

File No. 230778

Committee Item No. 8

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date July 19, 2023

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
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- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

#### OTHER (Use back side if additional space is needed)

- Port Commission Resolution No. 23-24 5/9/2023
- PRT Presentation 7/19/2023
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Completed by: Brent Jalipa Date July 14, 2023

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [License Agreement - GSW Arena LLC - Non-Exclusive License for Curb Space and Metered  
2 Parking Spaces on Terry Francois Boulevard, Illinois Street, 16th Street and Warriors Way -  
3 Anticipated Revenue to Exceed \$1,000,000]

4 **Resolution approving Port Commission License No. 17036 with GSW Arena LLC for the**  
5 **non-exclusive use of white and yellow zone curb spaces and metered parking spaces**  
6 **on Port streets in and around the Chase Center on game and special event days for an**  
7 **initial term of 10 years with two five-year extension options and with anticipated**  
8 **revenues from this License to exceed \$1,000,000 to commence on August 1, 2023; to**  
9 **authorize the Executive Director of the Port of San Francisco to enter into amendments**  
10 **or modifications to the Port Commission License No. 17036 that do not materially**  
11 **increase the obligations or liabilities to the City and are necessary to effectuate the**  
12 **purposes of this Resolution; and making findings under the California Environmental**  
13 **Quality Act.**

14  
15 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and Charter,  
16 Sections 4.114 and B3.581, empower the Port Commission with the power and duty to use,  
17 conduct, operate, maintain, manage, regulate and control the Port area of the City and County  
18 of San Francisco; and

19 WHEREAS, GSW Arena LLC ("GSW") is a licensee in good standing under its current  
20 License No. 16688 for colored curb spaces and metered parking spaces located on Terry  
21 Francois Boulevard, Illinois Street, 16th Street and Warriors Way, in the City and County of  
22 San Francisco (the "Existing License Area"); and

23 WHEREAS, Port Staff has negotiated with GSW the terms of a new License No. 17036  
24 (the "License"), a copy of which is on file with the Clerk of the Board of Supervisors in File  
25

1 No. 230778, which License will have an initial 10 year term with two five-year extension  
2 options for the non-exclusive license of the Existing License Area comprised of three separate  
3 white zone curb spaces totaling approximately 624 linear feet, two separate yellow zone curb  
4 spaces totaling approximately 337 linear feet and 80 metered parking spaces on game and  
5 special event dates; and

6 WHEREAS, On November 3, 2015, the San Francisco Commission on Community  
7 Investment and Infrastructure (“OCII”), the successor agency to the former San Francisco  
8 Redevelopment Agency, reviewed and considered the Final Subsequent Environmental  
9 Impact Report for the Golden State Warriors Event Center and Mixed-Use Project at Mission  
10 Bay Blocks 29-32 (“FSEIR”) and, by OCII Resolution No. 12 69-2015, certified the FSEIR in  
11 compliance with California Environmental Quality Act; and

12 WHEREAS, On December 8, 2015, the Board of Supervisors upheld OCII’s  
13 certification of the FSEIR, a copy of which is on file with the Clerk of the Board of Supervisors  
14 in File No. 150991; and

15 WHEREAS, The uses permitted by the License are within the scope of the FSEIR;  
16 and

17 WHEREAS, Charter, Section 9.118, requires Board of Supervisors' approval of non-  
18 maritime licenses under the jurisdiction of the Port Commission which either have a term in  
19 excess of ten years or have anticipated revenue to the City of \$1,000,000 or more; and

20 WHEREAS, The License term is 10 years with two five-year extension options and the  
21 Port anticipates revenues from this License to exceed \$1,000,000; and

22 WHEREAS, On May 9, 2023, through Resolution 23-24, the Port Commission  
23 determined that the uses permitted by the License are within the scope of the project  
24 evaluated in the FSEIR, approved the terms of the License, and authorized the Executive  
25

1 Director or her designee to forward the License to the Board of Supervisors for approval,  
2 pursuant to the Board's authority under Charter, Section 9.118; now, therefore, be it

3 RESOLVED, That the Board of Supervisors determines that the uses permitted by the  
4 proposed License are within the scope of the project evaluated in the FSEIR, and hereby  
5 approves the proposed License and authorizes the Executive Director of the Port or her  
6 designee to execute such License in substantially the same form as the License on file with  
7 the Clerk of the Board of Supervisors in File No. 230778; and, be it

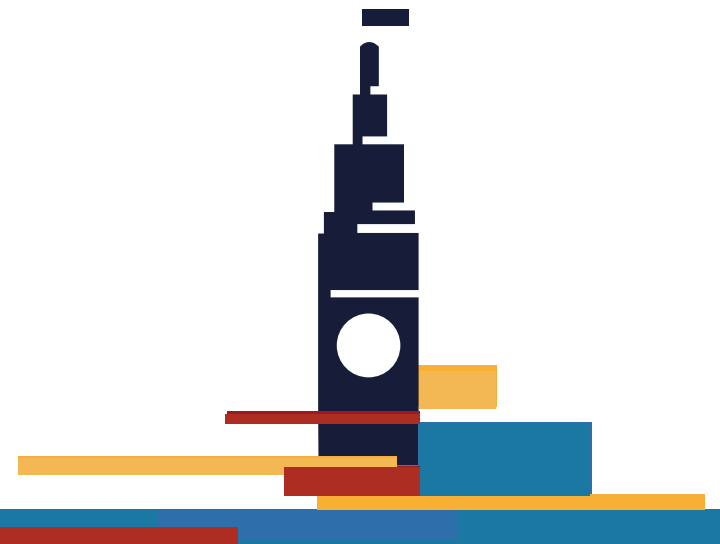
8 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive  
9 Director to enter into any additions, amendments or other modifications to the License that the  
10 Executive Director, in consultation with the City Attorney, determines, when taken as a whole,  
11 to be in the best interest of the Port, do not materially increase the obligations or liabilities of  
12 the City or the Port, and are necessary or advisable to complete the transactions which this  
13 Resolution contemplates and effectuate the purpose and intent of this Resolution, such  
14 determination to be conclusively evidenced by the execution and delivery by the Executive  
15 Director of such documents; and, be it

16 FURTHER RESOLVED, That within thirty (30) days of the License being fully executed  
17 by all parties, the Port shall provide a copy of the License to the Clerk of the Board for  
18 inclusion into the official file.

# Golden State Warriors Arena Curb License - Overview

July 19, 2023

Presented By:  
Jennifer Gee



# Background

- 2019 - Port Commission approved an amendment of Port's Traffic Harbor Code for parking and access restrictions to accommodate games/events at Chase
- License No. 16688 for non-exclusive use of white curbs, yellow zones and metered spaces in and around Chase will expire June 30, 2023
- GSW and Port wish to enter into a new License No. 17036 for non-exclusive use of the same area for an initial 10-year term plus two 5-year extension options
- Commission resolution passed unanimously on May 9



# Proposed Curb License

## License Area and Permitted Activity

- Non-exclusive license for white and yellow curb space for passenger and commercial loading/unloading
- Reservation of eighty metered stalls/spaces
- Perimeter streets of Chase Center on game and special event days

## Term

- 10-year initial term + two 5-year extension options

## License Fee

- Current parameter + annual increases

## Revenue

- Total Revenue (for initial term) approx. \$1.5 million
- Total Revenue (with extension options) approx. \$3.5 million
- Plus additional \$1,008 per game/event for the metered parking spaces

# Port Staff Analysis

## Likely Impacts

- Increased parking revenues
- Improved traffic flow, pedestrian and vehicular safety
- Improved parking enforcement, fewer citations

## Environmental Review

- Within the scope of the GSW Event Center and Mixed-Use Project at Mission Bay Blocks 29-32 Final Subsequent Environmental Impact Report (FSEIR) and certified in compliance with California Environmental Quality Act (CEQA)





**PIER 1  
SAN FRANCISCO, CA 94111**

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**LICENSE TO USE PROPERTY  
LICENSE NO. 17036**

**BY AND BETWEEN**

**THE CITY AND COUNTY OF SAN FRANCISCO  
OPERATING BY AND THROUGH THE  
SAN FRANCISCO PORT COMMISSION**

**AND**

**GSW ARENA LLC**

**4034 – TERRY FRANCOIS BLVD.**

**AUGUST 1, 2023**

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**ELAINE FORBES  
EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION**

**KIMBERLY BRANDON, PRESIDENT  
WILLIE ADAMS, VICE PRESIDENT  
GAIL GILMAN, COMMISSIONER  
ED HARRINGTON, COMMISSIONER  
STEVEN LEE, COMMISSIONER**

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### **EXHIBITS AND SCHEDULES**

#### **EXHIBIT A LICENSE AREA**

#### **SCHEDULE 1 HAZARDOUS MATERIALS DISCLOSURE**

**BASIC LICENSE INFORMATION**

<i>License Date:</i>	August 1, 2023
<i>License Number:</i>	<b>17036</b>
<i>Port:</i>	<b>CITY AND COUNTY OF SAN FRANCISCO,</b> a municipal corporation, operating by and through the <b>SAN FRANCISCO PORT COMMISSION</b>
<i>Port's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development  Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Licensee:</i>	<b>GSW ARENA LLC</b> , a Delaware limited liability company
<i>Licensee's Main Contact Person and Mailing Address:</i>	Golden State Warriors, LLC 1 Warriors Way San Francisco, California 94158 Attn: Raymond Chavis, Director, Parking  Cell: (415) 358-7648 Email: <a href="mailto:rchavis@warriors.com">rchavis@warriors.com</a>
<i>Licensee's Billing Contact and Address:</i>	Golden State Warriors, LLC 1 Warriors Way San Francisco, California 94158 Attn: Raymond Chavis, Director, Parking  Cell: (415) 358-7648 Email: <a href="mailto:rchavis@warriors.com">rchavis@warriors.com</a>
<i>Licensee's Emergency Contact and Address:</i>	Same as Main Contact
<i>Licensee's Insurance Contact and Address (not broker):</i>	Same as Main Contact
<i>Licensee's Parking Contact and Address:</i>	Same as Main Contact
<i>Contact Information for Licensee's Agent for Service of Process:</i>	1505 Corporation 5600246 CT Corporation System 330 N Brand Blvd, Ste #700 Glendale, CA 91203

<p><i>License Area:</i></p>	<p>The License Area is comprised of the following Parcels A-C and Parcels E-J:</p> <p><b><u>Curb Space:</u></b></p> <p><b>Parcel A:</b> Approx. 100 rentable linear feet of white zone curb space and 137 rentable linear feet of yellow zone curb space which constitutes the entirety of the curb space (excluding red zone space and driveways) located on the south side of Warriors Way between Bridgeview and Terry Francois Blvd..</p> <p><b>Parcel B –</b> Approx. 200 rentable linear feet of white zone curb space and 200 rentable linear feet of yellow zone curb space which constitutes the entirety of the curb space (excluding red zone space) located on the west side of Terry Francois Blvd between Warriors Way and 16<sup>th</sup> Street.</p> <p><b>Parcel C -</b> Approx. 324 rentable linear feet of white zone curb space which constitutes the entirety of the curb space (excluding red zone space and driveways) located on the north side of 16<sup>th</sup> Street between Illinois Street and Terry Francois Blvd..</p> <p><b><u>Parking Stalls and Spaces:</u></b></p> <p><b>Parcel E –</b>Twenty-three (23) metered parking spaces on the east side of Terry Francois between 16<sup>th</sup> Street and Warriors Way.</p> <p><b>Parcel F -</b> Twenty-three (23) metered parking spaces on the west side of Terry Francois Blvd., south of 16<sup>th</sup> Street.</p> <p><b>Parcel G –</b> Ten (10) metered parking spaces on the east side of Terry Francois Blvd. south of 16<sup>th</sup> Street.</p> <p><b>Parcel H -</b> Seven (7) metered parking spaces on the south side of 16<sup>th</sup> Street.</p> <p><b>Parcel I</b> Nine (9) metered parking spaces on the east side of Illinois Street.</p> <p><b>Parcel J -</b> Eight (8) metered parking spaces on the west side of Illinois.</p> <p>Parcels A-C and E-J are all located in the City and County of San Francisco, State of California, as further described in <b><i>Exhibit A</i></b> attached hereto and made a part hereof, together with any and all improvements and alterations thereto.</p>
<p><i>Permitted Activity:</i></p>	<p><b>All uses are non-exclusive:</b></p> <p><b>Parcels A, B and C</b> (White and Yellow Curb Space) – White Curbs shall be used solely for passenger loading and unloading during events at the Event Center Property and for no other purpose. The Yellow Curbs shall be used for commercial loading for the Event Center Property and for no other purpose.</p> <p><b>Parcels E – J</b> (Metered Parking Spaces) – shall be used solely for Transportation Network Company (“TNC”) passenger drop off and pick up, SFMTA bus staging and/or other vehicles associated with and directly supporting games, shows, special events and other activities occurring at the Event Center Property (collectively, “<b>Games and Events</b>”) during, before, and after such Games and Events during the</p>

	<p>hours requested in writing by Licensee and approved by Port and for no other purpose. Licensee agrees and acknowledges that general vehicle parking and all other uses authorized by Port are allowed at all other times.</p>
<p><i>Length of Term:</i></p>	<p>Without limiting <b>Section 3</b>, ten (10) years, subject to the Extension Options described in the “<b>Extension Option</b>” section of this Basic License Information.</p> <p>Any holding over after the expiration of the Term shall not constitute a renewal of this License, but shall be deemed a month-to-month agreement upon the terms, conditions, and covenants of this License, except that either party may cancel the month-to-month license upon thirty (30) days’ prior written notice to the other party. If Licensee holds over without the prior written consent of Port, the monthly License Fee shall equal two hundred percent (200%) of the monthly License Fee payable in the month immediately preceding the expiration of this License.</p>
<p><i>Extension Option:</i></p>	<p>Subject to the conditions set forth in this section of the Basic Lease Information, Tenant shall have two (2) consecutive options (each an “<b>Extension Option</b>”) to extend the term for a period of (5) years (each an “<b>Extension Term</b>”) commencing upon the first day after the relevant expiration date. Licensee may exercise the Extension Option by providing Port with at least three (3) months written notice (the “<b>Extension Notice</b>”) to Port prior to the then applicable Expiration Date. The Extension Notice will also include the Parcels and areas within the then License Area Licensee wishes to license during the applicable Extension Term (the “<b>Extension Premises</b>”).</p> <p>If there is any continuing default by Licensee (provided the Port has notified Licensee in writing of such continuing default) either at the time of Licensee’s exercise of an Extension Option or at any time prior to the first day of the applicable Extension Term (or if any event has occurred which with the giving of notice or the passage of time or both would constitute such a default), then Port may elect by written notice to Licensee to reject Licensee’s exercise of the Extension Option, whereupon the Extension Option shall be null and void and the Term shall expire on the day the Term would have expired had Licensee never exercised the Extension Option unless such default (or such event which with the giving of notice or the passage of time or both would constitute such a default) is cured within the applicable Cure Period. Licensee’s failure to exercise or Port’s rejection of the first Extension Option shall render the second Extension Option null and void and likewise with subsequent Extension Options, if any.</p> <p>If Licensee exercises an Extension Option, then the license for the Extension Term shall cover the Extension Premises and shall be upon all of the terms, covenants and conditions of this License, except that the Expiration Date shall mean the last day of the applicable Extension Term and the License Fee for the Extension Term shall be determined as set forth in the “<b>Monthly License Fee</b>” section of Basic Lease Information .</p>

<i>Commencement Date:</i>	August 1, 2023														
<i>Expiration Date:</i>	July 31, 2033, as may be extended in accordance with the terms and conditions of this License.														
<i>Anniversary Date:</i>	July 1, 2024, and each July 1 thereafter as long as this License is in effect														
<i>Monthly License Fee:</i>	<p><b><u>White Zone Curb Space Fee</u></b></p> <p>Parcel A - \$1,775.68 per month;  Parcel B - \$3,551.36 per month;  Parcel C - \$5,753.21 per month;</p> <p>On each Anniversary Date on which this License is in effect, the Monthly White Zone Curb Space Fee shall increase by three percent (3%).</p> <table border="1"> <thead> <tr> <th></th> <th>Monthly License Fee</th> </tr> </thead> <tbody> <tr> <td>Parcel A Parcel B Parcel C 8/1/2023 – 6/30/2024</td> <td>\$1,775.68 \$3,551.36 \$5,753.21 <b>\$11,080.25</b></td> </tr> <tr> <td>Parcel A Parcel B Parcel C 7/1/2024 – 6/30/2025</td> <td>\$1,828.95 \$3,657.90 \$5,925.81 <b>\$11,412.66</b></td> </tr> <tr> <td>Parcel A Parcel B Parcel C 7/1/2025 – 6/30/2026</td> <td>\$1,883.82 \$3,767.64 \$6,103.58 <b>\$11,755.04</b></td> </tr> <tr> <td>Parcel A Parcel B Parcel C 7/1/2026 – 6/30/2027</td> <td>\$1,940.33 \$3,880.67 \$6,286.69 <b>\$12,107.69</b></td> </tr> <tr> <td>Parcel A Parcel B Parcel C 7/1/2027 – 6/30/2028</td> <td>\$1,998.54 \$3,997.09 \$6,475.29 <b>\$12,470.92</b></td> </tr> <tr> <td>Parcel A Parcel B Parcel C 7/1/2028 – 6/30/2029</td> <td>\$2,058.50 \$4,117.00 \$6,669.55 <b>\$12,845.05</b></td> </tr> </tbody> </table>		Monthly License Fee	Parcel A Parcel B Parcel C 8/1/2023 – 6/30/2024	\$1,775.68 \$3,551.36 \$5,753.21 <b>\$11,080.25</b>	Parcel A Parcel B Parcel C 7/1/2024 – 6/30/2025	\$1,828.95 \$3,657.90 \$5,925.81 <b>\$11,412.66</b>	Parcel A Parcel B Parcel C 7/1/2025 – 6/30/2026	\$1,883.82 \$3,767.64 \$6,103.58 <b>\$11,755.04</b>	Parcel A Parcel B Parcel C 7/1/2026 – 6/30/2027	\$1,940.33 \$3,880.67 \$6,286.69 <b>\$12,107.69</b>	Parcel A Parcel B Parcel C 7/1/2027 – 6/30/2028	\$1,998.54 \$3,997.09 \$6,475.29 <b>\$12,470.92</b>	Parcel A Parcel B Parcel C 7/1/2028 – 6/30/2029	\$2,058.50 \$4,117.00 \$6,669.55 <b>\$12,845.05</b>
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Parcel A Parcel B Parcel C	\$2,120.26 \$4,240.51 \$6,869.64 <b>\$13,230.40</b>
<i>7/1/2029 – 6/30/2030</i>	
Parcel A Parcel B Parcel C	\$2,183.86 \$4,367.73 \$7,075.73 <b>\$13,627.31</b>
<i>7/1/2030 – 6/30/2031</i>	
Parcel A Parcel B Parcel C	\$2,249.38 \$4,498.76 \$7,288.00 <b>\$14,036.13</b>
<i>7/1/2031 – 6/30/2032</i>	
Parcel A Parcel B Parcel C	\$2,316.86 \$4,633.72 \$7,506.64 <b>\$14,457.22</b>
<i>7/1/2032 – 6/30/2033</i>	

**License Fees for Parcels A-C During Extension Terms**

During the first year of each Extension Term (7/1/2033 and 7/1/2038), and any period for which the License is deemed a month-to-month agreement pursuant to the terms hereof, the License Fee for Parcels A-C shall be equal to the higher of: (a) the License Fee payable in the month immediately preceding the expiration of this License multiplied by one hundred three percent (103%) or (b) the then current rate for similar spaces in the general vicinity of the License Area approved by the Port Commission. On each anniversary of the Commencement Date during an Extension Term or while the License is deemed a month-to-month agreement pursuant to the terms hereof, the License Fee for Parcels A-C will increase by 3%.

**Parking Stalls and Spaces Fee**

Parcels E-J - \$12 per meter per event (not to exceed \$1,008 per event for all metered spaces), which amounts, including the cap, will increase as the City’s parking meter rate for and around the License Area increases.

In the event that SFMTA (or a successor City agency responsible for setting parking meter rates in and around the License Area) increases the meter rates, Port reserves the right to increase meter rates accordingly to no less than the then current rate and shall notify Licensee of such rate increase within thirty (30) business days from each such increase.

<p><i>Security Deposit:</i></p>	<p>As of the Commencement Date, Port holds a security deposit on behalf of Licensee in the amount of Thirty Thousand Seven Hundred Ninety-Seven Dollars (\$30,797.00) from the Prior License. Licensee agrees and consents to Port applying the security deposit Port currently holds under the Prior License to Licensee’s obligation to provide the Security Deposit under this License in lieu of returning such amount to Licensee upon the expiration or termination of the Prior License.</p> <p>Within thirty (30) days from the effective date of a Monthly Fee increase pursuant to this License, if the Security Deposit amount is less than two-times the Monthly License Fee, Licensee shall increase the amount of the Security Deposit such that it is no less than two-times the Monthly License Fee.</p>
<p><i>Additional Requirements:</i></p>	<p>Licensee is responsible for managing use of the License Area during the allowable hours of use. Port has no obligation, responsibility, or liability to maintain or repair the License Area, or to manage the use of the License Area, including for ticketing, citing or removing vehicles using or parked in the License Area (except for Port’s own vehicles).</p> <p>Port retains the right to install parking meters and/or allow other uses in the License Area during all other hours, provided, so long as Licensee has provided Port with prior written notice of Games and Events scheduled at the Event Center Property, Port will not enter into a written license or agreement with another party granting such party rights to use the License Area during Games and Events. Licensee’s provision of a calendar showing booked and/or anticipated Games and Events pursuant to Licensee’s reporting requirements hereunder shall constitute prior written notice for the purposes of this Section.</p> <p>Licensee must comply with all requirements of the Port Harbor Traffic Code, as amended from time to time, including without limitation current Section 3.8 which currently provides, among other things, that (1) Yellow Zones shall indicate stopping only for the purpose of loading or unloading freight and passengers (unless as otherwise stated on signage posted by Port or SFMTA), and in any such event the stopping shall be limited to a maximum period of 60 minutes; and (2) that White Zones” shall indicate stopping only for loading or unloading of passengers, day or night, and in any such event the stopping shall be limited to a maximum period of five (5) minutes; provided, however, that in no event shall White Zones be used, except for taxicab operators, to originate or solicit business for commercial tour operations or any other commercial operations.</p> <p>The Parties acknowledge that the Port Harbor Traffic Code will control in the event of any conflict between the Port Harbor Traffic Code and the terms set forth in this Basic License Information.</p>
<p><i>Additional Prohibited Uses:</i></p>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 7 below, Licensee shall be prohibited from using the License Area for any of the following activities:</p>



	<p>(a) Parking or stopping for any purpose other than the drop off and pick up of the Event Center Property patrons and commercial loading in the designated areas;</p> <p>(b) Loading or unloading supplies, equipment or materials except in the areas designated for commercial loading;</p> <p>(c) Interference with the use of the Pier 52 parking lot or any right-of-way, sidewalk, curb or other adjacent Port property by the public, other Port tenants or the Port;</p> <p>(d) Installation of any signs, material or equipment without Port’s prior written approval.</p> <p>Port shall have all remedies set forth in this License, and at law or equity in the event Licensee performs any of the Prohibited Uses.</p>
<p><i>Cure Period where applicable:</i></p>	<p>For violations of the Port Harbor Traffic Code or defaults that could result in an adverse and material impact to health, safety or the environment, the Cure Period is the lesser of two (2) hours after written notice from Port (which written notice may be by electronic mail) or 24 hours; provided, however, notwithstanding anything contained in this License to the contrary, Port shall not terminate this License pursuant to Section 13.2 as long as Licensee uses commercially reasonable efforts to commence a cure of such violation or default within the applicable Cure Period and diligently pursues a cure until completion. For all other defaults, the Cure Period is five (5) calendar days (it being understood that the Cure Period for failing to provide Port evidence of the required insurance coverage and endorsements within the time period under Section 11.6(d) shall be five (5) calendar days from the expiration of the prior insurance policy) or, if the default cannot reasonably be performed within five (5) calendar days, such longer period as is reasonably necessary to perform such obligation, but no longer than thirty (30) days.</p>
<p><i>Maintenance and Repair:</i></p>	<p>Subject to Port permitting, as necessary, Licensee shall, at its sole cost, paint and refresh the paint on the White Zone and Yellow Zone within Parcels A-C.</p>
<p><i>Reporting, Payment and True Up for Monthly License Fee for Parking Stalls and Spaces in Parcels E – J:</i></p>	<p>No later than June 20<sup>th</sup> and December 20<sup>th</sup> of each calendar year, Licensee shall furnish Port a calendar showing booked and anticipated Games and Events for the following six (6) months (January to June and July to December respectively) which will require use of Parcels E-J. Based on total number of events anticipated, Licensee shall pay the Monthly License Fee for the respective six-month period (“<b>Reporting Period</b>”) on each July 1 and January 1.</p> <p>If the actual number of Games and Events at the Event Center Property are more or less than anticipated, in order to reconcile the account, on June 20<sup>th</sup> and December 20<sup>th</sup> of each calendar year, Licensee shall furnish Port a list of Games and Events that took place for the previous Reporting Period. Port and Licensee agree to true up the account bi-annually, with Licensee paying for any additional Games and Events</p>

	for which Parcels E-J were used and Port to credit Licensee if fewer Games and Events took place than initially reported and paid for.
<i>Prior License:</i>	The parties agree that as of the Commencement Date, License No. 16688 dated as of December 19, 2022 (the " <b>Prior License</b> "), between GSW Arena LLC and Port is hereby terminated; provided, however, that the parties will continue to be liable for any obligations under the Prior License which have accrued prior to the date of termination and any obligations which by their terms survive the termination or expiration of the Prior License.
<i>Prepared By:</i>	Jennifer Gee, Senior Property Manager

## LICENSE TO USE PROPERTY

### 1. BASIC LICENSE INFORMATION.

This License to Use Property, dated for reference purposes only as of the License Date set forth in the Basic License Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), as licensor, and the party identified in the Basic License Information as licensee ("**Licensee**"). The Basic License Information that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this License and shall be construed as a single instrument and referred to herein as this "**License**." In the event of any conflict or inconsistency between the Basic License Information and the License provisions, the Basic License Information will control.

### 2. GRANT OF LICENSE.

**2.1. License.** In consideration of the stated conditions and agreements, Port hereby grants permission to Licensee to carry on the Permitted Activity within the License Area described in the Basic License Information and *Exhibit A* attached hereto.

#### **2.2. Encroachment.**

(a) If Licensee or its Agents or Invitees uses or occupies space outside the License Area in violation of this License without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Licensee shall immediately vacate such Encroachment Area and pay as an additional charge for each day Licensee used, occupied, uses or occupies such Encroachment Area, an amount equal to the square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by the San Francisco Port Commission for the Encroachment Area, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Licensee uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. Unless otherwise agreed to by the Parties in writing, in no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Licensee or its Agents or Invitees, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this License (including Licensee's obligation to Indemnify Port as set forth in this Section), at law or in equity. Licensee shall also pay any costs, including attorneys' fees, incurred by Port by reason of the encroachment, including the costs of inspection and delivery of notice of an Encroachment Area Charge.

(b) In addition to Port's rights and remedies under this Section, the terms and conditions of Section 14 below (Indemnity and Exculpation) shall also apply to Licensee's and its Agents' and Invitees' use and occupancy of the Encroachment Area as if the License Area originally included the Encroachment Area, and Licensee shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Licensee in surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(c) All amounts set forth in this Section shall be due within thirty (30) days following the applicable Notice to Vacate. By signing this License, each party specifically confirms the accuracy of the statements made in this Section 2.2 and the reasonableness of the amount of the charges described in this Section 2.2.

**3. TERM; REVOCABILITY.**

This License is a revocable, personal, non-assignable, non-exclusive, and non-possessory privilege to enter and use the License Area for the Permitted Activity only on a temporary basis that commences on the Commencement Date and expires on the Expiration Date specified in the Basic License Information ("**Term**") unless sooner terminated pursuant to the terms of this License.

Without limiting any of Port's rights hereunder, by initialing below, Licensee agrees and acknowledges that either Party may, in each of their sole and absolute discretion, upon ninety (90) days' prior written notice to the other Party, revoke or terminate this License at any time prior to the Expiration Date, without cause and without obligation to pay any consideration to the other Party (with respect to each Party, the "**Termination Right**"). Failure of Licensee to initial below shall in no way affect or hinder Port's Termination Right.

Initials: \_\_\_\_\_  
Licensee

**4. FEES.**

**4.1. License Fee.** Licensee shall pay the License Fee set forth in the Basic License Information upon execution of this License, and thereafter if the Term is for a period greater than one (1) month, in advance on or before the first day of each month during the Term. The monthly License Fee shall be paid to Port in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever. All sums payable by Licensee to Port hereunder shall be paid in cash or by good check to the Port and delivered to Port's address specified in the Basic License Information, or such other place as Port may designate in writing. The License Fee and all other sums payable by Licensee, including without limitation, any additional charges and late charges, are referred to collectively as "Fees."

**4.2. Late Charges.** Licensee acknowledges that late payment by Licensee to Port of Fees or other sums due under this License will cause Port increased costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Licensee fails to pay Fees on the date due, such failure shall be subject to a Late Charge at Port's discretion. Licensee shall also pay any costs including attorneys' fees incurred by Port by reason of Licensee's failure to timely pay Fees. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Such charges may be assessed without notice and cure periods and regardless of whether such late payment results in default hereunder. Payment of the amounts under this Section shall not excuse or cure any default by Licensee.

**4.3. Default Interest.** Any Fees, if not paid within five (5) days following the due date and any other payment due under this License not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Licensee nor on other amounts to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Licensee. Licensee shall also pay any costs, including attorneys' fees incurred by Port by reason of Licensee's failure to pay Fees or other amounts when due under this License.

**4.4. Returned Checks.** If any check for a payment for any License obligation is returned without payment for any reason, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission) and the outstanding payment shall be subject to a Late Charge as well as interest at the Interest Rate.

## 5. SECURITY DEPOSIT.

Licensee shall pay to Port on or before the Commencement Date, in addition to the advance payment of the first month's License Fee, a deposit, in cash, in the sum specified in the Basic License Information (the "Security Deposit"), as security for the faithful performance by Licensee of all terms, covenants and conditions of this License. Licensee agrees that Port may (but shall not be required to) apply the security deposit in whole or in part to (a) pay any sum due to Port under this License, (b) compensate Port for any damage to the License Area caused by Licensee or its Agents or Invitees other than ordinary wear and tear, (c) subject to any applicable notice and Cure Period, cure any default by Licensee, or cure, or attempt to cure, any failure of Licensee to perform any covenant, term or condition of this License. If Port uses any portion of the security deposit to cure any default (subject to any applicable notice and Cure Period) by Licensee hereunder, Licensee shall replenish the security deposit to the original amount within ten (10) business days' of Port's notice of the amount due. Port's obligation with respect to the security deposit is solely that of debtor and not trustee. Licensee shall not be entitled to any interest on such security deposit. Port shall not be required to keep the security deposit separate from its general funds. If Licensee is not in default at the termination of this License, Port shall return the unused balance of the security deposit to Licensee after Licensee vacates the License Area. The amount of the security deposit shall in no way limit Licensee's obligations under this License, and nothing contained in this Section shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this License or provided by Law or equity.

Licensee hereby waives the provisions of California Civil Code Section 1950.7 and/or any successor statute, it being expressly agreed that, subject to the terms and conditions of this Section 5, Port may apply all or any portion of the security deposit in payment of any and all sums reasonably necessary to compensate Port for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Licensee or any agent, employee or invitee of Licensee, and that following a default (subject to any applicable notice and Cure Period) by Licensee, all or any portion of the security deposit may be retained by Port following a termination of this License and applied to future damages, including damages for future License Fees, pending determination of the same.

## 6. PERMITTED ACTIVITY; SUITABILITY OF LICENSE AREA.

The License Area shall be used and occupied only for the Permitted Activity specified in the Basic License Information and for no other purpose. If the Basic License Information limits the times and location of the activities permitted hereunder, then Licensee shall not conduct the activity at times and locations other than at the times and locations hereinabove specified unless express prior written permission is granted by Port. Persons subject to this License must comply with the directions of the San Francisco Police Department and Fire Department in connection therewith.

Licensee acknowledges that Port has made no representations or warranties concerning the License Area, including without limitation, the seismological condition thereof. By entering onto the License Area under this License, Licensee acknowledges its receipt of *Schedule 1* regarding the presence of certain Hazardous Materials and shall be deemed to have inspected the License Area and accepted the License Area in its "As Is" condition and as being suitable for the conduct of Licensee's activity thereon.

Port shall have the full right and authority to make, revoke, impose, and amend any rules and regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the License Area. If no rules and regulations currently exist for the License Area, Licensee agrees to be bound by any rules and regulations Port later imposes on the License Area. Licensee also acknowledges that Port's exercise of any of its rights regarding the License Area and other Port property in the vicinity of the License Area will not entitle Licensee to any abatement or diminution of Fees.

## **7. PROHIBITED USES.**

Licensee shall use the License Area solely for Permitted Activities and for no other purpose. Licensee shall not place any object, machinery or equipment on any portion of the License Area that exceeds the load restrictions, if any, described in the Basic License Information or in *Schedule 2*. Any other use in, on or around the License Area or surrounding or adjacent Port property shall be strictly prohibited, including, but not limited to, waste, nuisance or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port's use of its property, or obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic) (each, a "**Prohibited Use**").

In the event Port determines after inspection of the License Area that Licensee or its Agents or Invitees are engaging in a Prohibited Use or Prohibited Uses in, on or around the License Area, then Licensee shall (or shall cause its Agents or Invitees to) immediately cease the Prohibited Use(s). Licensee shall pay any costs including attorneys' fees incurred by Port by reason of the Prohibited Use, including the costs of inspection and delivery of default notices.

## **8. COMPLIANCE WITH LAWS; REGULATORY APPROVAL; PORT ACTING AS OWNER OF PROPERTY.**

**8.1. *Compliance With Laws.*** Licensee, at Licensee's sole cost and expense, promptly shall comply with all Laws relating to or affecting the condition, use or occupancy of the License Area.

**8.2. *Regulatory Approval.*** Licensee understands that Licensee's activity on the License Area may require Regulatory Approvals from Regulatory Agencies. Licensee shall be solely responsible for obtaining any such Regulatory Approvals, and Licensee shall not seek any Regulatory Approval without first obtaining the prior written approval of Port, which approval will not be unreasonably withheld, conditioned or delayed so long as Port is not a co-permittee. If Port is a co-permittee to any Regulatory Approval, then Port's approval may be withheld in its sole discretion. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Licensee. Licensee shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Licensee shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit, or if the conditions or restrictions it would impose on the project could affect use or occupancy of other areas controlled or owned by the Port or would create obligations on the part of the Port (whether on or off of the License Area) to perform or observe, unless in each instance the Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Licensee to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Licensee, and Port shall have no liability, monetary or otherwise, for the fines and penalties. To the fullest extent permitted by Law, Licensee agrees to Indemnify City, Port and their Agents from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Licensee's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

**8.3. *Port Acting As Owner of Property.*** By signing this License, Licensee agrees and acknowledges that (i) Port has made no representation or warranty that any required Regulatory Approval can be obtained, (ii) although Port is an agency of City, Port has no authority or influence over any other Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this License in its capacity as a landowner with a proprietary interest in the License Area and not as a Regulatory Agency of City with certain police powers, and (iv) Licensee is solely responsible for obtaining any and all required

Regulatory Approvals in connection with the Permitted Activity on, in or around the License Area. Accordingly, Licensee understands that there is no guarantee, nor a presumption, that any required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency and Port's status as an agency of City shall in no way limit the obligation of Licensee to obtain approvals from any Regulatory Agencies (including Port) which have jurisdiction over the License Area. Licensee hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval. Notwithstanding the foregoing, Port shall use reasonable efforts to cooperate with Licensee's efforts to obtain required Regulatory Approvals in connection with Permitted Activities so long as the Port is not a co-permittee and such cooperation is at no cost or expense to Port.

**8.4. Accessibility.** California Law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The Law does not require landlords to have the inspections performed. Licensee is hereby advised that the License Area has not been inspected by a CASp and, except to the extent expressly set forth in this License, Port shall have no liability or responsibility to make any repairs or modifications to the License Area in order to comply with accessibility standards. The following disclosure is required by Law:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state Law. Although state Law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

Further, Licensee is hereby advised that the License Area may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Licensee understands and agrees that Licensee may be subject to legal and financial liabilities if the License Area does not comply with applicable federal and state disability access Laws. As further set forth in this Section, Licensee further understands and agrees that it is Licensee's obligation, at no cost to Port, to cause the License Area and Licensee's uses thereof to be conducted in compliance with all federal or state disability access Laws.

## **9. UTILITIES, SERVICES, MAINTENANCE AND REPAIR.**

**9.1. Utilities.** Port has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the License Area. Except as may be otherwise provided in the Basic License Information, to the extent Licensee requires Utilities in connection with the Permitted Activities, Licensee shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the License Area for its Permitted Activities. Licensee will procure all electricity for the License Area from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. If the SF Public Utilities Commission determines that it cannot feasibly provide service to Licensee, Licensee may seek another provider.

**9.2. Services.** Port has no responsibility or liability of any kind with respect to the provision of any services to Licensee or on, in, or to the License Area. Licensee shall make arrangements and shall pay all charges for all services to be furnished on, in or to the License Area or to be used by Licensee, including, without limitation, security service, garbage and trash collection, janitorial service and extermination service.

**9.3. Maintenance and Repair.** Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon. Without limiting Licensee's repair obligation in the immediately following sentence, Licensee shall have no obligation to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon due to or arising out of damage caused by Port or its Agents. In the event that Licensee or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the License Area or any other Port property, Licensee shall be responsible and Port may, at its sole and absolute discretion, elect to repair the same itself or require Licensee to repair the same, all at Licensee's sole cost and expense. Upon receipt of any invoice from Port for costs incurred by Port related to any repair performed by Port in accordance with this Section, Licensee shall reimburse Port therefor within thirty (30) days of receipt of such invoice. This provision shall survive the expiration or earlier termination of this License.

## **10. TAXES AND ASSESSMENTS.**

Licensee agrees to pay to the proper authority any and all taxes, assessments and similar charges on the License Area in effect at the time this License is entered into, or which become effective thereafter, including all taxes levied or assessed upon the possession, use, or occupancy, as distinguished from the ownership, of the License Area. Licensee, on behalf of itself and any permitted successors and assigns, recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee, and any permitted successor or assign may be subject to the payment of such taxes. Licensee, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublicense, or other transfer of this License be reported to the County Assessor within sixty (60) days after any such transaction. Accordingly, Licensee must provide a copy of this License to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Licensee to timely provide a copy of this License to the County Assessor will be a default under this License. Licensee further agrees to provide such other information as may be requested by City or Port to enable City or Port to comply with any reporting requirements under applicable Law with respect to possessory interest. Licensee shall Indemnify Port, City and their Agents from and against any Claims resulting from any taxes and assessments related to this License.

## **11. INSURANCE.**

### **11.1. Required Insurance.**

Licensee shall maintain throughout the Term, at Licensee's expense, insurance as follows:

(a) Workers' compensation insurance as required by Laws, U.S. Longshore and Harborworker's Act Insurance and Jones Act insurance with employer's liability limit not less than One Million Dollars (\$1,000,000) for each accident, on employees eligible for each. Notwithstanding the foregoing, so long as Licensee does not (i) operate, use, or berth any watercraft vessels or floating barges owned or operated by Licensee, and (ii) employ any maritime workers within the License Area for loading, unloading, building, repairing, dismantling, or longshoring of any watercraft or marine vessel, Licensee shall not be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively.

(b) Comprehensive or commercial general liability insurance, with limits not less than Five Million Dollars (\$5,000,000.00) each occurrence with a combined single



limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) and explosion, collapse and underground (XCU) coverage during any period in which Licensee is conducting any activity on or Alteration or Improvement to the License Area with risk of explosion, collapse or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(c) Comprehensive or Business Automobile Liability Insurance with limits not less than \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverage for owned, non-owned and hired automobiles, as applicable, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Licensee's activity on, in or around the License Area. If parking is a Permitted Activity under this License, Licensee must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the License Area on a regular basis, including without limitation Licensee's Agents and Invitees.

(d) Personal Property Insurance. Licensee, at its sole cost and expense, shall procure and maintain on all of Licensee's personal property and if applicable, any alterations or improvements Licensee is permitted to make as described in the Basic License Information, in, on, or about the License Area, personal property insurance on all risk form, excluding earthquake and flood, in an amount not less than full replacement value or a stated value, at Licensee's sole discretion, for the replacement of Licensee's personal property and if applicable, alterations and improvements. In addition to the foregoing, Port may, in its sole discretion, insure any personal property leased to Licensee by Port pursuant to this License in such amounts as Port deems reasonably appropriate and Licensee shall have no interest in the proceeds of such personal property insurance. Port shall have no responsibility or obligation to maintain insurance or replace Licensee's personal property, alterations, or any improvements regardless of cause of loss.

(e) Other Coverage. Such other insurance as required by Law or as City's Risk Manager may require.

**11.2. Claims Made Policy.** Should any of the required insurance be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the Term and, without lapse, for three (3) years beyond the expiration of this License, to the effect that, should occurrences during the Term give rise to claims made after expiration of this License, such claims shall be covered by such claims-made policies.

**11.3. Annual Aggregate Limit.** Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be not less than double the occurrence limits specified above.

**11.4. Payment of Premiums.** Licensee shall pay all the premiums for maintaining all required insurance.

**11.5. Waiver of Subrogation Rights.** Notwithstanding anything to the contrary contained herein, Port and Licensee (each a "**Waiving Party**") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the License Area or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this License or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation

rights endorsements to all policies relating to the License Area; provided, the failure to obtain any such endorsement shall not affect the above waiver.

#### **11.6. General Insurance Matters.**

(a) All liability insurance policies required to be maintained by Licensee hereunder shall contain a cross-liability clause, shall name as additional insureds by written endorsement the "**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, COMMISSIONERS, DIRECTORS, EMPLOYEES AND AGENTS,**" shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this License, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Licensee hereunder shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Licensee's compliance with this Section shall in no way relieve or decrease Licensee's liability under this License.

(c) All insurance policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to Port at the address for Notices specified in the Basic License Information.

(d) Licensee shall deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking system such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If Port is using an internet-based insurance compliance tracking system, Licensee's broker shall complete the insurance questionnaire and submit all required documentation. Licensee shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

(e) Not more often than every year and upon not less than sixty (60) days prior written notice, Port may require Licensee to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be required by Law, the City's Risk Manager or as is generally required for similar operations with respect to risks comparable to those associated with the use of the License Area.

#### **12. NOTICES.**

Except as otherwise expressly provided in this License or by Law, all notices (including notice of consent or non-consent) required or permitted by this License or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United States Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party's mailing address in the Basic License Information, unless superseded by a notice of a change in that party's mailing address for notices, given to the other party in the manner provided above, or by Licensee in Licensee's written response to Port's written request for such information.

All notices under this License shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

### **13. DEFAULT BY LICENSEE; REMEDIES.**

**13.1. *Event of Default.*** The occurrence of any one or more of the following events shall constitute a default by Licensee:

(a) Failure by Licensee to pay when due any Fees and/or all other charges due hereunder within five (5) days after written notice to Licensee; or

(b) Failure to perform any other provisions of this License, if the failure to perform is not cured within the Cure Period set forth in the Basic License Information after Port has given notice to Licensee; or

(c) An assignment, or attempted assignment, of this License by Licensee; or

(d) Either (i) the failure of Licensee to pay its debts as they become due, the written admission of Licensee of its inability to pay its debts, or a general assignment by Licensee for the benefit of creditors; or (ii) the filing by or against Licensee of any action seeking reorganization, arrangement, liquidation, or other relief under any Law relating to bankruptcy, insolvency, or reorganization or seeking the appointment of a trustee, receiver or liquidator of Licensee's or any substantial part of Licensee's assets unless such action is dismissed within sixty (60) days; or (iii) the attachment, execution or other judicial seizure of substantially all of Licensee's interest in this License unless such seizure is discharged within thirty (30) days.

**13.2. *Port's Remedies.*** Upon default by Licensee and expiration of any applicable notice and Cure Period, Port shall, without further notice or demand of any kind to Licensee or to any other person, and in addition to any other remedy Port may have under this License and at law or in equity, have the ability to immediately terminate this License and Licensee's right to use the License Area. Upon notice of any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and Port may take any and all action to enforce Licensee's obligations.

### **14. INDEMNITY AND EXCULPATION.**

**14.1. *General Indemnity.*** Licensee shall Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and shall defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Licensee, or loss or damage to or destruction of any property occurring in, on or about the License Area, from Licensee's, its Agents' or Invitees' acts or omissions, or (b) any default by Licensee in the observance or performance of any of the terms, covenants or conditions of this License, or (c) the use, occupancy, manner of use or occupancy, or condition of the License Area or the activities therein by Licensee, its Agents, or Invitees, or (d) any construction or other work undertaken by Licensee on the License Area whether before or during the Term, or (e) any acts, omissions or negligence of Licensee, its Agents or Invitees, in, on or about the License Area.

#### **14.2. *Hazardous Materials Indemnity.***

(a) In addition to its obligations under Section 14.1, Licensee, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition to the extent caused or Exacerbated by Licensee or its Agents or Invitees, and (ii) Licensee's Exacerbation of any Hazardous Material Condition.

(b) Unless Licensee or its Agents or Invitees Exacerbate a Hazardous Material Condition, Licensee's Indemnity obligations under this License do not include any Hazardous Material Claims that arise as a result of a Hazardous Material Condition: (i) caused or Exacerbated solely by City, Port, or their Agents during Licensee's, its Agent's or Invitee's use of the License Area; or (ii) arising before the Commencement Date or the date of Licensee's first use of the License Area under the Prior License, whichever is earlier.

(c) Licensee's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the License Area; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the License Area; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vii) attorneys' fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Licensee must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within three (3) business days after Port's payment demand. Licensee's obligations hereunder shall survive the expiration or earlier termination of this License.

**14.3. Scope of Indemnities.** The Indemnification obligations of Licensee set forth in this License shall be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Licensee set forth in this License shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this License. Except as specifically provided otherwise, the Indemnification obligations of Licensee set forth in this License shall exclude Claims resulting solely from the willful misconduct or gross negligence of the Indemnified Parties, or from any other act or omission of any person using the License Area other than Licensee, its Agents or Invitees, including the general public.

In addition to Licensee's obligation to Indemnify the Indemnified Parties, Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Licensee set forth in this License, even if the allegations are or may be groundless, false or fraudulent. This Indemnification by Licensee shall begin from the first notice that any claim or demand is or may be made and shall continue at all times thereafter.

**14.4. Exculpation and Waiver.** To the fullest extent permitted by Law, Licensee, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence. The Indemnified Parties shall not be responsible for or liable to Licensee, and Licensee hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, for any injury, loss or damage to any person or property in or about the License Area by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying areas adjacent to or connected with the License Area, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective systems, (v) defects, (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vii) Claims by persons in, upon or about the License Area or any other Port property in the vicinity of the License Area for any cause arising at any time, (viii) alleged facts or circumstances of the process or negotiations leading to this License prior to the Commencement Date, (ix) inability to use all or any portion of the License

Area due to sea level rise, and (x) any other acts, omissions or causes to the fullest extent permitted by Law.

Licensee understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this License might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this License shall remain effective. Therefore, with respect to the Claims released in this License, Licensee waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Initials: \_\_\_\_\_  
*Licensee*

Licensee specifically acknowledges and confirms the validity of the release made above and the fact that Licensee was represented by counsel who explained the consequences of the release at the time this License was made, or that Licensee had the opportunity to consult with counsel, but declined to do so.

**14.5. *Survival.*** The provisions of Section 14 shall survive the expiration or earlier termination of this License.

## **15. HAZARDOUS MATERIALS.**

**15.1. *Requirements for Handling.*** Neither Licensee nor its Agents or Invitees may Handle or permit any other person within its control to Handle any Hazardous Material in, on, under or about the License Area, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: janitorial and office supplies in limited amounts customarily used for general janitorial purposes.

**15.2. *Licensee Responsibility.*** Licensee agrees to protect its Agents and Invitees in its operations on the License Area from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the License Area, each of them:

(a) will not permit any Hazardous Materials to be present in, on, under or about the License Area or other Port property in the vicinity of the License Area during the hours when Licensee is using the License Area except as permitted under Section 15.1 (Requirements for Handling);

(b) will not cause or permit any Hazardous Material Condition during the hours when Licensee is using the License Area; and

(c) will comply with all Environmental Laws relating to the License Area and any Hazardous Material Condition, and will not engage in or permit itself, its Agents or Invitees to conduct any activity at the License Area, or in the operation of any vehicles or vessels used in connection with the License Area in violation of any Environmental Laws.

### **15.3. *Licensee's Environmental Condition Notice Requirements.***

(a) Licensee must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Licensee learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 15.1 (Requirements for Handling), Handled, in, on, or about the License Area, any other Port property in the vicinity of the License Area, or

the environment, or from any vehicles or vessels that Licensee, its Agents or Invitees use during Licensee's occupancy of the License Area, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

**(b)** Licensee must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide Port with an electronic copy, of:

**(i)** Any notice of the Release or Handling of Hazardous Materials, in, on, or about the License Area, any other Port property in the vicinity of the License Area, or the environment, or from any vehicles or vessels Licensee or its Agents or Invitees uses during Licensee's occupancy of the License Area that Licensee or its Agents or Invitees provides to an Environmental Regulatory Agency;

**(ii)** Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Licensee or its Agents or Invitees receives from any Environmental Regulatory Agency;

**(iii)** Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the License Area, other Port property in the vicinity of the License Area, or the environment, or from any vehicles or vessels Licensee or its Agents or Invitees use during Licensee's occupancy of the License Area;

**(iv)** Any Hazardous Materials Claim that is instituted or threatened by any third party against Licensee or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the License Area, other Port property in the vicinity of the License Area, or the environment, or from any vehicles or vessels that Licensee or its Agents or Invitees use during Licensee's occupancy of the License Area; and

**(v)** Any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Licensee or its Agents or Invitees for their operations at the License Area.

**(c)** Licensee must notify Port of any meeting, whether conducted face-to-face or telephonically, between Licensee and any Environmental Regulatory Agency regarding an Environmental Regulatory Action. Port will be entitled to participate in any such meetings at its sole election.

**(d)** Licensee must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval. Licensee's notice to Port must state the issuing entity, the Environmental Regulatory Approval identification number, and the date of issuance and expiration of the Environmental Regulatory Approval. In addition, Licensee must provide Port with a list of any Environmental Regulatory Approval, plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the License Area, including a "Spill Prevention Control and Countermeasure Plan." Licensee must provide Port with copies of any of the documents within the scope of this Section upon Port's request.

**(e)** Licensee must provide Port with copies of all communications with Environmental Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Materials Claims arising from Licensee's or its Agents' or Invitees' operations at the License Area. Upon Port's request, Licensee must provide Port with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

(f) Port may from time to time request, and Licensee will be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

**15.4. Requirement to Remediate.**

(a) Licensee's Remediation obligations under this Subsection (a) are subject to Subsection (b).

(i) After notifying Port in accordance with Section 15.3(a) (Licensee's Environmental Condition Notice Requirements), Licensee must Remediate at its sole cost in compliance with all Environmental Laws and this License, any Hazardous Material Condition for which Licensee has responsibility under this License occurring during the Term or while Licensee or its Agents or Invitees otherwise actively use any part of the License Area. Licensee must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete as required under the Remediation work plan, as determined by Port, in its sole discretion.

(ii) In addition to its obligations under clause (i), before this License terminates for any reason, Licensee must Remediate at its sole cost in compliance with all Environmental Laws and this License: (A) any Hazardous Material Condition caused by Licensee's or its Agents' or Invitees' Handling Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during Licensee's occupancy that is required to be Remediated by any Regulatory Agency if Remediation would not have been required but for Licensee's use of the License Area.

(iii) If Environmental Laws require a Remediation action plan, Licensee must provide a draft of its plan to Port for comment and approval before submittal to the appropriate Environmental Regulatory Agency, and a copy of the final plan as submitted.

(iv) In all situations relating to Handling or Remediating Hazardous Materials, Licensee must take all actions that are reasonably necessary in Port's sole judgment to protect the value of the License Area, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the License Area in any manner related directly, or indirectly to Hazardous Materials.

(b) Unless Licensee or its Agents or Invitees Exacerbate the Hazardous Material Condition, and subject further to Section 15.4(c), Licensee will not be obligated to Remediate any Hazardous Material Condition: (i) caused or Exacerbated solely by City, Port, or their Agents during Licensee's occupancy of the License Area, or caused or Exacerbated by any Person other than Licensee, its Agents or Invitees; or (ii) arising before the Commencement Date or the date of Licensee's first use of the License Area, whichever is earlier.

**15.5. Port's Right to Audit.** Port will have the right, but not the obligation, to inspect and audit the License Area for any Hazardous Materials, including the right to Investigate, at reasonable times under Section 16 (Port's Entry on License Area). Port's failure to inspect or obtain samples or to detect conditions attributable to Licensee's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Licensee's responsibility under this License.

**15.6.** Intentionally deleted.

**15.7.** Intentionally deleted.

**15.8. Storm Water Pollution Prevention.**

(a) Licensee must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water

Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("**SWPPP**"), and conducting storm water monitoring and reporting. Licensee's SWPPP and a copy of a Notice of Intent for Licensee's License Area must be submitted to Port's Real Estate Division before beginning operations in the License Area.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Licensee shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Management Requirements and Design Guidelines, subject to review and permitting by the Port.

**15.9. Presence of Hazardous Materials.** California Law requires landlords to disclose the presence or potential presence of certain Hazardous Materials. Accordingly, Licensee is hereby advised that Hazardous Materials (as herein defined) may be present on or near the License Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: the Hazardous Materials described in the reports listed in *Schedule 1* attached hereto, copies of which have been delivered to or made available to Licensee. By execution of this License, Licensee acknowledges that the notice set forth in this Section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Licensee must disclose the information contained in this Section to any sublicensee, licensee, transferee, or assignee of Licensee's interest in this License. Licensee also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

**15.10. Survival.** Licensee's obligations under this Section 15 (Hazardous Materials) shall survive the expiration or earlier termination of this License.

## **16. PORT'S ENTRY ON LICENSE AREA.**

**16.1. Entry for Inspection.** Port and its authorized Agents shall have the right to enter the License Area without notice at any time for the purpose of inspecting the License Area to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under this License; to perform any necessary maintenance, repairs or restoration to the License Area; and to show the License Area to prospective licensees, tenants or other interested parties.

**16.2. Emergency Entry.** Port may enter the License Area at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means that Port may deem proper in such an emergency in order to obtain entry to the License Area. Entry to the License Area by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a breach of Licensee's rights under this License.

**16.3. No Liability.** Port shall not be liable in any manner, and Licensee hereby waives any Claims for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Fees due hereunder, arising out of Port's entry onto the License Area, or entry by the public (as Licensee has a non-exclusive right to use the License Area) onto the License Area.

## **17. IMPROVEMENTS AND ALTERATIONS.**

Unless specified in the Basic License Information, Licensee shall not make, nor suffer to be made, alterations or improvements to the License Area (including the installation of any trade fixtures affixed to the License Area or whose removal will cause injury to the License Area).



## **18. SURRENDER.**

Upon the expiration or earlier termination of this License, Licensee shall surrender to Port the License Area and any pre-existing alterations and improvements in good condition (except for ordinary wear and tear). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by commercially reasonable maintenance by Licensee, or Licensee otherwise performing all of its obligations under this License. The License Area shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this License and any other encumbrances created by Port. On or before the expiration or earlier termination hereof, Licensee shall remove all of its personal property and, unless Port directs otherwise, any alterations and improvements that Licensee has installed with Port's consent, and perform all restoration made necessary by the removal of Licensee's personal property.

Without any prior notice, Port may elect to retain or dispose of Licensee's personal property and any alterations and improvements that Licensee has installed with or without Port's consent that Licensee does not remove from the License Area prior to the expiration or earlier termination of this License. These items shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned property, and Licensee waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Licensee shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned property and repairing any damage to the License Area resulting from such removal. Licensee agrees that Port may elect to sell abandoned property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Licensee. Licensee hereby waives the benefits of California Civil Code Section 1993 et seq., to the extent applicable.

If Licensee fails to surrender the License Area as required by this Section, Licensee shall Indemnify Port from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, any costs of Port to enforce this Section and Claims made by a succeeding licensee or tenant resulting from Licensee's failure to surrender the License Area as required together with, in each instance, reasonable attorneys' fees and costs.

Licensee's obligation under this Section shall survive the expiration or earlier termination of this License.

## **19. ATTORNEYS' FEES; LIMITATIONS ON DAMAGES.**

**19.1. *Litigation Expenses.*** The prevailing party in any action or proceeding (including any cross complaint, counterclaim or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this License, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to, reasonable attorneys' fees, which fees shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

**19.2. *City Attorney.*** For purposes of this License, reasonable fees of attorneys of the City's Office of the 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 San Francisco in Law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

**19.3. *Limitation on Damages.*** Licensee agrees that Licensee will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this License, or for any Claim based upon this License, except to the extent of the fair market value of Port's fee interest in the License Area (as encumbered by this License). Licensee's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Licensee expressly waives all such liability.

**19.4. *Non-Liability of City Officials, Employees and Agents.*** No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of City and/or Port under this License. Under no circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

**19.5. *Limitation on Port's Liability Upon Transfer.*** In the event of any transfer of Port's interest in and to the License Area, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this License thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

## **20. MINERAL RESERVATION.**

The State of California ("**State**"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the License Area and Licensee acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Licensee for any Claims arising from the State's exercise of its rights nor shall such action entitle Licensee to any abatement or diminution of Fees or otherwise relieve Licensee from any of its obligations under this License.

## **21. CITY AND PORT REQUIREMENTS.**

The San Francisco Municipal Codes (available at [www.sfgov.org](http://www.sfgov.org)) and City and Port policies described or referenced in this License are incorporated by reference as though fully set forth in this License to the extent the ordinances are applicable to Licensee and this License pursuant to the terms and provisions of the applicable ordinance. The descriptions below are not comprehensive but are provided for notice purposes only; Licensee is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Licensee understands and agrees that its failure to comply with any such applicable ordinance shall be deemed a material breach of this License and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this License shall have the meanings ascribed to them in the cited ordinance.

### **21.1. *Nondiscrimination.***

**(a) Covenant Not to Discriminate.** In the performance of this License, Licensee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapters 12B or 12C of the Administrative Code or in retaliation for opposition to any practices forbidden under Chapters 12B or 12C of the Administrative Code against any employee of Licensee, any City and County employee working with Licensee, any applicant for

employment with Licensee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensee in the City and County of San Francisco.

(b) **Sublicenses and Other Contracts.** Licensee shall include in all Sublicenses and other contracts relating to the License Area a nondiscrimination clause applicable to such Sublicensee or other contractor in substantially the form of Subsection (a) above. In addition, Licensee shall incorporate by reference in all Sublicenses and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all Sublicensees and other contractors to comply with such provisions.

(c) **Nondiscrimination in Benefits.** Licensee does not as of the date of this License and will not during its Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) **CMD Form.** On or prior to the License Commencement Date, Licensee shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) **Penalties.** Licensee understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

**21.2. Requiring Health Benefits for Covered Employees.** Unless exempt, Licensee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Administrative Code Chapter 12Q (Chapter 12Q).

(a) For each Covered Employee Licensee shall provide the appropriate health benefit set forth in Section 12Q.3(d) of the HCAO.

(b) Notwithstanding the above, if Licensee meets the requirements of a "**small business**" by the City pursuant to Section 12Q.3 of the HCAO, it shall have no obligation to comply with Section 21.2(a) above.

(c) If, within 30 days after receiving written notice of a breach of this License for violating the HCAO, Licensee fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Licensee fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublicense or Contract regarding services to be performed on the License Area entered into by Licensee shall require the Sublicensee or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Licensee shall notify the Office of Labor Standards Enforcement ("**OLSE**") when it enters into such a Sublicense or Contract and shall certify to OLSE that it has notified the Sublicensee or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Sublicensee or Contractor through written agreement with

such Sublicensee or Contractor. Licensee shall be responsible for ensuring compliance with the HCAO for each Sublicensee, Contractor and Subcontractor performing services on the License Area. If any Sublicensee, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Licensee based on the Sublicensee's, Contractor's, or Subcontractor's failure to comply, provided that OLSE has first provided Licensee with notice and an opportunity to cure the violation.

(e) Licensee shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Licensee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Licensee shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Licensee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Sublicensees, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Licensee shall provide the City with access to pertinent records relating to any Licensee's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Licensee at any time during the Term. Licensee agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

**21.3. First Source Hiring.** The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Licensee acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Licensee acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this License.

**21.4. Local Business Enterprises.** The Port Commission encourages the participation of local business enterprises (LBEs) in Licensee's operations. Licensee agrees to consult with the CMD to determine appropriate methods for promoting participation by LBEs in the scope of work. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <https://sfgov.org/cmd/LBE-certification-0>.

**21.5. Indoor Air Quality.** Licensee agrees to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

**21.6. Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution.** Licensee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Licensee acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the License Area and such prohibition must be included in all sublicenses or other agreements allowing use of the License Area. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

**21.7. Graffiti Removal.** Licensee agrees to remove all graffiti from the License Area within forty-eight (48) hours of the earlier of Licensee's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. "Graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this License or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

**21.8. Restrictions on the Use of Pesticides.** Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Licensee shall not use or apply or allow the use or application of any pesticides on the License Area, and shall not contract with any party to provide pest abatement or control services to the License Area, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, (ii) describes the steps Licensee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Licensee's primary IPM contact person with the City. Licensee shall comply, and shall require all of Licensee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Licensee to keep certain records and to report to City all pesticide use by Licensee's staff or contractors. If Licensee or Licensee's contractor will apply pesticides to outdoor areas, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest

Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state Law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

**21.9. *MacBride Principles Northern Ireland.*** Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

**21.10. *Tropical Hardwood and Virgin Redwood Ban.*** Port and the City urge Licensee not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Licensee shall not provide any items to the construction of Alterations, or otherwise in the performance of this License which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Licensee fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Licensee shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

**21.11. *Preservative-Treated Wood Containing Arsenic.*** Licensee may not purchase preservative-treated wood products containing arsenic in the performance of this License unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "**preservative-treated wood containing arsenic**" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Licensee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**21.12. *Notification of Limitations on Contributions.*** If this License is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 21.13 shall apply. Through its execution of this License, Licensee acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Licensee further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Licensee; and any subcontractor listed in the Licensee's bid or contract. Additionally, Licensee certifies that if this

Section 21.13 applies, Licensee has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of each of the persons required to be informed.

**21.13. *Sunshine Ordinance.*** In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

**21.14. *Conflicts of Interest.*** Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Licensee becomes aware of any such fact during the Term, Licensee shall immediately notify the Port.

**21.15. *Drug-Free Workplace.*** Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

**21.16. *Prevailing Wages and Working Conditions.*** Licensee shall comply with all applicable prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Licensee shall require its contractors and subcontractors performing ( i ) labor in connection with a “public work” as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii ) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “**Prevailing Wage Requirements**”). Licensee agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Licensee shall include and shall require its sublicensees, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Licensee’s failure to comply with its obligations under this Section shall constitute a material breach of this License. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek any remedy provided by Law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Licensee shall also pay, and shall require its sublicensees, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities

on the License Area as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

**21.17. Public Transit Information.** Licensee shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Licensee employed on the License Area, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the License Area and encouraging use of such facilities, all at Licensee's sole expense.

**21.18. Food Service and Packaging Waste Reduction Ordinance.** Licensee agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this License, Licensee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Licensee agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this License was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Licensee's failure to comply with this provision.

**21.19. Consideration of Criminal History in Hiring and Employment Decisions.**

(a) Licensee agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; “**Chapter 12T**”), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Licensee who would be or are performing work at the License Area.

(b) Licensee shall incorporate by reference the provisions of Chapter 12T in all sublicenses of some or all of the License Area, and shall require all sublicenses to comply with such provisions. Licensee's failure to comply with the obligations in this subsection shall constitute a material breach of this License.

(c) Licensee and sublicenses shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Licensee and sublicenses shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Licensee and sublicenses shall not require such disclosure or



make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Licensee and sublicensees shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Licensee or sublicensee at the License Area, that the Licensee or sublicensee will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Licensee and sublicensees shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the License Area and at other workplaces within San Francisco where interviews for job opportunities at the License Area occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the License Area or other workplace at which it is posted.

(g) Licensee and sublicensees understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this License, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this License.

(h) If Licensee has any questions about the applicability of Chapter 12T, it may contact Port for additional information. Port may consult with the Director of the Purchasing Department who may also grant a waiver, as set forth in Section 12T.8.

**21.20. Local Hire.** Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Licensee's improvements and alterations under this License are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Licensee agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Licensee's improvements or alterations, Licensee shall contact City's Office of Economic Workforce and Development ("OEWD") to determine the work is a Covered Project subject to the Local Hiring Requirements.

License shall include, and shall require its sublicensees to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Licensee shall cooperate, and require its sublicensees to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Licensee's failure to comply with its obligations under this Section shall constitute a material breach of this License. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

**21.21. San Francisco Bottled Water Ordinance.** Licensee is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in specified containers at City-permitted events held on the License Area with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

**21.22. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings.** Licensee shall not install or permit any vending machine on the License Area without

the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9- 1(c), as may be amended from time to time (the “Nutritional Standards Requirements”). Licensee agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the License Area or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this License. Without limiting Port’s other rights and remedies under this License, Port shall have the right to require the immediate removal of any vending machine on the License Area that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the License Area is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

**21.23. Licensee’s Compliance with City Business and Tax Regulations Code.** Licensee acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Licensee under this License is withheld, then Port will not be in breach or default under this License, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 21.23 to Licensee, without interest, late fees, penalties, or other charges, upon Licensee coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

**21.24. Consideration of Salary History.** Licensee shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Licensee for work that relates to this License or for work to be performed in the City or on City property, Licensee is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Licensee shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Licensee is subject to the enforcement and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

## **22. WAIVER OF RELOCATION.**

Licensee hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar Law, statute or ordinance now or hereafter in effect, to the extent allowed under applicable Law.

## **23. SIGNS.**

Licensee shall not have the right to place, construct or maintain any business signage, awning or other exterior decoration or notices on the License Area without Port's prior written consent. Any sign that Licensee is permitted to place, construct or maintain on the License Area shall comply with all Laws relating thereto, including but not limited to Port's Sign Guidelines, as revised by Port from time to time, and building permit requirements, and Licensee shall obtain all Regulatory Approvals required by such Laws. Licensee, at its sole cost and expense, shall remove all signs placed by it on the License Area at the expiration or earlier termination of this License.

## **24. MISCELLANEOUS PROVISIONS.**

**24.1. California Law; Venue.** This License is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this License shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this License has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

**24.2. Entire Agreement.** This License contains all of the representations and the entire agreement between the parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this License.

**24.3. Amendments.** No amendment of this License or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

**24.4. Severability.** If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by Law.

### **24.5. Interpretation of License.**

**(a)** References in this License to Licensee's acts or omissions will mean acts or omissions by Licensee and its Agents and Invitees unless the context requires or specifically stated otherwise.

**(b)** Whenever an exhibit or schedule is referenced, it means an attachment to this License unless otherwise specifically identified. All exhibits and schedules are incorporated in this License by reference.

**(c)** Whenever a section, article or paragraph is referenced, it refers to this License unless otherwise specifically provided. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this License. Wherever reference is made to any provision, term, or matter "in this License," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this License in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this License.

**(d)** References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this License and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this License are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

**(e)** The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be

construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this License.

(g) The party on which any obligation is imposed in this License will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," "waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

**24.6. Successors.** The terms, covenants, agreements and conditions set forth in this License shall bind and inure to the benefit of Port and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns.

**24.7. Real Estate Broker's Fees.** Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this License. Licensee agrees to Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this License.

**24.8. Counterparts.** For convenience, the signatures of the parties to this License may be executed and acknowledged on separate pages which, when attached to this License, shall constitute as one complete License. This License may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same License.

**24.9. Authority.** If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is at the time of execution and at all times while this License is in effect will continue to be: (1) a duly authorized and existing entity, (2) qualified to do business in California; and that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon Port's request, Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

**24.10. No Implied Waiver.** No failure by Port to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Licensee requiring Port's consent or

approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this License.

**24.11. *Time is of Essence.*** Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.

**24.12. *Cumulative Remedies.*** All rights and remedies of either party hereto set forth in this License shall be cumulative, except as may otherwise be provided herein.

**24.13. *Survival of Indemnities.*** Termination or expiration of this License shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this License, the ability to collect any sums due, nor shall it affect any provision of this License that expressly states it shall survive termination or expiration hereof.

**24.14. *Relationship of the Parties.*** Port is not, and none of the provisions in this License shall be deemed to render Port, a partner in Licensee's business, or joint venturer or member in any joint enterprise with Licensee. Neither party shall act as the agent of the other party in any respect hereunder. This License is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

**24.15. *No Recording.*** Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

**24.16. *Additional Written Agreement Required.*** Licensee expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised fee credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by the Executive Director of Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

## **25. DEFINITIONS.**

For purposes of this License, the following terms have the meanings ascribed to them in this Section or elsewhere in this License as indicated:

"ACMs" is defined in Section 15.6.

"Agents" when used with reference to either party to this License or any other person, means the officers, directors, commissioners, employees, agents, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

"Basic License Information" refers to the summary of basic license information attached to this License.

"CMD" means the Contract Monitoring Division of the City's General Services Agency.

"Cal-OSHA" means the Division of Occupational Safety and Health of the California Department of Industrial Relations.

"City" is defined in Section 1.

"Claim" means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

"Commencement Date" means the date specified in the Basic License Information.

"**Cure Period**" means the period of time described in the Basic License Information.

"**Encroachment Area**" is defined in Section 2.2.

"**Encroachment Area Charge**" is defined in Section 2.2.

"**Environmental Laws**" means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Law affecting any portion of the License Area.

Environmental Laws include the Risk Management Plan, Mission Bay Area, San Francisco, California as approved by the Regional Board on May 11, 1999, as amended and as interpreted by Regulatory Agencies with jurisdiction ("**RMP**"), deed restrictions recorded against the License Area and the Site Mitigation Plan approved by the San Francisco Department of Health, all as presently in effect or as further amended during the Term of this License.

"**Environmental Regulatory Action**" when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"**Environmental Regulatory Agency**" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"**Environmental Regulatory Approval**" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the License Area and any closure permit.

"**Event Center Property**" means multi-purpose event center located at 1 Warriors Way, San Francisco, California 94158, commonly known as "Chase Center" along with the surrounding mixed-use development commonly known as "**Thrive City**".

"**Exacerbate**" or "**Exacerbating**" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Licensee's operations, Investigations, maintenance, repair, Improvements and Alterations under this License. "**Exacerbation**" has a correlating meaning.

"**Expiration Date**" means the date specified in the Basic License Information.

"**Fees**" means the License Fee and all other sums payable by Licensee under this License, including without limitation, any Late Charge and any interest assessed pursuant to Section 4.

"**Handle**" or "**Handling**" means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

"**Hazardous Material**" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury

to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACMs, and PACMs, whether or not part of the structure of any existing Improvements on the License Area, any Improvements to be constructed on the License Area by or on behalf of Licensee, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

**"Hazardous Material Claim"** means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the License Area, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release of any Hazardous Material, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the License Area or any other Port property in the vicinity of the License Area, the loss or restriction of the use or any amenity of the License Area or any other Port property in the vicinity of the License Area, and attorneys' fees and consultants' fees and experts' fees and costs.

**"Hazardous Material Condition"** means the presence, Release, or threatened Release of Hazardous Materials in, on, or about the License Area, any other Port property in the vicinity of the License Area, or the environment, or from any vehicles or vessels Licensee, or its Agents and Invitees uses during Licensee's occupancy of the License Area.

**"Indemnified Parties"** is defined in Section 14.1.

**"Indemnify"** means to indemnify, protect, defend, and hold harmless forever.

**"Indemnification"** and **"Indemnity"** have correlating meanings.

**"Interest Rate"** means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

**"Investigate"** or **"Investigation"** when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the License Area, any other Port property in the vicinity of the License Area, or the environment, and includes, without limitation, preparation of site history reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

**"Invitees"** means Licensee's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, Sublicensees, and any other person whose rights arise through them.

**"Late Charge"** means a fee equivalent to fifty dollars (\$50.00).

**"Law"** means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the License Area, including Regulatory Approvals issued to Port which require Licensee's compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the License Area, whether in effect when this License is executed or at any later time and whether or not within the present contemplation of the parties.

**"License"** is defined in Section 1.

**"License Area"** means the area described in the Basic License Information.

"**License Fee**" means the monthly usage charge for the License Area described in the Basic License Information.

"**Notice to Cease Prohibited Use**" is defined in Section 7.

"**Notice to Vacate**" is defined in Section 2.2.

"**OSHA**" means the United States Occupational Safety and Health Administration.

"**PACMs**" is defined in Section 15.6.

"**Permitted Activity**" is means the activity described in the Basic License Information.

"**Port**" is defined in Section 1.

"**Port's Termination Right**" is defined in Section 3.

"**prevailing party**" is defined in Section 19.1.

"**Prohibited Use**" is defined in Section 7.

"**Regulatory Agency**" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, commissioners, or other officials, including the Bay Conservation and Development Commission, any Environmental Regulatory Agency, the City and County of San Francisco (in its regulatory capacity), Port (in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"**Regulatory Approval**" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"**Release**" when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the License Area, other Port property in the vicinity of the License Area, or the environment.

"**Remediate**" or "**Remediation**" when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. "**Remediation**" also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

"**SWPPP**" is defined in Section 15.8.

"**Term**" is defined in Section 3.

"**Waiving Party**" is defined in Section 11.5.

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**IN WITNESS WHEREOF**, Port and Licensee have executed this License as of the last date set forth below

*Licensee:* **GSW ARENA LLC**, a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date signed: \_\_\_\_\_

*Port:* **CITY AND COUNTY OF SAN FRANCISCO**,  
a municipal corporation, operating by and through the  
**SAN FRANCISCO PORT COMMISSION**

By: \_\_\_\_\_

Kimberly Beal,  
Acting Deputy Director, Real Estate and Development

Date signed: \_\_\_\_\_

*Approved as to Form:* **DAVID CHIU**, City Attorney

By: \_\_\_\_\_

Grace Park,  
Deputy City Attorney

License Prepared by Jennifer Gee, Senior Property Manager \_\_\_\_\_ (initial)

**EXHIBIT A**  
**LICENSE AREA**

(To be attached.)

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**SCHEDULE 1**  
**HAZARDOUS MATERIALS DISCLOSURE**



## MEMORANDUM

May 5, 2023

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Willie Adams, Vice President  
Hon. Gail Gilman  
Hon. Ed Harrington  
Hon. Steven Lee

**FROM:** Elaine Forbes  
Executive Director

**SUBJECT:** Request approval of a proposed License 17036 with GSW Arena, LLC, a Delaware limited liability company (“GSW”), for 3 separate white zone curb spaces totaling approximately 624 linear feet, 2 separate yellow zone curb spaces totaling approximately 337 linear feet and 80 metered parking spaces on game and special event dates located in and around Chase Center for a term of 10 years with two (2) five-year options to extend, subject to Board of Supervisor’s approval.

**DIRECTOR'S RECOMMENDATION:** Approve the Attached Resolution No. 23-24

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***On April 28, 2023, the Port Commission heard an information item on a proposed license between the Port and GSW Arena, LLC (“GSW”). The only substantive change to this memorandum compared to the informational memorandum is the recommended approval and inclusion of a resolution at the end of this document.***

### EXECUTIVE SUMMARY

The Port and GSW entered into Port License to Use Property No. 16688 which commenced on August 22, 2019 and will expire on June 30, 2023, for the non-exclusive use of white zones and yellow zones and reservation of metered parking spaces on Port streets in and around the Chase Center on game and special event

dates. Port and GSW wish to enter a new License 17036 (the “License”) for an initial 10-year term with two (2) five-year extension options for the non-exclusive use of the same area and use under License No. 16688. This new license will continue GSW’s use of these white and yellow zones and metered parking spaces.

This is being brought to the Port Commission because the term exceeds five years (10-year License term) and will generate more than \$1 million (\$1,524,272) in License fees for the initial term with total estimated License fees equaling \$3,572,765 if the extension options are exercised. In addition to the monthly License fee, GSW will pay the Port \$1,008 for use of eighty (80) metered parking spaces for each game and special event. This rate will increase as the City’s parking meter rate for and around the License area increases. All other terms and conditions, including License fees, conform to the Port Commission’s approved FY 22/23 parameter terms and conditions (Port Resolution 22-41).

Under Charter Section 9.118, the License will also require approval by the Board of Supervisors because the length of term is over ten years and anticipated rent revenue exceeds \$1 million over the term of the License.

## **STRATEGIC OBJECTIVE**

The proposed License is consistent with the Economic Growth and Evolution objectives of the Strategic Plan by maintaining a rent-paying tenant in place for 10 years with annual rent increases over the term and improving access to the waterfront and transportation service along Port jurisdiction.

## **BACKGROUND**

Since the opening of Chase Center in 2019, GSW has been licensing approximately 624 linear feet of white zone curb space, 337 linear feet of yellow zone curb space and 80 metered parking spaces on Terry Francois Boulevard, Warriors Way, and 16<sup>th</sup> Street. On game and special event days, GSW also pays Port a parking fee to reserve (80) metered parking spaces, the locations which have been identified and agreed upon between the parties, on Terry Francois Boulevard, 16<sup>th</sup> Street and Illinois Street.

The initial term for License 16688 commenced on August 22, 2019 and will expire on June 30, 2023. License fees under the current License are: (1) \$11,080.25 per month (current parameter at \$325 per linear feet) with a 3% annual increase for the white zones and (2) \$1,008 each game or special event for the metered parking spaces (\$12 per space per game or event).

GSW is a tenant in good standing, and Port staff proposes GSW’s continued use of the loading zones and metered spaces which will allow a continual revenue stream to Port over 10 years, improve traffic flow, pedestrian and vehicular safety and parking enforcement on Port streets in and around Chase Center.

**PORT’S TRAFFIC HARBOR CODE AND ENVIRONMENTAL REVIEW**

On November 3, 2015, the San Francisco Commission on Community Investment and Infrastructure (OCII), the successor agency to the former San Francisco Redevelopment Agency, reviewed and considered the Final Subsequent Environmental Impact Report for the Golden State Warriors Event Center and Mixed-Use Project at Mission Bay Blocks 29-32 (FSEIR) and, by OCII Resolution No. 12 69-2015, certified the FSEIR in compliance with California Environmental Quality Act. On December 8, 2015, the Board of Supervisors upheld OCII’s certification of the FSEIR (Board of Supervisors File No. 150991). The uses permitted by the License are within the scope of the project evaluated in the FSEIR.<sup>1</sup>

On December 13, 2022, the Port Commission approved amendments to the Port’s Harbor Traffic Code that designated passenger and commercial loading zones and installation of parking meters in and around Chase Center (Port Resolution 22-67). GSW’s proposed use of the passenger and commercial loading zones and metered spaces are permitted under the Port’s Harbor Traffic Code as amended on December 13, 2022. The proposed use has also been brought to the Southern Advisory Committee.

**PROPOSED LICENSE TERMS**

The schedule below is an outline of the important terms and conditions of the License:

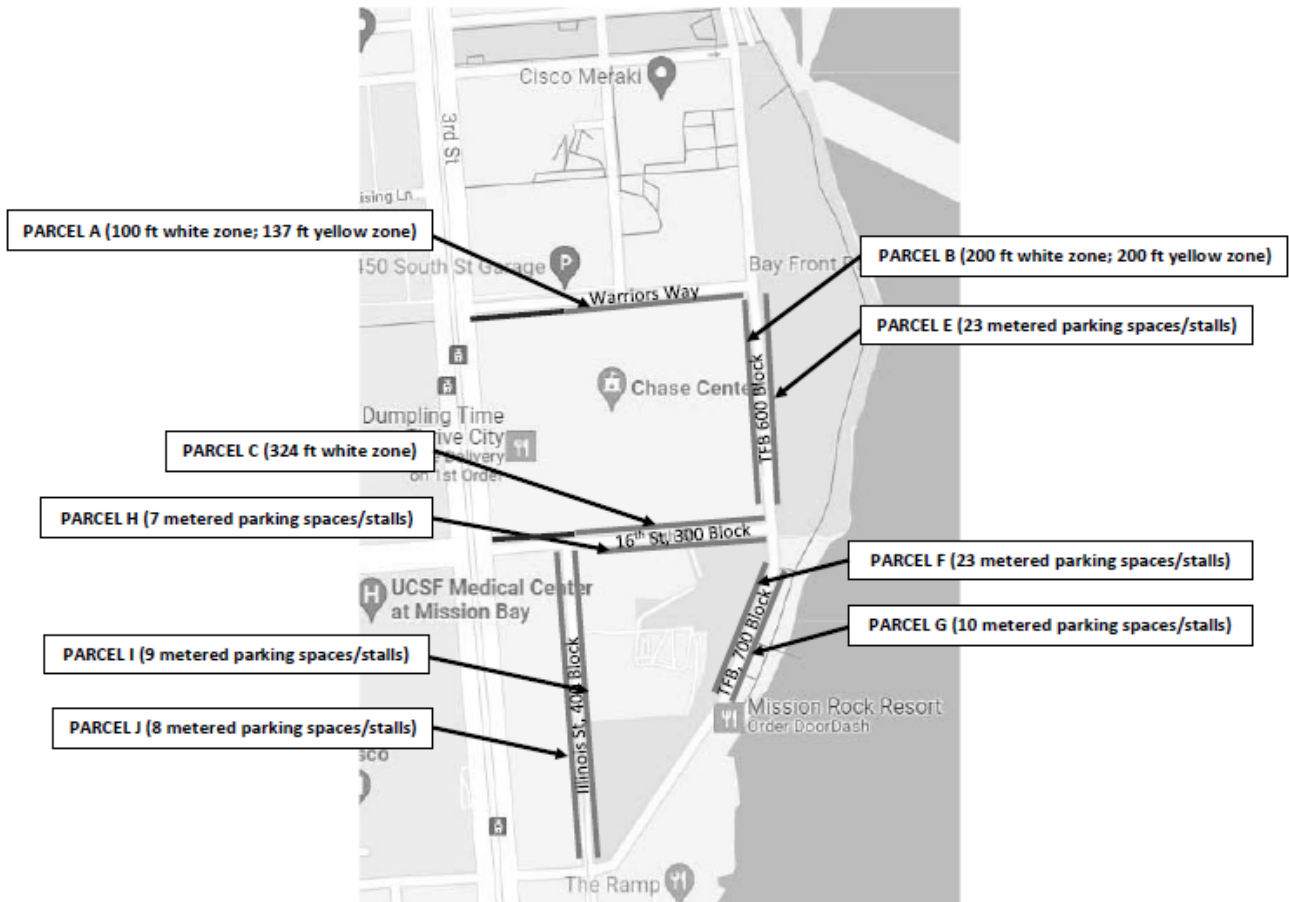
<i>License Area:</i>	<p>The License Area is comprised of the following Parcels A-C and Parcels E-J:</p> <p><b><u>Curb Space:</u></b>  <b>Parcel A:</b> Approx. 100 rentable linear feet of white zone curb space and 137 rentable linear feet of yellow zone curb space located on the south side of Warriors Way between Bridgeview and Terry Francois Blvd.  <b>Parcel B</b> – Approx. 200 rentable linear feet of white zone curb space and 200 rentable linear feet of yellow zone curb space located on the west side of Terry Francois Blvd between Warriors Way and 16<sup>th</sup> Street.  <b>Parcel C</b> - Approx. 324 rentable linear feet of white zone curb space located on the north side of 16<sup>th</sup> Street between Illinois Street and Terry Francois Blvd.  <b><u>Parking Stalls and Spaces:</u></b>  <b>Parcel E</b> –Twenty-three (23) metered parking spaces on the east side of Terry Francois between 16<sup>th</sup> Street and Warriors Way.</p>
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	<p><b>Parcel F</b> - Twenty-three (23) metered parking spaces on the west side of Terry Francois Blvd., south of 16<sup>th</sup> Street.</p> <p><b>Parcel G</b> – Ten (10) metered parking spaces on the east side of Terry Francois Blvd. south of 16<sup>th</sup> Street.</p> <p><b>Parcel H</b> - Seven (7) metered parking spaces on the south side of 16<sup>th</sup> Street.</p> <p><b>Parcel I</b> - Nine (9) metered parking spaces on the east side of Illinois Street.</p> <p><b>Parcel J</b> - Eight (8) metered parking spaces on the west side of Illinois.</p>
<i>Permitted Activity:</i>	<p><b>All uses are non-exclusive:</b></p> <p><b>Parcels A, B and C</b> (White and Yellow Curb Space) – White Curbs shall be used solely for passenger loading and unloading during events at Chase Center or Thrive City. The Yellow Curbs shall be used for commercial loading for Chase Center and Thrive City and for no other purpose.</p> <p><b>Parcels E – J</b> (Metered Parking Spaces) – shall be used solely for Transportation Network Company (“TNC”) passenger drop off and pick up, SFMTA bus staging and/or other vehicles associated with and directly supporting games and Special Events at Chase Center or Thrive City during, before, and after games and Special Events at the Chase Center or Thrive City General vehicle parking and all other uses authorized by Port are allowed at all other times.</p>
<i>Length of Term:</i>	Ten (10) Years
<i>Extension Option:</i>	Licensee shall have two (2) consecutive options to extend the term for a period of (5) years
<i>Commencement Date:</i>	July 1, 2023
<i>Expiration Date:</i>	June 30, 2033
<i>Monthly License Fee:</i>	<p><b><u>White Zone Curb Space Fee</u></b></p> <p>Parcel A - \$1,775.68 per month  Parcel B - \$3,551.36 per month  Parcel C - \$5,753.21 per month</p> <p>On each Anniversary Date on which this License is in effect, the Monthly White Zone Curb Space Fee shall increase by three percent (3%).</p>



	<p><b>License Fees for Parcels A-C During Extension Terms</b>  During the first year of each Extension Term (7/1/2033 and 7/1/2038), the License Fee for Parcels A-C shall be equal to the higher of: (a) the License Fee payable in the month immediately preceding the expiration of this License multiplied by three percent (3%) or (b) the then current rate for similar spaces in the general vicinity of the License Area approved by the Port Commission. Each succeeding year during an Extension Term, the License Fee for Parcels A-C will increase by 3%.</p> <p><b><u>Parking Stalls and Spaces Fee</u></b>  Parcels E-J - \$12 per meter per event (not to exceed \$1,008 per event for all metered spaces)</p>
<p><i>Security Deposit:</i></p>	<p><u>No less than</u> two-times the Monthly License Fee</p>

**PROPOSED LICENSE AREA**



## **RECOMMENDATION**

Port staff recommends that the Port Commission approve the attached resolution authorizing the Executive Director or her designee to: forward the License to the Board of Supervisors for approval and, upon the effectiveness of such approval, execute the License on the terms described in this memorandum and substantially in the form of the License on file with the Commission Secretary.

Prepared by:                   Jennifer Gee, Senior Property Manager  
Real Estate and Development

For:                               Rebecca Benassini, Deputy Director  
Real Estate and Development

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 23-24**

WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and

WHEREAS, GSW Arena, LLC is in good standing under its current License 16688 for passenger and commercial loading zones and metered parking spaces and stalls on game and special event days for Port streets in and around Chase Center, in the City and County of San Francisco; and

WHEREAS, Port Staff has negotiated the terms of a new 10-year proposed License 17036 (the "License") with two (2) five-year options to extend with GSW Arena, LLC for the non-exclusive license of 3-separate white zone curb spaces totaling 624 linear feet, 2-separate yellow zone curb spaces totaling 337 linear feet and 80 metered parking spaces and stalls on game and special event days in and around Chase Center; and

WHEREAS, On November 3, 2015, the San Francisco Commission on Community Investment and Infrastructure (OCII), the successor agency to the former San Francisco Redevelopment Agency, reviewed and considered the Final Subsequent Environmental Impact Report for the Golden State Warriors Event Center and Mixed-Use Project at Mission Bay Blocks 29-32 (FSEIR) and, by OCII Resolution No. 12 69-2015, certified the FSEIR in compliance with California Environmental Quality Act; and

WHEREAS, December 8, 2015, the Board of Supervisors upheld OCII's certification of the FSEIR (Board of Supervisors File No. 150991); and

WHEREAS, The uses permitted by the License are within the scope of the FSEIR; and

WHEREAS, Port staff recommends approval of the proposed License with GSW Arena, LLC on terms described in the Memorandum to the Port Commission dated May 5, 2023 and substantially in the form of the License on file with the Commission Secretary; and now therefore be it

RESOLVED, The Port Commission determines that the uses permitted by the proposed License are within the scope of the project evaluated in the FSEIR, and hereby approves the terms of the proposed License with GSW Arena, LLC on terms described in the Memorandum to the Port Commission dated May 5, 2023 and substantially in the form of the

License on file with the Commission Secretary and authorizes the Executive Director or her designee to forward the License to the Board of Supervisors (“Board”) for approval, pursuant to the Board’s authority under Charter Section 9.118, and upon the effectiveness of such approval, to execute the License; and be it further

RESOLVED,

That the Port Commission authorizes the Executive Director or her designee, to enter into any additions, amendments or other modifications to the License that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the Port or materially decrease the public benefits accruing to the Port, and are necessary and advisable to complete the transaction and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of May 9, 2023.***

DocuSigned by:  
  
Secretary  
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## Introduction Form

*(by a Member of the Board of Supervisors or the Mayor)*



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)  
*(Routine, non-controversial and/or commendatory matters only)*
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor  inquires..."
- 5. City Attorney Request
- 6. Call File No.  from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission       Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes                       No

*(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)*

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: