CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117911

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to enter into an agreement with EarthCorps, a Washington not-for-profit corporation, to occupy and use a portion of Building 30 at Magnuson Park; and ratifying and confirming certain prior acts.

RECITALS

WHEREAS, EarthCorps has used space at Warren G. Magnuson Park ("Magnuson Park" or "Park") since 2000; and

WHEREAS, the Department of Parks and Recreation (DPR) and EarthCorps have similar missions to restore parks and natural areas and strengthen community through hands-on environmental service; and

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

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

WHEREAS, it is in the best interests of both DPR and EarthCorps to enter into a long-term agreement to headquarter the EarthCorps program in Building 30 at Magnuson Park;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation ("Superintendent"), or his designee, is authorized to execute for and on behalf of the City a twenty-five year agreement with EarthCorps for space in a section of Building 30 at Warren G. Magnuson Park to manage and operate EarthCorps programs, in the form of the Concession Agreement between the City of Seattle Department of Parks and Recreation and EarthCorps (the "Agreement"), which is attached to this ordinance as Attachment 1. The Superintendent is authorized to make such

minor deletions and revisions as the Superintendent deems to be in the best interest of the City, consistent with the purposes of this ordinance.

Section 2. Any acts consistent with the authority of this ordinance taken prior to its effective date are hereby ratified and confirmed.

Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Concession Agreement between the City of Seattle Department of Parks and Recreation and EarthCorps

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

THIS AGREEMENT is made and entered into this ___ day of _____, 2013 (the "Effective Date"), by and between THE CITY OF SEATTLE, a municipal corporation ("the City"), acting by and through its Superintendent of Parks and Recreation ("Superintendent" and "DPR", respectively), and EarthCorps, a Washington not-for-profit corporation ("Concessionaire").

RECITALS

WHEREAS, EarthCorps has used space at Warren G. Magnuson Park ("Magnuson Park" or "Park") since 2000; and

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

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

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

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

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

1. PREMISES AND ADJACENT AREA

1.1 Premises Description and Use

As used in this Agreement, "Premises" means portions (approximately 8,815 square feet) of the building commonly referred to as Building 30 located on the land legally described on Exhibit A-4, in Magnuson Park, Seattle, Washington, which portions are depicted on the floor plans attached as Exhibits A-1 and A-2. In carrying out its activities under this Agreement, Concessionaire shall have exclusive use of the Premises subject to the terms and conditions herein.

1.2 Adjacent Area

In addition to use of the Premises, Concessionaire is granted a revocable license to install and maintain storage facilities, including a fuel shed, for its exclusive use in the location designated on Exhibit A-3 as "Adjacent Area". Fuel storage is limited to the area marked as "Fuel Storage" on Exhibit A-3, and Concessionaire may store therein the quantity of fuel allowed by Concessionaire's fuel storage permit, but not to exceed sixty (60) gallons of gasoline. The license to use the Adjacent Area may be terminated by the City upon not less than seventy-five (75) days written notice and without reduction in the Concession Fee. Unless Concessionaire's license to use the Adjacent Area is revoked, all terms and conditions of this Agreement that are applicable to the Premises shall also be applicable to the Adjacent Areas unless otherwise expressly provided herein.

The foregoing notwithstanding, the City agrees not to terminate the Concessionaire's license to use the Adjacent Area, unless, due to presently unforeseen circumstances, the City needs to use the Adjacent Area for another purpose, as determined by the Superintendent; in such event, the City may, but is not obligated to, offer the Concessionaire an alternative area. If the offered replacement area is not acceptable to the Concessionaire, the Concessionaire shall have the right to terminate this Agreement upon written notice to the City.

The City makes no guarantee that the Adjacent Area depicted in Exhibit A-3 is code compliant, nor does the City guarantee the Adjacent Area will remain available for use by the Concessionaire throughout the Term of the Agreement.

2. MAGNUSON PARK COMMON AREAS; PARKING; LOADING ZONES

2.1 Magnuson Park Common Areas

Concessionaire may use those areas of Magnuson Park designated by the Superintendent for public use (the "Common Areas"), including the parking areas, in common with members of the general public during normal Park hours and subject to the Superintendent's rules and regulations. The City shall at all times have exclusive control and management of the Common Areas and no diminution thereof shall be deemed a constructive or actual eviction or entitle Concessionaire to compensation or a reduction or abatement of Concession Fee.

2.2 General Parking

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

2.3 Service Vehicle Parking

The City acknowledges that Concessionaire needs designated loading zones to allow access to its storage sheds and that Concessionaire has a number of service

vehicles associated with its daily operation of service. The City hereby agrees to establish loading zones by appropriate signage and Concessionaire is hereby granted the right to park its service vehicles in the locations shown on Exhibit A-3. Upon request by the City and upon reasonable notice, Concessionaire shall temporarily move the service vehicles from the location shown on Exhibit A-3 to another designated location within the Park. The City agrees to give Concessionaire as much notice as is reasonably possible under the circumstances but in any event, not less than three (3) business days notice, unless an unanticipated emergency situation arises. Additionally, the City agrees that it will not request that Concessionaire's vehicles be moved more than five (5) times during any calendar month

3. TERM

This Agreement shall be for a term of twenty-five (25) years (the "Term"), beginning on August 1, 2013 (the "Commencement Date"). So long as this Agreement is executed by an authorized representative of both parties following authorization by an ordinance of Seattle City Council, this Agreement will be retroactively effective as of the Commencement Date regardless of the date of signature.

4. PERMITTED USE

4.1 Permitted Use

Concessionaire shall use the Premises and Adjacent Area described in Section 1 and depicted on Exhibits A-1, A-2 and A-3 for classrooms, meeting rooms, storage and administrative offices related to the general operations of EarthCorps as a nonprofit organization dedicated to local environmental restoration, including trail work and the training of staff and volunteers (the "Permitted Use"). Concessionaire shall not use the Premises or Adjacent Area for any other purpose or make any use of the Premises that is inconsistent with the Permitted Use without the Superintendent's prior written consent.

4.2 Conditions in USA Deed

The City acquired Magnuson Park, including the Premises, by quitclaim deed recorded by the King County Recorder's Office under recording number 9905041194, whereby the United States of America granted Building 30 and other portions of Magnuson Park to the City (the "USA Deed"). This Agreement and the obligations of the parties hereto are subject to the terms and conditions set forth in the USA Deed. Concessionaire shall use the Premises in strict accordance with all the terms and conditions imposed by the United States of America as set forth in the USA Deed that pertain to the use of the Premises, including but not limited to the terms and conditions regarding hazardous materials, lead based paints, asbestos, and historic resources contained in provisions in paragraphs 8, 9, 10, 11, 12 and 13 of the USA Deed, if and to the extent applicable to the Premises. In the event of any conflict between the terms and conditions of the USA Deed and any provisions of this Agreement, the terms of the USA Deed shall control. Violations of the said terms and conditions of the USA Deed

may be grounds for reversion to the United States of America of the Premises, in the discretion of the United States of America and with no compensation to either the Concessionaire or the City from the United States of America.

5. CONCESSION FEE

5.1 Concession Fee

Beginning on the Commencement Date and thereafter each month during the term, Concessionaire shall pay the City a monthly fee (the "Concession Fee) in an initial amount of $5,722 (five thousand seven hundred twenty-two dollars), together with any leasehold excise tax due and owing, as further described in Section 12.4.

5.2 Time and Manner of Payment

Concessionaire shall pay the Concession Fee on or before the first day of each month during the Term. All payments shall be by check or money order, and made payable to the City. All payments shall be delivered to:

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

or to such other address as DPR may hereafter designate, in writing.

5.3 Adjustments to Concession Fee.

5.3.1 Annual Concession Fee Adjustments. Except as set forth in Section 5.3.2, beginning on the first anniversary of the Commencement Date and annually thereafter until the expiration or termination of this Agreement (each, a "Fee Adjustment Date"), the Concession Fee shall be adjusted upward by the greater of either two (2) percent or the percentage increase in the Consumer Price Index. The CPI used for this calculation will be the total non-compounded percentage change between the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (All Items) in the Seattle-Tacoma-Bremerton region (1982-84 = 100) ("CPI") published for the month which is two months prior to the Fee Adjustment Date compared to the CPI published for the month which is fourteen months prior to the Fee Adjustment Date. Notwithstanding the foregoing, the annual adjustment shall never exceed four percent (4%). The City shall notify Concessionaire in writing of the new monthly Concession Fee amount that will be due starting on the Fee Adjustment Date.

By way of example only, if the CPI fourteen months prior to the Fee Adjustment Date is 100 and the CPI two months prior to the Fee Adjustment Date is 102 and the then-current annual Concession Fee is $60,000, then the total CPI

adjustment would be two (2%) and the annual Concession Fee would increase to $61,200 effective as of the Rent Adjustment Date.

In the event the CPI is discontinued, the parties shall agree upon another similar index to be used to calculate the contemplated adjustment and, in the event of an inability to agree, the parties shall request the American Arbitration Association or its successor to appoint a qualified arbitrator to establish an appropriate adjustment standard to measure inflation, and the fees and costs incurred in connection with such arbitration shall be borne equally by City and Lessee.

5.3.2 Market Rate Concession Fee Adjustment. Effective as of the sixth anniversary of the Commencement Date, the annual Concession Fee shall be adjusted to "fair market rate" determined according to the process in this section. As used in this Agreement, "fair market rate" shall mean the rate per square foot that a willing concessionaire would pay in an arms-length transaction for comparable space in the building and in comparable buildings in comparable locations pursuant to a comparable agreement. Notwithstanding the foregoing, the fair market rate adjustment shall not exceed ten percent (10%) of the then-current Concession Fee. Beginning on the fifth anniversary of the Commencement Date and for a period of six complete calendar months, DPR and Concessionaire will negotiate to determine the fair market rate. If the parties have not agreed upon fair market rate within the time allowed in this section, the parties shall submit the determination of fair market rate to arbitration according to the procedures in the following paragraph.

5.3.3 Arbitration of Fair Market Rate. Within 15 days after the six month period for negotiation expires, each party will give written notice to the other of the party's selected arbitrator, who must be a real estate broker licensed in the State of Washington who has been regularly engaged in the business of commercial leasing in the Puget Sound region for at least 10 years immediately preceding the appointment under this Agreement. If either party fails to select an arbitrator, the fair market rate will be determined by the arbitrator selected by the other party. Each arbitrator will independently make her or his determination of the fair market rate within 20 days after the appointment of the second arbitrator. If the two arbitrators' determinations are not the same, but the higher of such two values is not more than one hundred five percent (105%) of the lower of them, then the fair market rate will be deemed to be the average of the two values. If the higher of such two values is more than one hundred five percent (105%) of the lower of them, then the two arbitrators will jointly appoint a third arbitrator within 10 days after the second of the two determinations described above has been rendered. The third arbitrator will independently make her or his determination of the fair market rate within 20 days after her or his appointment. The highest and the lowest determinations of value among the three arbitrators will be disregarded and the remaining determination will be deemed to be the fair market rate; provided, however, that in no event will the fair market rate Concession Fee be deemed to be less than the Concession Fee payable under this Agreement immediately preceding the sixth anniversary of the Commencement Date. Within 30 days after the fair market rate Concession Fee is determined, the parties will execute an amendment to this Agree-

ment setting forth the adjusted Concession Fee. Thereafter, the Concession Fee shall be adjusted annually as provided under Section 5.3.1.

5.4 Late and Refused Payments

Concessionaire acknowledges that late payment to the City of any sum due the City hereunder will cause DPR to incur costs not contemplated by this Agreement including but not limited to processing and accounting charges and the cost of administering and enforcing this Agreement, the exact amount of which would be extremely difficult and impractical to ascertain. Therefore, if Concessionaire fails to pay any sum after such amount is due to the City, Concessionaire shall also pay to the City a late charge of Fifty Dollars ($50.00). In addition, Concessionaire shall pay the City a Twenty Dollar ($20.00) charge (or such larger amount as may be hereafter established by ordinance) for each check refused payment for insufficient funds or any other reason. Interest on late payments shall accrue at the rate of 12% per annum from the date due to the date paid.

5.5 Offsets

5.5.1 Routine Improvements. After the fifth anniversary of the Commencement Date and every other year thereafter, Concessionaire may propose to the Superintendent routine improvements to the Premises such as painting, floor repair, carpeting and refinishing, or window treatment. Subject to the Superintendent's prior approval (which shall not be unreasonably withheld, conditioned, or delayed and shall be deemed to have been given if not withheld in writing within sixty (60) days after delivery of a request therefore), up to $5,000 dollars ($5,000) of Concessionaire's actual costs spent on the routine improvements to the Premises may be used as an offset against the Concession Fee.

5.5.2 Capital Improvements. After the fifth anniversary of the Commencement Date and every five years thereafter, Concessionaire may propose to the Superintendent capital improvements to the Premises, such as new flooring, electrical fixture replacement and upgrades, bathroom remodeling, or kitchen/break room upgrades. Subject to the Superintendent's prior approval (which shall not be unreasonably withheld, conditioned, or delayed and shall be deemed to have been given if not withheld in writing within sixty (60) days after delivery of a request therefore), up to ten thousand dollars ($10,000) of Concessionaire's actual costs spent on capital improvements to the Premises may be used as an offset against the Concession Fee.

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

6. UTILITIES

6.1 General

So long as Concessionaire is not in default under this Agreement, the City shall furnish and pay for electricity, heat, gas, water, sewer, and garbage collection services to the Premises. Concessionaire shall be responsible for the cost of any telecommunications utilities or any other services necessary for Concessionaire's Permitted Use of the Premises. Concessionaire shall obtain the Superintendent's prior written consent before installing lights or equipment in the Premises that exceed the building's standard mechanical loads. The Superintendent may refuse to grant consent unless Concessionaire agrees to pay (1) the costs incurred by the City for installation of supplementary air conditioning capacity or electrical systems as necessitated by Concessionaire's equipment or lights and (2) in advance, on the first day of each month during the Term, the amount estimated by the Superintendent as the excess cost of furnishing electricity or utility service for the operation of equipment or lights above normal building levels.

6.2 Liability for Utility Service Failures

DPR shall not be liable, and Concessionaire hereby waives any claim against the DPR, for the failure, for any reason whatsoever, of any utility service serving the Premises unless the failure is caused by DPR's failure to pay for utility services or failure to reasonably maintain utility systems.

7. CARE OF PREMISES

7.1 Maintenance, Cleaning & Repairs; Generally

So long as this Agreement is in effect, Concessionaire, at no cost to the City, shall keep and maintain the Premises in a neat, clean, and sanitary condition. Concessionaire shall repair any damage to the Premises or Building 30 that results from Concessionaire's use and occupancy or that is caused by Concessionaire's employees, contractors, licensees, agents, invitees, or other third parties for whose acts Concessionaire is liable pursuant to Washington law. The foregoing notwithstanding the Concessionaire shall not be required to repair damage caused by casualty events, such as earthquakes, nor shall Concessionaire be required to make repairs which are the responsibility of the City. The City shall be responsible for the repair of any damage done by the City, and shall maintain, clean and repair the utility systems (including HVAC and sprinkler systems), the exterior and structural aspects of the Premises and Building 30, and make any modifications which are required by governmental codes or regulations, but the City shall not otherwise be responsible for the interior or window areas of Premises..

7.2 Concessionaire's Custodial & Janitorial Services Obligation

Concessionaire shall provide all custodial and janitorial services as may be required in and for the Premises and trash and litter pickup within the Premises.

7.3 Major Maintenance

For every item of major maintenance that Concessionaire proposes to undertake, it shall deliver professionally-prepared plans and specifications that comply with all applicable laws, codes and regulations to the Superintendent for that official's review and approval, in writing, prior to implementation. The Superintendent shall not unreasonably withhold, condition, or delay such approval and shall be deemed to have given it if not withheld in writing within sixty (60) days after delivery of a request therefore.

7.4 Joint Annual Inspection of Premises; Remedial Action Obligation

Each year throughout the Term, Concessionaire shall participate in an annual inspection of the Premises with a DPR representative, and Concessionaire shall take any and all action that DPR may reasonably require to maintain and operate the Premises in accordance with the requirements of Section 7.1 of this Agreement. Likewise, the City shall take any and all action that the City is required to take in accordance with its maintenance and repair responsibilities as set forth in Section 7.1 of this Agreement. Prior to the annual inspection, Concessionaire shall provide the Superintendent with a list of all maintenance, repairs or improvements that were performed on the Premises during the preceding twelve (12) months.

7.5 City Remedy upon Concessionaire's Failure to Maintain Premises

If Concessionaire fails to maintain the Premises in a neat, clean and sanitary condition as required by this Agreement, DPR shall notify Concessionaire to undertake such work as is reasonably required to so maintain them. If Concessionaire fails to commence such work within ten (10) calendar days after Concessionaire's receipt of the City's notice and to diligently prosecute it to completion, then DPR shall have the right, at its option and in addition to all other remedies, to undertake such work and to invoice Concessionaire for the costs incurred by the City in connection therewith. DPR shall have no liability to Concessionaire for any damage, inconvenience, or interference with Concessionaire's use of the Premises as a result of the City's performing any such work, except to the extent resulting from the negligence or willful misconduct of City or its agents, employees or contractors.

7.6 Installation or Integration of Visual Art on Premises

Concessionaire shall not install on or integrate into the Premises any work of visual art that cannot be removed without causing damage, mutilation, or destruction to the work of art or the Premises unless Concessionaire obtains the Superintendent's prior, express, written consent, which may be withheld, conditioned or granted in the Superintendent's sole discretion.

8. ALTERATIONS, ADDITIONS & IMPROVEMENTS

If Concessionaire wishes to make any alterations, additions or improvements to the Premises during the Term, it shall not undertake any such work until the Superintendent has approved professionally-prepared plans and specifications therefore. The Superintendent shall not unreasonably withhold, condition, or delay such approval and shall be deemed to have given it if not withheld in writing within sixty (60) days after delivery of a request therefore. The Superintendent's approval of any plans and specifications shall not constitute an opinion or representation by the City as to their compliance with any law or ordinance or their adequacy for other than DPR's own purposes, and such approval shall not create or form the basis of any liability on the part of the City or any of its officers, employees or agents for any injury or damage resulting from any inadequacy or error therein or any failure to comply with applicable law, ordinance, rule or regulation. Any alterations, additions or improvements that Concessionaire wishes to make shall be at Concessionaire's sole cost and expense and shall comply with all applicable laws, regulations, rules and permits, including the Magnuson Park Historic Reuse and Property Plan and the Americans with Disabilities Act, 28 CFR 35.151, and Prevailing Wages RCW Chapter 39.12. Concessionaire shall obtain all permits required for any such alterations, additions or improvements, except that City will cooperate with Concessionaire as necessary and at Concessionaire's expense, to obtain any permits required for construction over water, or in a shoreline or critical area environment.

9. INDEMNIFICATION & INSURANCE

9.1 Indemnification

To the fullest extent provided by law and except as otherwise provided in this Section 9, Concessionaire shall indemnify, defend and hold the City harmless from and against any liability, claim, damage, cost or expense (including reasonable attorneys' fees) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to any property arising from or relating to: (i) Concessionaire's use and occupancy of the Premises and any portion thereof, or any use by Concessionaire's officers, employees, agents, contractors, volunteers, or invitees; or (ii) any act or omission of Concessionaire or any of its officers, employees, agents, contractors, volunteers, or other third parties for whose acts Concessionaire is liable pursuant to Washington law on or about the Premises; or (iii) any breach of this Agreement. In furtherance of Concessionaire's indemnification obligations, Concessionaire hereby waives any immunity Concessionaire may have or any limitations on the amounts or types of damages under any industrial insurance, worker's compensation, disability, employee benefit or similar law, but such waiver shall apply only as to the City and to the extent necessary to fulfill Concessionaire's obligations under this Section 9. The City and Concessionaire acknowledge that the foregoing waiver of immunity was mutually negotiated. The foregoing notwithstanding, the Concessionaire shall not be obligated to indemnify, defend or hold the City harmless with respect to claims, damages, costs or expenses to the extent arising out of the City's negligence or intentional acts or omissions, and the City shall indemnify, defend

and hold the Concessionaire harmless with respect to claims, damages, costs and expenses arising out of the City's sole negligence or that of its employees. The City's obligation under this Section 9.1 is not intended to and shall not be deemed a waiver of the City's immunity under RCW 4.24.210 as now existing or hereafter amended.

9.2 Survival of Indemnification Obligations

The provisions of this Section 9 shall survive the expiration or earlier termination of this Agreement.

9.3 Insurance to be Secured by Concessionaire

Concessionaire shall secure and maintain in full force and effect throughout the Term, at no expense to the City, insurance as specified in Section 15.

9.4 Assumption of Risk

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

10. CITY'S CONTROL OF PARK & VICINITY

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

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

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

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

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

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

11. DAMAGE OR DESTRUCTION

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

12. COMPLIANCE WITH LAWS

12.1 General Requirements

Concessionaire shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation, or for any purpose offensive to the standards of the community of which the Premises are a part. Concessionaire shall promptly comply, at its sole cost and expense, with all laws, ordinances and regulations now in force or hereafter adopted applicable to Concessionaire's business operations or relating to or affecting the condition, use or occupancy of the Premises

12.2 Licenses and Other Authorizations

Concessionaire, at no cost to the City, shall secure and maintain in full force and effect during the Term, all required licenses, permits and similar legal authorizations,

and comply with all requirements thereof, and shall submit to DPR evidence of Concessionaire's satisfaction of all such requirements upon request. Concessionaire shall pay all fees and charges incurred in obtaining any required permits or other governmental approvals.

12.3 Nondiscrimination and Equal Employment Opportunity

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

12.4 Taxes, Assessments and Other Governmental Impositions

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

13. ENVIRONMENTAL STANDARDS

13.1 Definitions

13.1.1 As used in this Agreement, "Environmental Law" means any environmentally related local, state or federal law or regulation, ordinance or order, now or hereafter amended including, but not limited to: the Federal Clean Air Act; the Federal Clean Water Act; the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of 1980; the Federal Waste Management Recovery and Recycling Act; the Federal Toxic Substances Control Act; the Washington Hazardous Waste Management Act; Washington Model Toxics Control Act; the Washington Water Pollution Control Act; the Washington Underground Petroleum Storage Tanks Act; the Washington Industrial Safety and Health Act; the Washington Worker and Community Right to Know Act; the Washington Oil and Hazardous Substance Spill Prevention and Response Act; and any regulations promulgated thereunder from time to time. As used in this Agreement, "Hazardous Substance" means any substance designated as, or containing any

component designated as hazardous, toxic, harmful or subject to regulation under any Environmental Law.

13.2 Concessionaire's General Obligations

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

13.3 Environmental Testing

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

13.4 Concessionaire's Obligation to Remove Hazardous Substances

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

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

If Concessionaire violates any of the terms of this Article 13 concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Concessionaire shall promptly take such action as is necessary to mitigate and correct the violation. If Concessionaire does not act in a prudent and prompt manner, the City reserves the right, but not the obligation, to come onto the Premises and to take such action as the Superintendent deems necessary to ensure compliance or to mitigate the violation. If the City has a reasonable belief that Concessionaire is in violation of any law or regulation, or that Concessionaire's actions or inactions present a threat of violation or a threat of damage to the Premises, the City reserves the right to enter onto the Premises and take such corrective or mitigating action as the Superintendent deems necessary. All costs and expenses incurred by the City in connection with any such actions shall become immediately due and payable by Concessionaire upon presentation of an invoice therefore.

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

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

13.7 Concessionaire's Environmental Indemnification Obligation

In addition to all other indemnities provided in this Agreement, Concessionaire shall defend, indemnify and hold the City free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup and other remedial action costs (including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation) (collectively, "Claims"), arising from the Concessionaire's use, release or disposal of any Hazardous Substance on the Premises during the term of this Agreement, or the migration of any Hazardous Substance released by Concessionaire, its agents or employees during the term of this Agreement from the Premises to other properties or into the surrounding environment, whether (i) made, commenced or incurred during the Term of this Agreement, or (ii) made, commenced or incurred after the expiration or termination of this Agreement if arising out of Concessionaire's, or its employees, agents, contractors, licensees, or invitee's acts, omissions, or breach of this Agreement during the Term. Nothing contained in this Section 13 shall require Concessionaire to

indemnify City for any such Claims resulting from the presence of Hazardous Substances that have come to be located on the Premises or in the soil or ground water prior to the Effective Date or resulting from Hazardous Substances released or disposed of by persons other than Concessionaire, its agents, employees, or other persons under the reasonable control of the Concessionaire, unless Concessionaire exacerbates or contributes to the migration or continued release of such Hazardous Substances,

13.8 Survival of Environmental Obligations

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

14. LIENS AND ENCUMBRANCES

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

15. INSURANCE

15.1 Concessionaire's Insurance Coverages and Limits

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

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

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

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

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

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

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

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

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

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

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

of Concessionaire's business. City shall be named as a loss payee as respects property insurance covering the alterations, additions and improvements under such policy.

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

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

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

15.2 City's Property Insurance Coverage and Limits

15.2.1 City will maintain at its expense Property Insurance or self-insurance under which the Premises, excluding Concessionaire's Business Personal Property and tenant improvements, are insured throughout the Agreement Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (including earthquake), not less broad than provided by the insurance industry standard "Causes of Loss - Special Form" (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises. City's Property Insurance currently is subject to a $250,000 deductible for most claims. Concessionaire shall be responsible to pay the deductible to the proportional extent to which the loss or damage is attributable to Concessionaire's negligent acts.

15.2.2 The City may change the terms of its insurance in Section 15.2 at any time based on market conditions, with no compensation due to the Concessionaire.

15.3 General Requirements for Concessionaire's Insurance

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

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

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

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

15.4 Waiver of Subrogation

Unless such waiver would void the property insurance coverage to be provided pursuant to this section, the City and Concessionaire waive all subrogation rights each may have against the other, or any subtenant, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Premises.

15.5 Evidence of Insurance

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

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

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

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

15.5.4 Pending receipt of the documentation specified in this Section 15.5, Concessionaire may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

Original certification of insurance shall be issued to:

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

15.6 Assumption of Property Risk

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

15.7 Adjustments of Claims

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

15.8 Concessionaire's Responsibility

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

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

Concessionaire shall keep separate, accurate, complete and auditable records and receipts for each year, showing the programming offered at and from Magnuson Park. All such records shall be retained in King County, Washington, for at least three (3) years after the close of any fiscal year in which they were generated or issued. Concessionaire's books and records shall be subject at all reasonable times to inspection, review, or audit in King County by personnel duly authorized by DPR, the City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract. Concessionaire shall ensure that such inspection, audit and copying right of the City is a condition of any license, contract or other arrangement under which any other person who is not an Concessionaire employee or other entity is permitted to carry on a business or social service activity in, on or from the Premises.

17. ACCESS

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

18. SIGNS OR ADVERTISING

18.1 Concessionaire's Signs

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

18.2 No Other Signage on Premises

Other than the signage permitted by Section 18.1, above, Concessionaire shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere in or about the Premises without first

obtaining DPR's written consent thereto. Any consent so obtained from DPR shall be with the understanding and agreement that Concessionaire will remove the same at the expiration or earlier termination of this Agreement and repair any damage or injury to the Premises caused thereby.

19. WASTEFUL AND DANGEROUS USE

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

20. DEFAULT; REMEDIES FOR DEFAULT; TERMINATION

20.1 Concessionaire's Default; Definition

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

20.2 City Remedies in the Event of Concessionaire's Default

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

Concessionaire shall be liable and shall reimburse the City upon demand for all actual and reasonable costs and expenses of every kind and nature incurred in retaking possession of the Premises. If the City retakes the Premises, the City shall have the right, but not the obligation, to remove therefrom all or any part of the personal property

located thereon and may exercise City's rights under Section 21. City's remedies under this Section 20.2 are cumulative and City does not waive its right to any remedy allowed at law or equity.

20.3 Termination for Reasons beyond the Parties' Control

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

20.4 Termination for City's Convenience

Notwithstanding anything else in this Agreement to the contrary, City may, at any time and without liability of any kind to Concessionaire except as set forth in this Section 20.4, terminate this Agreement upon two hundred seventy (270) days' prior written notice to Concessionaire if the City determines that the Premises are required for a different public purpose. If City terminates for convenience, City will pay a Termination Fee to Concessionaire that is equal to the dollar amount of the previous twelve (12) month's fee that the Concessionaire paid to the City.

20.5. City's Default

City shall be in default if City fails to perform its obligations under this Lease within thirty (30) days after its receipt of notice of nonperformance from Lessee; provided, that if the default cannot reasonably be cured within the thirty (30) day period, City shall not be in default if City commences the cure within the thirty (30) day period and thereafter diligently pursues such cure to completion. Upon City's default, Lessee may pursue any remedies at law or in equity that may be permitted from time to time by the laws of the State of Washington.

20.6. Notwithstanding any other provision of this Agreement, Concessionaire may terminate this Agreement, with or without cause, effective as of the fifth, tenth, fifteenth or twentieth anniversary of the Commencement Date, provided that the Concessionaire provides the City with not less than ninety (90) days written notice.

21. REMOVAL OF CONCESSIONAIRE'S PROPERTY FROM PREMISES

Upon the expiration or earlier termination of this Agreement, all of Concessionaire's right, title and interest in and to the Premises, including fixtures installed therein pursuant to this Agreement, shall vest in the City, without any action of either party hereto. At such time, Concessionaire shall return the Premises to DPR in good order and condition, except for normal wear and tear and damage by fire or other casualty excepted, and shall have removed from the Premises all items of personal property located thereon. If such personal property is not removed, then DPR shall

have the right, but not the obligation, to remove all such personal property from the Premises and may store the same in any place selected by DPR, including but not limited to a public warehouse, at the expense and risk of the owner(s) of such property, with the right to sell such stored property, without notice to Concessionaire or such owner(s), after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied first, to the cost of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money that may be due from Concessionaire to the City. The balance, if any, shall be paid to Concessionaire.

22. NOTICES

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

If to Concessionaire:	Steve Dubiel, Executive Director EarthCorps 6310 NE 74th St., Suite 201E Seattle, WA 98115
If to the City:	Seattle Parks and Recreation Attn: Christopher Williams, Acting Superintendent 100 Dexter Ave. N Seattle, WA 98109

If mailed, a notice shall be deemed given three (3) business days following the date of mailing.

23. MISCELLANEOUS

23.1 Captions

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

23.2 Time

Time is of the essence of this Agreement.

23.3 Partial Invalidity

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be found or held to be invalid or unenforceable, the remainder of this Agreement, and the application of such term, covenant or condition to persons or circumstances other than those as to which it is

held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

23.4 Binding Effect

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

23.5 Applicable Law

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

23.6 Jurisdiction & Venue

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

23.7 No Partnership or Joint Venture Created

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

23.8 City's Remedies Cumulative

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

23.9 Amendments

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

23.10 Consumption of Alcoholic Beverages

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

23.11 No Third-Party Rights

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

23.12 No Waivers

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

23.13 Entire Agreement

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

- Exhibit A-1: Premises first floor
- Exhibit A-2: Premises second floor
- Exhibit A-3: Adjacent Areas
- Exhibit A-4: Legal Description

23.14 City's Consent or Approval

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

consent or approval be construed to authorize any failure to comply with any of the foregoing.

23.15 Counterparts

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

IN WITNESS WHEREOF, each of the parties hereto has had its authorized representative affix his/her signature in the space provided below:

CONCESSIONAIRE:

By: _____
(Signature)

_____
(Print or Type Name)

_____
(Print or Type Name)

THE CITY OF SEATTLE

By: _____
Christopher Williams
Acting Superintendent
Department of Parks and Recreation

State of Washington)
) ss:
County of King)

I certify that I know of or have satisfactory evidence that _____ signed the foregoing Concession Agreement, on oath stated he/she was authorized to execute said agreement and acknowledged it as the _____ of EarthCorps, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in such agreement.

Dated: _____.

_____
Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

State of Washington)
) ss:
County of King)

I certify that I know of or have satisfactory evidence that _____ signed the foregoing Concession Agreement, on oath stated that _____ was authorized to execute such agreement and acknowledged it as the Superintendent of the Department of Parks and Recreation of The City of Seattle to be the free and voluntary act of The City of Seattle for the uses and purposes mentioned in said agreement.

Dated: _____.

Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

EXHIBIT A- 1 Building 30 / First Floor

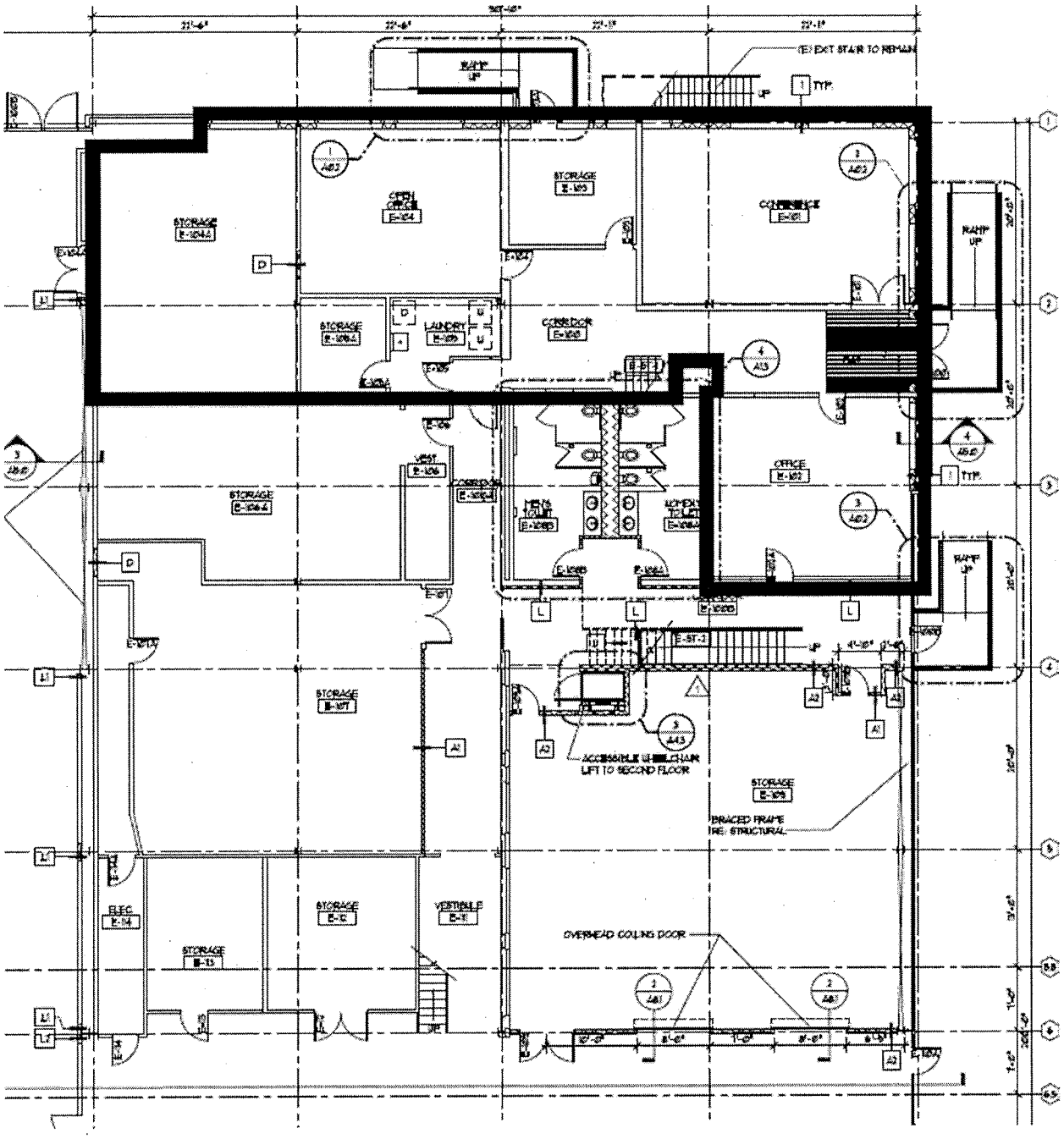

EXHIBIT A-2 Building 30/ Second Floor

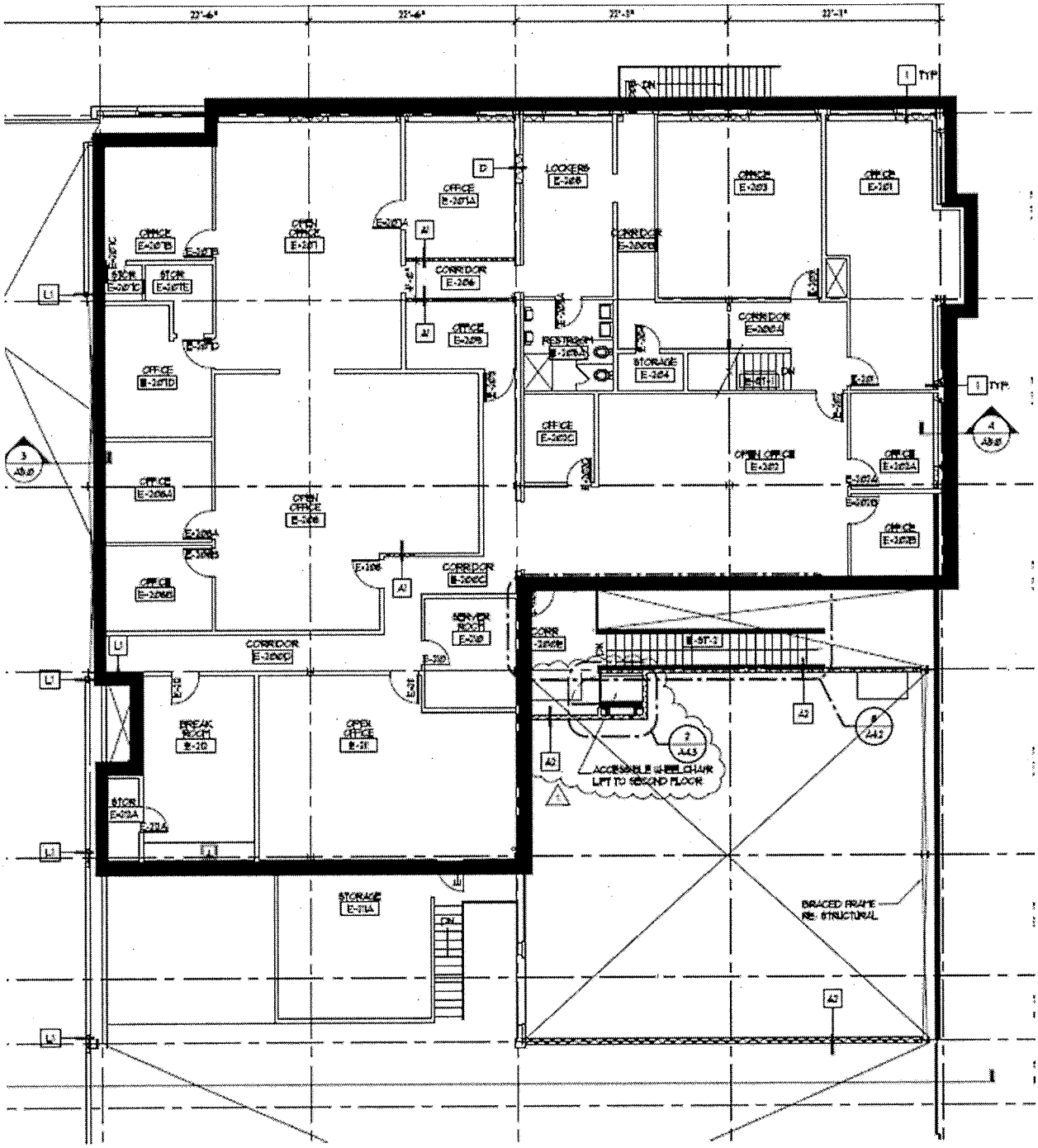

EXHIBIT A-3 Adjacent Areas

EXHIBIT A-4

Legal Description

Bldg 30
W ½ Section 2, TWP 25, RNG 04E, W.M.
PARCEL 6 Lot A
That portion of the northeast quarter (NE4) of the southwest quarter (SW4), the southwest quarter (SW4) of the northwest quarter (NW4) and Govt. Lot 2 in Section 2, TWP 25N, RNG 04E, as acquired by the U. S. Navy on behalf of the United States of America by deed recorded in the records of King Co., Washington in Vol. 1306 at pg. 455, described as follows:

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

Form revised: December 12, 2012

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Eric Friedli/ 684-8369	Jeff Muhm /684-8049

Legislation Title: AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to enter into an agreement with EarthCorps, a Washington not-for-profit corporation, to occupy and use a portion of Building 30 at Magnuson Park; and ratifying and confirming certain prior acts.

Summary of the Legislation:
The proposed legislation authorizes the Department of Parks and Recreation (DPR) to enter into a twenty-five year concession agreement with EarthCorps to occupy and use a portion of Building 30 at Magnuson Park for its general operations as a non-profit dedicated to local environmental restoration through both training and the use of volunteers. EarthCorps has been a core tenant at Magnuson Park since 2000. EarthCorps will occupy 8,815 square feet of space in Building 30.

EarthCorps has been a tenant in Building 30 for 13 years under a series of short term agreements. They moved in during a time when there were few tenants in the park and all of the buildings needed significant upgrades. Over the years EarthCorps has made the space they have occupied habitable through incremental upgrades including minor restroom improvements, paint, floors, space reconfiguration, and landscape improvements. They have endured inadequate heating and cooling, substandard windows, and construction inconveniences during site renovation projects. EarthCorps has already completed significant improvements to their space through their years of occupancy. A long term agreement would provide them with the security to continue to make additional costly improvements as necessary to create an efficient and pleasant workspace.

In 2012 EarthCorps paid $52,524 to DPR for use of the space. Building 30 has recently undergone significant upgrades making it more attractive for tenants. Recognizing EarthCorps' mission is consistent with DPR and they have been a valuable tenant for 13 years we negotiated a concession fee that allows them to adjust to higher rates appropriate for the improved building. The initial concession fee of $69,351 equals $7.78 per square foot. That will increase annually by the Consumer Price Index (CPI) for 5 years and then a market rate adjustment will be made at year 6. A market study will be done and EarthCorps' rate will be increased at that time.

____ **This legislation does not have any financial implications.**

__X__ **This legislation has financial implications.**

Appropriations: N/A

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**

Appropriations Notes:

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
Park and Recreation Fund (10200)	Parks and Recreation	Income from base concession fee payment	$34,332	$69,351
TOTAL				**$69,351**

Revenue/Reimbursement Notes:
CPI adjustment of 2% in July 2014.
EarthCorps will initially pay $7.78 per sq ft, increased by CPI (2-4%). During the fifth year a market rate study will adjust the rate to "market rate" and with a resulting adjustment beginning with the 6th year.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact: N/A

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions*	2014 FTE*
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

Position Notes:

Do positions sunset in the future? N/A

Spending/Cash Flow: N/A

Fund Name & #	Department	Budget Control Level*	2013 Expenditures	2014 Anticipated Expenditures
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**

Spending/Cash Flow Notes:
DPR will pay utilities, common area maintenance and tenant management costs associated with this and other tenant agreements in the building. Based on experience with other buildings at

Magnuson Park we estimate those costs to be $3.31 sq. ft. That is estimated at $29,178 in costs for 2014.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
Yes, as shown in Table 2 revenues continue to increase during the term of the agreement.

b) **What is the financial cost of not implementing the legislation?**
DPR would have to start searching for a different tenant or tenants to occupy the space. Rental revenue from these spaces would be delayed.

c) **Does this legislation affect any departments besides the originating department?**
No.

What are the possible alternatives to the legislation that could achieve the same or similar objectives?
Other than finding a similar tenant who can agree to similar terms, there are no feasible alternatives to the legislation that would achieve the same result.

d) **Is a public hearing required for this legislation?**
No

e) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No

f) **Does this legislation affect a piece of property?**
Yes – a map is included as Exhibit 1 in Attachment 1 of the ordinance.

g) **Other Issues:**
None

List attachments to the fiscal note below:
Attachment A: Contract Summary Form

Attachment A

Seattle Department of Parks and Recreation

CONTRACT SUMMARY

Contracting Party/ Lessee/ Concessionaire/Other: EarthCorps

Contract Title and Contract Type: Concession agreement for 8,815 square feet of space in Building 30 at Magnuson Park

Non-Profit___X___ or **For Profit** _____

New ___X___ or **Renewal (or extension of existing Concession Agreement)** _____
EarthCorps has been a tenant at Magnuson Park since 2000; the proposed Agreement is a new long-term agreement, not a renewal of the existing short-term agreement

Premises: Approximately 8,815 sq. ft. of Building 30 at Magnuson Park

Term of Concession Agreement: 25 years

Purpose of Concession Agreement (description of license): This agreement allows the EarthCorps to occupy space over two floors in the northeast section of Building 30.

Concession Fee: EarthCorps will pay $69,351for the first year adjusted by the CPI (2-4%) for the next four years, then adjusted after the fifth year to the "fair market rate."

Offset to Concession Fee: At each fifth anniversary the Lessee may offset the concession fee by up to $5,000 for routine improvements and up to $10,000 for capital improvements.

Public Benefit (e.g., description of permitted use): EarthCorps has been an active working partner of Parks since 2000, working together with Parks in environmental and trail restoration.

Maintenance: EarthCorps is responsible for all minor maintenance and custodial work within their Premises. The City is responsible for exterior and major building maintenance.

City of Seattle
Office of the Mayor

July 30, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill which authorizes the Superintendent of Parks and Recreation to enter into an agreement with EarthCorps to use a portion of Building 30 at Warren G. Magnuson Park. The ordinance provides for a twenty-five year agreement.

EarthCorps' offices and work center have been located at Magnuson Park since 2000, initially under the name of Cascadia Crest. They continue to be an active partner of the Department of Parks and Recreation (DPR), working together with similar missions to restore parks and natural areas and strengthen community through hands-on environmental service. A long term agreement not only guarantees the relationship with DPR will continue but also provides the security that EarthCorps needs to financially invest in creating a usable and efficient office and work environment.

Approval of this proposed legislation will provide for the occupancy of Building 30 as well as revenue to the City. Thank you for your consideration of this legislation. Should you have questions, please contact Eric Friedli at 684-8369.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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