SETTLEMENT AGREEMENT CITY AND COUNTY OF SAN FRANCISCO VS. PACIFIC ROD AND GUN CLUB SAN FRANCISCO SUPERIOR COURT NO. CUD-12-642832

This Settlement Agreement ("Agreement") is made and entered into this 5th day of November 2012 by and between PACIFIC ROD AND GUN CLUB, a California nonprofit corporation ("Club"), and THE CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation ("City"), acting through its San Francisco Public Utilities Commission ("SFPUC") and San Francisco City Attorney Dennis J. Herrera.

I. RECITALS

The parties enter into this Agreement with reference to the following facts and understandings:

- A. Club and City entered into a month-to-month lease agreement, effective January 1, 1934 ("1934 Lease"), with respect to approximately 4 acres of City-owned land located on a portion of the SFPUC's 811.13-acre Lake Merced tract located at 520 John Muir Drive in San Francisco, for purposes of skeet shooting and fly casting. Over the course of the term of the 1934 Lease, Club has occupied and used approximately 10 acres of City owned land ("Premises").
- B. On September 28, 2012, City filed an action in unlawful detainer no. CUD-12-642832 in the San Francisco Superior Court, seeking eviction of the Club from the Premises ("the Action") under the 1934 Lease.
- C. Club and City desire to resolve and settle the Action on the terms and conditions set forth herein without the time and expense of a trial of the Action. City will permit Club's continued occupancy of the Premises in an amendment and restatement of the 1934 Lease, and Club agrees that its continued occupancy of the Premises will be governed solely in accordance with the terms of this Agreement and the Amended and Restated Lease (the "Amended Lease") attached as Exhibit 1. Authorized representatives of Club, the SFPUC, and the City Attorney's Office executed this Agreement on November 2, 2012, subject to the understanding and agreement that this Agreement, and all terms herein, are contingent upon the San Francisco Board of Supervisors, acting in its sole discretion, approving an ordinance authorizing the settlement, as described herein.

NOW, THEREFORE, in consideration of the facts recited above, and the covenants, conditions and promises contained herein, the parties agree as follows:

II. AGREEMENT

1. <u>Condition Precedent.</u> This Agreement shall take effect on the date ("Effective **Date"**) that the San Francisco Board of Supervisors, acting in its sole discretion, ("Board") adopts legislation approving this Agreement, and the legislation becomes effective.

- Lease. Club may remain on the Premises only as permitted under this Agreement and in accordance with the Amended Lease. The SFPUC's acceptance of monthly base rental and other payments from Club under the 1934 Lease and the Amended Lease do not or constitute a waiver of any of City's rights, including but not limited to, City's right to recover possession of the Premises pursuant to this Agreement, the stipulation for entry of judgment attached hereto as Exhibit 2, or otherwise by lawful means. The existence of the Amended and Restated Lease shall not require City to file another unlawful detainer action in order to evict Club from the Premises. Instead, City's delivery of the Termination Notice as provided in section 3, the filing of a Stipulation for Entry of Judgment under section 4, and the issuance of the writ of possession attached to the Stipulation for Entry of Judgment shall be the only actions required by City to terminate the Club's tenancy and to secure possession of the Premises under the Amended and Restated Lease.
- Premises. In accordance with section 4.1 of the Amended and Restated Lease, either Party may terminate the Amended and Restated Lease by providing ninety (90) days' written notice to the other Party. Within ninety (90) calendar days of receipt of a written Notice of Termination ("Termination Notice") from the SFPUC, or within ninety (90) calendar days of City's receipt of a Termination Notice from Club; provided however, that in the event City elects to terminate the Lease because of an uncured Event of Default by Tenant (as such term is defined in the Amended Lease) under the Amended Lease, City may terminate the term of the Amended Lease immediately, or on a date then designated by City, by delivery of a written notice (a "Default Termination Notice") that specifies the effective date of termination and identifies the uncured Event of Default. On or before the date specified in the applicable Termination Notice or Default Termination Notice, Club shall vacate and surrender the Premises in accordance with sections 8.4 and 21.1 of the Amended and Restated Lease.
- 4. <u>Stipulated Judgment in the Action</u>. In the event that Club fails to vacate and surrender the Premises (i) within ninety (90) calendar days of receipt of the Termination Notice from the SFPUC, (ii) within ninety (90) calendar days of City's receipt of a Termination Notice from Club, or (iii) the date specified for termination of the Amended Lease term in a Default Termination Notice, City may file the Stipulation for Entry of Judgment attached as **Exhibit 2** to this Agreement with the San Francisco Superior Court.
- 5. <u>Survival of Indemnity Clause in 1934 Lease</u>. The indemnity clause in section 2 of the 1934 Lease shall survive the termination of the Amended and Restated Lease. Club agrees to cooperate in any SFPUC efforts to obtain coverage for any claims arising out of Club's occupancy of the Premises.

6. Representations and Warranties.

- a. Each party represents and warrants to the other party that:
 - i. to the extent applicable to such party, it is duly organized and existing and is in good standing in its state of formation;

- ii. it has the full right and authority to enter into this Agreement;
- iii. the person or persons signatory to this Agreement and any document executed pursuant to this Agreement on behalf of such party have full power and authority to bind such party; and
- iv. upon due execution and delivery by the respective parties, this Agreement

will be the valid, binding, and enforceable obligation of such party in accordance with their respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

- 7. Negotiated Settlement. The discussions that have produced this Agreement have been conducted with the explicit understanding that they are privileged under California Evidence Code section 1152, and that such discussions shall be without prejudice to the position of either Party and may not be used in any manner in any proceeding or otherwise, except as may be necessary to enforce or interpret this Agreement or as otherwise required by law.
- 8. Exercise of Independent Judgment. Club acknowledges that, in executing this Agreement, it is acting on its own, independent judgment informed by its legal counsel. Club acknowledges having read this Agreement, the Amended and Restated Lease, and the Stipulation for Entry of Judgment of Possession attached to this Agreement, and has been advised by its attorney as to its meaning and effect. Club acknowledges and warrants that its execution of this Agreement is free and voluntary.
- 9. Entire Agreement. Each party acknowledges that this Agreement and the attached exhibits 1 and 2 contain and constitute the entire agreement between the parties with respect to the Action. The terms of this Agreement are contractual and not a mere recital. Each party acknowledges that the other party has made no representations, express or implied, to induce that party to enter into this Agreement, other than as expressly set forth herein.
- 10. <u>No Admission</u>. No aspect of this Agreement or the settlement which led to it is intended to be nor at any time shall be construed, deemed, or treated in any respect as an admission by either party of liability, or wrongful actions, for any purpose.
- 11. <u>Severability</u>. If any of the provisions of this Agreement or the application thereof is held to be invalid, its invalidity shall not affect any other provision or application of this Agreement to the extent that such other provision or application can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are declared and understood to be severable.
- 12. Attorney's Fees. Each party understands and acknowledges that it shall bear its own legal expenses and costs incurred in connection with prosecuting or defending the Action, provided, however, that if any person or entity brings or commences any action or proceeding to enforce or interpret any provision of this Agreement, the prevailing party in such action or proceeding shall be entitled to receive its reasonable attorney's fees and costs therein incurred

from the party not prevailing. For purposes of this Agreement, reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in City in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

- 13. <u>Interpretation of Agreement</u>. For purposes of interpreting this Agreement, the parties hereto shall be deemed to have participated equally in its drafting. This Agreement and the settlement which led to it have been fully negotiated with the assistance of counsel and should not be construed more strictly against one party than another.
- 14. <u>Conflict of Interest</u>. No member, official or employee of City may have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement that affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly.
- 15. <u>Counterparts</u>. This Agreement may be executed in two or more counterparts, all of which counterparts shall be deemed originals.

IN WITNESS WHEREOF, the parties hereto and their respective attorneys of record have approved and executed this Agreement on the dates specified below:

AGREEING PARTIES:

	CITY AND COUNTY OF SAN FRANCISCO
Dated:, 2012	By: Harlan L. Kelly, Jr. SFPUC General Manager
	PACIFIC ROD AND GUN CLUB
Dated: <i>NOV.</i> 5 ,2012	By: Michael C. Miccer Its: POES A TOUT

EXHIBIT 1 AMENDED AND RESTATED LEASE

EXHIBIT 2 STIPULATION FOR ENTRY OF JUDGMENT