

Meeting Date: 4/29/2014

Report Type: Consent

Report ID: 2014-00312

Title: Agreement: Second Amendment to Funderland, Inc. Lease Agreement 2006-0258 (Two-Thirds Vote Required)

Location: 1350 17th Ave, Land Park, District 4

Recommendation: 1) Pass a Resolution a) in the best interest of the City, finding that special circumstances make the use of the bid procedure inappropriate for the lease of property at 1350 17th Avenue (commonly known as Funderland) and suspending competitive bidding for the lease of that property; and b) suspending competitive bidding, in the best interest of the City, for the construction of the Facility Improvements (described in the proposed Second Amendment to City Agreement 2006-0258); and 2) Pass a Motion authorizing the City Manager, or his designee, to execute the Second Amendment to City Agreement 2006-0258 to extend the lease term and make some modifications to the lease, including requiring Funderland, Inc. to make various improvements to the property.

Contact: Leslie Wisniewski, Administrative Officer (916) 808-8920, Convention, Culture and Leisure

Presenter: None

Department: Convention Culture & Leisure

Division: CCL Administration

Dept ID: 17001011

Attachments:

1-Description/Analysis

2-Resolution

3-Exhibit A (Agreement)

City Attorney Review

Approved as to Form

Kourtney Burdick

4/22/2014 4:50:23 PM

Approvals/Acknowledgements

Department Director or Designee: Rebecca Bitter - 4/11/2014 1:23:38 PM

Description/Analysis

Issue Detail: The proposed amendment to the lease agreement between the City of Sacramento and Funderland, Inc. would extend the agreement from its current expiration date in 2016, for an additional ten years, ending in 2026, with the option to extend for two additional five-year periods, upon the mutual consent of the parties. The amendment also commits Funderland, Inc. to making various improvements to the property, which staff estimates are valued at over \$1.3 million. Some of these improvements, with a total estimated value of \$220,000, would be permanent structures and would become the City’s property upon the expiration or termination of the lease. Additionally, the proposal transfers the responsibility for furnishing water and sewer service to the property from the City to Funderland, Inc.

Under the proposed amendment, Funderland, Inc. will construct the following improvements at its sole cost and expense. The values listed are estimates.

1	Install or construct City-approved restrooms within the Funderland boundary fence*	\$100,000	September 2015
2	Relocate the train tracks*	\$10,000	May 2014
3	Rebuild the loading area for the Cars*	\$40,000	February 2015
4	Remove and reinstall a new Water Ride	\$550,000	May 2017
5	Install a new Kiddy Themed Swing	\$125,000	May 2016
6	Replace the Dragon Roller Coaster track and landscape	\$400,000	May 2015
7	Rebuild Sutter’s Fort into a special party area*	\$50,000	September 2014
8	Build a shade structure over the Tea Cups*	\$20,000	May 2016
9	Install a portable Novelty Stand	\$15,000	July 2014
	Total Approximate Costs	\$1,310,000	

*Would become permanent structures and the property of the City of Sacramento upon the expiration or termination of the lease.

Funderland Inc. must adhere to the State of California, Department of Safety and Health guidelines related to amusement rides which have specific construction methods, operational procedures, engineering designs, and employee training related to amusement park standards.

Policy Considerations: The actions recommended in this report are consistent with City policies to foster public and private partnerships.

Economic Impacts: Funderland has created over 40 jobs and generates roughly \$1.1 million yearly in gross revenue. It is estimated that 250,000 people visit Funderland annually.

Environmental Considerations: The operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of

lead agency's determination is categorically exempt from the California Environmental Quality Act according to CEQA guidelines Section 15301.

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: Funderland, Inc. has proven itself an effective partner in running the amusement park known as Funderland. Staff recommends extending the lease and continuing this relationship to capitalize on Funderland, Inc.'s experience and success in the amusement park business, as well as take advantage of Funderland, Inc.'s willingness to make substantial improvements in the property, some of which will be retained upon the conclusion of the lease, including new restrooms inside the amusement park.

In recent years, it has become clear that the park needs additional rides, some rides need to be replaced, and the addition of restrooms located within the park walls would greatly improve patron satisfaction. Currently, restrooms are not located within the fenced leased space of Funderland. The lack of onsite restrooms has been the biggest complaint from customers. Installing restrooms within the leased grounds will allow Funderland to serve their guests better and improve this City asset. Funderland, Inc. will be responsible for cleaning, maintaining, and providing supplies for the restroom.

Kiddie rides have been operating in William Land Park since the early 1950s. In 1990, current operator Sam Johnston, made upgrades to the park and turned it into Funderland as we know it today. The current operation and equipment have been in operation for almost 30 years and today the facility needs to be upgraded with improvements made to the grounds, structures, and amusement rides. The proposed Second Amendment to the agreement requires Funderland, Inc. to make these improvements at zero cost to the City.

Allowing Funderland, Inc. to manage the construction of these improvements will allow it to tap into its experience and knowledge in amusement park renovations, minimize disruptions to the park's operation, minimize patron inconvenience, and allow the improvements to be constructed at zero cost to the City.

Financial Considerations: Over the last three years, the current agreement has provided an average of \$176,000 annually to the City in rent from Funderland, Inc. The City splits this revenue equally between the following funds: Sacramento Zoo (Fund 2605), Fairytale Town (Fund 2606), and Land Park (Fund 2507). The proposed Second Amendment does not change the rental rate provisions of the original agreement.

Currently, Funderland water and sewer costs are paid for from the Department of Convention, Culture and Leisure Administration operating budget. It is required in the Second Amendment that the financial responsibility for water and sewer costs, including monthly charges and repair and maintenance, be transferred directly to Funderland.

Local Business Enterprise (LBE): Not applicable.

RESOLUTION NO.

Adopted by the Sacramento City Council

XXX 2014

SUSPENDING COMPETITIVE BIDDING FOR THE LEASE OF PROPERTY AT 1350 17th Avenue

BACKGROUND

- A. In 2006, the City leased the property known as Funderland in William Land Park to Funderland, Inc. (City Agreement 2006-0258). The agreement is set to expire on March 31, 2016.
- B. The parties would like to extend the term of the agreement as well as make some amendments, include providing for Lessee's investment in the property. Some of Funderland's structures and equipment have been in operation for almost 30 years and, today, the facility is in need of upgrades and repairs to the grounds, structures and riding devices.
- C. In exchange for an extension of the term of the agreement, Funderland, Inc. is willing to make substantial improvements to the property (the "Facility Improvements") (outlined in the second amendment to the agreement, attached as Exhibit A to this resolution), with an estimated value of over \$1.3 million dollars. Some of these improvements, with a total estimated value of \$220,000 would be permanent structures and would become the City's property upon the expiration or termination of the lease.
- D. City Code section 3.68.110(F) authorizes the City Council to suspend competitive bidding for the lease of city property for a period of more than six months when, upon a two-thirds vote, it determines it is in the best interest of the City to do so and special circumstances make the use of the bid procedure inappropriate. Funderland, Inc. has proven itself an effective partner in running the amusement park. In addition, Funderland, Inc. is willing to make a substantial investment in the property, increasing its appeal and value for City residents. For these reasons, extending the term of the agreement with Funderland, Inc.—a proven partner—is in the City's best interest.
- E. City Code section 3.30.170(D) authorizes the City Council to suspend competitive bidding for the construction of public projects when it is in the best interest of the City to do so. Funderland, Inc. has agreed to construct the Facility Improvements at zero cost to the City in exchange for the increased leased term. These improvements will benefit the property and increase Funderland's value to City residents. Allowing Funderland, Inc. to manage the construction of these improvements will allow it to tap into its experience and knowledge in amusement park renovations, minimize disruptions to the park's operation, minimize patron

inconvenience, and allow the improvements to be constructed at zero cost to the City.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. In the best interest of the City, the City Council finds that special circumstances make the use of the bid procedure inappropriate for the lease of property at 1350 17th Avenue, Sacramento, California (commonly known as Funderland) and hereby suspends competitive bidding for the lease of that property.
- Section 2. In the best interest of the City, competitive bidding is suspending for the construction of the Facility Improvements, described in the Second Amendment to City Agreement 2006-0258 (attached as Exhibit A).
- Section 3. Exhibit A is a part of this Resolution

Table of Contents:

- Exhibit A Second Amendment to City Agreement 2006-0258: Lease for the Children's Amusement Park Rides Area in William Land Park with Funderland, Inc.



Requires Council Approval: No YES Meeting:

Real Estate

Other Party Signature Needed

Recording Requested

General Information

Type: Lease Agreement	PO Type: Select PO Type	Attachment: Original No.: 2
\$ Not to Exceed: \$ 000		Original Doc Number: 2006-0258
Other Party: Funderland, Inc.		Certified Copies of Document::
Project Name: Second Amendment to Lease Agreement		Deed: <input type="checkbox"/> None <input type="checkbox"/> Included <input type="checkbox"/> Separate
Project Number:	Bid Transaction #:	E/SBE-DBE-M/WBE:

Department Information

Department: **CCL**

Division: **Admin**

Project Mgr: **Leslie Wisniewski**

Supervisor: **Rebecca Bitter**

Contract Services:

Date: **4/3/14**

Division Mgr:

Phone Number: **x8920**

Org Number: **17001011**

Comment:

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:		
Accounting:		
Contract Services:	<i>Wisniewski</i>	<i>4-3-14</i>
Supervisor:	<i> </i>	<i> </i>
Division Manager:		

City Attorney	Signature or Initial	Date
City Attorney:	<i>KOB</i>	<i>4/11/14</i>

Send Interoffice Mail Notify for Pick Up x 8920

Authorization	Signature or Initial	Date
Barbara Bonebrake Choose Director Department Director:		
City Mgr: yes <input type="checkbox"/> No <input type="checkbox"/>		

For City Clerk Processing

Finalized:

Initial: _____

Date: _____

Imaged:

Initial: _____

Date: _____

Received:
(City Clerk Stamp Here)

**SECOND AMENDMENT TO CITY AGREEMENT 2006-0258
LEASE FOR THE CHILDREN'S AMUSEMENT PARK RIDES AREA IN WILLIAM LAND PARK
WITH FUNDERLAND. INC.**

This second amendment ("**Second Amendment**") to City Agreement 2006-0258 ("**Lease**"), as amended, dated _____, 2014, for purposes of identification only, is between the City of Sacramento, a municipal corporation ("**City**"), and Funderland, Inc., a California corporation ("**Lessee**"). The City and Lessee may be referred to collectively as "**Parties**" or in the singular as "**Party**," as the context requires.

Recitals

- A. In 2006, the Parties entered into the Lease wherein the City leased the **Leased Premises** to Lessee to operate a children's amusement park thereon. The Lease is set to expire March 31, 2016.
- B. In accordance with the Lease, the City, in 2006, repaired the restrooms located just outside the front gate of the Leased Premises.
- C. The Parties would like to extend the term of the Lease as well as make some modifications to the Lease, including providing for Lessee's investment in the Leased Premises. Pursuant to this Second Amendment, Lessee will repair, replace, and upgrade portions of the Leased Premises and amusement rides therein. The Parties also agree that upon the execution of this Second Amendment, the responsibility for furnishing water and sewer service to the Leased Premises shall be transferred from the City to Lessee.

Based on the facts in the foregoing recitals, the City and Lessee agree to amend the Lease as follows:

1. Section 3. Term. of the Lease is deleted and replaced in its entirety with the following:

Section 3. Term.

The initial term of this Lease commenced on April 1, 2006, and shall conclude at 11:59 p.m. on March 31, 2026 ("**Initial Term**"), subject to prior termination by the City in the event of Lessee's breach of any of the terms or conditions of the Lease. If Lessee holds over for any reason beyond such term with the consent, express or implied, of the City, such holding over shall be month-to-month only, subject to the terms and conditions of this Lease, but shall not be a renewal thereof; and the consideration to be paid shall be at rates then prevailing under the terms of this Lease.

Provided that Lessee is not in default of the Lease, the parties, by mutual agreement, may extend the term of this Lease for two additional five-year periods. Prior to any extension, Funderland must submit a written proposal, for the City's consideration, for future improvements to the Leased Premises. All extensions shall be upon the same terms and conditions of this Lease. Lessee shall request an extension of the term by delivering a written request to the City no later than six months prior to the expiration of the Initial Term or first extension period, as applicable. If Lessee is in default beyond any applicable notice and cure period on the date the extended term is to commence, the extended term shall not commence and this Lease shall terminate. The City may grant or deny Funderland's request for an extension in its sole discretion.

2. Section 6(b) of the Lease is deleted in its entirety.

3. Section 6(c) of the Lease is deleted in its entirety.

4. Section 7(d) is added to the Lease to read as follows:

(d) Lessee shall construct the improvements ("**Facility Improvements**") identified in Exhibit E in accordance with the terms of the exhibit.

5. Section 8(h) of the Lease is deleted and replaced in its entirety with the following:

(h) Lessee shall assume the responsibility for and pay, before delinquency, all charges or assessments for telephone, heat, electricity, gas, water, sewer service, diesel, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used on the Leased Premises. Lessee also shall be responsible for the maintenance and repair, at no cost to the City, of all above- and below-ground water, sewer, and drainage pipelines and appurtenances on the Leased Premises.

6. Section 15. Insurance. is deleted and replaced in its entirety with the following:

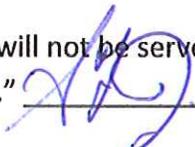
Section 15. Insurance.

During the term of this Lease, and until final completion and acceptance of any work required by this Lease, Lessee shall maintain in full force and effect at its own cost and expense the following insurance coverage. By requiring the insurance herein, the City does not represent that the coverage and limits will necessarily be adequate to protect the Lessee. It is understood and agreed by the Lessee that the required insurance coverage and limits shall not be deemed as a limitation on Lessee's liability under the indemnities granted to the City in this Lease.

Insurance requirements are subject to review and revision every five (5) years to assure that policy terms, conditions and limits are maintained in accordance with current insurance industry standards for comparable premises and buildings.

(a) Minimum Scope & Limits of Insurance Coverage

- (1) General Liability Insurance is required providing coverage at least as broad as ISO GL Form 00 01 on an occurrence basis for bodily injury including death of one or more persons, property damage and personal injury, with limits of not less than three million dollars (\$3,000,000). The policy shall include coverage for premises, operations, products and completed operations, contractual liability and liquor liability for the term of the policy. The policy shall include a fire legal liability limit of \$50,000.
- (2) Liquor liability insurance shall not be required if Lessee completes the following certification:

“I certify that alcohol will not be served on any premises leased under this agreement.”  _____ (Lessee initials)
- (3) All Risk Property Insurance including coverage for special perils is required all improvements, fixtures and equipment. All property insurance must be for replacement value and name the City as loss payee.
- (4) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000) are required. The Worker's Compensation policy shall include a waiver of subrogation.
- (5) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Lessee.

No automobile liability insurance shall be required if Lessee completes the following certification:

“I certify that a motor vehicle will not be used in the performance of any work or services under this agreement.” _____ (Lessee initials)

(b) Additional Insured Coverage.

The City, its officers, employees and volunteers shall be covered by policy terms or endorsement as additional insured as respects general liability arising out of activities performed by or on behalf of the Lessee including products and completed operations of Lessee and premises owned, leased or used by Lessee.

(c) Other Insurance Provisions

The policies are to contain or be endorsed to contain the following provisions.

- (1) Lessee's insurance shall be primary as respects the City, its officers, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of Lessee's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees and volunteers.
- (3) Coverage shall state that Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.
- (4) The City will be provided with thirty (30) days written notice of cancellation or material change in the policy terms or language.

(d) Acceptability of Insurers

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self insured retentions, policy terms or other variations that do not comply with the requirements of this section must be declared to City's representative and approved by the City Risk Management Division.

(e) Verification of Coverage

- (1) Lessee shall provide initial insurance documents to the City representative upon request, prior to execution of the final contract. All future insurance renewal documents shall be sent to:

EBIX BPO
212 Kent Street
Portland, MI, 48875
Phone: (517) 647-1700
Fax: (517) 647-7900
Email: CertsOnly@periculum.com

(2) The City may withdraw its offer or cancel this Lease if the certificates of insurance and endorsements required have not been provided prior to execution of this Lease. Failure to provide insurance certificates and endorsements and keep such certificates and endorsements current will be considered a material breach by Lessee of this Lease.

(f) Contractors

Lessee shall require and verify that all contractors and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified above.

7. **Exhibits.** Exhibits B, C, D, and E in the Lease are replaced in their entirety with those Exhibits in Attachment 1 to this Second Amendment.
8. **Ratification.** Except as modified by this Second Amendment, the Lease is ratified, affirmed, and remains in full force and effect.
9. **Authority.** The person signing this Second Amendment on Lessee's behalf represents that he or she is authorized to do so and that no further action beyond his or her signature is required to bind Lessee to this Second Amendment.
10. **Effective Date.** This Second Amendment is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.

(Signature Page Follows)

CITY OF SACRAMENTO

By: _____

John F. Shirey, City Manager

Date: _____

APPROVED AS TO LEGAL FORM

Sacramento City Attorney

By: Kourtney C. Burdick

Kourtney Burdick, Deputy City Attorney

ATTEST:

Sacramento City Clerk

By: _____

FUNDERLAND, INC.

By: Samuel F. Johnston

Print Name: SAMUEL F. JOHNSTON

Date: MARCH 24, 2014

Attachment 1 – New Exhibits

- B – Operations Schedule
- C – Fee Schedule
- D – Ride Schedule
- E – Facility Improvements

ATTACHMENT 1 – NEW EXHIBITS B, C, D, and E

EXHIBIT B – OPERATIONS SCHEDULE

January (amusement park to reopen the third weekend in January, weather permitting)

Saturday and Sunday: 10:00am–5:00pm

February and November

Friday: 11:00am–5:00pm

Saturday and Sunday: 10:00am–5:00pm

March (after daylight savings), April, September, and October

Wednesday–Friday: 11:00am–5:00pm

Saturday and Sunday: 10:00am–6:00pm

May–August & Spring Break

Monday–Friday: 11:00am–5:00pm

Saturday and Sunday: 10:00am–6:00pm

December–first half of January – closed for maintenance and inclement weather

*All hours are weather permitting. Special events or park rentals may fall outside of these hours.

Note: Lessee shall not modify the above schedule without the prior written approval of the City; provided, however, Lessee may modify this schedule in the event of inclement weather.

EXHIBIT C – FEE SCHEDULE

Lessee may not alter this fee schedule without the written consent of city.

TICKETS

Admission to Funderland shall be free. Lessee shall sell tickets for each ride. Each ride shall require just one ticket per person. Ticket charges are as follows:

Weekdays (not including holidays)

- Single Ticket – \$1.75 each
- Book of Ten – \$15.00 each
- Family 30 Pack – \$39.95
- Unlimited Ride Wristband – \$15.95 per person
 - Note: Unlimited Ride Wristbands are available only on weekdays, not on weekends or holidays. They are sold until 4pm and good only until 5pm on the day they are sold.

Weekends and Holidays

- Single Ticket – \$1.95 each
- Book of Ten – \$16.95 each
- Family 30 Pack – \$39.95

Season Pass (good every day the Leased Premises is open to the public) – \$79.95 per person.

*Refunds will not be given for early closing due to weather.

BIRTHDAY PARTIES

Basic Party – \$13.95 per person (minimum 10 riding guests)

- 2 hours of unlimited rides for each rider;
- Birthday party area for same two-hour period;
- One book of ten tickets to be distributed by the birthday child's parent;
- Birthday party host/hostess available at the beginning of your party to help set up, answer questions, and administer hand stamps;
- Birthday prizes for birthday child:
 - Funderland birthday shirt for birthday child
 - Special coupon for birthday child that is good for a free wristband or ticket pass for a future visit; and
- Birthday party invitations.

Deluxe Party – \$16.95 per person (minimum 10 riding guests)

Includes Basic Party features above, plus:

- Each rider will receive a voucher good for either a corn dog, kids hot dog, or six-piece chicken nugget and a small soda from the snack stand.

Super Deluxe Party – \$21.95 per person (minimum 10 riding guests)

Includes Basic Party features above, plus:

- A kids combo meal for each paying child/rider, which includes an entrée item (hot dog, corn dog, or chicken nuggets), carrots or fruit cup, and one small drink;
- Birthday cake, personalized with child's name: ¼ sheet cake for 10-19 paying children/riders or ½ sheet cake for up to 20 paying children/riders; and
- One goodie bag for each paying child/rider.

OTHER

Rates for school groups, park rentals, or special promotions are available throughout the year.

EXHIBIT D ("RIDE SCHEDULE")

Lessee shall provide the following amusement rides in the park:

1. Merry Go Round
2. Wild Stagecoach
3. Antique Cars
4. Bulgy (Oscar the Fisher)
5. Dragon Coaster
6. Log Flume
7. Red Baron
8. Tea Cups
9. Train Ride
10. Swing Ride
11. Coin-operated Merry Go Round
12. Coin-operated Train
13. Coin-operated Horse

Lessee may not modify the above list without the prior written consent of the City.

EXHIBIT E ("FACILITY IMPROVEMENTS")

(a) *Definition and Timeline.* Lessee, at its sole cost and expense, shall complete the following improvements (the "Facility Improvements") to the Leased Premises by March 31, 2019 (the "**Completion Date**"). Failure to complete the Facility Improvements by the Completion Date shall constitute an Event of Default. While Lessee must complete the Facility Improvements by the Completion Date, the Parties anticipate the improvements will be completed much sooner, as indicated by the dates below (the "**Anticipated Completion Dates**"). If Lessee is unable to complete each Facility Improvement by its Anticipated Completion Date, Lessee shall provide the City with written notice of such fact, along with an explanation for the delay, no later than 30 days prior to the Anticipated Completion Date. The asterisked items shall become the sole and exclusive property of the City following the expiration or termination of the Lease in accordance with paragraph (i) below.

- (1) Install or construct City-approved restrooms* (September 2015)
- (2) Relocate the train tracks* (May 2014)
- (3) Rebuild the loading area for the Cars* (February 2015)
- (4) Remove and Reinstall a new Water Ride (May 2017)
- (5) Install a new Kiddy Themed Swing (May 2016)
- (6) Replace the Dragon Roller Coaster track and landscape (May 2015)
- (7) Rebuild Sutter's Fort into a special party area* (September 2014)
- (8) Build a shade over the Tea Cups* (May 2016)
- (9) Install a portable Novelty Stand (July 2014)

(b) *Design and Construction.*

- (1) Lessee shall submit the design of all proposed improvements, remodels and renovations to the City for approval in advance of any work. All submissions shall include sufficient detail to enable the City to make an informed judgment concerning the quality of the contemplated improvements and renovations.
- (2) The City's approval of plans pursuant to the foregoing shall not constitute approval of such plans in any manner except as required by this Lease. Lessee shall obtain building permits for all improvements, if required, and shall comply with all laws and regulations applicable to such improvements including, but not

limited to, building codes, fire codes, access for the disabled, CEQA, and zoning. Lessee shall assume all fees and charges levied in connection with issuance of building permits.

- (3) All work shall be performed in a good and workmanlike manner, shall substantially comply with any plans and specifications approved by City, shall comply with all applicable governmental permits, laws, ordinances, and regulations, including the City's Standard Specifications, dated June 2007, and shall be performed by a licensed general contractor as required by law.
 - (4) Lessee shall be solely responsible, at Lessee's sole cost, for the performance of all work necessary to fully design and construct the Facility Improvements. No such payment by Lessee shall be construed as reimbursement for any sums owed to City.
 - (5) Neither the City or its officers, employees or agents thereof, shall be responsible to Lessee for any claim, cost, damage or other liability occurring by reason of anything done or omitted to be done in connection with the design and construction of the Facility Improvements, and Lessee hereby waives and releases any and all such claims, costs, damages or other liabilities.
- (c) *Approvals.* Lessee shall be solely responsible, at Lessee's sole cost, for obtaining and complying with the terms and conditions of any and all approvals, licenses and permits necessary to construct the Facility Improvements.
- (d) *Bidding and Award of Construction Contract.* Lessee shall bid and award the construction contracts for the Facility Improvements in accordance with the procedures and requirements attached hereto as Attachment 1 to Exhibit E.
- (e) *Insurance.* Prior to the commencement of any work on the Facility Improvements, and until the Facility Improvements are completed and accepted by the City, Lessee or Lessee's contractor(s) shall maintain insurance against liabilities arising out of the performance of such work by or on behalf of Lessee or Lessee's contractor(s) as specified in Attachment 2 to Exhibit E.
- (f) *Performance and Payment Bonds; Prevailing Wages; Non-Collusion Affidavit.* Lessee shall require its general contractors for the Facility Improvements: (1) to provide performance and payment bonds from a surety admitted to transact surety insurance in the State of California, in the full amount of the Facility Improvements contract, and in the form provided by the City; (2) to pay, and require all subcontractors to pay, not less

than the prevailing wage rates determined by the State Director of Industrial Relations pursuant to the California Labor Code, for all construction work; and (3) to provide a non-collusion affidavit executed in a form approved by the City. Lessee shall provide City copies of the executed contract, performance and payment bonds, and non-collusion affidavit prior to the commencement of any construction work.

(g) *Failure to Maintain Bonds or Insurance.*

- (1) If, at any time during the performance of this Lease, Lessee or Lessee's contractors fail to maintain any item of the bonds and/or insurance required under the Lease in full force and effect, Lessee shall immediately suspend all work and notify the City in writing of such failure. Lessee shall not resume work until notified by City to do so, and the City shall have no responsibility or liability for any costs incurred by Lessee as a result of such suspension of Work.
- (2) In addition to the foregoing, any failure to maintain any item of the required bonds and insurance at any time during the performance of this Lease will be sufficient cause for termination of the Lease by City.
- (3) Lessee shall be solely responsible for, and shall defend, indemnify and hold harmless the City, its officers, employees and agents against and from, any and all damages, claims, losses, actions, costs or other expenses of any kind incurred by any party as a direct or indirect result of any suspension of work or termination of the Lease under the provisions of this section.

(h) *Inspection.* The City shall be allowed to enter the construction site and Leased Premises to perform construction inspection whenever deemed necessary by the City. Upon completion and testing of the Facility Improvements, the City shall inspect the Facility Improvements and either (1) accept the Facility Improvements as complete, or (2) identify any deficiencies to be corrected before the City will accept the Facility Improvements as complete. Lessee shall correct any deficiencies identified, and the City thereafter shall inspect the Facility Improvements and notify Lessee whether such corrections are approved or disapproved. Lessee shall reimburse the City for its costs in inspecting the Facility Improvements, whether the costs are incurred by its employees or third parties hired to do the job.

(i) *Acceptance by the City.* As noted in paragraph (a) above, certain Facility Improvements (those noted with an asterisk) shall become the sole and exclusive property of the City upon completion of construction, final inspection and testing, and final acceptance by City, after the correction by Lessee of any deficiencies identified by City; provided that, as a precondition to final acceptance by City: (1) Lessee shall take any and all actions

necessary to insure that the Facility Improvements are free and clear of all liens, stop notices and encumbrances of any kind, and that the City is in possession of all rights, approvals and permits necessary to operate, maintain and repair the Facility Improvements upon final acceptance by City; (2) Lessee shall have satisfied all of the terms and conditions of this Lease; and (3) Lessee shall provide the City with a set of record plans.

(j) *Guarantee.* The Lessee guarantees and agrees, at Lessee's sole cost, to remedy any defects in the Facility Improvements arising from faulty or defective construction occurring at any time within one (1) year after final acceptance thereof by the City. In the event that Lessee fails to remedy any and all such defects within ten (10) days after being notified of the defects in writing by City, City shall have the right, but shall not be obligated, to repair or cause to be repaired such defects, and Lessee shall pay to City on demand all costs and expenses incurred by City to repair or cause to be repaired such defects. Notwithstanding anything herein to the contrary, if any defects in the improvements result in a condition that, in the City's sole and exclusive judgment, constitutes an imminent hazard to public health or safety, or to any person or property, City shall have the right to immediately repair or cause to be repaired such defects, with or without prior notice to Lessee, and Lessee shall pay to City on demand all costs and expenses incurred by City to repair or cause to be repaired such defects.

(k) *Indemnity.*

(1) Lessee shall defend, hold harmless and indemnify the City and its officers, employees, and agents, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, whether arising on or offsite of the Work, including, but not limited to, any fees and/or costs reasonably incurred by the City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform the Work by the Lessee, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder, or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for

death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, City, its agents, servants, or independent contractors who are directly responsible to City, or (ii) the active negligence of City.

- (2) The existence or acceptance by City of any of the insurance policies or coverages described in this Lease shall not affect or limit any of City's rights under this section, nor shall the limits of such insurance limit the liability of Lessee hereunder. The provisions of this section shall survive any expiration or termination of the Lease.

ATTACHMENT 1 TO EXHIBIT E

BIDDING AND AWARD PROCEDURES AND REQUIREMENTS

1. After the plans and specifications for the Facility Improvements are approved in writing by the City, acting through the City Manager or his designee, Lessee shall solicit and obtain sealed bids to perform the work shown on the approved plans and specifications from a minimum of three licensed contractors.
2. All requests for bids shall inform bidders that all work shall be performed in accordance with the approved plans and specifications and any City-approved changes thereto, and in strict conformity with the City's standard specifications and requirements, unless exceptions are approved by the City.
3. All requests for bids shall inform bidders of the requirement to pay prevailing wages, provide insurance coverage and a non-collusion affidavit as required in this Lease, and comply with all other applicable provisions of this Lease.
4. Bidders shall be provided a minimum of ten (10) working days to prepare and submit bids.
5. Lessee shall provide the City with a list of subcontractor awards, including the subcontractor's name, address, and license number, and the work to be performed.

ATTACHMENT 2 TO EXHIBIT E

INSURANCE FOR THE FACILITY IMPROVEMENTS

1. *Minimum Scope and Limits of Insurance Coverage.*
 - (a) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
 - (b) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Contractor.
 - (c) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation.
 - (d) All-Risk Property Insurance against all risks of loss to any improvements, fixtures, or equipment added to the Leased Premises, with a limit equal to the completed value of the Facility Improvements. All property insurance must be for replacement value and name the City as loss payee.
2. *Deductibles and Self-Insured Retentions.* Any deductibles or self-insured retentions must be declared to and approved by the City's Risk Department.
3. *Other Insurance Provisions.* The policies are to contain, or be endorsed to contain, the following provisions:
 - (a) The City and District, and their officials, employees and volunteers are to be covered as additional insureds, and the coverage shall contain no special limitations on the scope of the protection afforded to the City, its officials, employees or volunteers.

- (b) The insurance coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
 - (c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City and District, their officials, employees or volunteers.
 - (e) Coverage shall state that the insurance required herein shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - (f) Each insurance policy required herein shall be endorsed to state that cover ages shall not be cancelled or materially changed except after thirty (30) days prior written notice has been given to the City.
4. *Acceptability of Insurance.* Insurance shall be placed with insurers with a Bests' rating of not less than A:V.
5. *Verification of Coverage.* Lessee or Lessee's contractor shall furnish the City and District with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City representative designated by the City. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
6. *Subcontractors.* Lessee shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified above.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/28/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER InterWest Insurance Services License #0B01094 P.O. Box 255188 Sacramento CA 95865-5188		CONTACT NAME: Cynthia Sanderlyn PHONE (A/C, No, Ext): 916-609-8355 E-MAIL ADDRESS: csanderlyn@iwins.com FAX (A/C, No): 916-979-7515															
INSURED FUNDE-1 Funderland Amusement Park dba Funderland Amusement Park P.O. Box 221532 Sacramento CA 95822-1200		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Philadelphia Ind. Ins. Co.</td> <td>18058</td> </tr> <tr> <td>INSURER B : State Comp Ins Fund (CA)</td> <td>35076</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Philadelphia Ind. Ins. Co.	18058	INSURER B : State Comp Ins Fund (CA)	35076	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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COVERAGES

CERTIFICATE NUMBER: 1997896831

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			PHPK1040167	6/25/2013	7/1/2014	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$0 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$3,000,000 PRODUCTS - COMP/OP AGG \$3,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS <input checked="" type="checkbox"/>			PHPK882281	6/25/2013	7/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000			PHUB425809	6/25/2013	7/1/2014	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input type="checkbox"/> N/A			806326713	7/1/2013	7/1/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

RE: Contract Renewal

City of Sacramento, its officials, employees and volunteers are named as Additional Insured per the attached endorsement

CERTIFICATE HOLDER

City of Sacramento
 c/o Ebix BPO
 P.O. Box 257
 Portland MI 48875-0257

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

"Blanket where required by written contract".

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

1. Designation of Premises (Part Leased to You): 1350 17th Ave
Sacramento, CA 95822-1200
2. Name of Person or Organization (Additional Insured): City Of Sacramento
BPO
3. Additional Premium: Included

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the Schedule.