

NOTE: THIS AGREEMENT COVERS THE TEMPORARY USE OF CERTAIN INTERIM FACILITIES (TERRY FRANCOIS CONNECTOR ROAD) THAT ARE PART OF THE INTERIM PHASE 1 REQUIRED INFRASTRUCTURE UNDER THE MISSION BAY SOUTH BLOCK 8721 PHASE 1 PUBLIC IMPROVEMENT AGREEMENT

AGREEMENT

(Temporary City Access and Use — GSW Portion of Terry Francois Connector Road)

This Agreement (Temporary City Access and Use — GSW Portion of Terry Francois Connector Road) ("**Agreement**") is made by and between GSW Arena LLC, a Delaware limited liability company ("**GSW**"), and the City and County of San Francisco, a municipal corporation, acting by and through its Director of Property ("**City**"), and is dated for reference purposes only as of _____, 20__ (the "**Execution Date**"), with reference to the following facts:

A. FOCIL-MB, LLC, a Delaware limited liability company ("**FOCIL**"), or its predecessor Catellus Development Company, or an affiliate or successor thereto, and their respective agents, have constructed, is constructing, or has caused or is causing to be constructed certain permanent right-of-way improvements and associated improvements or facilities, including certain utility facilities described as the "Phase 1 Required Infrastructure" in the Mission Bay South Block 8721 Phase 1 Public Improvement Agreement, dated December 4, 2000 (the "**PIA**"). The Phase 1 Required Infrastructure includes certain interim facilities described in the PIA as "**Interim Phase 1 Required Improvements**."

B. The Interim Phase 1 Required Infrastructure includes an interim roadway segment that connects the permanent portion of the new or relocated Terry Francois Boulevard being constructed under the PIA to the existing Terry Francois Boulevard (the "**Connector Road**") in an area adjacent to Block 8722-1. The improvements described in the SIP (the "**Improvements**"), are located on certain property (the "**Improvement Area**") depicted on **Exhibit A** hereto.

C. That portion of the Improvement Area depicted on **Exhibit B** hereto (the "**License Area**") is owned in fee by GSW. GSW has no contractual obligation to construct, install, maintain, repair, replace, and/or warrant any of the Improvements, wherever located.

D. The Connector Road has been determined to be either complete or substantially complete by the City's Director of the Department of Public Works ("**Director**").

E. The City desires to continue to use the Connector Road for pedestrian and vehicular access and utility purposes.

F. This Agreement addresses the temporary use of and access to the Improvements in the License Area (the "**License Area Improvements**"), to the extent (if any) GSW has an interest therein, and a temporary license for the License Area. This Agreement does not grant

any rights with respect to real property other than the License Area or with respect to improvements other than the License Area Improvements.

G. Unless otherwise defined in this Agreement, all initially capitalized terms used in this Agreement shall have the meanings given them in the Mission Bay South Redevelopment Plan, and the Plan Documents, as described therein.

H. All terms, obligations and responsibilities set forth herein shall commence as of the "**Commencement Date**" (as defined below).

NOW, THEREFORE, for valuable consideration, the receipt of which each of the parties hereto does hereby acknowledge, the parties hereto do hereby agree as follows:

1. Grant of Temporary License. Subject to the provisions of this Agreement, GSW hereby grants to City a non-exclusive temporary license for the use of the License Area Improvements, to the extent (if any) of GSW's interest therein, and for access in, on and over the License Area, for public pedestrian and vehicular access by City and its officers, employees, agents, contractors, subcontractors, and invitees, including, without limitation, the general public, for sidewalk, street and roadway purposes ("**Temporary License**") for the term specified in Section 4 below.

2. Limitation on Use. City acknowledges that the Temporary License herein granted is nonexclusive and is effective only insofar as the rights of GSW in the License Area and License Area Improvements are concerned, and City shall obtain any further permission necessary because of any other existing rights affecting the License Area or any other portion of the Improvement Area. City agrees that the use of the Temporary License granted herein shall not (a) unreasonably impede work required to be performed by a private or public utility company to repair or maintain any functioning, in-place utility facility located in, on or under the License Area or to install new utility facilities in the License Area, subject to obtaining any required permits or other authorizations, provided that GSW shall use reasonable efforts to attempt to cause the utility to perform such work in a manner that will not unreasonably interfere with City's use of the License Area Improvements, at no additional cost to GSW, or (b) unreasonably impede the use of the License Area or applicable portions thereof of the Phase 1 Required Infrastructure on, under or above the Connector Road to fulfill FOCIL's obligations in connection with the PIA, and any authorized amendments thereto, without incurring additional costs or delay, or (c) unreasonably impede the use of the Connector Road, or applicable portions thereof, by FOCIL or its invitees in a manner consistent with the Temporary License.

3. DPW Notification and Approval Requirements. The Director has the right to approve the location of any public or private improvements, facilities, or utilities to be located on, in or under the License Area. In connection with any approval provided by the Director under this Section, the Director shall make reasonable efforts, at no additional cost to City, to attempt to coordinate and consolidate any work to be performed by City or any licensee or permittee in the License Area with any work to be performed by GSW or any licensee or permittee to minimize the disruption and interference with the use of the License Area or development or existing uses of immediately adjacent properties. A request for approval under this Section ("**Utility Placement Approval Request**") shall be made to the Director in writing,

delivered by messenger or certified mail, and shall, where applicable, include the contact information for the utility company and a plat showing the proposed location for placement of the utility lines on, in or under the License Area or adjoining properties. The Director shall have ten (10) days from the date of delivery of the Utility Placement Approval Request to approve or disapprove such request. The Utility Placement Approval Request shall be deemed approved if the Director or the Director's designee does not make a response within the ten (10) day approval period. All Utility Placement Approval Requests made to the Director or the Director's designee shall display prominently on the envelope enclosing such request and the first page of such request, substantially the following words: **"UTILITY PLACEMENT APPROVAL REQUEST FOR MISSION BAY. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED."** The parties acknowledge that, in addition, any private or public utility provider subject to the approval requirements of this Section may also be subject to additional requirements imposed by City, including that such utility provider relocate its utility facilities at its sole cost and expense as may be reasonably required by City in the exercise of City's rights under this Agreement, City ordinances or other applicable law.

4. Term of License; Satisfaction of Condition Precedent. The term of the Temporary License shall commence as of October 9, 2015, and shall continue until the earlier of (i) December 31, 2020 (unless such time is extended prior to such date, by not more than five (5) years, by written notice to GSW from City's Director of Real Estate and the Director of City's Department of Public Works, acting jointly, in their respective sole discretion, with GSW's consent, which shall not be unreasonably withheld), or (ii) City's acceptance (by action of the Board of Supervisors) of the dedication of a public street that provides substantially equivalent or greater access, including, without limitation, completion of the relocated Terry Francois Boulevard, or portion thereof, (iii) a determination by the Director that both (A) such access is no longer required, and (B) either (a) reasonable alternative access has been provided to areas served by the License Area, and (b) the areas serviced by the License Area no longer require access, or (iv) FOCIL provides alternative access and grants to City and City accepts an immediate temporary substitute easement, license, permit or other instrument that will, in the reasonable judgment of the Director, so acknowledged in writing, satisfy the structural requirements of a dedicated public street, and/or which provide direct alternative means of access. The alternative access provided by any of the foregoing alternatives must, in the reasonable judgment of the Director, be substantially equivalent in all respects (including, without limitation, the ease and ability to travel across any substitute area or facility) (either alone or in conjunction with other access) to the License Area or portion thereof which is being terminated, removed or replaced. Since the parties recognize that a temporary substitute facility granted under alternative (iv) above will by its nature be temporary, City agrees that the facilities provided thereby may be less extensive or different standard than those required by alternative (i) or (ii) above so long as such facilities (either alone or in conjunction with other facilities) provide access substantially equal (as described in the foregoing sentence) to the access given by the License Area. Notwithstanding the foregoing, City may terminate the Temporary License at any time as to all or any portion of the License Area Improvements or the License Area by written notice to GSW.

5. Condition of the License Area.

(a) As-Is. GSW makes no representations or warranties whatsoever under this Agreement with respect to the current physical condition of the License Area or the License Area Improvements and GSW shall have no responsibility under this Agreement with respect thereto (except as otherwise specifically set forth herein), and the use of the Temporary License granted herein shall be with the License Area and the License Area Improvements in their "as is" physical condition, except as otherwise specifically provided herein. City hereby waives any and all claims against GSW arising from, out of or in connection with the suitability of the physical conditions of the License Area or the License Area Improvements for the uses permitted under Section 1 above. However, except as provided in Section 2, GSW shall not take any action that would unreasonably impair the ability of City to use the Temporary License herein granted without City's consent. Nothing herein shall be construed in any way to alter, amend, or otherwise relieve FOCIL or City of any of their respective responsibilities with regard to the physical condition of the License Area or the License Area Improvements (including without limitation, responsibilities with regard to environmental investigation and remediation) set forth in any document, instrument or agreement by and between FOCIL and City (including, without limitation, the PIA and the Mission Bay South Redevelopment Plan and Plan Documents).

(b) Maintenance and Surrender. Except as specifically herein provided, GSW and City shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description to the License Area Improvements. City shall surrender use and possession of the License Area Improvements and the License Area, or applicable portion thereof, free and clear of any liens or encumbrances relating to or arising in connection with the use of the License Area Improvements by reason of the Temporary License. City, and its agents, contractors, licensees and invitees shall at all times keep the License Area Improvements and the License Area free and clear of liens, claims, security interests or encumbrances in their favor or in favor of any contractor, subcontractor, material supplier or other person or entity making a claim by reason of having provided labor, materials and equipment relating to the use of the License Area Improvements by City.

(c) Warranty. Nothing in this Agreement, including, without limitation, Sections 5(a) and 5(b) above, shall be construed in any way to alter, amend or otherwise relieve FOCIL of its warranty responsibilities under the PIA with respect to the Improvements (including, without limitation, the License Area Improvements).

6. Indemnification.

(a) Indemnity. City shall indemnify, defend and hold GSW and its officers, directors, shareholders, members, employees, agents, successors and assigns (hereinafter collectively called "**Indemnified Parties**") harmless from all liabilities, penalties, costs, damages, expenses, causes of action, claims or judgments (including without limitation reasonable attorneys' fees) (collectively, "**Indemnified Claims**"), resulting from (i) injury to or death of any person (including, without limitation, any Indemnified Party) or physical damage to property, real or personal, of any kind wherever located and by whomever owned (including, without limitation, property owned by an Indemnified Party), which injury, death or physical damage arises out of or is connected with City's (or City's officers, employees, agents, contractors, licensees, or

invitees, including, without limitation, the general public) use or occupancy of any of the License Area Improvements or the License Area under the authority of the Temporary License, except to the extent that such Indemnified Claims are caused by the negligence or intentional wrongful acts or omissions of any Indemnified Party, and (ii) the use, generation, processing, production, packaging, treatment, storage, emission, discharge or disposal of "**Hazardous Materials**" (as that term is defined herein below) on or about the License Area Improvements or the License Area by City (or City's officers, employees, agents, contractors, licensees, or invitees, including, without limitation, the general public) in connection with the exercise of City's rights under the Temporary License, except that City will not indemnify any specific Indemnified Party to the extent that such Indemnified Claims are caused by the negligence or intentional wrongful acts or omissions of that Indemnified Party with respect to the generation, processing, production, packaging, treatment, storage, emission, discharge or disposal of Hazardous Materials. For purposes of this Section 6, the term "**Hazardous Materials**" shall mean any substance, material or waste that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment, including, but not limited to petroleum, petroleum-based products, natural gas, or any substance, material, or waste that is or shall be listed, regulated or defined by federal, state or local statute, regulation, rule, ordinance or other governmental requirement to be hazardous, acutely hazardous, extremely hazardous, toxic, radioactive, biohazardous, infectious, or otherwise dangerous.

(b) Notice. GSW agrees to give prompt notice to City with respect to any Indemnified Claims initiated or threatened against any Indemnified Party, at the address for notices to City set forth herein, and in no event later than the earlier of (i) ten (10) business days after valid service of process as to any suit, or (ii) fifteen (15) business days after receiving written notification of the filing of such suit or the assertion of a claim, which GSW has reason to believe is likely to give rise to an Indemnified Claim hereunder. If notice is not given to City within the time frames required in this Section, then City's liability hereunder shall terminate as to the matter for which such notice is not given, provided that failure to notify City shall not affect the rights of GSW or the obligations of City hereunder unless City is prejudiced by such failure, and then only to the extent of such prejudice. City shall, at its option but subject to the reasonable consent and approval of GSW, be entitled to control the defense, compromise or settlement of any such matter through counsel of City's own choice; provided, however, that in all cases GSW shall be entitled to participate in such defense, compromise, or settlement at its own expense.

7. Litigation Expenses.

(a) General. If either party hereto brings an action or proceeding (including any cross-complaint, counterclaim, or third-party claim) against the other party by reason of a default, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees and expert fees, which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing Party**" within the meaning of this Section 7 shall include without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

(b) Appeal. Attorneys' fees under this Section 7 shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

(c) Fee Award for City Attorney's, GSW's In-House Counsel. For purposes of this Agreement, reasonable fees of attorneys of City's Office of City Attorney and any in-house counsel of GSW shall be based on the fees regularly charged by private attorneys with an equivalent number of hours of professional experience in the subject matter area of the law for which City's or GSW's in-house counsel's services were rendered who practice in the City and County of San Francisco, State of California, in law firms with approximately the same number of attorneys as employed by the Office of City Attorney, or, in the case of GSW's in-house counsel, as employed by the outside counsel for GSW.

8. Time. Time is of the essence of this Agreement and each and every part hereof.

9. Covenant and Environmental Restriction on License Area. The land described herein may contain hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction (Covenant and Environmental Restriction on Property) dated as of February 23, 2000, and recorded on March 21, 2000, in the Official Records of San Francisco County, California, as Document No. 2000-G748552 (the "**Covenant and Restriction**"), which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. The foregoing statement is required by the Covenant and Restriction and is not a declaration that a hazard exists. This Agreement and the Temporary License contained herein shall be subject to, and in the use and enjoyment of the License Area Improvements and the License Area under this Agreement City shall at all times comply with, all of the terms, covenants and conditions set forth in and/or imposed as a result of the Covenant and Restriction. Further, the Covenant and Restriction references and requires compliance with the provisions of the Risk Management Plan, Mission Bay Area, San Francisco, California, dated May 11, 1999 (the "**RMP**"). Accordingly, City hereby acknowledges that it has a copy of the RMP, and hereby covenants that (i) City will comply with the RMP (to the extent the RMP applies to City's activities in the License Area); (ii) City will obligate other entities with which it contracts for construction, property maintenance or other activities in the License Area which may disturb soil or groundwater to comply with the applicable provisions of the RMP; and (iii) City (and the entities with which it so contracts) will refrain from interfering with GSW's compliance with the RMP in the License Area.

10. Amendment. This Agreement may be amended or otherwise modified only in writing signed and acknowledged by GSW and City, or the successors and assigns of each, subject to the provisions of Section 16 hereof.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be entitled to be the original and all of which shall constitute one and the same agreement.

13. References; Titles. Wherever in this Agreement the context requires, reference to the singular shall be deemed to include the plural. Titles of sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

14. Notice. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given.

GSW: GSW Arena LLC
c/o Golden State Warriors
1101 Broadway
Oakland, CA 94607
Attn: David Kelly

With a copy to: Valerie Christensen
Gibson, Dunn & Crutcher LLP
555 Mission Street
San Francisco, CA 94105-0921

City: Director of Public Works
City and County of San Francisco
c/o Grace Kwak, Project Manager
Mission Bay Project
30 Van Ness Avenue, Suite 4200
San Francisco, CA 94102

With copies to: City Attorney, City of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attention: Real Estate/Finance Team

And to: John Updike, Director of Real Estate
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns (except as otherwise

specifically provided in Section 17 below). Without limiting the foregoing, the Temporary License created by this Agreement shall be binding on any future owners and encumbrancers of the License Area or any part thereof and their successors and assigns.

16. Representations and Warranties. GSW represents, warrants and covenants to City the following:

(a) Good Standing. GSW is a limited liability company validly existing and in good standing under the laws of the State of Delaware.

(b) Authority. GSW has full power and authority to enter into this Agreement and to consummate the transactions contemplated by it. This Agreement has been duly authorized by all necessary action on the part of GSW and no other action on the part of GSW is necessary to authorize the execution and delivery of this Agreement.

17. Exclusive Benefit of Parties. The provisions of this Agreement are for the exclusive benefit of GSW and City and their successors and assigns, subject to the provisions hereof, and not for the benefit of nor give rise to any claim or cause of action by any other person; and this Agreement shall not be deemed to have conferred any rights upon any person except GSW and City. Nothing herein shall be deemed a dedication of any portion of the License Area Improvements or the License Area to or for the benefit of the general public. The license herein granted is in gross and for the personal benefit solely of City.

18. Severability. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

19. Entire Agreement. This Agreement, together with any attachments hereto or inclusions by reference, constitutes the entire agreement between the parties on the subject matter hereof, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the Temporary License that is the subject matter of this Agreement. This Agreement shall control in the event of any inconsistency between this Agreement and any other agreement in connection with performance of the Temporary License and the rights and obligations of the parties with respect thereto.

20. Compliance With Laws/Agreements. City, and City's agents, contractors, licensees or invitees, at its and their expense, shall comply with all laws, statutes, ordinances, rules and regulations of federal, state and local authorities (including, without limitation, City itself) having jurisdiction over the License Area Improvements, now in force or hereafter adopted, with respect to the use by City of the License Area Improvements under the authority of the Temporary License herein granted. Nothing herein shall be construed in any way to alter, amend, or otherwise relieve FOCIL or City of any of their respective responsibilities with regard to completion and acceptance and acquisition of the License Area Improvements set forth in any

other document, instrument or agreement by and between FOCIL and City (including, without limitation, the Mission Bay South Interagency Cooperation Agreement).

21. Default. City's, and City's agents, contractors, licensees or invitees, failure to perform any covenant or obligation of City hereunder and to cure such non-performance within thirty (30) days of written notice by GSW shall constitute a default hereunder, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if City commences such cure within such period and diligently prosecutes such cure to completion. Upon such default GSW be entitled to all remedies and means to cure or correct such default, both legal and equitable, allowed by operation of law except termination of the easements herein granted.

22. Insurance: Waiver of Subrogation.

(a) Self-Insurance. It is acknowledged by the parties hereto that this Agreement does not require City to carry liability insurance with respect to its use of the License Area Improvements or the License Area herein granted solely because it is the policy of City to self-insure as to the matters covered by such insurance. City hereby agrees that if to any extent said policy changes so that City does use liability insurance, it will reasonably negotiate with GSW to provide liability insurance coverage for the use of said License Area to the extent such new policy allows and in such event the terms and provisions of Section 23(b) shall also be applicable.

(b) Waiver. The terms and provisions of this Section 23(b) shall be inoperative unless and until City's policy of self-insurance changes and City is procuring liability insurance covering its use of the Temporary License granted herein. If City does obtain liability insurance, each party, for itself and, to the extent it is legally permissible for it to do so and without affecting the coverage provided by insurance maintained by such party, on behalf of its insurer, hereby releases and waives any right to recover against the other party from any liability for (i) damages for injury to or death of persons, (ii) any loss or damage to property, (iii) any loss or damage to buildings or other improvements, or (iv) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims under (i) through (iv) are covered (and only to the extent of such coverage) by insurance actually carried by each party irrespective of any negligence on the part of such party which may have contributed to such loss or damage. The provisions of this Section 23(b) are intended to restrict each party (as permitted by law) to recovery for loss or damage against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of the other party, any rights and/or claims that might give rise to a right subrogation in any such insurance carrier.

23. Tropical Hardwoods and Virgin Redwoods. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product or virgin redwood or virgin redwood wood product.

24. MacBride Principles - Northern Ireland. 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. GSW acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

25. Survival. All representations, warranties, waivers, indemnities and maintenance obligations given or made hereunder shall survive termination of this Agreement.

26. No Easement By Implication; Prevention of Prescriptive Rights. Neither the execution and delivery of this Agreement nor the granting of the Temporary License shall be deemed to grant or establish any easement by implication or prescription. GSW reserves the right to record, post and publish any of the notices referred to in Sections 813, 1008 and 1009 of the California Civil Code; provided, that such notices shall not affect the rights and obligations of GSW and City hereunder and, where appropriate, any such notice shall include a recognition of the provisions of this Agreement.

(signatures on following page)

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on _____, 20__.

GSW ARENA LLC,
a Delaware limited liability company

By: _____
Print Name: _____
Print Title: _____

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
JOHN UPDIKE
Director of Real Estate

RECOMMENDED:

By: _____
MOHAMMED NURU
Director of Public Works

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

By: _____
Anita L. Wood
Deputy City Attorney

EXHIBIT A
Depiction of Improvement Area
(See attached)

EXHIBIT B
Depiction of License Area
(See attached)