provision of high-quality operations and management services commensurate with the quality of programming envisioned in the public planning for the waterfront, as reflected in Central Waterfront Concept Design and Framework Plan; and

WHEREAS, in that resolution, the City stated its expectation that any future agreement with Licensee would include a scope of work in which all maintenance activities shall be provided by a dedicated and consistent team of Seattle Parks and Recreation staff working cooperatively with Licensee at a standard of care commensurate with the vision for the Waterfront Park adopted by such resolution; and

WHEREAS, in January 2019, the Council passed Ordinance 125761, authorizing a two-year pilot agreement with Licensee that shall govern the operations, management, and programming services for the completed Pier 62 and may also include Waterfront Park (the “Pilot Agreement”); and

WHEREAS, the Pilot Agreement is intended to provide Licensee and the City the opportunity to test a joint approach to operating and maintaining the Central Waterfront improvements and to inform the development of a long-term management agreement, which joint approach shall provide Friends of Waterfront Seattle flexibility to utilize different approaches, techniques and strategies to adaptively manage the operation and programming of the Central Waterfront to best achieve the Central Waterfront Guiding Principles and the goals set forth in the Central Waterfront Concept Design and Framework Plan and Ordinance 125761; and

WHEREAS, in Ordinance 125761 the Council established minimum terms and conditions to be included in the Pilot Agreement and directed that the Pilot Agreement be consistent with the Central Waterfront Guiding Principles set forth in Attachment D to that ordinance, with a goal of creating a “waterfront for all”; in particular, that the agreement shall be implemented to encourage use by people of all ages, incomes, and abilities; support free expression; provide the public with access to high-quality and safe parks and recreation, enhanced by regular programming, concessions that support the public’s use and enjoyment of the Central Waterfront, and free public access to civic and cultural events; and provide living wage jobs associated with operating and maintaining waterfront parks and public spaces for local residents regardless of their age, ethnicity, gender, or sexual orientation; and

WHEREAS, in the same Ordinance, the Council created the Central Waterfront Oversight Committee, whose members shall be appointed by December 31, 2019, and with whom the City and Licensee are committed to working throughout the implementation of this License Agreement, including for the development of a long-term management agreement and a performance standard; and

WHEREAS, Licensee has submitted to the City a one-year operating budget and has demonstrated that as of the date of this License Agreement it has on hand cash reserves to cover six months of this operating budget, thereby satisfying the “preconditions to Licensee’s capacity to operate” requirement described in Ordinance 125761;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance by both Parties to this LICENSE AGREEMENT, the City and Licensee mutually agree as follows:

## 1. GRANT OF LICENSE; PREMISES

The City hereby grants Licensee a right to use Pier 58 and the rebuilt portion of Piers 62/63, all as depicted on the attached EXHIBITS A-1, A-2, and A-3 (collectively, “Premises”) that is nonrevocable and exclusive to Licensee except as expressly provided herein and that is subject to the terms and conditions set forth herein. The City shall deliver use of the licensed Premises to Licensee at the commencement of the Term as set forth in Section 3 hereof.

## 2. DEFINITIONS

- “Activation” means providing semi-permanent or regularly available amenities such as moveable furniture, seasonal flowers, ping-pong tables, temporary art, information and concession kiosks, and other elements, and undertaking certain tasks and activities set forth in Section 4 that create a welcoming atmosphere and encourage people to use the Premises for cultural, educational and recreational purposes.
- “Central Waterfront” means the area along the downtown Seattle waterfront, as generally bounded by King Street to the south, Virginia Street to the north, the waterfront to the west, and the east side of Alaskan Way to the east.
- “Central Waterfront Improvements” refers to the capital improvements to the Central Waterfront, as initially identified in the Central Waterfront Concept Design and Framework Plan that was endorsed by City Council in Resolution 31399.
- “Central Waterfront Oversight Committee” or “Oversight Committee” means the committee created by Ordinance 125761, whose nineteen (19) members will be comprised of fourteen (14) members appointed by both City Council and Mayor, and five (5) members appointed by other parties, whose tasks will include providing guidance and feedback on the operations and maintenance of the Premises.
- “City Party” or “City Parties” means individually or collectively, City or any of City’s elected officials, advisory bodies, directors, employees, contractors, agents or representatives, but not any of the Licensee Parties.
- “DNR Aquatic Land Use Authorization” is defined in Section 4.1.5.4.
- "Event" means a meeting, show, competition, performance, festival, or other use for which all or a portion of the Premises may be used on a temporary or limited recurring basis, including all related activities such as move-in, move-out, rehearsal, practice, and other activities that are required to facilitate the use of the Premises for the authorized purpose.
- “Expressive activity” shall have the meaning set forth in SMC 15.52.005: “conduct, the sole or principal object of which is the expression, dissemination, or communication by verbal, visual, literary, or auditory means of opinion, views, or ideas that are likely to be understood as such in the surrounding circumstances. Expressive activity includes the assembly of persons for such purposes. Expressive activity includes the sale of merchandise that is inextricably intertwined with a statement carrying a religious, political, philosophical, or ideological message.”
- “Floating Dock” means the dock attached to the south side of Pier 62.

- “Free Speech Event” shall have the meaning set forth in Ch. 15.52 SMC: “an event, other than an athletic, commercial, community, or citywide event, that consists solely of expressive activity. ‘Free speech event’ does not include any event that includes any commercial activity such as commercial food or sales vendors. ‘Free speech event’ may include a ‘march’ as defined in Section 11.25.020.”
- “Labor harmony protocols” means a set of protocols that include, at the least, the commitment from an employer to not interfere with the ability of its employees to endeavor to become represented by a union and the commitment from the employees not to disrupt the workplace.
- “Licensee Party” or “Licensee Parties” means individually or collectively, Licensee, or any of Licensee’s assignees, sublicensees, or permittees and their respective agents, servants, employees, representatives, contractors, licensees and invitees, but not including any City Party.
- “Maintenance” means a formulated plan of cleaning and repairs of the Premises and the facilities thereupon to maintain the Premises in good condition and safe and enjoyable for the public.
- “Operations” means a formulated plan of activation, programming and safety measures with respect to the Premises.
- “Operations and Maintenance” or “O&M” means the formulated plans of Operations and Maintenance to be carried out via a joint delivery model by SPR and Licensee according to the roles and responsibilities assigned in this agreement.
- “OWCP” means the Office of the Waterfront and Civic Projects.
- “Park Hours” means 6:00 am – 10:00 pm or as may be amended by the SPR Superintendent pursuant to SMC 18.12.040 from time to time.
- “Performance Standard” means a detailed set of metrics which the City committed to develop jointly with the Oversight Committee in Ordinance 125761 and which shall be used, once developed, in reviewing SPR’s and Licensee’s performance under this agreement.
- “Permit Fee” means a fee charged by Licensee to a third-party user of the Premises for the limited right to use a portion of the Premises for non-Special Event programs.
- “Pier 58” means the pier park that currently is officially named “Waterfront Park.”
- “Programming” means scheduled activities and entertainment and associated staffing that bring participants to the parks, including without limitation, community events, classes, readings, musical and other cultural performances, temporary art installations, sports tournaments, or other open public activities.
- “Seattle Park District” or “Park District” means the metropolitan parks district, approved by Seattle voters in 2014, which provides funding for City parks and recreation, including maintaining parklands and facilities.
- “Special Event” means any event required to obtain a Special Event permit through the City of Seattle Special Events Office, as described in Seattle Municipal Code (“SMC”) Section 15.52.
- “Sponsorship Fee” means the fee collected by Licensee from the sale of Sponsorship Rights pursuant to Section 6 hereof. Sponsorship Fees shall not be considered Permit Fees.
- “Sponsorship Rights” means those certain rights and privileges provided by Licensee to a sponsor in consideration of the payment of a Sponsorship Fee and/or other valuable consideration. Sponsorship Rights may include such rights and privileges as (i) designation as presenting partner and/or varying levels of sponsorship of a particular event to be held on

the Premises; (ii) signage at the Premises (subject to restrictions set forth in this Agreement); (iii) hospitality benefits at events held at the Premises; (iv) media benefits – mentions in Licensee broadcast, print and/or social media efforts; (v) community relations – mentions in Licensee community marketing.

- “SPR” means Seattle Parks and Recreation.
- “Waterfront Park” means all parks and public spaces planned to be built as part of the Waterfront Seattle program, including without limitation, Pier 58.
- “Waterfront Seattle” means the program of capital improvements to the Central Waterfront, as initially identified in the Central Waterfront Concept Design and Framework Plan, which was endorsed by City Council in Resolution 31399.

### **3. TERM**

This License Agreement shall commence following the physical completion of the Phase 1 Pier 62/63 Redevelopment and shall terminate December 31, 2021, unless earlier terminated by the City or Licensee. The “physical completion of the Phase 1 Pier 62/63 Redevelopment” shall be established by the issuance of written notice by the City to the Licensee stating that physical completion has been achieved. The Term shall commence fourteen (14) days following Licensee’s receipt of the City’s written notice that physical completion has been achieved (the “Commencement Date”).

### **4. RESPONSIBILITIES**

#### Programming, Activation and Permitting

During the Term of this License, Licensee shall provide services and amenities for the activation and programming of the Premises, and will provide free, open and public access to Premises while providing these services, subject to the restricted public access to the Premises for Licensee’s ticketed events or that it may grant its permittees for ticketed events, and subject to the restricted access the City may grant its permittees for Free Speech Events.

- 4.1.1. Licensee shall promote and support the effective operation of all programs and events on the Premises, with the exception of Free Speech Events, with daily staffing at levels appropriate to the season and planned programming. The Licensee shall not be responsible for providing staff to support the operation of Free Speech Events.

- 4.1.2. Licensee shall program the Premises to achieve the goals set forth in Ordinance 125761, in particular the commitment to “provide the public with access to high-quality and safe parks and recreation enhanced by regular programming, concessions that support the public’s use and enjoyment of the Central Waterfront, and free public access to civic and cultural events.” A sample, initial schedule of programming for the first year of this agreement is included in **EXHIBIT B-2** for illustration purposes. In evaluating the Licensee’s performance in implementing programming, the City shall recognize the Licensee’s ability to hold certain events requires that the City obtain Shoreline Substantial Development Permit amendments.
- 4.1.3. Licensee shall maintain an electronic calendar for the Premises that is accessible to SPR staff and provides accurate and detailed information about all scheduled events, programs, and activities.
- 4.1.4. Licensee will comply with SPR written, reasonable and timely provided instructions regarding any rules, policies, practices or actions of Licensee relating to expressive events occurring in the Parks. Licensee will follow all City policies, practices, rules and laws regarding the regulation of speech in City parks that are provided to Licensee by the City.
- 4.1.5. This License Agreement shall constitute a park use permit under Ch. 3.26 SMC. As such, Licensee shall be exclusively authorized to conduct events and exclusively responsible for conducting events, and for allowing other parties to conduct events on the Premises, without payment of any permitting fees to SPR subject to the following:
  - 4.1.5.1. The City shall retain the sole responsibility for issuing permits for Free Speech Events, regardless of whether they require a Special Event Permit on the Premises as provided herein. Licensee shall forward to SPR any inquiries for events that it reasonably anticipates would qualify as a Free Speech Event within one business day of receipt. SPR shall within one business day of confirmation forward any inquiries for events that it reasonably anticipates would qualify as a Free Speech Event to Licensee.
  - 4.1.5.2. For those Free Speech Events that require a Special Event Permit, the City acknowledges and agrees that Licensee’s use of the Premises under this Agreement is substantially similar to and should be accommodated in the same manner as are “concurrent events, the rights of abutting owners, [and] the needs of the public to use streets, parks, or other public services” described in SMC 15.52.50.

4.1.5.3. Licensee acknowledges that the City has certain contractual obligations with respect to Piers 62 and 63 pursuant to the “Memorandum of Agreement for the Operation of Pier 62/63 Replacement Project between the City of Seattle Office of the Waterfront and Civic Projects, Seattle Parks and Recreation, and the Muckleshoot Indian Tribe” and “Memorandum of Agreement for the Pier 62 Reconstruction Project between the City of Seattle Office of the Waterfront, Seattle Parks and Recreation, and the Suquamish Tribe” (each, a “Tribal Agreement”). Licensee acknowledges receipt of the Tribal Agreements and agrees that the license granted hereunder by the City is subject to each Tribe’s rights under the applicable Tribal Agreement. Licensee agrees that it will conduct its Events, Programming and other activities under this Agreement in a manner that is consistent with each Tribe’s rights and the City’s obligations under the Tribal Agreements, and in particular, will not interfere with the Tribes’ rights of access to Pier 62 and the Floating Dock. Because Licensee is not a party to either Tribal Agreement, Licensee shall have no obligations to make payments under either Tribal Agreement, and Licensee shall have no direct obligations to any Tribe under either Tribal Agreement. In addition to the general obligation under Section 18, the City shall indemnify, defend and hold Licensee harmless from all claims to the extent arising as a result of City’s breach of either Tribal Agreement. In addition to the general obligation under Section 18, Licensee shall indemnify, defend and hold City harmless from all claims to the extent arising as a result of Licensee’s breach of this Agreement with respect to the Tribal Agreements.

4.1.5.4. Licensee acknowledges that the City occupies Pier 62 pursuant to a lease with the Washington State Department of Natural Resources (“DNR Aquatic Land Use Authorization”), a copy of which has been provided to Licensee. City represents and warrants that it has full authority under the DNR Aquatic Land Use Authorization to enter into this License Agreement with Licensee. The parties acknowledge that the Department of Natural Resources may levy a rental charge to the City as part of the DNR Aquatic Land Use Authorization (“DNR Aquatic Use Fee”). Licensee shall be solely responsible for and shall pay all DNR Aquatic Use Fees with respect to activities for which it collects revenue, except to the extent that the City or other parties collect revenue and are liable to pay DNR Aquatic Use Fees with respect to such activities. Additionally, Licensee shall conduct its activities under this Agreement in compliance with the DNR Aquatic Land Use Authorization.

- 4.1.5.5. Licensee shall conduct or authorize periodic events and activities that utilize and activate the Floating Dock and engage the public in maritime, marine health and related topics, all subject to the terms and conditions of this License Agreement, the Tribal Agreements, the DNR Aquatic Land Use Authorization, and subject to applicable permits and land use regulations. These activities may include kayak tours and other water activities provided they are consistent with terms of this License Agreement. Licensee shall not be required to operate the Floating Dock for use as a boat launch, dock, moorage or other short-term usage by the general public. Licensee shall exercise its reasonable efforts to provide that permittees utilizing the Floating Dock adhere to all applicable laws and have the necessary commercial licenses and sufficient liability insurance to protect the City and Licensee from liability and to serve the public successfully. The City shall be responsible for the maintenance of the Floating Dock.
- 4.1.6. In the implementation of non-Special Event programming, Licensee has the discretion to develop its own intake system for parties interested in holding events in the Premises. Licensee agrees to share this intake system with SPR prior to its implementation. Any fee that could reasonably be construed as a Permit Fee shall not exceed the amounts set forth in SPR's 2020 adopted fee ordinance (Ord. 125984), as the same may be updated in the adopted 2020-2021 City of Seattle Budget. Consistent with the Center City Parks Initiative Blanket Fee Waiver effective through December 31, 2021, the Licensee shall have the option of waiving fees for activities that meet the requirements as outlined in that waiver.
- 4.1.7. Although the Premises are located in a City park area managed by SPR, prohibitions on the serving and consumption of alcoholic beverages on the Premises shall not apply and Licensee may permit alcoholic beverages to be served on the Premises, with the exception of the Floating Dock, provided that Licensee is responsible for seeing that all required liquor permits/licenses are obtained.
- 4.1.8. For an event that requires a Special Event permit, Licensee shall utilize the following process:
- 4.1.8.1. All applications to the City for a non-Free Speech Special Event Permit for the Premises shall be made by Licensee directly or by Licensee together with a third-party sponsor of such event approved by Licensee.
- 4.1.8.2. If Licensee determines that a proposed use of the Premises qualifies as a Special Event, then Licensee will confer with SPR regarding such event and will then submit an application to the Special Events Committee pursuant to Chapter 15.52 SMC.

4.1.8.3. If the Special Events Committee approves such Special Event Permit, then it will impose any conditions it deems necessary and reasonable as part of the Special Events permitting process and Licensee shall abide by same.

4.1.8.4. Licensee shall be responsible for all non-SPR Special Event Permit fees.

#### 4.2. Safety and Outreach

4.2.1. Licensee will provide private security services during non-Park Hours to protect property in the Premises and inform users of overnight closures.

4.2.2. During Park Hours, Licensee will provide security services at a level that it determines in the exercise of its business judgement appropriate for the season, hour and level of programming and activation and that is within its budget for public safety (as set forth in Section 8.6).

4.2.3. Licensee shall include requirements for labor harmony protocols in any contract for third-party security service and shall use commercially reasonable efforts to enforce the requirements.

4.2.4. In no instance shall security personnel attempt to enforce City, State, or Federal laws. Instead, security personnel shall notify the Seattle Police Department and any other appropriate law enforcement agencies as necessary.

4.2.5. Licensee will provide for safety and outreach staff that will provide information, hospitality, human service outreach, coordination with public safety and security personnel, and other services to Premise patrons while also providing additional presence on the Premises.

4.2.6. Licensee will work with outreach programs such as the City's Homeless Encampment/Navigation Teams, Law Enforcement Assisted Diversion program ("LEAD") and the Metropolitan Improvement District ("MID") Outreach Team, as well as other existing social service providers, in order to facilitate access to services by vulnerable populations present on the Premises.

4.2.7. Licensee shall retain a security and outreach coordinator to coordinate with social service providers, SPD, and community partners with the goal of addressing security- and social service-related incidents.

- 4.2.8. Licensee will create and staff a Central Waterfront Safety and Outreach Committee. This group will include adjacent property owners, law enforcement representatives, LEAD, waterfront stakeholders, appropriate staff representatives provided by SPR and Licensee, relevant City departments representatives (SDOT, OWCP) and the MID and will convene on a regular basis to evaluate ongoing issues and identify steps to address changing dynamics in the park.
- 4.2.9. Based upon the feedback of the Central Waterfront Safety and Outreach Committee, Licensee shall consider augmenting the presence of SPD emphasis patrols and MID Outreach Ambassadors
- 4.2.10. In addition to closures under Section 7.1.1, Licensee may close or limit public access to all or any portion of the Premises for a discrete period if it reasonably determines that such closure or limitation is necessary to protect public safety due to present risk or danger. Licensee shall notify SPR of any closure under this section as soon as practical under the circumstances.

#### 4.3. Marketing and Branding

- 4.3.1. Licensee will collaborate with OWCP and SPR to develop a co-branded Friends + SPR Waterfront Park Communications and Style Guide (“Style Guide”) to coincide with the opening of Pier 62; such Style Guide and the appearance of the Marks (as defined below) shall be subject to the City’s approval. The Style Guide will include all names, trademarks, trade names, trademarks, trade names, service marks, logos, symbols, emblems, designs, colors, brands, identifications and designations of (or related to) the Waterfront Park (the “Marks”). Licensee may make changes to the Style Guide, subject to SPR and OWCP and the City’s approval. The Parties acknowledge and agree that Licensee shall have primary responsibility for all programming, online, and social media communications and marketing of the Premises (“Premises Marketing”) and that SPR, OWCP, the City and the various City departments and agencies shall engage in Premises Marketing only in concert and with permission of Licensee. Licensee and SPR, OWCP, the City and the various City departments and agencies shall use the Style Guide for all Premises Marketing.

- 4.3.2. Licensee acknowledges that the City is the owner of the entire right, title and interest in and to the existing and future Marks and the associated good will, and Licensee will not at any time do, or cause to be done, any act or thing in any way impairing or tending to impair any part of such right, title, and interest. Licensee acknowledges that its use of the Marks shall not create in Licensee's favor any right, title, or interest in or to the Marks, but that all uses of the Marks by Licensee shall inure to the benefit of the City. Licensee hereby assigns, and agrees to assign in the future, any right it may have acquired or will acquire in the Marks, including any goodwill associated therewith.
- 4.3.3. The City grants to Licensee the exclusive, sublicensable, royalty-free right and license to use the Marks in connection with Licensee's customary activities on or associated with the Premises as contemplated by this Agreement, including but not limited to, organizing and conducting entertainment and educational events, operating the website discussed in Section 4.3.7 below, and creating and selling merchandise, posters, maps, books, and publications associated with Waterfront Park. By way of clarification and not of limitation, the City may use the Marks as trademarks only with Licensee's consent, and Licensee may retain all revenues associated with or generated by its use of the Marks. Licensee shall always maintain the quality of the goods and services associated with the Marks at a level consistent with the terms of this Agreement and as otherwise reasonably specified by and reasonably satisfactory to the City. Licensee's license to use the Marks shall terminate when this License Agreement terminates, unless Licensee and City enter into a long-term management agreement or other agreement to operate and manage the Waterfront Park which agreement extends the term of the license to use the Marks.
- 4.3.4. If the City wishes to register the Marks, Licensee shall provide reasonable cooperation. Upon Licensee's reasonable request, the City shall prepare and submit applications to register those Marks identified by Licensee. Licensee may not register the Marks.
- 4.3.5. Licensee shall have the sole right, in its discretion, to enforce its rights in the Marks, including bringing an action with respect to any infringement. The City shall provide such assistance as may be reasonably requested by Licensee in connection with any such enforcement action (including being joined as a party to such action as necessary to establish standing).
- 4.3.6. Except as expressly permitted by this Agreement, neither Licensee nor the City, without the other's prior written consent, may use, during or after the Term, any trademarks, trade names, or service marks that are confusingly similar to the Marks.

- 4.3.7. Licensee will launch a Waterfront Park website to coincide with the opening of Pier 62. SPR will update its Pier 58 page to reference the entire Waterfront Park under construction and direct visitors to the newly created Waterfront Park website, which will be co-branded, by Licensee and SPR. Visitors to the SPR page and the newly-created Waterfront Park website will be directed to the waterfrontseattle.org website for project delivery and construction information. Waterfrontseattle.org will direct visitors to the new Waterfront Park website for park programming and event information and cease to duplicate waterfront event information on that site. Licensee shall transfer the domain name associated with the Waterfront Park website to the City when Licensee no longer has an agreement with the City to operate and manage Waterfront Park.
- 4.3.8. As between the parties to this Agreement, Licensee shall retain ownership of all copyrights and patents that it may create or invent in the course of operating and managing Waterfront Park. Notwithstanding the foregoing, in the event any of the Marks are also protected by copyright, Licensee hereby assigns any copyright it may hold in such Marks to the City.
- 4.3.9. Licensee shall ensure that any contracts with a third party for creation of the Marks shall include provisions to provide for the City's rights under Section 4.3.

#### 4.4. Maintenance

- 4.4.1. SPR will provide maintenance services for the Premises at least as described in **EXHIBIT C**. SPR shall assign a daily, part-time dedicated staff person to the Premises, as well as any additional staff as necessary, to fulfill its commitments. The staff providing the maintenance services by SPR hereunder shall be City of Seattle employees and subject to City personnel policies. Licensee shall maintain any temporary installations, amenities, or equipment purchased or provided by Licensee and may, in its discretion, provide limited maintenance, including litter pick-up, garbage-liner replacement, provision of recycling/compost, and wiping down of furniture to support programming and activities, if necessary to augment SPR's maintenance, as Licensee determines in its sole discretion. Licensee shall not use any power equipment for this maintenance.

- 4.4.2. Licensee may request SPR to perform additional maintenance of the Premises, which SPR shall provide and for which Licensee shall pay at a standard hourly rate. SPR will provide Licensee with an annual hourly rate schedule at the beginning of each calendar year. SPR will not provide any services unless and until it receives written authorization from Licensee. If an unscheduled SPR cleaning or repair is required beyond agreed cleaning and regular maintenance, such as after a major event in which a full cleaning was not completed by an event vendor, SPR will document the cleaning and/or repair and will bill Licensee for the costs thereof.
- 4.4.3. If ongoing supplemental maintenance (cleaning, repair) is needed beyond those identified in **EXHIBIT C**, Licensee and SPR will negotiate the supplemental services and billing arrangements in advance.

## **5. CONCESSIONS**

- 5.1. Licensee shall have the exclusive right to sell, and to permit third parties to sell, concessions on the Premises, as it deems appropriate in its sole discretion.
- 5.2. Licensee is authorized to manage and collect fees for concession activities on the Premises.
- 5.3. Licensee may set fees for concessions to encourage:
  - 5.3.1. Vendors operating year-round regardless of season and concurrent events.
  - 5.3.2. Vendors who represent the cultural and culinary diversity of Seattle's different neighborhoods and communities.

## **6. SPONSORSHIP**

Licensee shall have the exclusive right to sell sponsorships of events and activities occurring on or related to the Premises; and to license the use of Marks, all as it deems appropriate in its sole discretion. Recognizing that sponsorship revenue supports the free programming of the Premises, Licensee and City nonetheless share the goal of reducing, to the extent reasonable, the aesthetic and environmental impact of commercial signage to the Premises. In addition, Licensee shall follow all sign-related regulations as dictated by SMC 23.5 and SMC 23.60 and acquire the appropriate permits and permissions from Seattle Department of Construction and Inspections. Licensee shall include terms in its permits and sponsorship agreement to require its permittees and sponsors to whom it grants signage rights to do the same.

## **7. PUBLIC BENEFIT, EQUITY AND INCLUSION**

- 7.1. Licensee is a Washington public benefit non-profit corporation created to support,

facilitate, and, as appropriate, undertake and implement the redevelopment of the Seattle Central Waterfront in connection with the Seattle Waterfront Initiative, including providing funding and support to the public spaces created by the Waterfront Seattle program, including the Premises. As such, among Licensee's purposes is to provide public benefits through the operation and management of the Premises for the citizens of Seattle. Any revenue-generating activity undertaken by Licensee on the Premises is for the purpose of operating and activating the Premises. There is no other benefit or consideration inuring to the Licensee in exchange for its responsibilities under this agreement. The value of these public benefits is estimated to be \$1,366,000 for each year of the term of this license, which is represented by the budget attached as **EXHIBIT E**. Licensee is committed to creating public benefit by providing free, accessible, and inclusive cultural, recreational and educational programming, as well as vending and concession opportunities for women- and minority-owned enterprises. Among the public benefits further described in **EXHIBIT B-1** are:

- 7.1.1. The Premises will be open and accessible to the public 365 days per year, subject to Licensee's rights hereunder to produce or permit sponsored and ticketed events. The parties acknowledge that programming and activation – including, without limitation, sponsored and ticketed events -- and maintenance of the Premises may occasionally require closure and/or limited public access as may be convenient or necessary, for example, for pre- and post-event production activities. Any event taking place on Pier 62, whether permitted by Licensee or City, shall require as a condition to its approval, the maintenance of public access to no less than 20 feet of the southern pier apron for the full length of the pier, as well as public access to the floating dock.
  - 7.1.2. All programming and activation will be free of charge and open to all; provided however that in each year, the Licensee may conduct up to six private fundraising events not open to the public and additionally one-third of its events may be ticketed.
  - 7.1.3. Subject to any required City permitting approvals, Licensee shall provide and cause to be regularly serviced portable restrooms available to the public.
  - 7.1.4. Licensee will provide public safety and outreach staff to help create a safe experience for all visitors.
- 7.2. In addition to the public benefits described above and in **EXHIBITS B-1 and B-2**, the Parties share the core value of operating the Premises with the specific intention of promoting equity, access and inclusion, particularly for traditionally underserved communities in the Seattle area. To achieve these goals, Licensee will employ a variety of strategies to reach out to these communities and exercise reasonable efforts to provide equitable participation in activities held at the Premises. Outreach strategies will include:

- 7.2.1. Creating a Community Connections Committee comprised of Licensee board and non-board members to oversee and advance the inclusion and social equity goals of Licensee.
- 7.2.2. Creating a Park Programming Panel that allows broad public participation and includes representation from historically underserved communities, to develop inclusive and community curated programming for Premises.
- 7.2.3. Developing community partnerships to provide music, arts, and cultural programs and events.
- 7.2.4. Supporting local arts and cultural groups by providing resources, which include marketing support, staffing, augmented funding and programming infrastructure for their use of the Premises.
- 7.2.5. Working with organizations such as and which may include Ventures and El Centro de la Raza to provide concessions and other small retail opportunities on the Premises.

## **8. FUNDING AND CONSIDERATION**

- 8.1. Licensee will invest an annual amount of at least \$1,366,000 in the staffing, public safety, and activation and programming of the Premises, plus an amount for the purchase of capital amenities necessary to support Friends programming at its discretion based on its business judgment as represented in **EXHIBIT E**, in exchange for exclusive use of Premises. If the Commencement Date is later than March 1, 2020, then Licensee's financial commitment set forth in Section 8.1 hereof shall be reduced for 2020 by one-tenth (10%) or \$136,600 for each month of delay in 2020, and if the Commencement Date is later than January 1, 2021, then Licensee's financial commitment set forth in Section 8.1 hereof shall be reduced for 2021 by one-twelfth (8.33%) or \$113,833 for each month of delay in 2021. Amounts expended by Licensee prior to the Commencement Date in anticipation of performing its obligations hereunder, including such expenditures made prior to the Effective Date of this Agreement shall be considered as part of Licensee's investment. If some of the programming elements or activities anticipated in this Agreement are ultimately not permitted as a result of Shoreline Permit requirements, Licensee may substitute other programming, or, alternatively may submit to SPR a proposed reduction in Licensee's minimum investment, which shall be subject to the Superintendent's approval, which shall not be unreasonably withheld.
- 8.2. SPR shall expend, as approved in the 2019-2020 budget, annual amounts of \$95,355 and \$42,160 to provide routine and preventative maintenance to Pier 58 and Pier 62, respectively.
- 8.3. SPR, through the Park District and as identified in Ordinance 125761, has budgeted and shall expend, as approved in the 2019-2020 budget, a total of \$625,250 in 2019-

2020 (\$310,000 in 2019 and \$315,250 in 2020) to cover maintenance, including labor and equipment/supplies for Pier 62.

- 8.4. SPR will develop and present to Licensee an annual budget for 2021, which will be subject to City Council and Park District Board approval. Subject to appropriation of such funds, SPR shall expend funds in an amount not less than the amount approved by the City Council and Park District Board for 2021 for maintenance services as required hereunder. In no case will the proposed 2021 maintenance level of service be lower than the 2020 level of service unless agreed to by both Parties.
- 8.5. Licensee has identified a budget of \$250,000 for public safety, and will submit to SPR for reimbursement of its public safety related expenses, on a monthly basis, invoices for up to an annual total of \$50,000. This amount may be increased in 2021 based on the availability of City funding. The following activities will be eligible for reimbursement:
  - 8.5.1. Contracted security staffing, whose staff shall be represented by a union.
  - 8.5.2. Safety & Outreach staff, either contracted or in house.
- 8.6. Licensee may submit to OWCP for reimbursement invoices totalling no more than \$25,000.00 for purchase of trash cans necessary for the successful operation of the Premises.
- 8.7. All funds raised and collected by Licensee through permitting, sponsorship, ticketed events, licensing of Marks, or concessions on or exclusively relating to the Premises shall be applied towards the programming, activation and public safety services on the Premises and shall be subject to the Financial and Accounting Procedures set forth by the City and oversight by the City Budget Office and City Council. Nothing herein shall be construed to limit Licensee's ability to use such funds to pay for its own expenses related to its performance of its obligations hereunder. In addition, nothing herein shall be construed to limit Licensee's ability to raise funds through charitable contributions generally, or to undertake and raise funds through activities not on or exclusively related to the Premises ("Licensee's Non-Premises Funds"). Licensee's Non-Premises Funds need not be applied towards the programming, activation and public safety services in Premises and will not be subject to the Financial and Accounting Procedures set forth by the City and oversight by the City Budget Office and City Council. To the extent that Licensee chooses to apply a portion of its Non-Premises Funds to the programming, activation and public safety services in Premises, however, such portion shall be considered a part of the public benefits provided to the City.

## **9. COMMUNICATION AND COORDINATION**

- 9.1. Meetings

- 9.1.1. Weekly Operations Meeting: Each week, staff from both Parties shall convene, either in person or by phone, to coordinate their respective weekly operations. Subjects for discussion shall include, but are not limited to:
  - 9.1.1.1.A review of the previous week's activities and any noted successes or challenges.
  - 9.1.1.2.A review of the current week's calendar of activities, maintenance activities, and/or anticipated challenges.
  - 9.1.1.3.Calendar of events for the following two weeks.
  - 9.1.1.4.Pending or scheduled seasonal events that require additional resources or a deviation from scheduled resources.
  - 9.1.1.5.Licensee Staff Lead shall be designated. Designation and changes shall be noticed under Section 28.
  - 9.1.1.6.City Staff Lead shall be designated. Designation and changes shall be noticed under Section 28.
- 9.1.2. Quarterly Leadership Meeting: Leadership from both Licensee and City shall convene on a regular basis no less often than quarterly to evaluate the progress of the activities and the relationship of the Parties.

9.2. Conflict Resolution

- 9.2.1. Aside from the above, representatives of Licensee and the City shall meet as may be required by the City or Licensee to review Licensee's performance and SPR's service levels under this Agreement and discuss any problems or emerging issues.

- 9.2.2. All conflicts related to the performance of either Party's fulfillment of its obligations will be brought to and addressed at the Weekly Operations Meeting. If a conflict is not resolved within one calendar week after presentation at a Weekly Operations Meeting, the SPR Parks Resource Manager will convene a meeting with the Licensee manager on duty, which meeting may take place either by phone, in person, or by electronic communication. If the conflict is not resolved within one calendar week of this communication being initiated, Licensee's Executive Director and the SPR Director of Parks and Environment Division will convene, either by phone, in person, or through electronic communication in an effort to resolve the matter. Both Parties acknowledge that certain conflicts will require an expedited response and will endeavor to resolve issues in a timely manner.
- 9.2.3. If a conflict is not resolved through the process described above, it will be forwarded to the SPR Superintendent and Licensee's Executive Director for resolution.
- 9.2.4. If the SPR Superintendent and Licensee's Executive Director do not resolve a conflict, then the Parties may then exercise any remedy available to it in equity or at law.

9.3. Contacts

Each Party will provide the other a list of key contact information at least 15 days prior the start date of this Agreement and will provide any updates within one week of any personnel or contact changes.

**10. REPORTING AND AUDIT**

- 10.1. During the first year of this agreement, Licensee shall convene quarterly meetings with the City, as described in **EXHIBIT D**.
- 10.2. By the last working day of March, 2021, Licensee and SPR will each provide to each other their report as described in **EXHIBIT D** and will work with the Oversight Committee to develop a combined annual report for the Mayor and City Council, which shall be due to City Council and the Mayor by the last working day of April, 2021.

10.3 The Parties will review the data collected as part of these reporting commitments, along with any additional data and evaluation strategies jointly identified by both Parties and the Oversight Committee to determine the consistency of each Party's performance with the goals of the Performance Standard, once developed, and Ordinance 125761. As part of its review, either Party may propose adjustments in the nature and frequency of the other Party's performance hereunder and the achievement of the mutual goals and the Parties shall work with each other in good faith to respond to those requests.

**11. FINANCIAL AND ACCOUNTING PROCEDURES/BUSINESS RECORDS**

## 11.1. Accounting Procedures

- 11.1.1. Licensee shall employ a method of accounting for all funds it expends, permit fees collected, revenue and expenses in connection with the activation and programming services for the Premises that correctly and accurately reflects the gross receipts and disbursements received or made by Licensee for performance under this Agreement.
- 11.1.2. Licensee shall establish and implement internal controls for this operation and all cashiering and cash handling activities that comply with GAAP.
- 11.1.3. Licensee shall maintain all accounting and financial records in a manner to provide accountability and verification that all funds derived by Licensee from permitting, concessions, vending, and ticketed events on public property are used solely for the purposes authorized under this Agreement.

## 11.2. Reports and Transactions

- 11.2.1. If requested by the City, Licensee shall provide a copy of every bank deposit slip and a copy of every credit card batch settlement for the previous month(s), and a revenue report that separates the revenue by category and source approved by the City (excluding revenue derived from sponsorships, contributions, donations and grants from individuals, foundations, other city or other public, private or non-profit entities to Licensee).
- 11.2.2. The City may request additional reports that detail previous transactions related to the activities described in this Agreement.

## 11.3. Types of Business Records

Licensee shall keep and store within the city limits of Seattle, Washington the following records and documents, which shall be subject to review and audit by the City upon reasonable notice. Licensee shall retain the following documents for a period of 7 years:

- 11.3.1. Regular books of account, such as general ledgers;
- 11.3.2. Journals, including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.;
- 11.3.3. Sales tax returns and checks and other documents proving payment of sums shown;

11.3.4. Cash register tapes or computerized records for the identification of day-to-day sales; logs showing the dates and times of programming activities and events that generated revenue; and

11.3.5. Any other accounting records that the City, exercising reasonable discretion, deems necessary for proper reporting of receipts.

11.4. Annual Financial Statements

The City may request and Licensee shall provide audited annual financial statements of Licensee's business activities performed pursuant to this Agreement.

11.5. Public Records

All information the City uses in connection with its inspections of Licensees records or audits or Licensee's performance under this Agreement, and all information that Licensee submits to the City may be or become subject to public inspection and/or reproduction as public records. City agrees to give Licensee notice of any public records request that seeks disclosure of Licensee's financial reporting documents. It shall be Licensee's obligation to seek a court order enjoining such disclosure under RCW 42.56.540 if Licensee so chooses.

**12. TAXES, UTILITIES, AND SERVICES**

12.1. Taxes: The Licensee shall pay, before delinquency, all taxes (including leasehold excise tax, to SPR, unless otherwise exempted), levies, and assessments arising from its activities on or occupancy of the Premises.

12.2. Utilities: The City shall supply the Premises with electrical, water and sewer services necessary to provide for typical daily use of the Premises at no additional expense to Licensee. The City will monitor the utility usage for the first year and will identify and communicate to the Licensee an average baseline by November 2020. If Licensee chooses to provide an ice-skating rink at the Premises, then the Licensee agrees to reimburse SPR for any utility costs that exceed the baseline for the ice skating rink. The City shall not be liable for any injury, loss or damage caused by or resulting from any interruption or failure of utility services due to any causes whatsoever other than the City's gross negligence or willful misconduct.

**13. OPERATIONS, MAINTENANCE AND REPAIR/PREVENTATIVE MAINTENANCE PLANS**

The City will timely maintain and, when necessary, repair the lighting, railing, floating dock, grating, and other permanent infrastructure components of the Premises so they are safe to use by the public and such that the Premises are usable for Licensee's activities as contemplated by this Agreement, including, without limitation, use by Licensee's permittees for ticketed and other activities. For the portion of the Premises that is newly constructed, punch list items,

construction close-out, warranty items, faulty and unfinished construction and construction disputes are the responsibility of the City, which will resolve issues as expeditiously as possible so as not to unduly impair operations on the Premises. A maintenance schedule is included in **EXHIBIT C** for informational purposes.

#### **14. INSTALLATIONS**

- 14.1. During the term of this License Agreement, the Licensee shall have the right, at its own expense and without the prior written consent of the Superintendent, to install such of its own machinery and equipment as may be necessary to conduct its activities hereunder and to perform minor installations, which shall include, but not be limited to, items such as temporary staging, temporary art, canopies and tents, food carts, concession and vending kiosks, sports and recreational amenities, playground equipment, temporary lighting, or generators. The Licensee shall meet with SPR's ProView committee annually to discuss potential alterations to the Premises and determine the level and timing of any alterations needed. SPR's ProView committee conducts project reviews to ensure that alterations concerning SPR facilities meet SPR's mission/goals, meet approved engineering design standards, can be adequately maintained and operated, adhere to regulatory codes, ADA compliance and general safety and are well-designed. Licensee's rights under this Section 14 are limited to installation of items that may be removed from the Premises without damaging the Premises or the improvements existing at the commencement of the Term. Any other improvement, fixture or installation requires prior written approval of SPR, which may be conditioned upon approval of DNR.
- 14.2. Any installation or property, whether affixed to Premises or free standing, installed by Licensee on the Premises, shall remain the property of Licensee.

#### **15. ENVIRONMENTAL PROTECTION**

- 15.1. The Parties understand and agree that flammable or Hazardous Substances, including explosives, petroleum products, paint, solvents, and resins, are not allowed on the Premises without the express written permission of the City. The City hereby grants Licensee permission to have on the Premises flammable or Hazardous Substances in quantities customarily used for the routine operation and maintenance activities authorized under this Agreement, provided that Licensee's use and storage must be consistent with manufacture's recommendations. If the City provides Licensee written permission to store any other flammable or Hazardous Substances, disposal of such materials shall be in a legal manner by the Licensee.
- 15.2. In addition to its general indemnification obligation under Section 18, the Licensee shall indemnify, hold harmless and defend the City and its officials and employees from any costs (including reasonable attorneys' fees), expenses, liabilities, fines, penalties or other liability or responsibility under Federal, state or local law resulting from any release, discharge, emission, spill, storage, or disposal of flammable or Hazardous Substances on or from the Premises to the extent caused by the Licensee, or any of its

officers, employees, permittees, licensees or contractors.

- 15.3. In addition to its general indemnification obligation under Section 18, the City shall indemnify, hold harmless and defend the Licensee and its officers and employees from any costs (including reasonable attorneys' fees), expenses, liabilities, fines, penalties, or other liability or responsibility under Federal, state or local law resulting from any release, discharge, emission, spill, storage, or disposal of flammable or Hazardous Substances on or from the Premises to the extent caused by the City, or any of its officers, employees, permittees, licensees or contractors.
- 15.4. This provision shall survive the expiration or termination of this License, and each Party's obligations hereunder shall apply whenever the other Party incurs costs or liabilities for the other Party's actions.
- 15.5. "Hazardous Substance" means any hazardous, toxic, or dangerous waste, substance, or material, including petroleum products, or any contaminant, pollutant, or chemical defined or identified in any environmental regulation as posing a potential risk to human health or the environment.

## **16. DAMAGE OR DESTRUCTION**

In the event that the Premises (a) are damaged by fire, earthquake, act of war, or other extraordinary casualty to such an extent as to render them unusable in whole or in substantial part; or (b) are destroyed, the City shall not be obligated to rebuild the Premises nor to compensate the Licensee for any loss occasioned thereby. The Licensee will not be liable for any loss, damage, or destruction of the Premises, except to the extent of loss, damage, or destruction caused directly by the waste, willful, or negligent action of the Licensee, or failure of the Licensee to perform its obligations under this License. The City shall not be obligated to restore the functionality of the Premises in the event of loss, damage, or destruction; provided, however, if the City does not so restore such functionality of the Premises, Licensee may terminate this License with not less than sixty (60) days prior written notice.

Damage to Licensee's property, equipment and amenities caused by the City in the performance of its duties under this Agreement shall be the responsibility of the City, which shall replace or repair such property, equipment and amenities as necessary and agreed with Licensee.

## **17. COMPLIANCE WITH LAW**

- 17.1. General Requirement: In carrying out the activities contemplated by this Agreement, the Parties, each at its sole cost and expense, shall comply with, all applicable laws of the United States of America, the State of Washington, and the Charter and ordinances of the City, as well as all Codes, rules, and regulations of any such governmental entity including environmental, occupational safety and health, and coastal, and all requirements associated with any funding source for the improvement of, or operations on, the Premises. The Parties shall not knowingly permit any illegal activity as defined

by federal, state and local statutes and ordinances to occur within the confines of the Premises.

17.2. Licenses and Similar Authorizations:

17.2.1. The City, at no expense to Licensee, shall secure and maintain in full force and effect during the term of this License, all necessary licenses, permits, regulatory approvals and similar legal authorizations required for the performance of its obligations hereunder (including without limitation its obligation to license the Premises to Licensee for the use by Licensee as contemplated herein), from all relevant authorities and shall comply with all requirements thereof. These necessary licenses, permits, regulatory approvals and similar legal authorizations that the City shall so secure and maintain shall include, without limitation, any necessary authorizations from the Washington State Department of Natural Resources for use of tidelands and bedlands, and a Shoreline Substantial Development Permit if required for the use of the premises by Licensee and its permittees under this Agreement. The City shall exercise reasonable efforts to obtain a Shoreline Substantial Development Permit and all such authorizations from the Washington State Department of Natural Resources necessary for the activities and uses set forth on **EXHIBIT F** no later than the commencement of the Term of this License as set forth in Section 3. The City shall exercise reasonable efforts to obtain such additional Shoreline Substantial Development Permit and all such authorizations from the Washington State Department of Natural Resources necessary for the activities and uses set forth on **EXHIBIT G** and such other uses and activities contemplated hereunder as soon as practicable. The Parties currently expect the City to obtain such Permit no later than July 1, 2021.

17.2.2. The Licensee, at no expense to the City, shall secure and maintain in full force and effect during the term of this License, all necessary licenses, permits, regulatory approvals and similar legal authorizations required for the operation and use of the Premises, (other than any necessary authorizations from the Washington State Department of Natural Resources for use of tidelands and bedlands, and a Shoreline Substantial Development Permit if required for the use of the premises by Licensee and its permittees under this Agreement) from all relevant authorities and shall comply with all requirements thereof. The Licensee, at no expense to the City, shall also require through legally binding contracts that any permittees secure necessary licenses, permits, regulatory approvals, and similar legal authorizations required for the temporary operation and use of the Premises. Nothing herein shall be construed as assurance that any such approvals will be granted or that the City, as the City, will grant consents, approvals or modifications hereunder for the purpose of compliance with the conditions of any permit, approval or license sought or obtained by the Licensee.

- 17.2.3. Equal Employment Opportunity and Nondiscrimination: The Licensee shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States and the State of Washington, and the City including without limitation, the Americans with Disabilities Act and SMC Chapter 20.45 (Nondiscrimination in Benefits) and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

## 18. INDEMNIFICATION

- 18.1. Licensee's Indemnification of the City: Except as otherwise provided in this Section 18, and except to the extent provided in Section 15 above, Licensee shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City and the City Parties harmless from all claims (including, but not limited to, claims arising under federal, state or local laws or regulations and including, but not limited to, claims for infringement of any copyright, patent, trademark, or trade secret), suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) 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, or otherwise, to the extent arising out of or in connection with (a) the occupation, use or improvement of the Premises by Licensee or the Licensee Parties, (b) any breach of any covenant, representation or warranty made by Licensee in this Agreement or in any schedule or exhibit attached hereto or any other certificate or document delivered by Licensee to City pursuant to this Agreement, or (c) any negligent or wrongful act or omission of Licensee or any of the Licensee Parties in or about the Premises during the Term of this Agreement except to the extent that Licensee is immune from liability for such act or omission pursuant to RCW 4.24.210 or any successor provision or other applicable law. Licensee agrees that the foregoing indemnity specifically covers actions brought by its own employees. Licensee's indemnity obligations shall survive termination or expiration of this Agreement.
- 18.2. City's Indemnification of Licensee: Except as otherwise provided in this Section 18, and except to the extent provided in Section 15 above, City shall indemnify, defend (using legal counsel reasonably acceptable to Licensee) and save Licensee and the Licensee Parties harmless from all claims (including, but not limited to, claims arising under federal, state or local laws or regulations and including, but not limited to, claims for infringement of any copyright, patent, trademark, or trade secret), suits, losses, damages, fines, penalties, liabilities and expenses (including Licensee's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) 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 or otherwise, to the extent arising out of or in connection with (a) the occupation, use or improvement of the Premises by the City or the City Parties, (b) any breach of any covenant, representation or warranty made by City in this Agreement or in any schedule or exhibit attached hereto

or any other certificate or document delivered by City to Licensee pursuant to this Agreement, or (c) any negligent or wrongful act or omission of City (only when acting as licensor hereunder or otherwise in City's ownership capacity and not in any regulatory or other sovereign capacity) or any of the City Parties, in or about the Premises during the Term of this Agreement except to the extent that City is immune from liability for such act or omission pursuant to RCW 4.24.210 or any successor provision or other applicable law. City agrees that the foregoing indemnity, to the extent applicable, specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Term shall survive termination or expiration of this Agreement.

- 18.3. RCW Title 51 Waiver: The foregoing indemnities are expressly intended to and do constitute a waiver of each Party's immunity under the State of Washington's Industrial Insurance Act, RCW Title 51, for claims brought by such Party's employees against the other Party, provided that such waiver shall apply only to the extent necessary to provide the indemnified Party (and its elected officials, directors, employees, and agents, as applicable) with a full and complete indemnity from claims made by the other Party and its employees, to the extent of their negligence. Each Party shall promptly notify the other Party of casualties or accidents occurring in or about the Premises of which the notifying Party has actual knowledge.
- 18.4. RCW 4.24.115: In compliance with RCW 4.24.115 or any successor provision, all provisions of this Agreement pursuant to which either Party ("Indemnitor") agrees to indemnify the other Party ("Indemnitee") against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Premises, (a) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents, contractors or employees, and (b) to the extent caused by or resulting from the concurrent negligence of Indemnitee's agents, contractors or employees, shall apply only to the extent of the Indemnitor's negligence.
- 18.5. No Personal Liability: Neither Party's elected officials, appointed officials, board members, members, shareholders and other owners, directors, officers, employees, agents, and attorneys or other representatives shall be personally liable for any obligations or other matters arising under this Agreement.
- 18.6. The indemnification provisions contained in this Agreement shall survive any termination or expiration of the License.

## 19. INSURANCE

### 19.1. Required Insurance

Prior to the commencement of this Agreement and at no expense to the City, Licensee shall secure and maintain during the term of this Agreement policy or policies of

insurance as enumerated below. Evidence of such insurance shall be delivered to the address shown in this Agreement. Said policy(ies) (1) shall be subject to approval by the City's Risk Manager as to Company, Form and Coverage, and primary to all other insurance the City may secure, and (2) must protect the City from any negligence claims in connection with any activity performed by Licensee by virtue of this Agreement or any use and occupancy of the SPR facilities authorized under the Agreement.

Coverage and/or limits may be altered or increased as necessary, by agreement of the Parties. Said insurance policy(ies) and subsequent renewals must be maintained in full force and effect, at no expense to the City, throughout the entire period of the Agreement. The following documents must be provided as evidence of insurance coverage:

- Declarations: A copy of the policy's declarations pages, showing the policy effective dates, limits of liability and the Schedule of Forms and Endorsements.
- Required Separation of Insured Provision and Endorsement; Cross-Liability Exclusion and other Endorsements Prohibited: Licensee's insurance policy shall include a "separation of insureds" or "severability" clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer's liability. Licensee shall provide the City a copy of the endorsement naming the City of Seattle and its officers, officials, employees, agents and volunteers as an Additional Insured, showing the policy number and signed by an authorized representative, on Form CG2026 (ISO) or comparable. A copy of the "Endorsements Form" to the policy that shows endorsements issued on the policy, and which include any company-specific or manuscript endorsements. A copy of an endorsement stating that "The coverages provided by this policy to the City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City of Seattle."

Licensee's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under Licensee's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Licensee's failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Agreement with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Licensee or reduced and/or offset against the Contract.

#### 19.2. Commercial General Liability (CGL) insurance

A policy of Commercial General Liability Insurance, written on an occurrence form,

including the following coverages:

- Premises/Operations Liability,
- Products/Completed Operations,
- Personal/Advertising Injury,
- Contractual Liability,
- Owners and Contractors Protective Liability, and
- Stop Gap or Employers Contingent Liability.

Such policy(ies) must provide the following minimum limit:

- Bodily Injury and Property Damage –
- \$5,000,000 each occurrence
- \$5,000,000 annual aggregate

Any deductible or self-insured retention must be disclosed and is subject to approval by the City's Risk Manager.

- Licensee's CGL policy shall NOT include any of the following Endorsements (or their equivalent endorsement or exclusions): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer's Liability exclusion, and (e) any "Insured vs. Insured" or "cross-liability" exclusion.

#### 19.3. Business Automobile Liability insurance

When a vehicle is used on SPR property under this Agreement then a policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles is required. Such policy(ies) must provide the following minimum limit:

- Bodily Injury and Property Damage:
- \$1,000,000 per person
- \$1,000,000 per occurrence

#### 19.4. Worker's Compensation insurance

A policy of Worker's Compensation to comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. Such workers' compensation and occupational disease requirements shall include coverage for all employees suffering bodily injury (including death) by accident or disease, which arises out of or in the connection with the performance of this Agreement.

#### 19.5. Liquor liability insurance

When an event, other than a Special Event, is held that includes the sale or distribution of alcohol on the Premises, then a policy of Liquor Liability is required. Such

policy(ies) must provide a minimum limit of \$2,000,000 Combined Single Limit (CSL) per occurrence.

## 20. ASSIGNMENTS

This License is not assignable.

## 21. TERMINATION

- 21.1. For Cause: The City or Licensee may terminate the Agreement if the other party is in material breach of this Agreement, and such breach has not been corrected to the reasonable satisfaction of the non-breaching party in a timely manner as specified in written notice from the non-breaching party.
- 21.2. For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout or lockout, except labor disputes involving Licensee's own employees, sabotage, or superior governmental regulation or control.
- 21.3. Notice: Notice of termination under Section 21.2 shall be given by the Party terminating this Agreement to the other not fewer than ninety (90) business days prior to the effective date of termination.
- 21.4. Actions upon Termination: If termination occurs through no fault of Licensee, Licensee shall be reimbursed for any eligible services properly performed prior to termination, but such compensation shall not exceed the maximum compensation to be paid under the Agreement. Licensee agrees this reimbursement shall fully and adequately compensate Licensee and all sub consultants for all profits, costs, expenses, losses, liabilities, damages, taxes and charges of any kind (whether foreseen or unforeseen) attributable to the termination of this Agreement.

Upon the expiration of this License or its prior termination, all rights of the Licensee to use the Premises shall immediately cease. Licensee covenants that, to the extent that Licensee's use shall have caused the Premises, including all improvements, alterations, changes and additions thereto, to be in a condition materially different from and less valuable than that existing at the inception hereof, Licensee shall immediately restore the Premises to such prior condition. The Licensee, on or before said termination date, shall remove from the Premises all of the Licensee's personal property. All property not removed by the Licensee shall be deemed to have been abandoned by the Licensee and may be appropriated, sold, stored, destroyed or otherwise disposed of by the City without notice to the Licensee and without obligation to account therefor. If the License shall be terminated as to a portion of the Premises then this Section shall apply to such portion, together with all related personal property.

## 22. CONSENT OR APPROVAL

Whenever a Party's consent or approval in writing to any act to be performed by the other Party is required under this License, (a) the Party must obtain a consent or approval in writing expressly for purposes of this License, regardless of whether a consent or approval shall have been granted by the a Party in its regulatory, public utility, or other capacity; and (b) unless otherwise expressly stated herein, such consent or approval may not be unreasonably withheld, conditioned or delayed.

No permission, consent, or approval of the City contained herein or given pursuant to this License 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. AUTHORITY AND RELATIONSHIP

23.1. Licensee. As of the date of this Agreement and thereafter, Licensee hereby represents and warrants that (a) it is a non-profit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of Washington and is qualified to do business in Washington State, and has all requisite power and authority to conduct its business and own its property utilized under this Agreement, (b) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement, (c) the execution, delivery and performance by Licensee under this Agreement has been duly authorized by all necessary action and this Agreement has been duly and validly executed and delivered by Licensee, and (d) this Agreement constitutes the legal, valid and binding obligation of Licensee and is enforceable against Licensee in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the rights of creditors generally.

23.2. City. As of the date of this Agreement and thereafter, City hereby represents and warrants that (a) it is a municipal corporation and first-class city duly organized, validly existing and in good standing under the laws of the State of Washington and is qualified to do business in Washington State, and has all requisite power and authority to conduct its business and own its property utilized under this Agreement, (b) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement, (c) the execution, delivery and performance by City under this Agreement has been duly authorized by all necessary action and this Agreement has been duly and validly executed and delivered by City, and (d) this Agreement constitutes the legal, valid and binding obligation of City and is enforceable against City in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the rights of creditors generally.

23.3. No Partnership. In no event shall the City be construed or held to have become in any way or for any purpose a partner, associate, or joint venturer of the Licensee or any party associated with the Licensee in the conduct of the Licensee's business or otherwise. This License does not make the Licensee the agent or legal representative of the City for any purpose whatsoever. In no event shall the Licensee be construed or held to have become in any way or for any purpose a partner, associate, or joint venturer of the City or any party associated with the City in the conduct of the City's business or otherwise. This License does not make the Licensee the agent or legal representative of the City for any purpose whatsoever. This License shall not be construed to have created any tenancy or interest in land.

**24. AMENDMENTS**

No alteration or modification of the terms or conditions of this License shall be valid and binding unless made in writing and signed by the authorized representatives of the Parties hereto.

**25. NO WAIVER OF DEFAULT**

No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants, and conditions of this License to be performed, kept, and observed by the other party.

**26. BINDING EFFECT**

This License shall be binding upon the successors of the Parties hereto. Time is of the essence.

**27. NEGOTIATED AGREEMENT**

The Parties to this License acknowledge that it is a negotiated agreement, that they have had the opportunity to have this License reviewed by their respective legal counsel, and that the terms and conditions of this License are not to be construed against any party on the basis of such party's draftsmanship thereof.

**28. NOTICE**

Any notice to be given by either party to the other shall be in writing and shall be hand-delivered to the respective Parties at the addresses below, sent electronically with confirmation of receipt, or deposited in the United States mail, postage prepaid, addressed as follows:

If to the City:

Marshall Foster, Director  
Office of the Waterfront and Civic Projects  
P.O. Box 34996  
Seattle, WA 98124  
[Marshall.Foster@Seattle.Gov](mailto:Marshall.Foster@Seattle.Gov)

and

Jesús Aguirre, Superintendent  
Seattle Parks and Recreation  
100 Dexter Avenue North  
Seattle, WA 98109  
[jesus.aguirre@seattle.gov](mailto:jesus.aguirre@seattle.gov)

If to the Licensee:

Heidi Hughes, Executive Director  
Friends of Waterfront Seattle  
P.O. 21272  
Seattle, WA 98111  
[heidi@friendsofwaterfrontseattle.org](mailto:heidi@friendsofwaterfrontseattle.org)

Notices shall be deemed to have been received by the Parties three (3) days after mailing or upon actual delivery, whichever first occurs. The Parties, by notice given, may designate any further or different addresses to which subsequent notices or other communications shall be sent.

## **29. CAPTIONS**

The headings of the various Articles and Sections of this License are for convenience only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions herein.

## **30. INVALIDITY OF PROVISIONS**

Should any term, provision, condition or other portion of this License be held to be inoperative, invalid, or void, the same shall not affect any other term, provision, condition or other portion of this License, and the remainder of this License shall be effective as if such term, provision, condition, or portion were not a part hereof.

## **31. APPLICABLE LAW**

This License shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any legal action under the License shall be King County Superior Court.

**32. AGREEMENT CONTENTS**

This License, including all exhibits and attachments hereto, embodies the entire agreement and understanding between the Parties with respect to the licensing of the Premises and supersedes all other understandings or agreements, written or oral, between the Parties relating to the subject matter of this License.

Signed:

THE CITY OF SEATTLE

FRIENDS OF WATERFRONT SEATTLE

By:   
Marshall Foster (Sep 16, 2020 13:08 PDT)  
\_\_\_\_\_  
Marshall Foster  
Director, Office of the Waterfront and  
Civic Projects

By:   
Heidi Hughes (Sep 17, 2020 08:28 PDT)  
\_\_\_\_\_  
Heidi Hughes,  
Executive Director, Friends of  
Waterfront Seattle

Date: 09/16/20

Date: 09/17/20

By:   
Jesús Aguirre (Sep 17, 2020 15:06 PDT)  
\_\_\_\_\_  
Jesús Aguirre  
Superintendent, Seattle Parks and Recreation

Date: 09/17/20

**EXHIBITS**

- EXHIBIT A-1: Legal Description and Map of Premises – Pier 58
- EXHIBIT A-2: Legal Description and Map of Premises – Piers 62/63
- EXHIBIT A-3: Map of Rebuilt Pier 62
- EXHIBIT B-1: Public Benefits, Equity and Inclusion
- EXHIBIT B-2: Programming and Activation Calendar
- EXHIBIT C: SPR Maintenance Service Levels
- EXHIBIT D: Reporting Commitments
- EXHIBIT E: Licensee Annual Operating Budget
- EXHIBIT F: Uses Permitted under Shoreline Substantial Development Permit at Commencement
- EXHIBIT G: Uses Permitted under Revised or Subsequent Shoreline Substantial Development Permit

EXHIBIT A-1  
LEGAL DESCRIPTION AND MAP OF PREMISES: PIER 58

*WATERFRONT PARK LEGAL DESCRIPTION PROPOSED*

That portion of Lots 3 and 10, and all of Lots 4, 5, 6, 7, 8, and 9 Block 176 of the Supplemental Plat of Seattle Tide Lands, in King County, Washington, as shown on the official maps on file in the office of the Commissioner of Public Lands at Olympia, Washington, described as follows:

Beginning at a point 128.31 feet South 25°21'48" East from a point on said Tide Land Plat marked "Point 8" on Replat of Seattle Tide Lands; Thence South 25°21'48" East along Inner Harbor Line 342.30 feet; thence South 89°45'02" East 126.79 feet to the Westerly margin of Alaskan Way (formerly Railroad Avenue, as platted 180 feet in width in said Supplemental Plat); thence North 31°45'54" West along said Westerly margin 149.83 feet to a point of curvature; thence northwesterly along a curve concave to the southwest having a radial bearing of South 58°14'06" West, a radius of 1399.975 feet and a central angle of 9°17'21" an arc distance of 226.97 feet to a point East of the point of beginning; thence West 59.96 feet to the point of beginning.

Containing 30927 sf

TOGETHER WITH an easement providing non-vehicular public ingress and egress and providing vehicular Seattle Parks maintenance ingress and egress over and upon an existing ramp and decking within the following described area;

That portion of Block 176 of the Supplemental Plat of Seattle Tide Lands, in King County, Washington, as shown on the official maps on file in the office of the Commissioner of Public Lands at Olympia, Washington, described as follows:

Beginning at a point 470.60 feet South 25°21'48" East from a point on said Tide Land Plat marked "Point 8" on Replat of Seattle Tide Lands; Thence South 25°21'48" East along Inner Harbor Line 14.02 feet; thence South 89°35'45" East 32.74 feet; thence South 30°52'46" East 6.27 feet; thence South 89°02'26" East 96.82 feet to the westerly margin of Alaskan Way (formerly Railroad Avenue, as platted 180 feet in width in said Supplemental Plat); thence North 31°45'54" West 22.77 feet; thence North 89°45'02" West 126.79 feet to the Point of Beginning.

ALSO all right, title, and interest of lessees in harbor area leases from the State of Washington for the areas abutting the above described property.

ALSO subject to Easement and Operating Agreement dated May 15th, 1989, and recorded under Record Number 198905151042, records of King County, Washington.



**WATERFRONT PARK AQUATIC LEASE DESCRIPTION:**

THAT PORTION OF THE HARBOR AREA IN FRONT OF LOTS 1 THROUGH 12, INCLUSIVE, BLOCK 173 OF THE SUPPLEMENTAL PLAT OF SEATTLE TIDE LANDS, SHEETS 24 THROUGH 28, MARCH 2, 1897, IN KING COUNTY, WASHINGTON, AS SHOWN ON THE OFFICIAL MAP ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 82.60 FEET SOUTH 24°13'44" EAST, AS MEASURED ALONG THE INNER HARBOR LINE, FROM A POINT ON SAID TIDE LAND PLAT MARKED POINT " 8 " ON REPLAT OF SEATTLE TIDE LANDS;

THENCE SOUTH 24°13'44" EAST 388.00 FEET, ALONG THE INNER HARBOR LINE TO THE NORTH LINE OF PARCEL "X" KING COUNTY LOT BOUNDARY ADJUSTMENT 3011647;

THENCE NORTH 88°36'58" WEST 140.46 FEET, ALONG THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID PARCEL "X";

THENCE NORTH 28°52'29" EAST 30.33 FEET;

THENCE SOUTH 62°54'55" EAST 58.72 FEET TO A POINT ON THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID PARCEL "X"; THENCE NORTH 88°36'58" WEST 124.39 FEET, ALONG THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID PARCEL "X" TO A POINT ON THE OUTER HARBOR LINE;

THENCE NORTH 24°13'44" WEST 264.47 FEET, ALONG THE OUTER HARBOR LINE, TO A POINT MARKED POINT " 8 " ON SUPPLEMENTAL PLAT OF SEATTLE TIDE LANDS;

THENCE NORTH 47°41'47" WEST 155.21 FEET;

THENCE SOUTH 88°51'56" EAST 21.81 FEET;

THENCE NORTH 01°08'04" EAST 8.00 FEET;

THENCE SOUTH 88°51'56" EAST 305.00 FEET;

THENCE SOUTH 01°08'04" WEST 11.50 FEET;

THENCE SOUTH 88°51'56" EAST 37.00 FEET;

THENCE NORTH 01°08'04" EAST 11.50 FEET;

THENCE SOUTH 88°51'56" EAST 33.00 FEET TO A POINT ON THE

INNER HARBOR LINE AND THE POINT OF BEGINNING.

CONTAINING 118,698 SF

TOGETHER WITH AN EASEMENT PROVIDING NON-VEHICULAR PUBLIC INGRESS AND EGRESS AND PROVIDING VEHICULAR SEATTLE PARKS MAINTENANCE INGRESS AND EGRESS OVER AND UPON AN EXISTING RAMP AND DECKING WITHIN THE FOLLOWING DESCRIBED AREA: THAT PORTION OF BLOCK 176 OF THE SUPPLEMENTAL PLAT OF SEATTLE TIDE LANDS, IN KING COUNTY, WASHINGTON, AS SHOWN ON THE OFFICIAL MAPS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 470.60 FEET SOUTH 25°21'48" EAST FROM A POINT ON SAID TIDE LAND PLAT MARKED "POINT 8" ON REPLAT OF SEATTLE TIDE LANDS;

THENCE SOUTH 25°21'48" EAST ALONG INNER HARBOR LINE 14.02 FEET; THENCE SOUTH 89°35'45" EAST 32.74 FEET; THENCE SOUTH

30°52'48" EAST 6.27 FEET; THENCE SOUTH 89°02'26" EAST 96.82

FEET TO THE WESTERLY MARGIN OF ALASKAN WAY (FORMERLY

RAILROAD AVENUE, AS PLATTED 180 FEET IN WIDTH IN SAID

SUPPLEMENTAL PLAT); THENCE NORTH 31°45'54" WEST 22.77 FEET;

THENCE NORTH 89°45'02" WEST 126.79 FEET TO THE POINT OF

BEGINNING.

ALSO ALL RIGHT, TITLE, AND INTEREST OF LESSEES IN HARBOR AREA LEASES FROM THE STATE OF WASHINGTON FOR THE AREAS ABUTTING THE ABOVE DESCRIBED PROPERTY.

ALSO SUBJECT TO EASEMENT AND OPERATING AGREEMENT DATED MAY 15TH, 1989, AND RECORDED UNDER RECORD NUMBER 198903151042, RECORDS OF KING COUNTY, WASHINGTON.



L#	BEARING	DISTANCE
L1	S 88°51'56" E	33.00'
L2	N 01°08'04" E	11.50'
L3	S 01°08'04" W	11.50'
L4	N 01°08'04" E	8.00'

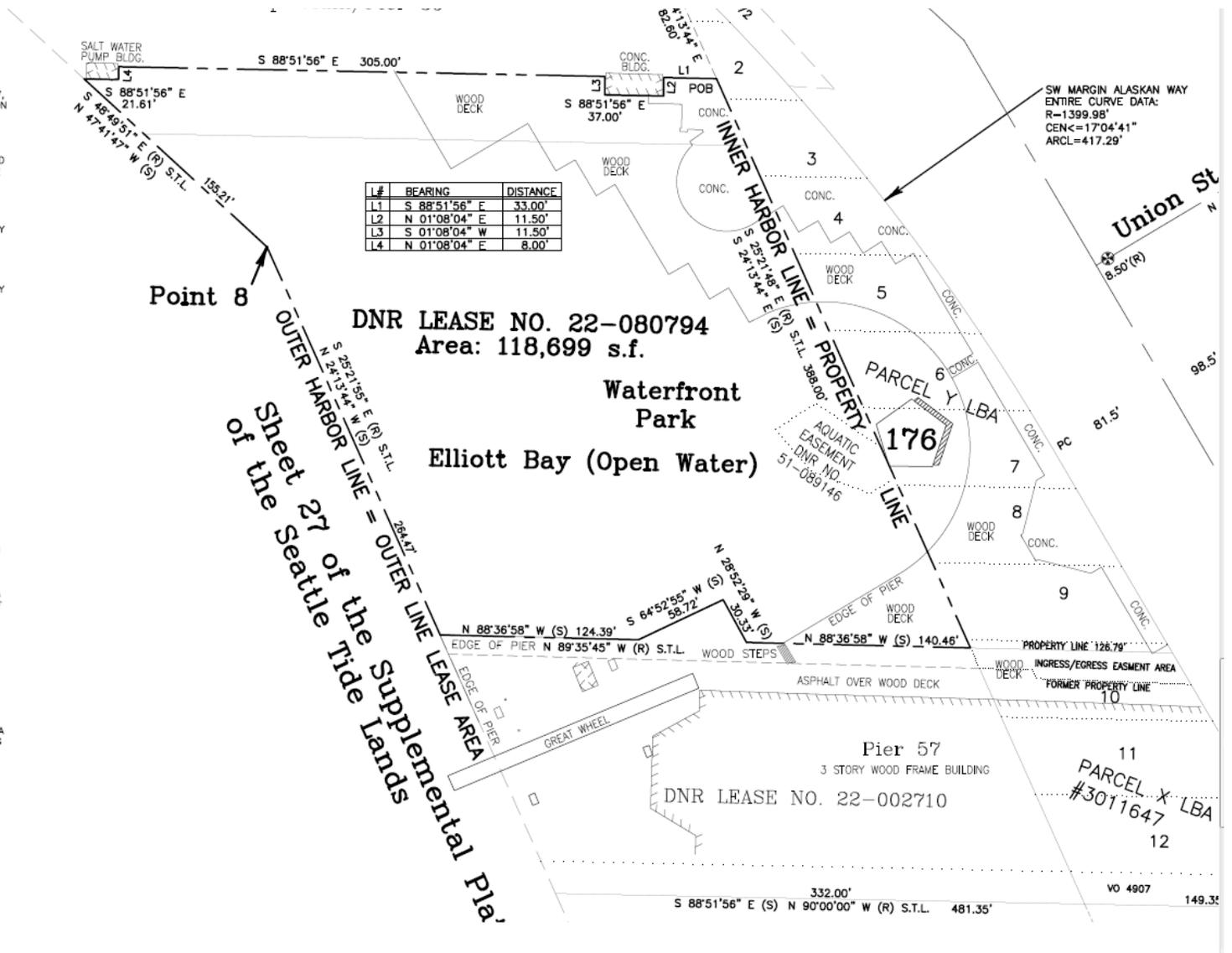
Point 8

Sheet 27 of the Supplemental Plat of the Seattle Tide Lands

DNR LEASE NO. 22-080794  
Area: 118,699 s.f.

Waterfront Park

Elliott Bay (Open Water)



SW MARGIN ALASKAN WAY  
ENTIRE CURVE DATA:  
R=1399.98'  
CEN<=17°04'41"  
ARCL=417.29'

Union St

8.50' (R)

98.5'

81.5'

PROPERTY LINE 126.79'

INGRESS/EGRESS EASEMENT AREA

FORMER PROPERTY LINE

Pier 57  
3 STORY WOOD FRAME BUILDING

DNR LEASE NO. 22-002710

PARCEL X LBA  
#3011647

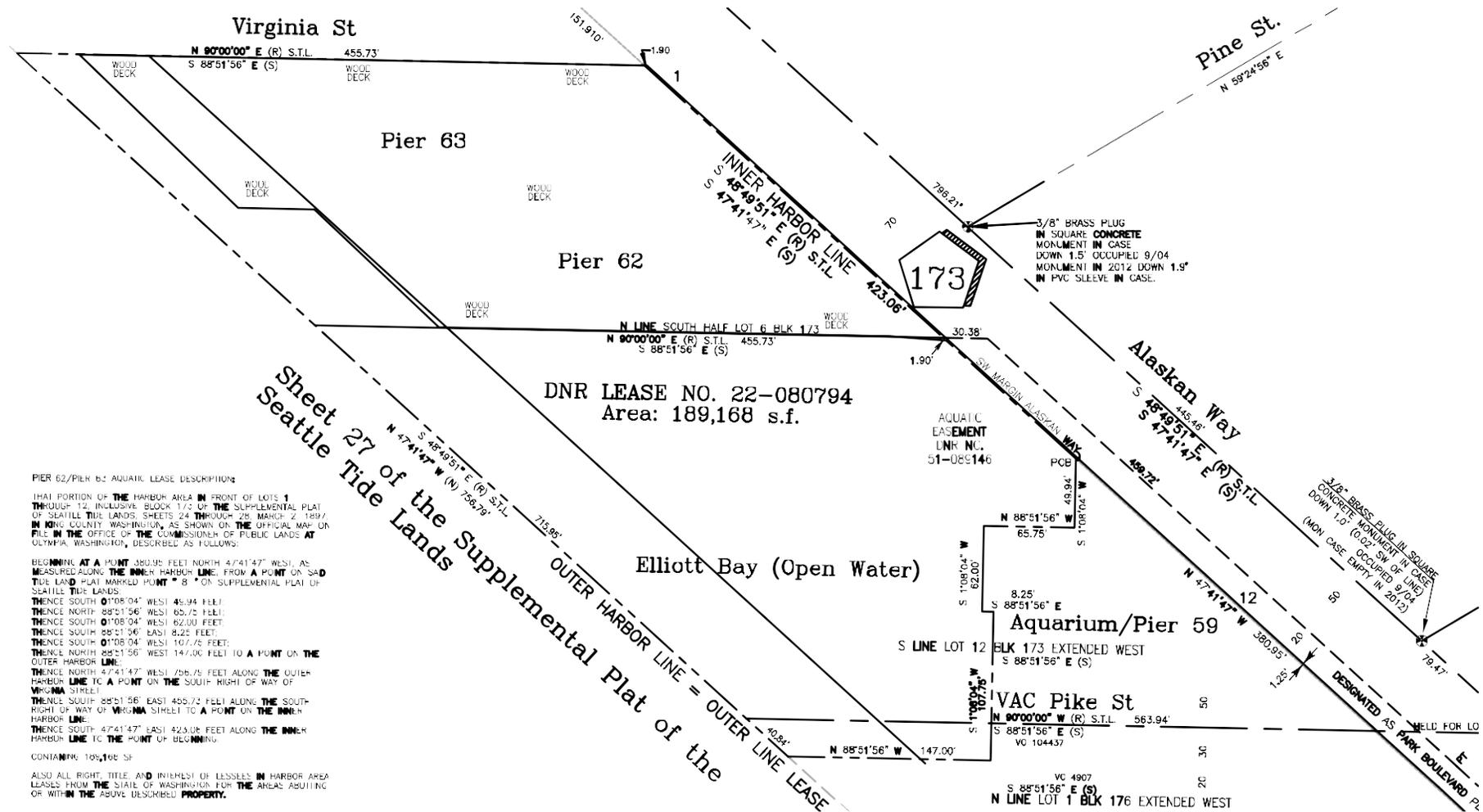
12

VO 4907

149.3'

332.00'  
S 88°51'56" E (S) N 90°00'00" W (R) S.T.L. 481.35'

EXHIBIT A-2  
LEGAL DESCRIPTION AND MAP OF PREMISES: PIERS 62/63



PIER 62/PIER 63 AQUATIC LEASE DESCRIPTION

THAT PORTION OF THE HARBOR AREA IN FRONT OF LOTS 1 THROUGH 12, INCLUSIVE, BLOCK 173 OF THE SUPPLEMENTAL PLAT OF SEATTLE TIDE LANDS, SHEETS 24 THROUGH 28, MAP NO. 2, 1987, IN KING COUNTY, WASHINGTON, AS SHOWN ON THE OFFICIAL MAP ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 380.00 FEET NORTH 4/741.47" WEST, AS MEASURED ALONG THE INNER HARBOR LINE, FROM A POINT ON SAID TIDE LAND PLAT MARKED POINT "B" OR SUPPLEMENTAL PLAT OF SEATTLE TIDE LANDS:

- THENCE SOUTH 01°08'04" WEST 45.94 FEET;
- THENCE NORTH 88°51'56" WEST 65.75 FEET;
- THENCE SOUTH 01°08'04" WEST 82.00 FEET;
- THENCE SOUTH 88°51'56" EAST 8.25 FEET;
- THENCE SOUTH 01°08'04" WEST 107.75 FEET;
- THENCE NORTH 88°51'56" WEST 147.00 FEET TO A POINT ON THE OUTER HARBOR LINE;
- THENCE NORTH 4/741.47" WEST 726.75 FEET ALONG THE OUTER HARBOR LINE TO A POINT ON THE SOUTH RIGHT OF WAY OF VIRGINIA STREET;
- THENCE SOUTH 88°51'56" EAST 455.73 FEET ALONG THE SOUTH RIGHT OF WAY OF VIRGINIA STREET TO A POINT ON THE INNER HARBOR LINE;
- THENCE SOUTH 4/741.47" EAST 423.06 FEET ALONG THE INNER HARBOR LINE TO THE POINT OF BEGINNING.

CONTAINING 105,168 SF

ALSO ALL RIGHT, TITLE, AND INTEREST OF LESSEES IN HARBOR AREA LEASES FROM THE STATE OF WASHINGTON FOR THE AREAS ADJACENT OR WITHIN THE ABOVE DESCRIBED PROPERTY.

EXHIBIT A-3  
MAP OF REBUILT PIER 62

**PIER 62/63**  
SITE PLAN

LEGEND

- ① REBUILT PIER 62
- ② FLOATING DOCK
- ③ LIGHT PENETRATING SURFACE



## EXHIBIT B-1 PUBLIC BENEFITS, EQUITY AND INCLUSION

The City and Licensee share the goal of making the Premises reflective of the “waterfront for all” principle that has guided the Waterfront Seattle program since 2012. In order to do this, both Parties are committed to providing a series of public benefits with the goal of maintaining and encouraging public access to the Premises while also engaging different communities, especially underserved ones, in the daily and seasonal programming of the Premises.

### Free Programming and Activation

In the course of developing, planning, implementing and issuing permits for events for daily and seasonal programming, Licensee will include events and activities that are cultural, recreational, and educational. Licensee will plan and execute activities and programming in a manner similar to the schedule attached at EXHIBIT B-2, understanding that there will be changes and substitutions as necessary or convenient. While changes may be made to the specific activities, Licensee will make reasonable efforts to provide the number and types of activities shown.

### Ticketed and Fundraising Events

The City and Licensee recognize that ticketed and fundraising events enhance the ability of Licensee to provide programming and activation that is free to the public. Both Parties also recognize that these events must not erode the fundamental nature of public spaces. Licensee commits that the Premises will remain open and accessible to the public 365 days per year during Park Hours, except for ticketed and private fundraising events as authorized by and subject to Section 7 in the License Agreement.

All revenue generated by these events and in receipt by Licensee will be used to offset the cost of free programming and activation offered to the public by Licensee.

### Small Business Incubation and Park Concessions

Through its concession program, Licensee will provide opportunities for underserved communities to start and/or grow their small businesses on the Premises. Licensee will do so, in part, through partnerships with organizations that provide small business support to women, people of color, immigrants, and individuals with low income, such as Ventures and El Centro de la Raza. As part of this effort, Licensee and City have identified the aspirational target of 25% of all vendors and concessions represented by Women and Minority Owned Business Enterprises (WMBE).

All revenue generated by concessions and vending in the Premises and in receipt by Licensee will be used to offset free programming and activation offered to the public by Licensee.

### Engagement and Inclusion in Programming and Activation

Licensee commits to robust community outreach and engagement to provide that programming and activation is representative of and welcoming for all communities in Seattle. The following represents the Engagement and Inclusion Plan developed by Licensee and approved by the City:

- At least 35% of Events will be marketed towards and/or reflective of underserved communities. Licensee shall utilize its Park Programming Panel to determine the best mechanisms to engage underserved communities in using the new spaces on Pier 62.

- Outreach for all programming and activation will be comprised of a diverse mix of marketing including print, signage, radio, online, eBlasts, and social media. Community outlets and media sources will include those used to date by Licensee in programming and activation of Pier 58 since 2015. Those include ads in community newspapers such as, The Facts NW, International Examiner, La Raza del Noroeste, NW Asian Weekly, Northwest Vietnamese News, Seattle Gay News, similar tribal publications and The Stranger.
- Licensee has established a Friends of the Park Programming Panel, which will invite members of diverse community groups to plan programming of the Premises and may recommend awarding of grants to underserved community organizations to participate in activities on the Premises. Licensee will also coordinate community outreach with SPR in order to develop additional strategies to work together on community inclusion for the Premises.

EXHIBIT B-2  
PROGRAMMING AND ACTIVATION CALENDAR

**PROGRAM PLANNING**

YEAR							DECEMBER 2019 - DECEMBER 2021						
MONTH		Jan		Feb		Mar		Apr		May		Jun	
<b>AMENITIES &amp; INSTALLATIONS</b>	Ice Skating Rink & Climbing Wall	Ice Skating Rink & Climbing Wall	Ice Skating Rink & Climbing Wall	RAVE Soccer Pitch & Flexible Event Space									
	Concessions	Concessions	Concessions	Concessions	Concessions	Concessions	Concessions	Concessions	Concessions	Concessions	Concessions	Concessions	Concessions
	Outdoor Furniture	Outdoor Furniture	Outdoor Furniture	Outdoor Furniture	Outdoor Furniture	Outdoor Furniture	Outdoor Furniture	Outdoor Furniture	Outdoor Furniture	Outdoor Furniture	Outdoor Furniture	Outdoor Furniture	Outdoor Furniture
	Floating Dock	Floating Dock	Floating Dock	Floating Dock	Floating Dock	Floating Dock	Floating Dock	Floating Dock	Floating Dock	Floating Dock	Floating Dock	Floating Dock	Floating Dock
	Rotating Art	Rotating Art	Rotating Art	Rotating Art	Rotating Art	Rotating Art	Rotating Art	Rotating Art	Rotating Art	Rotating Art	Rotating Art	Rotating Art	Rotating Art
<b>PARK PROGRAMS: SMALL EVENTS</b> (ATTENDANCE: 0-250) Daily and Weekly	Ice Skating & Ice Wall Climbing	Ice Skating & Ice Wall Climbing	Ice Skating & Ice Wall Climbing	Sounders RAVE Soccer & Storm Basketball									
	Games & Activities	Games & Activities	Games & Activities	Games & Activities	Games & Activities	Games & Activities	Games & Activities	Games & Activities	Games & Activities	Games & Activities	Games & Activities	Games & Activities	Games & Activities
	Fishing & Squid Jigging	Fishing & Squid Jigging	Fishing & Squid Jigging	Fishing & Squid Jigging	Fishing & Squid Jigging	Fishing & Squid Jigging	Fishing & Squid Jigging	Fishing & Squid Jigging	Fishing & Squid Jigging	Fishing & Squid Jigging			
	Walking Tours	Walking Tours	Walking Tours	Walking Tours	Walking Tours	Walking Tours	Walking Tours	Walking Tours	Walking Tours	Walking Tours	Kayak Tours	Kayak Tours	Kayak Tours
	Live Music Buskers	Live Music Buskers	Live Music Buskers	Live Music Buskers	Live Music Buskers	Live Music Buskers	Live Music Buskers	Live Music Buskers	Live Music Buskers	Live Music Buskers	Live Music Buskers	Live Music Buskers	Live Music Buskers
	Movement & Fitness Classes	Movement & Fitness Classes	Movement & Fitness Classes	Movement & Fitness Classes	Movement & Fitness Classes	Movement & Fitness Classes	Movement & Fitness Classes	Movement & Fitness Classes	Movement & Fitness Classes	Movement & Fitness Classes			
	Educational Programs	Educational Programs	Educational Programs	Educational Programs	Educational Programs	Educational Programs	Educational Programs	Educational Programs	Educational Programs	Educational Programs	Educational Programs	Educational Programs	Educational Programs
	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour
<b>PARK PROGRAMS: MEDIUM EVENTS</b> (ATTENDANCE: 250-2500) Quarterly	Film & Sports Game Screenings	Film & Sports Game Screenings	Film & Sports Game Screenings	Film & Sports Game Screenings	Film & Sports Game Screenings	Film & Sports Game Screenings	Film & Sports Game Screenings	Film & Sports Game Screenings	Film & Sports Game Screenings	Film & Sports Game Screenings			
	Art & Light Installations	Art & Light Installations	Art & Light Installations	Art & Light Installations	Art & Light Installations	Art & Light Installations	Art & Light Installations	Art & Light Installations	Art & Light Installations	Art & Light Installations			
	Live Music Concerts	Live Music Concerts	Live Music Concerts	Live Music Concerts	Live Music Concerts	Live Music Concerts	Live Music Concerts	Live Music Concerts	Live Music Concerts	Live Music Concerts // Folklife Showcase	Live Music Concerts	Live Music Concerts	Live Music Concerts
	Pop-up Markets & Vendors	Pop-up Markets & Vendors	Pop-up Markets & Vendors	Pop-up Markets & Vendors	Pop-up Markets & Vendors	Pop-up Markets & Vendors	Pop-up Markets & Vendors	Pop-up Markets & Vendors	Pop-up Markets & Vendors	Pop-up Markets & Vendors			
	Cultural & Food Festivals	Cultural & Food Festivals	Cultural & Food Festivals	Cultural & Food Festivals	Cultural & Food Festivals	Cultural & Food Festivals	Cultural & Food Festivals	Cultural & Food Festivals	Cultural & Food Festivals	Cultural & Food Festivals			
<b>PARK PROGRAMS: LARGE EVENTS</b> (ATTENDANCE: 2500+) Seasonal Special Events													
	Winter Festival			Spring Festival									

EXPECTED ATTENDANCE
0 - 250 people per hour
250 - 2500 people per hour
2500+ people per hour

Jul	Aug	Sep	Oct	Nov	Dec
RAVE Soccer Pitch & Flexible Event Space	RAVE Soccer Pitch & Flexible Event Space	RAVE Soccer Pitch & Flexible Event Space	RAVE Soccer Pitch & Flexible Event Space	RAVE Soccer Pitch & Flexible Event Space	RAVE Soccer Pitch & Flexible Event Space
Concessions	Concessions	Concessions	Concessions	Concessions	Concessions
Outdoor Furniture	Outdoor Furniture	Outdoor Furniture	Outdoor Furniture	Outdoor Furniture	Outdoor Furniture
Floating Dock	Floating Dock	Floating Dock	Floating Dock	Floating Dock	Floating Dock
Rotating Art	Rotating Art	Rotating Art	Rotating Art	Rotating Art	Rotating Art
Sounders RAVE Soccer & Storm Basketball	Sounders RAVE Soccer & Storm Basketball	Sounders RAVE Soccer & Storm Basketball	Sounders RAVE Soccer & Storm Basketball	Sounders RAVE Soccer & Storm Basketball	Ice Skating & Ice Wall Climbing
Games & Activities	Games & Activities	Games & Activities	Games & Activities	Games & Activities	Games & Activities
Fishing & Squid Jigging	Fishing & Squid Jigging	Fishing & Squid Jigging	Fishing & Squid Jigging	Fishing & Squid Jigging	Fishing & Squid Jigging
Kayak Tours	Kayak Tours	Kayak Tours	Walking Tours	Walking Tours	Walking Tours
Live Music Buskers	Live Music Buskers	Live Music Buskers	Live Music Buskers	Live Music Buskers	Live Music Buskers
Movement & Fitness Classes	Movement & Fitness Classes	Movement & Fitness Classes	Movement & Fitness Classes	Movement & Fitness Classes	Movement & Fitness Classes
Educational Programs	Educational Programs	Educational Programs	Educational Programs	Educational Programs	Educational Programs
Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour
Film & Sports Game Screenings	Film & Sports Game Screenings	Film & Sports Game Screenings	Film & Sports Game Screenings	Film & Sports Game Screenings	Film & Sports Game Screenings
Art & Light Installations	Art & Light Installations	Art & Light Installations	Art & Light Installations	Art & Light Installations	Art & Light Installations
Live Music Concerts	Live Music Concerts // Bumbershoot Showcase	Live Music Concerts	Live Music Concerts	Live Music Concerts	Live Music Concerts
Pop-up Markets & Vendors	Pop-up Markets & Vendors	Pop-up Markets & Vendors	Pop-up Markets & Vendors	Pop-up Markets & Vendors	Pop-up Markets & Vendors
Cultural & Food Festivals	Cultural & Food Festivals	Cultural & Food Festivals	Cultural & Food Festivals	Cultural & Food Festivals	Cultural & Food Festivals
SeaFair at the Pier		Salmon Homecoming Celebration	Trick-or-Treat on the Waterfront		Holiday Market and Event

EXHIBIT C  
SPR MAINTENANCE SERVICE LEVELS

**Pier 62 Maintenance Schedule**

Pay Grade	Position	Task Category	Routine or As Needed (Demand)	Facilities Inspections (Preventative Maintenance)	Detail Task	Low	Medium	High
						Jan - Mid-March	Mid-March - May, Sept - Dec	May Sept
W-1	Maint Laborer	Cleaning	Routine		Litter pickup	1x/day	1-2x/day	2x/day
W-1	Maint Laborer	Cleaning	Routine		Servicing trash, recycling, and compost receptacles	1x/day	2x/day	3x/day
W-1	Maint Laborer	Cleaning	Routine		Pressure washing (pavement, concrete, pavers, light penetrating surfaces). Assumes we are using triversus or similar equipment		2x/month	1x/week
W-1	Maint Laborer	Cleaning	Routine		Blowing		1x/week	2x/week
W-2	Carpenter	Repair & Maintenance	As needed	Annual	Boardwalk, railing cap, comfort station partition and door, kiosk (plexi-glass sign boards)	As needed	As needed	As needed
W-2	Cement Finisher	Repair & Maintenance	As needed		Benchboard replacement, boardwalk board replacement, tile repair and replacement, pavement, swing gate, floating dock, piling inspection	As needed	As needed	As needed
W-2	Facilities Lead Worker	Repair & Maintenance	As needed		Assist Cement Finisher and on repair and replacement of benchboards, boardwalks, pavements			
W-2	Drainage Collector Worker	Repair & Maintenance	Routine	Annual	Inspect and clean catch basin, replace storm water filter cartridge, Inspect & clean surface drainage infrastructure, repair infrastructure	As needed	As needed	As needed
W-2	Installation Maint Wkr	Repair & Maintenance	As needed	Annual	Light carpentry, painting, graffiti removal, play ground equipment repair, installation/replacement signs, gutter cleaning, roof inspections, diagnose minor irrigation repair needs, unclog toilets, sinks, drains, less technical than a journey level crafts (trades)	As needed	As needed	As needed
W-2	Painter	Repair & Maintenance	As needed	Annual	Paint touchups and graffiti removal off furnishing, fixtures, structures	As needed	As needed	As needed
W-2	Truck Driver	Repair & Maintenance	Routine		Pick ups, deliveries, hauling	As needed	As needed	As needed
W-3	Electrician	Repair & Maintenance	As needed	Annual	Replace and repair damaged fixtures, troubleshoot non functioning fixtures, replace and repair electric hand dryers	As needed	As needed	As needed
W-3	Metal Fabricator	Repair & Maintenance			Waterfront railing, fencing, and screens, planter walls	As needed	As needed	As needed
W-3	Plumber	Repair & Maintenance	As needed	Biannual	Irrigation repair, unclog toilets, sinks, drains, winterization of irrigation and water features, repair and replace comfort station fixtures, inspect/repair fire supression system?	As needed	As needed	As needed

## EXHIBIT D REPORTING COMMITMENTS

Licensee and City have identified the following reporting protocol based on their experience working together in the programming and activation of Waterfront Park and the commitments described in Ordinance 125761. In addition to this reporting protocol, Licensee and City, including both SPR and SDOT, will work with the Oversight Committee, once established, in developing a “Performance Standard.” The Performance Standard will form the benchmark for how the Premises are evaluated and will be used as the basis for an annual report that the Oversight Committee provides to the Mayor and City Council. The City, Licensee, and Oversight Committee will identify which of the following reports will be incorporated into the annual report to the Mayor and City Council.

For the first year of the License Agreement, Licensee will convene quarterly meetings with the City to discuss the following:

- Summary of events, programs and activities conducted, indicating if they were free and open to the public, ticketed and open to the public, or private events, as well as which events were Special Events.
- All parties who approached Licensee to hold an event that required a Special Event Permit and why inquiries did not result in events.

Licensee will provide to the City an annual report that includes the following:

- Finance – Detailed revenue, costs and expenditures, and budgetary forecasts:
  - Showing transactions of the current period and year-to-date;
  - Separating revenues and expenses by category;
  - A one-year budgetary forecast;
  - Clearly identifying the period – date, month, and year – covered by the report;
  - Providing narrative information to explain any problems or irregularities in record-keeping or reporting that City should be aware of.
- Outreach for community input and feedback – Summary of outreach methods (surveys, etc.) employed to collect community input and feedback regarding how safe, welcoming, and vibrant the parks are perceived to be and regarding the quality and effectiveness of programming and activities.
- Security – Summary of the security services provided in the Premises, including names of companies/organizations with whom the Licensee has contracted for these services.
- Staffing – Summary of all staffing provided by Licensee in the Premises during the year, including number, type, and typical hours of staff positions.
- Outreach for social service purposes – Number of contacts made, services offered, and outcomes as available and adhering to confidentiality guidelines as determined by City, State, and Federal law.
- Public Restrooms – Number and frequency of publicly available restrooms and cleaning frequency.
- Programming – A calendar of all events held in the Premises, including:
  - Summary of events, programs and activities conducted, indicating if they were free and open to the public, ticketed and open to the public, or private events, as well as which events were Special Events.
  - List of community partners and public acknowledged sponsors.
  - Attendance and female-to-male ratio, taken twice daily and including regular daily attendance and, when relevant, event-based attendance.

- Public Benefits – Summary of any additional public benefits offered, including:
  - Summary of aspirational target(s) and actual outcomes regarding the securing of contracts, vendors and concessions through Women and Minority Owned Business enterprises (WMBE).
  - Outreach to surrounding communities, including underserved populations;
  - Summaries to indicate extent; scope of outreach (how many people contacted, what groups and organizations contacted)

SPR shall provide to Licensee the following reports:

- Maintenance Activities (Annual) – A summary of total FTE hours and specific maintenance activities.
- Budget (Annual) – Budget actuals, including capital equipment investments, labor, and overhead.
  - Any unspent funds from the Seattle Park District will be applied to the following budget year or to a capital investment and replacement fund, the determination of which will be made by SPR with input from Licensee and the Central Waterfront Oversight Committee. Carry-forward of these funds will be subject to Seattle City Council approval.
- In addition to these annual reporting commitments, SPR will utilize its Park Inspection Protocol with both Licensee and Oversight Committee to evaluate cleanliness and functionality of Premises on a quarterly basis but will also make this service available with two (2) weeks-notice by Licensee or Oversight Committee to six (6) times per year.

All annual reporting commitments will be due by the last working day of March of the following year.

EXHIBIT E  
LICENSEE ANNUAL OPERATING BUDGET

## Pier 62 and Pier 58 Programming and Activation Budget (2020)

EXPENSES	COST
<b>Programming: Events &amp; Activities</b>	
Large Events (2500+)	\$10,000
Medium Events (250-2500 attendees)	\$130,000
Small Events (0-250 attendees)	\$30,000
<b>Recreational Programming</b>	
Sounders RAVE Foundation Soccer Pitch	\$25,000
General Recreational (play area, roller hockey, kayak tours, etc.)	\$35,000
<b>Art Installations, Markets &amp; Concessions</b>	\$40,000
<b>TOTAL PIER 62 PROGRAMMING</b>	<b>\$270,000</b>
<b>Staffing</b>	
Programming Staff	\$470,000
Security Staff	\$250,000
<b>TOTAL STAFF</b>	<b>\$720,000</b>
<b>Overhead &amp; Marketing</b>	
Insurance (CGL) and reporting expenses	\$150,000
Honey Bucket Rental	\$100,000
Marketing, Website, Signage, and Data Collection	\$126,000
<b>TOTAL OVERHEAD</b>	<b>\$376,000</b>
<b>TOTAL OPERATING EXPENSES</b>	<b>\$1,366,000</b>

## EXHIBIT F

### USES PERMITTED UNDER SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT AT COMMENCEMENT

Food and beverage service provided by food trucks and carts
Canopy installation (imbeds are permitted to be built into the pier to secure the canopy which is removable) where the cost is less than the threshold amount as adjusted under RCW 90.58.030(3)(e)
Placement of removable, modified, shipping containers to provide covered seating: containers have no foundation and would be placed on the Pier ready for use
Portable restrooms
Trash and recycling receptacles
Modular storage hut to house park staff and belongings
Trailer to house park staff, belongings, and ADA accessible restroom trailer, other trailers to support program
Storage container for equipment
Removable play equipment, movable sporting fields, and movable recreation equipment that support activities such as soccer, beach volleyball (seasonal), dancing, and basketball (seasonal)
Auxiliary lighting (cafe style string lights and stage lighting) to support events and placemaking
Moveable seating, furniture and umbrellas
Small tents (10'x10'): up to 25 at a time for all size events
Medium tents (10'x20', 10'x30', 10'x60'): for small, medium, and large events
Showmobile stage truck
Temporary art installations
Kayak tours leaving from the floating dock; ability to leave kayaks and exhibit displays on wheeled trailers on Pier between tours

## EXHIBIT G

### USES PERMITTED UNDER REVISED OR SUBSEQUENT SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

Canopy installation (imbeds are permitted to be built into the pier to secure the canopy which is removable) where cost exceeds the threshold amount as adjusted under RCW 90.58.030(3)(e)
Removable ice-skating rink (seasonal)
Large tents (40'x90', 80'x180'): for larger events like Salmon Homecoming, concerts, winter events
Portable stages of various sizes to support concerts and performances with lighting and sound systems
Scaffolding Structures for art walls, walks and runs start/ finish structures, temporary bleachers