

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute rental agreement No. L18-05 with the Cow Palace, as property operator, for the relocation of non-operative historic streetcars, cable cars and buses consisting of approximate 31,500 square feet of paved land and a covered building, in the amount of \$2,072,457.68 for a five-year term with extension options of two additional two-year terms.


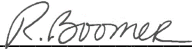
SUMMARY:

- The SFMTA currently houses a fleet of non-operative historic streetcars, cable cars, and buses at 1399 Marin St. The site is owned by the Port of San Francisco and leased to the SFMTA under a MOU agreement.
- The portion of the site used for the non-operative vehicles is earmarked for expansion to accommodate a more robust new bus acceptance program and other related Transit Division needs.
- The SFMTA has negotiated a rental agreement with the Cow Palace to relocate non-operative vehicles from 1399 Marin St. to the Cow Palace site.
- The rental agreement with the Cow Palace is for a five-year term with extension options for two additional two-year terms.
- The initial annual rent for the five-year term will be \$204,000 with a 3% annual increase. The SFMTA has right to terminate the rental agreement with a 90 days advance written notice to the Cow Palace.

ENCLOSURES:

1. SFMTAB Resolution
2. Rental Agreement

APPROVALS:

	DATE
DIRECTOR 	3/13/2018
SECRETARY 	3/13/2018

ASSIGNED SFMTAB CALENDAR DATE: March 20, 2018

PAGE 2.

PURPOSE

Authorizing the Director of Transportation to execute rental agreement No. L18-05 with the Cow Palace, as property operator, for the relocation of non-operative historic streetcars, cable cars and buses consisting of approximate 31,500 square feet of paved land and a covered building, in the amount of \$2,072,457.68 for a five-year term with extension options of two additional two-year terms.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This action supports the following SFMTA Strategic Plan Goals and Objectives:

Goal 3: Improve the environmental and quality of life in San Francisco

Objective 3.3: Allocate capital resources effectively

Goal 4: Create a workplace that delivers outstanding service

Objective 4.4: Improve relationships and partnerships with our stakeholders

TRANSIT FIRST POLICY PRINCIPLES

10. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

DESCRIPTION

The SFMTA currently houses approximate 35 non-operative historic streetcars, cable cars and buses at the 1399 Marin Street facility. These non-operative vehicles are collected from traffic collisions or are determined to be non-operational. The SFMTA needs to retain these vehicles for future retrofit to potentially put back into service, some will be dismantled for replacement parts, and those determined as surplus vehicles will be disposed of through the city's vehicle surplus process. A portion of the facility is also being used for SFMTA's new bus acceptance function. The 1399 Marin Street facility is leased from the Port of San Francisco under a MOU agreement.

The SFMTA plans to utilize the existing portion of the site currently housing the non-operative historic streetcars, cable cars and buses to expand the agency's new bus acceptance function and related ancillary uses, so it can accommodate receiving new buses more efficiently and in a timely manner. This plan allows the SFMTA to allocate capital resources effectively under agency's Strategic Objective Goal Objective 3.3: Allocation capital resources effectively.

Representatives from the SFMTA Transit Division, Strategic Real Estate and Facilities have discussed various relocation options and considered multiple sites, including the existing SFMTA real estate portfolio, and through that process have determined the Cow Palace site meets the need for an immediate move-in. There is no open space within the existing SFMTA real estate portfolio that could accommodate 31,500 square feet of space for the non-operative vehicle relocation.

PAGE 3.

The Cow Palace in Daly City will provide as part of the rental agreement approximately 31,500 square feet of paved land including a covered building for the SFMTA to store historic streetcars, non-operative cable cars and buses. The rental agreement is for a five-year term expected to commence in April 2018 with extension options for two additional two-year terms.

The initial annual rent will be \$204,000 (\$0.539 per square foot per month, or \$6.47 per square foot a year) and will increase 3% annually. The SFMTA has the right to terminate this rental agreement by providing the Cow Palace with 90 days advance written notice anytime during the term. The SFMTA may terminate this rental agreement if suitable and more permanent accommodations have been acquired and/or developed by the SFMTA.

Under this rental agreement, the Cow Palace will rent the designated paved land and covered building space in “as is” condition and will maintain and make repairs to majority of structural portions of the covered building and to all systems including electrical, mechanical and plumbing during the rental term.

Staff has researched comparable properties in and around the San Francisco area which ranges between \$6.89 per square foot a year at 2150 Geneva Avenue, Daly City to \$25 per square foot a year at 1439 Egbert Avenue. Based on that research and analysis, the SFMTA recommends that the Cow Palace’s rental rate is considered reasonable for it falls within an acceptable fair market value rental rate range for comparable properties within five mile radius of the Cow Palace site.

STAKEHOLDER ENGAGEMENT

The Cow Palace option was presented to the Transit Division as it was the only current viable solution to accommodate the relocation of non-operative vehicles. The Transit Division concurs with this solution.

ALTERNATIVES CONSIDERED

The SFMTA has evaluated its existing real estate portfolio and other potential locations in and around the City and County of San Francisco. In each instance, the location is neither adequate enough nor ready to accommodate storage of our agency’s non-operative historic streetcars, cable cars and buses efficiently.

FUNDING IMPACT

Operating funds required for this rental agreement, in the amount of \$2,072,457.68, for the five-year term with extension options of two additional two-year terms are budgeted in the Transit Division’s budget.

ENVIRONMENTAL REVIEW

On February 5, 2018, the SFMTA, under authority delegated by the Planning Department,

PAGE 4.

determined that the proposed rental agreement is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

Not applicable.

A City Attorney has reviewed this report.

RECOMMENDATION

The staff recommendation is to authorize the Director of Transportation to execute rental agreement No. L18-05 with the Cow Palace, as property operator, for the relocation of non-operative historic streetcars, cable cars and buses consisting of approximate 31,500 square feet of paved land and a covered building, in the amount of \$2,072,457.68 for a five-year term with extension options of two additional two-year terms.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The SFMTA currently houses a fleet of non-operative historic streetcars, cable cars and buses at 1399 Marin Street facility, which is leased from the Port of San Francisco under a MOU agreement. The SFMTA plans to utilize the historic vehicle storage space to accommodate the new bus acceptance program and other Transit Division needs; and,

WHEREAS, The SFMTA has negotiated a rental agreement with the Cow Palace to relocate non-operative vehicles from 1399 Market Street facility to a portion of the Cow Palace property consisting of approximate 31,500 square feet of paved land and a covered building; and,

WHEREAS, The Cow Palace will rent out the designated facility space in “as is” condition and will maintain and make repairs to the structural portions of the covered building and to all systems including electrical, mechanical and plumbing during the term; and,

WHEREAS, The initial annual rent will be \$204,000 with 3% annual increases over the five-year term expected to commence in April, 2018. It provides the SFMTA extension options for two additional two-year terms and right to terminate with 90-days written notice; and,

WHEREAS, On February 5, 2018, the SFMTA, under authority delegated by the Planning Department, determined that the proposed rental agreement is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute rental agreement No. L18-05 with the Cow Palace, as property operator, for the relocation of non-operative historic streetcars, cable cars and buses consisting of approximate 31,500 square feet of paved land and a covered building, in the amount of \$2,072,457.68 for a five-year term with extension options of two additional two-year terms.

Authorizing the Director to execute Agreement No. L18-05 with the Cow Palace, in the amount of \$2,072,457.68 for a five-year term with extension options of two additional two-year terms.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of March 20, 2018.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

RENTAL AGREEMENT No. L18-05

This Rental Agreement (“Rental Agreement”) for the use of certain described buildings and facilities of the Cow Palace made this 14th day of December 2017 by and between the **1-A District Agricultural Association, hereinafter called “Cow Palace” or “1-A DAA/Cow Palace Arena & Event Center” (“Property Operator”)** and the **City and County of San Francisco (“City”), acting by and through its Municipal Transportation Agency (“SFMTA” or “Renter”)**:

Name: **San Francisco Municipal Transportation Agency**
Address: **Attn: Jason A. Gallegos, Real Estate Development Manager**
1 South Van Ness Avenue-8th Floor #8163
San Francisco, CA 94103

Telephone: (415) 701-4622
Email: Jason.gallegos@sfmta.com
Contact: William Zhao, Principal Administrative Analyst
Finance & I.T. Division-Strategic Real Estate Section
Telephone: (415) 701-4514
Email: William.Zhao@sfmta.com

1. **EVENT DATES:**

- A. Move-In: April 1, 2018
- B. Move-Out: Sixty months after move-in date; March 31, 2023

2. **DESCRIPTION OF PREMISES:**

Subject to the provisions of this Rental Agreement, Cow Palace hereby rents to Renter and Renter rents from Cow Palace that certain commercial real property that certain commercial property consisting of approximately 37,600 square feet of space (“the larger space”) which includes a mandated “emergency fire lane” the (“Premises”) located within the grounds of the larger site commonly referred to as the 1-A DAA/Cow Palace Arena & Event Center, located at 2600 Geneva Avenue, Daly City, CA (the “Cow Palace Site”).

Space available for use by Renter totals 31,500 square feet consisting of approximately 27,500 square feet of paved land and 4,000 square feet of a portion of a portion of one building commonly referred to as the “Warehouse” or “Metal Building 2” within the Cow Palace site.

Renter shall have non-exclusive access to the Premises via the southernmost gate entrance (Gate 7C). (Refer to attached Exhibit A-1).

3. **RENT AND OTHER CHARGES:**

Renter agrees to pay 1-A DAA/Cow Palace rent, repairs (for damages caused by renter during its occupation of Premises), reimbursements (which may include Utilities; defined as Electricity, Gas, Water and Sewer) and other charges as set forth in **Exhibit A**, which is attached hereto and incorporated herein by reference, for the use set forth in paragraph 6.

4. **SECURITY DEPOSIT:**

Upon full execution of this Agreement, Renter shall pay 1-A DAA/Cow Palace a security deposit in the amount of \$10,000.00 (the "Security Deposit") to secure performance under this Rental Agreement with said security deposit funds to be held for the first twelve (12) months under the Rental Agreement. Upon commencement of the thirteenth (13) month of the Rental Agreement term, the Security Deposit shall be applied as partial rent payment.

5. **OPTIONS TO RENEW:**

Renter shall have the right to extend their Rental Agreement for two (2) additional two (2) year terms ("Option Periods"). Renter and 1A DAA/Cow Palace shall still reserve their Termination Rights (same as per Section 25 below) during any Option Period-refer to Termination Provisions below). Renter shall be required to provide 1A DAA/Cow Palace with ninety (90) days prior written notice of their intent to exercise each of their options to extend.

6. **CONDITION OF PROPERTY/IMPROVEMENTS:**

Renter accepts the property in an "As Is" condition and upon expiration (or early termination as provided herein) of this Rental Agreement, Cow Palace agrees to accept the return of the Premises in such "As-Is" condition, (including permitted improvements made and approved pursuant to this paragraph 6) and including reasonable wear and tear.

Alterations

Renter may redecorate the interior of the building which is part of the Premises and make such alterations, changes and/or installations as Renter may from time to time think are necessary or desirable; provided, however, that such alterations, changes and/or installations shall comply with laws and may not impair the electrical or mechanical systems serving the Property or the structural soundness of the Property.

1-A DAA/Cow Palace Repair

Except where damaged by Renter, 1-A DAA/Cow Palace will maintain and make all repairs, at its sole expense as follows: (i) to the structural portions of the building (this excludes the roof areas of Metal Building 2) including the floor slab, bearing walls and foundations); (ii) to all systems, including electrical, mechanical, plumbing and water to the point of entry into or hook-up with the Premises; (iii) required because of the act or omission of 1-A DAA/Cow Palace, or 1-A DAA's employees, agents, contractors, or invitees. If 1-A DAA/ Cow Palace deems the costs of such repairs to be excessive in light of the overall value of the facilities to 1-A DAA/Cow Palace, it may, at its

discretion, terminate this Rental Agreement in whole or in part, upon one hundred eighty (180) day's prior written notice, but only with respect to such affected facilities and the rental fee payment due under this Rental Agreement shall be adjusted accordingly. 1-A DAA/Cow Palace acknowledges and Renter accepts that Metal Building 2 leaks during the rainy season.

Renter's Repairs

Except for reasonable wear and tear and repairs required by 1-A DAA/Cow Palace pursuant to this article, Renter will maintain the Premises as Renter shall determine necessary; provided, however, that any "substantial changes" ("substantial changes" shall mean modification or structural changes to the building) to the Premise shall only be made with written approval by 1-A DAA/Cow Palace. Renter will maintain and make all repairs to the interior of the Premises, including wall coverings, floorings and Renter's personal property equipment.

7. **PERMITTED USES:**

Renter is authorized to conduct storage of historic SFMTA trolleys and paratransit buses including associated equipment/parts. Renter shall be responsible for and comply with all local and federal laws, codes and compliances as it pertains to operational and non-operational vehicle storage. Additionally, Renter shall be prohibited from conducting major vehicle repairs and maintenance on the Premises and/or Property. However, Renter shall be allowed to perform minor repairs and maintenance by its personnel or its contractors, subject to approval by 1-A DAA/Cow Palace of activities and layout. The Premises shall not be used for any other purpose without the written consent of 1-A DAA/Cow Palace Arena & Event Center. Renter agrees to comply with all reasonable rules and regulations contained in this Rental Agreement and to provide a layout of the Premises prior to move-in of SFMTA trolleys and paratransit buses.

Phone Lines and Internet Access

Renter is responsible for securing phone lines and internet access needed for Renter's use.

8. **COMPLIANCE WITH LAWS:**

(a) Renter agrees that every employee, agent and contractor connected with Renter's use of the Premises pursuant to this Rental Agreement shall abide by, conform to, and comply with all the laws of the United States and the State of California and with the ordinances of the City of Daly City and the County of San Mateo, as these statutes, ordinances, regulations and requirements may apply to the operation of Renter by virtue of this license and whether such statutes, ordinances, regulations, and requirements are now in force or hereinafter enacted. Renter shall conduct its activities upon the premises so as not to endanger or harm any person, property, or the environment. For purpose of this paragraph, the term "Premises" shall include all the Cow Palace Property including the Parking Lot, Entryways, Ticket Booth areas, and other areas used by Renter or its employees, contractors, agents, members or guests pursuant to this Agreement.

(b) Renter shall be responsible for and pay all taxes, charges, fees, licenses and permits, whether Federal, State, County or City, due on account of its business and other permitted activities engaged in under this agreement.

9. **SMOKING:**

Smoking is not allowed at any time inside any of the 1-A DAA/Cow Palace buildings. Smoking is permitted in outside areas only.

10. **INSURANCE:**

Renter's Self-Insurance:

Renter shall not be required to carry third party insurance with respect to this Rental Agreement. 1-A DAA/Cow Palace acknowledges that City maintains a program of self-insurance and agrees that SFMTA shall not be required to carry any insurance with respect to this Rental Agreement. 1-A DAA/Cow Palace further acknowledges its approval of Renter's self-insurance program as described in the letter attached as **Exhibit B**, which is attached hereto and incorporated herein by reference.

11. **CONTROL OF BUILDING:**

By entering into this Rental Agreement 1-A DAA/Cow Palace Arena & Event Center does not relinquish the right to reasonable control the management of any of its facilities or to enforce all necessary and proper rules for the management and operation of the same. 1-A DAA/Cow Palace officers, agents and/or employees may enter the Premises at any time and on any occasion after providing a minimum of at least a one (1) weekday (Monday through Friday) advance notice of such entry to SFMTA employees, Jason Gallegos (415-701-4622) and/or William Zhao (415-701-4514). 1-A DAA/Cow Palace Arena reserves the right to its Chief Executive Officer or his/her designee to restrict access to the premises to any objectionable person or persons and Renter hereby waives any right and all claim for damages against 1-A DAA/Cow Palace Arena for exercising this control; provided, however, that 1-A DAA/Cow Palace shall give prior notice to Jason Gallegos and/or William Zhao before exercising such restriction right.

12. **REMOVAL OF ALL EQUIPMENT AND PERSONAL PROPERTY:**

In the event that Renter refuses or fails to remove any of its equipment, property, stock, or other materials, or refuses to vacate the Premises within thirty (30) calendar days of either the termination or expiration of this Agreement, 1-A DAA/Cow Palace Arena & Event Center shall have the right to remove and store such materials at the expense of Renter without incurring liability for damage to, or loss of any such property which may be sustained by reason of the removal and storage, and 1-A DAA/Cow Palace Arena & Event Center is expressly released from any and all claims for damages of whatever kind or nature. For any additional period beyond the term of this agreement which the equipment or material of Renter may remain on the Premises, 1-A DAA/Cow Palace Arena & Event Center shall be entitled, in addition to all other costs incurred, an amount of five hundred (\$500.00) dollars per day, as liquidated damages. Said costs and damages are payable to 1-A DAA/Cow Palace Arena & Event Center in the form of cash, certified check, money order or cashier's check.

13. **INDEMNIFICATION AND HOLD HARMLESS CLAUSE:**

Renter agrees to indemnify, defend and hold harmless the State of California, the 1-A District Agricultural Association, its officers, agents, and employees from any and all claims of damage or injury to persons or property of any kind or nature and losses accruing or resulting from any and all contractors, subcontractors, material men, laborers, suppliers, employees, agents, members, guests, or third parties in connection with the Renter's use of the Premises and from any and all claims or losses accruing or resulting to any person, firm, or corporation who may be injured, or damaged in connection with the Renter's use of the Premises, except for those damages or injuries resulting from the active negligence or willful misconduct of 1-A DAA/Cow Palace.

14. **ASSUMPTION OF RISK:**

Renter assumes the risk of any loss or damage to its personal property or the personal property of any person or entity associated with Renter's event. 1-A DAA/Cow Palace, its officers, agents and employees shall not be responsible or liable for any loss of or damage to such property.

15. **DAMAGE OR DEFAACEMENT OF PROPERTY:**

Renter shall be responsible for damage or defacement of the Premises, Cow Palace equipment and personal property which may occur as a result of Renter's use of the Premises. Renter agrees if the Premises, equipment or personal property are damaged by the act, default or negligence of Renter or Renter's agents, contractors, employees, members and guests, Renter will pay to 1-A DAA/Cow Palace Arena & Event Center upon demand the reasonable amount necessary to restore the premises, equipment and personal property to its original condition.

16. **SIGNS AND POSTERS:**

Renter will not post, exhibit, or allow to be posted signs, advertisements, show bills, posters, or cards of any description on the premises without prior approval of 1-A DAA/Cow Palace Arena & Event Center.

17. **CALIFORNIA STATE POSSESSORY INTEREST TAX:**

Renter recognizes and understands that this Rental Agreement may create possessory interest subject to property taxation and that the Renter may be subject to the payment of property taxes levied on such interest.

18. **HAZARDOUS MATERIALS:**

18.1. Definition-“Hazardous Materials”

The term “Hazardous Materials means any hazardous, toxic or dangerous substance, waste contaminant, pollutant, gas or material, including, without limitation, gasoline, waste oil and other petroleum products and constituents thereof, which are now or may become regulated under any feral, state or local statue, regulation, ordinance or other law now or hereafter in effect, including, without limitation, any substance, waste or material which is now or hereafter (a) designated as a “hazardous substance” under the Federal Water Pollution Control Act and/or the Comprehensive Environmental Response, Compensation, and Liability Act, (b) designated as a hazardous waste or regulated substance pursuant to the Resource Conservation and Recovery Act, (c) designated or listed as a hazardous material under the Hazardous Material Transportation Act, or (d) is in any way regulated as a hazardous material or toxic substance under the laws of the state wherein the Premises is located.

18.2 Indemnification

In addition to the rights of 1-A DAA/Cow Palace as an agency of the State of California and specific provisions of this Rental Agreement concerning indemnification and without prejudice to any rights and remedies of the parties thereunder, the parties further grant to each other the following Hazardous Materials indemnification.

- (a) 1-A DAA/Cow Palace and its successors, assigns, trustees, beneficiaries and legal representatives will protect, indemnify, defend and hold harmless Renter, its officers, directors, shareholders, representatives, and their respective successors and assigns from and against all judgments, suits, proceedings, liabilities, losses, costs, judgments, orders, obligations, damages, expenses or claims (whether by third parties or governmental authorities) arising out of or in any way in connection with any presence or release of any Hazardous Materials on, in, about or under the Premises and/or the Property by any person or entity other than Renter or any person or entity acting for, by or through Renter or with Renter’s permission. This indemnity includes, but is not limited to, remedial removal, response, abatement, cleanup, legal, investigative and monitoring costs, penalties, fines, and disbursements (including without limitation, attorneys’, consultants’ and experts’ fees of any kind whatsoever, which may at any time be imposed upon or incurred by any indemnitee arising, directly or indirectly, (i) from requirements of any federal, state or local environmental law; (ii) in connection with claims by government authorities or third

- parties related to the condition of the Property; and/or (iii) from the presence or existence of Hazardous Materials on, in or near the property.
- (b) Renter and its successors, assigns, trustees, beneficiaries and legal representatives will protect, indemnify, defend and hold harmless 1-A DAA/ Cow Palace, its officers, directors, shareholders, representatives, and their respective successors and assigns from and against all judgments, suits, proceedings, liabilities, losses, costs, judgments, orders, obligations, damages, expenses or claims (whether by third parties or governmental authorities) arising out of or in any way in connection with any introduction or release of any Hazardous Materials on, in, about, or under the Premises by Renter or any person or entity acting for, by or through Renter or with Renter's permission, except to the extent 1-A DAA/Cow Palace or its officers, employees, contractors, consultants or invitees is responsible for the introduction or release of Hazardous Materials. This indemnity includes, but is not limited to, remedial removal, response, abatement, cleanup, legal, investigative and monitoring costs, penalties, fines, and disbursements (including without limitation, attorneys', consultants' and experts' fees of any kind whatsoever, which may at any time be imposed upon or incurred by any indemnitee arising, directly or indirectly, (i) from requirements of any federal, state or local environmental law; and (ii) in connection with claims by government authorities or third parties related to the release of Hazardous Materials on the Premises. The foregoing indemnity shall not include claims resulting from the non-negligent aggravation by Renter, its agents or invitees of physical conditions of the Premises, or other parts of the Property, existing prior to Renter's occupancy and/or use thereof.
- (c) In the event that any investigation, monitoring, containment, cleanup, removal, remediation, restoration or other work of any kind or nature ("Remedial Work") is required reasonably necessary or desirable under any applicable federal, state or local law or regulation, any judicial order, or by governmental or non-governmental entity or person because of, or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Material in or into the air, soil, groundwater, surface water or soil vapor at, in, about, or under or within the Property (or any portion thereof), the party who has an obligation to indemnify the other will, within 30 days after written demand for performance thereof by the indemnitee (or within a shorter period of time as may be required under applicable law, regulation, order or agreement), commence to perform or cause to be commenced, and thereafter diligently prosecute to completion, all such Remedial Work. All Remedial Work will be performed by one or more contractors, approved in advance in writing by indemnitee, and under the supervision of a consulting engineer approved in advance in writing by the indemnitee. All costs and expenses of such Remedial Work will be paid by the indemnitor, including without limitation, the charges of such contractor(s) and/or the consulting engineer, and the attorney's fees and any costs incurred by the indemnitee in connection with monitoring or review of such Remedial Work. In the event the indemnitor fails to timely commence or cause to be commenced, or fails to diligently prosecute to completion, such Remedial Work the indemnitee may, but will not be obligated to, cause such Remedial work to be performed, and all costs and expenses thereof, or incurred in connection therewith, will be reimbursed by the indemnitor.

(d) Nothing contained in this indemnification will prevent or in any way diminish or interfere with any rights and remedies, including without limitation, the right to contribution, which either party may have against the other party or against any of its predecessors or successors in interest, or any other party under the federal Comprehensive Environmental Response, Compensation, and Liability Act, as it may be amended from time to time, or other applicable federal, state or local laws.

19. **INDEPENDENT CONTRACTOR:**

The parties hereto agree that Renter, and any agents, servants, or employees of Renter in the performance of this Agreement, shall act in an independent capacity and not as officers, servants, agents or employees of 1-A DAA/Cow Palace.

20. **TIME OF THE ESSENCE:**

Time is of the essence of each and all provisions of this agreement.

21. **ADA COMPLIANCE:**

Contractors and subcontractors of Renter shall comply with the provisions of the Americans with Disability Act (42 U.S.C. 12101) to the extent applicable.

22. **NON-EXCLUSIVE USE OF FACILITIES:**

Renter shall have the sole right to use the Premises described in Section 2 above; however, Renter understands and acknowledges that the 1-A DAA/Cow Palace facilities and grounds are used to promote a variety of events and other activities on a year-round basis and that such use may have an impact on Renter's use of its Premises under this Agreement. To the extent that events occurring on the Cow Palace grounds around or near Renter's Premises may have an impact on Renter's use of the Premises, Renter's rights to use and occupy the Premises are so limited. Except as expressly permitted in paragraph 7, Renter shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other occupants of the Cow Palace or injure or cause, maintain or permit any nuisance in, on or about the Premises. Notwithstanding Renter's exclusive use of the Premises, in the event of an emergency, Renter shall not interfere with access to the "emergency fire lane". Renter shall not commit or suffer to be committed any waste in or upon the Premises. Renter shall not use or permit the use of the Premises for any unlawful purpose.

23. **USE OF NAME:**

Any use by Renter of the name "Cow Palace", including but not limited to advertising and promotion material, other than to designate the location of the event must be approved in writing by 1-A DAA/Cow Palace Arena & Event Center's CEO.

24. **EMERGENCY TERMINATION & OCCUPANCY**

INTERRUPTIONS:

(a) Emergency Termination: Renter agrees and acknowledges that the 1-A DAA/Cow Palace Arena & Event Center can terminate this Rental Agreement without notice during any emergency declared by local, state, and/or federal governments when the 1-A DAA/Cow Palace Arena & Event Center facilities are required for emergency purposes. Any rents collected for the unused portion of this Rental Agreement shall under such circumstances be refunded to Renter.

(b) Occupancy Interruptions: In the event the Cow Palace or any part of the Premises shall be destroyed, or rendered untenable by fire, earthquake, or any other cause, or if any other casualty or unforeseen occurrence, including strikes, labor disputes, war or acts of military authority, shall render the fulfillment of this Agreement impracticable or impossible to perform, this Rental Agreement shall terminate except for the purpose of enforcing rights that may have accrued hereunder. Upon such termination, the parties hereto shall be released from all obligations hereunder accruing thereafter. In any such case, 1-A DAA/Cow Palace Arena & Event Center shall not be held liable or responsible to Renter for any damage, including lost profits, by said termination. Any rents collected for the unused term of this Rental Agreement under such circumstances be refunded to Renter.

In the event of an electrical power energy shortage, whereby the public utility company deems it necessary to reduce, cut or rotate electrical service to the Cow Palace, or in the event that water, gas or electricity is cut off, 1-A DAA/Cow Palace Arena & Event Center shall not be liable for any losses suffered by Renter.

25. **TERMINATION:** At any time, Renter may terminate this Agreement by providing ninety (90) days advance written notice to 1-A DAA/Cow Palace. All obligations between the parties will cease and the Rental Agreement shall become null and void upon Renter's vacancy.

26. **WAIVER:**

The waiver of any breach of any term, covenant, or condition herein contained shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

27. **WRITING REQUIREMENT:**

Notwithstanding anything herein contained to the contrary, this Rental Agreement may be terminated and the provisions of this Rental Agreement may be altered, changed, or amended, by mutual consent of the parties hereto. It is mutually understood and agreed that no alterations or variation of the terms of this contract shall be valid unless made in writing and signed by the 1-A DAA/Cow Palace Arena & Event Center's Chief Executive Officer and Renter, and that no oral understanding or agreement not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties hereto, shall be binding on any of the parties hereto.

28. **ATTORNEYS FEES:**

In the event suit is brought to enforce or interpret any part of this agreement, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, a reasonable attorney's fee to be fixed by the court. The "prevailing party" shall be the party that is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorney fees.

27. **ADDITIONAL CONTRACT TERMS AND CONDITIONS:**

Renter will comply with the Standard Contract Terms and Conditions as stated in **Exhibit C**, which is attached hereto and incorporated herein by reference.

28. **MISCELLANEOUS:**

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. 1-A DAA/Cow Palace Arena & Event Center acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

29. **NOTICE:**

Notices given under this Rental Agreement shall be effective only if in writing and given by delivering the notice in person or by sending it by first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid to:

**1-A District Agricultural Association
2600 Geneva Avenue
Daly City, CA 94014
Attn: CEO**

**San Francisco Municipal
Transportation Agency (SFMTA)
1 South Van Ness Avenue-8th Floor #8163
San Francisco, CA 94103
Attn: Real Estate Development Manager**

30. **AUTHORITY:**

1-A DAA/Cow Palace represents and warrants to SFMTA that it is the sole Property Operator acting by and through the State of California and the execution and delivery of this Rental Agreement by 1-A DAA Cow Palace does not violate any provision of this agreement, law or regulation to which 1- DAA/Cow Palace or the Property is subject. 1- A DAA/Cow Palace does hereby warrant that the person signing on behalf of 1-A DAA/Cow Palace is authorized to do so.

31. **GOVERNING LAW:**
This Rental Agreement shall be construed and enforced in accordance with the laws of the State of California and the City's Charter.
32. **ENTIRE AGREEMENT:**
The parties intend that this Rental Agreement (including all of the attached exhibits, which are made a part of this Rental Agreement) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Rental Agreement shall constitute the complete and exclusive statement of its terms and no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial or administrative or other legal proceeding involving the Rental Agreement.
33. **NON-LIABILITY OF CITY OFFICIALS, EMPLOYEES AND AGENTS:**
Notwithstanding anything to the contrary in this Rental Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to 1-A DAA/Cow Palace, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to 1-A DAA/Cow Palace, its successors and assigns, or for any obligation of City under this Rental Agreement.
34. **CONTROLLER'S CERTIFICATION OF FUNDS:**
The terms of this Rental Agreement shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Rental Agreement there shall be no obligation for the payment or expenditure of money by City under this Rental Agreement unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that encumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the term of this Rental Agreement commences, sufficient funds for the payment of Rent and any other payments required under this Rental Agreement are not appropriated, then the City may terminate this Rental Agreement without penalty, liability or expense of any kind to the City, as of the last date on which sufficient funds are appropriated. City shall use its reasonable efforts to give 1-A DAA/Cow Palace reasonable advance notice of such termination.

IN WITNESS WHEREOF, this agreement has been executed in duplicate, or triplicate when required, by and on behalf of the parties hereto, on the day and year first written.

1-A DAA/

Cow Palace Arena & Event Center

2600 Geneva Avenue

Daly City, CA 94014

San Francisco, CA 94134

By: (To be signed after SFMTA signs)

Lori Marshall, CEO

Date: _____

RENTER:

San Francisco Municipal

Transportation Agency (SFMTA)

1 South Van Ness Avenue-8th Floor #8163

San Francisco, CA 94103

By: _____

Edward D. Reiskin

SFMTA, Director of Transportation

Date: _____

Taxpayer ID #: 94-1160893

AUTHORIZED BY:

**MUNICIPAL TRANSPORTATION
AGENCY BOARD OF DIRECTORS**

Resolution No.: _____

Adopted: _____

Attest:

Roberta Boomer, Secretary

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

Stephanie Stuart, Deputy City Attorney

Exhibit “A”

1. Rental Fee

The rental fee for use of the facilities as specified below:

Year	Monthly Rent	Months	Annual
Apr 1, 2018-Mar 31, 2019	\$17,000.00	12	\$204,000.00
Apr 1, 2019-Mar 31, 2020	\$17,510.00	12	\$210,120.00
Apr 1, 2020-Mar 31, 2021	\$18,035.30	12	\$216,423.60
Apr 1, 2021-Mar 31, 2022	\$18,576.36	12	\$222,916.32
Apr 1, 2022-Mar 31, 2023	\$19,133.65	12	\$229,603.80

2. Utilities

Renter may need to reimburse for utilities, including electricity gas, water and sewer, as determined in reasonable discretion of the Cow Palace. The Cow Palace shall provide a billing notice together with reasonable documentation evidencing such expense, and Renter shall reimburse these utilities expenses within 30 days upon receipt.

3. Schedule of Payment

In addition to security deposit as required in Section 4 of the Agreement, Renter shall pay by check or ACH wire transfer according to the following schedule:

- The monthly rental fee per the rental fee schedule appearing in section 1 of this Exhibit A which shall be due on or before the fifth (5th) day of each month.
- Renter’s failure to pay the required monthly fee on or before the 5th day of each month shall result in assessment of a late fee on the fifteenth (15th) day of each month at a rate of 5% of the then due monthly rental fee.
- Balance of all contract obligations shall be due upon final invoice by 1-A DAA/Cow Palace.

Initial (1-A DAA/Cow Palace) _____ Initial (Renter) _____

Exhibit "A-1"
Rental Premises



Exhibit "B"
Renter Self-Insurance



Edwin M. Lee, Mayor
Naomi Kelly, City Administrator

**CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE
CITY ADMINISTRATOR
RISK MANAGEMENT DIVISION**



February 27, 2018

Diane Colvin
Rentals & Operations Officer
Cow Palace
2600 Geneva Avenue
San Francisco, CA 94014

**RE: Rental of Certain Real Estate at the Cow Palace
 Under Rental Agreement No. L18-05
 April 1, 2018 to March 31, 2023**

This letter certifies that the City and County of San Francisco is self-insured and self-funded for the following insurance coverages which cover the City and County of San Francisco, its officers and employees.

Comprehensive General Liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury, property damage, and personal injury to third parties or liability arising out of the City's negligence in performance of this agreement.

Automobile Liability combined single limit per accident for bodily injury and property damage in the amount of \$1,000,000 per accident.

Workers' Compensation in statutory amounts with Employer's Liability of \$1,000,000 per accident, injury or illness.

The City and County of San Francisco's self insurance program is not commercial insurance and has no legal capacity to name another entity as additional insured.

Do not hesitate to contact this office should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Matt Hansen".

Matt Hansen
Director

cc: SFMTA, William Zhao

Exhibit "C"

STANDARD CONTRACT TERMS AND CONDITIONS (F-31, RENTAL AGREEMENT)

1. **National Labor Relations Board (PCC Section 10386)**
Contractor, by signing this contract, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of a Federal Court which orders the contractor to comply with an order of National Labor Relations Board (Public Contract Code Section 10396).
2. **Resolution of Contract Disputes (PCC Section 10246.5, 10381)**
If, during the performance of this agreement, a dispute arises between contractor and Fair Management, which cannot be settled by discussion, the contractor shall submit a written statement regarding the dispute to Fair Management. A decision by Fair Management shall be made to the Contractor in writing, and shall be final and conclusive. Contractor shall continue to perform contract requirements without interruption during the dispute period.
3. **Non-Discrimination Clause/Statement of Compliance (GC 12890/CCR 8103-8120)**
During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractors and subcontractors shall comply with the provision of the Fair Employment and Housing Act (Gov. Code Section 12900, et seq.) and the applicable regulations promulgated there under (CA Code of Regulations, Title 2, Section 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code Section 12950 (a-d), set forth in Ch. 5 of Div. 4 of Title 2 of the CA Code of Regulations are incorporated into this contract by reference and made part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This contractor shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this contract. Contractor by signing this contract hereby certifies, unless specifically exempted, compliance with Gov. Code 12990 (a-d) and CA Code of Regulations, Title 2, Div. 4, Ch. 5 in matters relating to reporting requirements and the development, implementation and maintenance of a Non-discrimination Program. Prospective contractor agrees not to unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
4. **Amendment (GC 110105)**
Contract modification, when allowable, may be made by formal amendment only.
5. **Assignment**
This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
6. **Termination**
This state reserves the right to terminate any contract, at any time, upon order of the Board of Directors by giving the contractor notice in writing at least 30 days prior to the date when such termination shall become effective. Such termination shall relieve the fair of any further payments, obligations, and/or performance required in the terms of the contract. The Fair reserves the right to terminate the Rental Agreement as set forth under Section 6 "Condition of Property/Improvements", paragraph 3 "1-A DAA/Cow Palace Repair" to which this Exhibit C is an attachment. Cow Palace Initial: _____ Renter Initial: _____
7. **Governing Law**
This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
8. **Conflict of Interest (PCC 10410, 10411, 10420)**
Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
Current State Employees (PCC 10410):
1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
Former State Employees (PCC 10411):
1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.
If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void (PCC 10420).
9. **Contractor Name Change**
An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
10. **Air or Water Pollution Violation (WC 13301)**
Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.