

CITY AND COUNTY OF SAN FRANCISCO

GAVIN NEWSOM, MAYOR

**MEMORANDUM OF UNDERSTANDING
PORT REF. NO. MOU M-13828**

BY AND BETWEEN

THE SAN FRANCISCO PORT COMMISSION

AND

**THE
SAN FRANCISCO
DEPARTMENT OF PARKING AND TRAFFIC,
A DIVISION OF THE
MUNICIPAL TRANSPORTATION AGENCY**

PORT OF SAN FRANCISCO

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MEMORANDUM OF UNDERSTANDING
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THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into by and between the Department of Parking and Traffic ("DPT"), a division of the Municipal Transportation Agency, an agency of the City and County of San Francisco ("MTA") and the San Francisco Port Commission, an agency of the City and County of San Francisco ("Port").

RECITALS

A. Pursuant to an MOU dated June 1, 1994, as amended March 7, 1996 ("1994 MOU"), Port leased to DPT approximately 13.66 acres of property for the purpose of storing and handling abandoned automobiles, and related uses. The 1994 MOU replaced an earlier 1987 license between the Port and the San Francisco Police Commission for a similar use at the same location.

B. The initial term of the 1994 MOU expired on May 31, 1999, after which date the 1994 MOU has continued on a month-to-month basis in accordance with its terms. The 1994 MOU premises are presently being used by TEGSCO, LLC, a California limited liability company, dba San Francisco AutoReturn ("AutoReturn") for its automobile towing, storage and lien sale operations pursuant to an Emergency Interim Service Agreement and Property Use License for Towing, Storage and Disposal of Abandoned and Illegally Parked Vehicles between DPT and AutoReturn ("Emergency Interim Agreement"), approved by the Board of Supervisors by Resolution No. 423-04 on July 13, 2004, File No. 040638.

C. DPT is currently negotiating a long term towing services agreement ("Towing Agreement") pursuant to which DPT anticipates licensing the Port property shown in Exhibit A to this MOU ("License") to the long term towing services provider ("Licensee") and the Licensee is expected to continue use of the real property described herein for the purpose of automobile towing and storage and to conduct weekly public lien sales or auctions, subject to all of the applicable terms and conditions of this MOU, the Towing Agreement and License.

D. Under the Charter of San Francisco, the administration and control of real property transferred to the City of San Francisco by the State of California pursuant to the legislative trust grant, commonly referred to as the Burton Act (Chapter 1333 of Statutes of 1968), as amended including the area encompassing the real property which is the subject of this MOU, is vested in the Port.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Termination of 1994 MOU/Effective Date. The Port and DPT hereby mutually agree that the 1994 MOU will be terminated on the Effective Date of the Towing Agreement as defined therein, which date shall be the effective date ("Effective Date") of this MOU. The 1994 MOU contained the following acknowledgment: "Because the rental fees due hereunder are not intended to cover risks associated with DPT's use of the Premises and because of certain funding restrictions imposed on Port funds due to public trust restraints, it is the understanding of the parties that Port shall not expend any funds due to or in connection with DPT's, or its contractor's, use of the Premises." Accordingly, DPT agreed to hold the Port harmless from claims, damages, liabilities or losses as specified in Section 12 of the 1994 MOU, and Section 12 further provided that: "The foregoing obligation of DPT shall survive termination of this agreement." Therefore, the parties hereto recognize that DPT's obligations under Section 12 of the 1994 MOU survive the termination of the 1994 MOU.

3. Premises/Condition.

a. Parcel A. For the Rent and subject to the terms and conditions of this MOU, Port hereby authorizes DPT to use the area located at Pier 70 and SWL 349 in the City and County of San Francisco, California, shown outlined and marked Parcel A on Exhibit A, attached hereto and made a part hereof, including approximately 406,810 square feet of paved land and 112,518 square feet of shed space contained in 5 buildings that are as shown on Exhibit A, and 3,967.8 square feet of Unusable Area as shown on Exhibit A and reserving a non-exclusive right of way in the general area shown on Exhibit A as Reserved 22nd Street Extension, an area extending from the east end of 22nd Street through Parcel A and connecting with the east end of 20th Street, together with any improvements located thereon (the "Parcel A Premises").

b. Parcel B. For the Rent and subject to the terms and conditions of this MOU, including but not limited to the obligation to obtain a permit from the San Francisco Bay Conservation and Development Commission ("BCDC") for the uses contemplated under this MOU, Port hereby authorizes DPT to use the area located at Pier 70 and SWL 349 in the City and County of San Francisco, California, shown outlined and marked Parcel B on Exhibit A attached hereto, including approximately 17,241 square feet of paved land (the "Parcel B Premises").

c. Definition of Premises. The Parcel A Premises and the Parcel B Premises are hereinafter collectively referred to as the "Premises."

d. Condition. DPT hereby acknowledges that hazardous substances may exist on the Premises, and that it will be responsible for notifying its Licensee as required by Health and Safety Code Section 25359.7. DPT further acknowledges that DPT has permitted, and will permit its Licensees to use the Premises for the purposes authorized herein. DPT agrees that the Port shall have no responsibility for: (i) terminating Licensee's use of the Premises, (ii) removing Licensee's possessions, (iii) removing Licensee's vehicles and (iv) removing other materials (including Hazardous Materials if any) put on the Premises by Licensee(s).

e. Requirement to Fence. DPT shall have the affirmative obligation to install and maintain Port-approved fencing along the perimeter of the Premises. Port agrees that the existing perimeter fencing meets its requirements; provided, however, that if DPT fails to satisfy the condition of obtaining BCDC approval for use of Parcel B, and surrenders possession of Parcel B to the Port, DPT shall install and maintain Port approved fencing along the adjusted perimeter of the Premises. The installation cost of the fencing needed as a result of the Port extending 22nd Street through the Premises shall be the responsibility of the Port.

4. Term. DPT will use the Premises from the Effective Date through a date five (5) years from the Effective Date ("Expiration Date"), but not later than September 1, 2010. DPT shall have the right to terminate the MOU at any time during the Term of the MOU provided that DPT also terminates the License, upon providing to the Port one hundred eighty (180) days prior written notice. On a date no sooner than three (3) years and no later than two (2) years prior to the Expiration Date DPT shall send written notice to the Port Executive Director stating whether DPT intends to extend the MOU beyond the Expiration Date and requesting a meeting between DPT and the Port to discuss the parties' plans for the Premises. In the event that DPT wishes to extend this MOU beyond the Expiration Date, it shall so notify Port in writing at least one hundred eighty (180) days prior to the Expiration Date, and thereupon DPT's use of the Premises shall continue on all of the terms and conditions stated herein, except for Rent which shall be governed by Section 5(c), unless the Port has notified DPT one hundred eighty (180) days prior to the Expiration Date in writing that the MOU may not be extended. If the MOU is extended as provided above beyond the Expiration Date, either party hereto may terminate the MOU upon providing to the other party one hundred eighty (180) days prior written notice. In no event shall any hold over period extend beyond March 1, 2012. The definition "Term" shall refer to the total time period during which this MOU exists as a legally binding agreement between the parties, including all month-to-month extensions.

5. Rental Payments.

a. Rent. DPT will cause to be paid a monthly rental fee of \$118,830.00 (one hundred eighteen thousand eight hundred thirty dollars) for Parcel A and \$2,850 (two thousand eight hundred fifty dollars) for Parcel B ("Rent") to Port in lawful money of the United States of America at Port's address for notices, as set forth herein, on or before the 1st of the month for which the Rent is due, without prior demand and without any deduction, setoff or counterclaim whatsoever, except as such deduction or setoff is specifically provided for in Section 5(d) [Rent Abatement and Credits]. Use of the Premises for any partial month will be prorated at the rate of one-thirtieth (1/30) of the monthly charge.

If DPT fails to pay Rent or any portion of Rent within ten (10) days following the due date, such unpaid amount shall be subject to a late payment charge (the "Late Charge") equal to one and one-half percent (1½%) of all undisputed amounts which remain unpaid, and/or one and one-half percent (1½%) of all undisputed amounts which are more than five (5) business days late. Such Late Charge may be assessed without notice and cure periods. The Late Charge shall start accruing as of the original due date of the owed amount notwithstanding the five (5) calendar day grace period provided herein.

b. Rent Adjustment. Commencing on the Effective Date of this MOU and on each anniversary date (the "Anniversary Date") thereafter, the Rent shall be adjusted on the first day of the month that immediately follows the Effective Date and on that same date in each succeeding year in direct proportion to the percentage increase in the Current CPI Index for the month immediately preceding the applicable Anniversary Date ("Current Index") over the CPI index for the month of June, 2004 ("Base Index"). In no case shall the Rent, as adjusted, be less than the Rent in effect immediately prior to the Anniversary Date. If the Current Index has increased over the Base Index, the adjusted Base Rent shall be determined by multiplying the Base Rent by a fraction, the numerator of which is the Current Index and the denominator of which is the Base Index, as follows:

$$\frac{\text{Current Index}}{\text{Base Index}} \times \text{Base Rent} = \text{Adjusted Base Rent}$$

c. Extension Period Rent. Should DPT hold over beyond the Expiration Date specified in Section 4 of this MOU, Rent shall be increased to an amount equal to one hundred twenty percent (120%) of the Rent payable by DPT on the last calendar month of the initial five-year term on a month-to-month basis until such time as the parties renegotiate the Rent payments for any additional term, or the MOU terminates. The Extension Period Rent shall be subject to further Rent Adjustment per Section 5(b) of this MOU.

d. Rent Abatement and Credits.

1. If the Premises cease to be used for towing operations at any time due to damage sustained during the Term by fire, earthquake, or other casualty rendering the Premises unsuitable for occupancy, as determined by the Director of Building Inspection pursuant to the San Francisco Building Code, or are otherwise deemed legally not useable for any reason, Rent hereunder shall be abated and DPT shall have the option to terminate the MOU and shall be entitled to a prorated refund of any Rent or deposits paid. In the event the Premises ceases to be used for more than two (2) consecutive months for towing operations, Port, at its option, may terminate this MOU.

2. DPT shall be entitled to a proportional abatement in the Rent if the exercise of any rights reserved to the Port in this MOU, results in the loss of use of the Premises or any portion thereof for a period in excess of thirty (30) days or in an area in excess of 250 square feet, or if DPT surrenders the possession of Parcel B to the Port for the sole reason that it is unable to obtain a BCDC permit for use of Parcel B consistent with this MOU. The opening of 22nd Street by the Port for

non-exclusive, general circulation through the Pier 70 area may occur at the Port's sole option without Rent abatement. The planned alignment for the 22nd Street Extension is as shown on Department of Parking and Traffic, Division of Traffic Engineering drawing on file with the Port's Chief Harbor Engineer, entitled "New Pier 70 Roadway – Preliminary Striping Plan", dated June 28, 2001, File Name swl349sv newroad final.dwg. The parties recognize that the final alignment may deviate as necessary to effect the right of way improvement.

3. In the event Port requires the modification of the original configuration of the Premises, any reasonable and actual costs incurred by Licensee to relocate the Premises, fences, gates, lights, driveways and other improvements in order to comply with such requirement may be offset from the Rent, except for such costs incurred with respect to the opening of 22nd Street by the Port for non-exclusive, general circulation through the Pier 70 area, which may occur at the Port's sole option without Rent abatement; however in such event Port shall be responsible for the cost of any fencing that Port requires along the extended 22nd Street corridor. The parties agree that any such costs incurred to modify the original configuration of the Premises due to a surrender of possession of Parcel B to the Port due to DPT's inability to obtain a BCDC permit for use of Parcel B consistent with this MOU may not be offset from the Rent.

4. At any time during the Term of the MOU, the Port may elect to implement the extension of 22nd Street in the approximate location shown on Exhibit A. In order to fully implement the extension of 22nd Street, a fence will have to be installed around certain areas demising the Premises from the new roadway to provide for adequate security for the Premises. The responsibility to construct the fence is at the sole cost and expense of the Port. Both Port and DPT herein agree that, at the Port's option, Port Executive Director may require DPT's Licensee, upon ninety (90) days written notice, to construct the fence at a cost not to exceed the Construction Costs defined below. The scope and specification of the fence shall be in the Port's sole discretion. In consideration for installation of the fence by DPT's Licensee, and expenditures related thereto, and upon approval by Port of Construction Costs, Port shall issue an appropriate rent credit (herein "Rent Credit") to DPT. The Rent Credit shall be a sum equal to the Construction Costs, or a sum not to exceed one hundred fifty thousand dollars (\$150,000.00), whichever is the lesser amount. In the event that Licensee determines that the fence specified by the Port does not meet its security or related needs, it may elect to apply the Rent Credit for estimated Construction Costs of the fence specified by the Port to the costs of an alternate fence, provided that: (i) it obtains a building permit from the Port for construction of the alternate fence, (ii) the alternate fence is more expensive than the fence initially specified by the Port, and (iii) the Port Executive Director approves the plan for the alternate fence. "Construction Costs" are defined to be the lesser of the estimated or actual costs incurred for labor, materials, contractor fees, and reasonable architecture and engineering fees in connection with the project pursuant to a bid obtained under a guaranteed not-to-exceed construction bid for the fence project that is approved by the Port Executive Director. In order for construction of the project to be authorized by Port: DPT must first obtain, prior to commencing the project, written approval from Port Executive Director that the Construction Costs of the proposed project are reasonable; and DPT, or its Licensee, must obtain all required governmental approvals, including, but not limited to building permits. After the completion of the

approved project, DPT must deliver to Port an itemized statement of the actual Construction Costs expended on the approved project, accompanied by documentation substantiating all said expenditures. Such documentation of expenditures shall include: (i) copies of executed contracts; (ii) copies of invoices for labor, services and/or materials, copies of bills of lading, and/or copies of other bills or receipts for goods, materials and/or services; (iii) copies of canceled checks, and (iv) such other proofs of expenditure as may be reasonably requested by Port. Such appropriate proofs of expenditure may include copies of canceled checks; copies of contracts or invoices for labor, services and/or materials marked "Paid", or otherwise evidenced as having been paid bills of lading marked "Paid"; other bills, contracts, receipts for goods materials and/or services marked "Paid" and such other proofs of expenditure as may be reasonably approved by Port. All such proofs of expenditure must be directly attributable to the approved project and may include materials purchased by DPT for installation by Port but not the Port's cost if it undertakes such installation.

e. Formula for Abatement/Credit. All rent credits available to DPT permitted by Section 5(d) shall be applied against Base Rent payment obligation during the Term at a rate not greater than one half (1/2) of the applicable month Base Rent payment and shall be applied if and only if DPT is in good standing and is not in default of any of the terms of this MOU. In the event that the total of rent credits available to DPT pursuant to Section 5(d) and any other sections of this MOU exceeds an amount equal to one half (1/2) of the Base Rent payment for any one calendar month, the remaining available Rent Credit shall be carried forward to successive calendar months at a rate not to exceed one half (1/2) of the applicable Base Rent payment, until all available rent credits have been fully applied. In no event, however, shall DPT be entitled to the application of any rent credits or the value thereof, beyond the expiration or earlier termination of this MOU.

6. Financial Assurances and Fines for Violations.

a. DPT agrees that it shall require Licensee to provide DPT and the Port with a security deposit of **at least \$1,000,000.00** to secure Licensee's obligations under this MOU, the Towing Agreement and the License ("Security Deposit").

b. The parties agree that **at least \$250,000.00** of the Security Deposit shall be reserved as a security for rental payments ("Rental Payment Security Deposit") due to Port hereunder, and DPT shall require Licensee to provide the Rental Payment Security Deposit in the form of a financial guarantee that is directly accessible to the Port at all times during the term of the License. The amount of the Rental Payment Security Deposit shall be increased in accordance with increases in Rent so as to equal at least two months' Rent at all times.

c. The parties agree that **at least \$400,000.00** of Licensee's Security Deposit shall be reserved for the purposes of (i) ensuring regulatory compliance and to pay Port and DPT costs in the event that Licensee receives a notice of violation or other regulatory order from a governmental or regulatory agency with jurisdiction over the Premises and or Licensee's operations (other than from the Port) and Licensee does not achieve compliance with the notice of violation or order to the satisfaction of the issuing agency within the time specified by the agency or by the City if the agency does not

specify a timeframe; or (ii) reimbursement of any fine or other charge assessed against the City related to any notice of violation or other regulatory order issued to Licensee; or (iii) reimbursing the City for costs associated with City's environmental assessments or corrective action, which may be performed at the City's sole discretion; or (iv) for property damage to the Premises ("Environmental and Property Security Deposit"). DPT shall require Licensee to provide the Environmental and Property Security Deposit in the form of a financial guarantee that is directly accessible to the Port at all times during the term of the License.

d. DPT agrees that it shall require Licensee to provide, maintain and replenish throughout the Term of the License and for a period of at least ninety (90) days after expiration of the License, an Environmental Oversight Deposit in the amount of \$10,000, which shall be deposited in an account to be specified by and accessible to the Port. If Licensee receives a notice of violation or other regulatory order from a governmental or regulatory agency with jurisdiction over the site and or its operations (other than from the Port), and such notice is not cured within fourteen (14) days, the City may draw from this deposit to reimburse the City for staff costs incurred by the City while inspecting site conditions and enforcing and administering the Hazardous Materials provisions of the License. If Licensee receives a notice of violation or other regulatory order from a governmental or regulatory agency with jurisdiction over the site and or its operations (other than from the Port), and such notice is cured within fourteen (14) days, the City may draw from this deposit in an amount not to exceed \$500 to reimburse the City for staff costs incurred by the City. The City will submit an invoice to Licensee for any such costs, and Licensee will pay such invoiced amounts within thirty (30) days to replenish the Environmental Oversight Deposit.

e. Port and DPT agree to cooperate in enforcement of the License requirements, including the imposition of any fines allowed under Section 6.7 of the License as appropriate. DPT shall have primary responsibility for enforcement of fines and providing notification of violations to Licensee. If Port identifies violations of the License requirements, it may notify DPT and DPT shall notify Licensee of the violation and imposition of fines within three (3) business days. In the event that Port notifies DPT of a violation of the License which results in the imposition of fines pursuant to Section 6.7, the fines for such violations shall be paid to Port.

7. Permitted Uses. The Premises shall be used for temporary storage and transfer of motor vehicles towed pursuant to the Towing Agreement between DPT and Licensee, for related office use as necessary to meet its obligations under the Towing Agreement and to conduct weekly public auction "lien sales" required by state laws and related uses, and for no other purpose. The buildings identified as Buildings 12, 15, 16, 31, and 32 on Exhibit A shall only be used to store vehicles and shall not be used as office space. Occupancy of the loft area of Building 12 will not be permitted unless all State and City Code requirements are satisfied, as determined by the Port. DPT and Licensee shall not use the Premises for any other purpose, including, without limitation, vehicle crushing and dismantling. Licensee may seek authorization from the Port Executive Director and DPT to maintain, fuel or wash vehicles and/or to sell vehicle parts from the Premises for the purpose of making auctioned or lien sold vehicles operable. These activities may only be conducted on the Premises after both of the following

occur: (i) the Port Executive Director and DPT authorize the specific activity in writing, and (ii) the specific activity is incorporated as authorized into the appropriate section of the Operations Plan as described in Section 14(k) herein, including a description of the manner in which the activity will be conducted on the Premises, and such addition to the Operations Plan is approved as required by Section 14(k) herein, the Towing Agreement, Appendix A Section 14 and Appendix B. Once approved as provided herein, such approval of Operations Plan elements listed in Appendix B as "Pier 70 Operation Plan Elements" may not be revoked except as part of a regular amendment of the Operations Plan under the Towing Agreement. DPT, SFPD, its Licensee and their respective agents or employees shall use 20th and/or 22nd Street for access and egress to and from the Premises. No loading, unloading, queuing, parking or storage of vehicles will be permitted on any adjacent Port property, public streets or rights-of-way in the vicinity unless provided for in a separate agreement executed by both parties. DPT shall not authorize the placement of advertising or signage in areas on or about the Premises without the prior written permission of the Port, subject to the Port sign guidelines. DPT agrees to require and enforce an Operations Plan through the Towing Agreement, which will incorporate the provisions required in Section 14(k) of this MOU.

8. BCDC Permit. Port shall cooperate with DPT and its Licensee(s) in obtaining any necessary BCDC permits and approvals, including, if necessary, joining with DPT or Licensee as a co-applicant, provided that DPT or Licensee pay all fees and satisfy all conditions incurred in the BCDC process.

9. Maintenance, Improvements, Utilities, Surrender of Premises. DPT will be strictly responsible for the security of the Premises, and the maintenance of the Premises and all utilities thereon in good order and repair. DPT agrees not to make or authorize any improvements or alterations to the Premises without the prior written consent of Port, which consent shall not be unreasonably withheld. DPT will pay, or cause to be paid for, all utility services provided to the Premises, including but not limited to electricity, water, sewer, gas and telephone, and will provide any scavenger service necessitated by its use of the Premises. At the expiration or sooner termination of this MOU, DPT shall surrender the Premises clean and free of any vehicles, auto parts, Hazardous Materials or other materials introduced and stored on the Premises by DPT or its Licensee(s) and shall repair any damage to the Premises occasioned by DPT's use, excluding ordinary wear and tear. DPT shall require the Licensee to have a letter of credit or other guarantee securing Licensee's obligation to remove all vehicles, auto parts, Hazardous Materials, improvements, alterations or other materials introduced and stored on the Premises by Licensee, in a form and amount acceptable to the Port, in its reasonable discretion.

10. Insurance. DPT shall require, pursuant to the Towing Agreement and/or any other written instrument acceptable to the Port, that Licensee and any other subtenant or any agent, contractor or subcontractor (collectively referred to as "Licensee" for the purpose of this section) it hires in connection with its use of the Premises shall secure such insurance as is recommended by the City Risk Manager and approved by Port, which approval shall not be unreasonably withheld. Such required insurance shall include, at a minimum, Commercial General Liability coverage with policy limits of five million dollar (\$5,000,000) per occurrence. All liability insurance policies shall be endorsed to

name the City and County of San Francisco, the Port Commission and their officers, directors and employees as additional insureds. DPT shall require the Licensee to provide to the Port certificates of insurance and policy endorsements upon execution of the Towing Agreement, and as the insurance and endorsements are renewed during the Term. For Commercial General Liability insurance required of the Licensee, DPT's Towing Agreement shall require the Licensee to provide an endorsement in the form of ISO Form 2026 or its equivalent, without modification.

11. Damages and Indemnity. DPT, directly and through its Licensee, agrees to be responsible for all costs associated with all claims, judgments, damages, penalties, fines, costs, liabilities or losses, including costs of defense and attorneys fees, which arise as the result of presence of Hazardous Materials (as defined in the License) on the Premises or out of any injury or death of any person or damage of any property occurring in, on or about the Premises, as the result of any other act or omission of DPT or the Licensee or the officers, directors, employees, agents, or invitees of DPT or the Licensee. The foregoing obligations of DPT shall survive the termination of this agreement. Furthermore, this MOU imposes no responsibility on DPT or Licensee for any claims, judgments, including costs of defense and attorneys' fees, damages, penalties, fines, costs, liabilities or losses which arise from existence of Hazardous Materials introduced onto the Premises by (1) the Port or its officers, directors, employees, agents, or invitees (unless by DPT or Licensee), or (2) any prior occupants, tenants, property owners, individuals, corporations or entities, except as otherwise expressly provided in Section 2 of this MOU.

12. Compliance of Licensee(s) with Terms; Port Consent; Assignment. During the Term of this MOU, DPT may issue a Request for Proposals ("RFP") or other solicitation to award a Licensee the right to enter into a Towing Agreement with DPT for the purpose of towing, storing and disposing of abandoned and illegally parked vehicles. DPT hereby agrees to include this MOU in any such RFP or solicitation. DPT further agrees that the Towing Agreement and any other agreement entered into by and between DPT and another party granting such party use of the Premises shall incorporate all of the terms and conditions of this MOU, and require Licensee's or such other party's agreement to comply with all of terms and conditions set forth hereunder. Prior to submitting Towing Agreement for approval, DPT shall provide Port with a copy of such Towing Agreement and the License to use the MOU Premises, and Port shall review the Towing Agreement and License for consistency with this MOU. Any License or other agreement granting a party use of the Premises shall be subject to the prior written consent of the Port Director, in the Port Director's reasonable discretion. Consent to the License shall not be construed as a waiver or release of any DPT obligation under this MOU, nor shall it create a privity of contract between Port and Licensee. DPT shall not consent to the assignment or assign the Towing Agreement or enter into any new agreement during the Term without the prior written consent of Port pursuant to this section. Prior to entering into a new agreement or assigning the Towing Agreement or License to a new Licensee, DPT will disclose to the Port any outstanding obligations of the previous Licensee, and present a plan describing how such obligations will be met by DPT and/or the Licensee or assigned to the new Licensee.

13. Entry.

a. Port may enter upon the Premises at any reasonable time with or without notice to DPT or the present occupant of the Premises when deemed reasonably necessary to oversee or inspect Licensee's operations or conduct any business with Licensee, to show the Premises to prospective tenants or other interested parties, to post notices of non-responsibility, to conduct any environmental audit of Licensee's use of the Premises, to repair, alter or improve any part of the Buildings, Building Systems or the Premises, whenever City believes that emergency access is required, for the protection of the Port's interests and for any other lawful purpose. In the event Port chooses to install or replace metal plates and bull rails around the trenches located on the Premises, DPT and any present occupant of the Premises shall permit such entry and shall cooperate with and not interfere with such work.

b. The Port reserves for itself and its designees, the right to enter the Premises and any portion thereof at all reasonable times upon reasonable advance oral or written notice to Licensee (except in the event of an emergency) for the following purposes: (a) to conduct inspections or inventories; (b) to install, inspect, sample, monitor, close and abandon permanent or temporary groundwater wells; (c) to obtain environmental samples from all media, from both on and offshore areas; (d) to conduct utility clearances; and (e) to conduct cleanup activities. Port shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Licensee's use hereunder. Licensee will cooperate with Port by complying with reasonable requests to temporarily relocate vehicles and other operations to accommodate the Port, at no expense to the Port. Except as otherwise specified herein, Port shall not be liable in any manner, and Licensee hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Port's or its designees' entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Port or its designees and not contributed to by the acts, omissions or negligence of Licensee or Contactor's Invitees.

14. Property Use Conditions. DPT shall include the following conditions in any property lease or license with any Licensee:

a. Requirement that Premises be Used. Licensee shall continuously use the Premises for the uses specified in this MOU.

b. Compliance with Laws and Regulations. Licensee, at Licensee's cost and expense, shall comply with all laws, ordinances, judicial decisions, orders and regulations of federal, state, county and municipal governments and the departments, courts, commissions, boards and officers thereof pertaining to Licensee's use and occupation of the Premises in effect either at the time of execution of the Towing Agreement or at any time during the Term. Licensee further understands and agrees to be responsible and comply within its leased Premises with 42 USCS 12101, et seq., commonly known as the Americans with Disabilities Act.

c. Mineral Rights. The State of California, 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 Premises. In accordance with the provisions of said statute, Port and Licensee shall and hereby do grant to the State of California the right to explore, drill for and extract said subsurface minerals, including oil and gas deposits, from an area located by the California Grid System, Zone 3, beginning at a point where X equals 1,456,113 and Y equals 463,597, extending 1,000 feet south, thence 1,000 feet east, thence 1,000 feet north, and thence 1,000 feet west, ending at said point of beginning.

d. Possessory Interest Tax. Licensee acknowledges and understands that a possessory interest subject to property taxation may be created by the Towing Agreement and that Licensee may be subject to the payment of property taxes levied on such possessory interest. Licensee further acknowledges that Licensee is familiar with San Francisco Administrative Code Sections 23.38-23.39, which require that Port submit a report, which includes specified information relating to the creation, renewal, sublease, or assignment of any such possessory interest, to the County Assessor within 60 days after any such transaction. Licensee agrees to provide to Port the information required by Sections 23.38-23.39 within 30 days of a request in writing by Port to do so.

e. Hazardous Materials

1. Each party to the MOU will cooperate to affirmatively enforce the License to the fullest extent possible and in a manner that protects the Premises and the City from potential liability related to Hazardous Materials and Environmental Laws.

2. The License shall require the Licensee, prior to termination of the License or during the Term if required by a governmental agency, at its sole cost and expense, to remove any and all Hazardous Materials introduced in, on, under or about the Premises by Licensee, its agents or invitees during the term of the License. Prior to the termination of the License, Port, DPT and Licensee shall conduct a joint inspection of the Premises for the purpose of identifying Hazardous Materials on the Premises which Licensee is required to remove.

3. If Licensee fails to fulfill its removal obligations, DPT shall undertake such obligations, or make funds available to the Port to fulfill such obligations.

f. Improvements and Alterations.

1. Definitions. "Alterations" means any alterations, including, but not limited to demolition, removal, installations or additions to or improvements to the Property, including the installation of any appurtenances or trade fixtures affixed to the Property, including those constructed by or on behalf of Licensee to the Improvements or to the Premises. "Improvements" means any and all buildings, structures, fixtures or other improvements constructed or installed on the Premises, including those constructed by or on behalf of Licensee pursuant to the Towing Agreement (including, without limitation, any trailers, signs, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping).

2. Construction Requirements. All Alterations or Improvements to the Premises made by or on behalf of Licensee shall be subject to the following conditions, which Licensee covenants faithfully to perform. Licensee shall not make, nor cause or suffer to be made, any Alterations or Improvements to the Premises until Licensee shall have first obtained DPT and Port written approval, and if granted, then obtained a permit therefore from the Port Engineering Department, with respect to the Premises, and any other permits or approvals as the Port's Chief Harbor Engineer deems necessary, and any required approvals of regulatory agencies having jurisdiction over the Premises. All Alterations or Improvements shall be done at Licensee's expense in accordance with plans and specifications approved by, and subject to any conditions imposed by, DPT and Port, and only by duly licensed and bonded contractors or mechanics approved by DPT. Any proposed Alterations to Buildings 12,15,16, 31, and 32 must comply with the federal Secretary of the Interior Standards of Rehabilitation, as determined by the Port. DPT may require Licensee, at Licensee's expense to obtain the prior written approval of City's Arts Commission with respect to any Alterations or Improvements, to the extent that Arts Commission has jurisdiction over the design of such proposed alterations under City's Charter Section 5.103. Licensee shall pay to Port any applicable permit fees for such Alterations in accordance with standard permit fees generally charged to Port tenants, as adopted by the Port Commission.

- (i) All Alterations and Improvements shall be constructed in a good and workmanlike manner and in compliance with all applicable building, zoning and other applicable Laws, and compliance with the terms of and the conditions imposed in any Regulatory Approval;
- (ii) All Alterations and Improvements shall be performed with reasonable dispatch, delays beyond the reasonable control of Licensee excepted; and
- (iii) At the completion of the construction of the Alterations or Improvements, Licensee shall furnish one (1) set of "as-built" drawings of the same made on or to the Premises. Unless otherwise stated as a condition of the Regulatory Approval, this requirement may be fulfilled by the submittal after completion of the Alterations or Improvements of a hand-corrected copy of the approved permit drawings.
- (iv) Licensee shall have procured and paid for all Regulatory Approvals (as defined in paragraph 14(i) below) required to be obtained for such Alterations or Improvements, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises.

3. Improvements Part of Realty. All Alterations or Improvements to the Premises made by or on behalf of Licensee which may not be removed without substantial injury to the Premises shall become part of the realty, shall be owned by Port and shall, at the end of the Term hereof, remain on the Premises without compensation to Licensee, unless Port first waives its right to the Alterations or Improvements in writing.

4. Removal of Improvements. At Port's election made in accordance with Section 14(f)5 hereof, Licensee shall be obligated at its own expense to remove and relocate or demolish and remove (as Licensee may choose) any or all Alterations or Improvements which Licensee has made to the Premises, including without limitation all telephone wiring and equipment installed by Licensee. Licensee shall repair, at its own expense, in good workmanlike fashion any damage occasioned thereby, except as may be provided in Section 14(f)(7) below.

5. Notice of Removal. Prior to the termination of the Towing Agreement, Port shall give written notice to Licensee (herein "Notice of Removal") specifying the Alterations or Improvements or portions thereof which Licensee shall be required to remove and relocate or demolish and remove from the Premises, in accordance with Section 14(f)4. If termination is the result of loss or destruction of the Premises or any Improvements thereon, Port shall deliver said Notice of Removal to Licensee within a reasonable time after the loss or destruction. If Licensee fails to complete such demolition or removal on or before the termination of the Towing Agreement, Port may perform such removal or demolition at Licensee's expense, and Licensee shall reimburse Port upon demand therefor. The Notice of Removal shall not include any Alterations which were previously designated as not subject to removal in accordance with Section 14(f)(7) below.

6. Removal of Non-Permitted Improvements. If Licensee constructs any Alterations or Improvements to the Premises without Port's prior written consent or without complying with Section 14(f)2 hereof, then, in addition to any other remedy available to Port, Port may require Licensee to remove, at Licensee's expense, any or all such Alterations or Improvements and to repair, at Licensee's expense and in good workmanlike fashion, any damage occasioned thereby. Licensee shall pay to Port all special inspection fees as set forth in the San Francisco Building Code for inspection of work performed without required permits.

7. Alterations Not Subject to Removal. Licensee may submit a request for a City determination to Port and DPT prior to commencing work on an Alteration, for the purpose of requesting a determination of whether the Alteration would or would not be required to be removed upon expiration or termination of this License. Such request for determination shall be submitted to DPT and to the Executive Director of the Port. The Executive Director of the Port shall have sixty (60) days to review the request and to respond to Licensee with a determination of whether the proposed Alteration would or would not be required to be removed upon termination of this License. This Section shall not apply to Alterations that are required by any regulatory authority to conform the Premises or any building thereon to a requirement of statute, ordinance or regulation.

g. Suitability: Acceptance. Licensee acknowledges that Port has made no representations or warranties concerning the Premises and accepts the Premises in its "As Is" "With All Faults" condition.

h. Liens. Licensee shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Licensee or its Agents. In the event that

Licensee shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record, DPT and Port shall have, in addition to all other remedies provided by the Towing Agreement or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by DPT or Port for such purpose and all reasonable expenses incurred by Port in connection therewith shall be payable to Port by Licensee within thirty (30) days following written demand by DPT or Port.

i. Regulatory Approvals. Licensee understands that Licensee's operations on the Premises, changes in use, or Improvements or Alterations to the Premises may require an authorization, approval or a permit required by any governmental agency having jurisdiction over the Premises, including but not limited to the Bay Conservation and Development Commission ("BCDC") ("Regulatory Approval"). Licensee shall be solely responsible for obtaining any such Regulatory Approval, and Licensee shall not seek any Regulatory Approval without first obtaining the approval of DPT and the Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Licensee. Licensee shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval. 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 paid and discharged by Licensee, and Port shall have no liability, monetary or otherwise, for said fines and penalties. To the fullest extent permitted by Law, Licensee agrees to indemnify and hold City, Port and their Agents harmless 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.

j. Utilities. Licensee shall make arrangements and shall pay all charges for all utilities to be furnished on, in or to the Premises or to be used by Licensee, including, without limitation, gas, electrical, water, sewer, scavenger service and telecommunications services. Licensee shall pay all charges for said utilities, including charges for the connection and installation of the utilities.

Licensee shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities located within the Premises and all utilities installed by Licensee (whether within or outside the Premises). If Licensee requests Port or City to perform such maintenance or repair, whether emergency or routine, either Port or DPT may, in their sole discretion, elect to do so, and Port or City shall charge Licensee for the cost of the work performed at the then prevailing standard rates, and Licensee agrees to pay said charges to Port or City promptly upon billing. Licensee shall pay for repair of utilities located outside the Premises (regardless of who installed the same) which are damaged by or adversely affected by Licensee's use of such utility and shall be responsible for all damages, liabilities and claims arising therefrom. The parties agree that any and all utility improvements shall become part of the realty and are not trade fixtures.

k. Operations Plan. DPT shall cause the Licensee to submit to the Port the Operations Plan elements identified below, pursuant to Section 14 of Appendix A to the Towing

Agreement. The Licensee shall be required to submit those proposed Operations Plan elements to the Port and DPT at the same time, and the Port and DPT will confer in a timely manner so that DPT may satisfy the time limits established in Towing Agreement Appendix A, Section 14, and DPT will forward Port requested revisions to Licensee, and DPT shall not accept an Operations Plan element that is inconsistent with this MOU or the License Agreement for Pier 70.

1. Pollution Prevention Plan: Providing for: (i) the proper storage, handling and disposal of hazardous materials and hazardous waste, including volumes and locations where such materials will be handled and stored; (ii) spill prevention and response, including prevention measures and equipment and training to respond to spills; (iii) wastewater management practices; (iv) solid waste management plan, including disposal of regulated materials (e.g. tires) and recycling; (v) management practices for any authorized vehicle or equipment maintenance or other activities posing a potential for environmental impact; and (vi) related administrative controls. This Plan should include information related to best management practices employed by the Licensee related to any of the activities described above.

2. Utilities Maintenance Plan

3. Pier 70 Premises Maintenance Plan: Providing for the maintenance of the surface of the Premises, including the initial seal coating of paved areas, supervised video or photo documentation of initial surface conditions, ongoing inspection, spill and drip response procedures, maintenance of cracks and other identified deficiencies, re-application of seal coat, staff training protocols, and supervised video or photo documentation of exit surface conditions. This plan shall include other property management protocols, including but not limited to, maintenance of fencing, lighting, signage and buildings, permanent or temporary.

4. Facility Plan: Providing for the Contractor's conduct of a clean, well-maintained and efficient business operations program to minimize or avoid external effects on surrounding streets and parking supply, property, businesses and residents in the neighborhood. This Plan should include information provided to employees, tow truck operators and auction attendees to educate them on these issues and recommended actions to appropriately address them.

5. Public Auction Plan: Describing auction procedures designed to minimize or avoid external effects on surrounding streets, property, businesses and neighbors, including a parking plan for auction participants designed to reduce parking impacts of auction events, and information to be provided to all auction attendees to inform them of prohibitions on vehicle abandonment. This Plan shall address community concerns and provide for communication with community representatives in designing signage and information provided to educate customers and other site visitors of local safety, parking and neighborhood concerns. Licensee shall commit to facilitate a positive relationship with the community by offering to meeting regularly or as needed with neighborhood representatives.

15. Notices. All notices, demand, consents or approvals which are or may be required to be given by either party to the other under this MOU shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of Port and DPT as shall from time to time

be designated by the parties for the receipt of notice, or when deposited in the United States mail, postage prepaid, and addressed, if to Port to:

**Director of Real Estate
Port of San Francisco
Pier 1
San Francisco, CA 94111**
FAX No: (415) 274-0578
Telephone No: (415) 274-0510

And if to DPT to: **Department of Parking and Traffic
City and County of San Francisco
Attention: Steve Bell
25 Van Ness Avenue, Suite 230
San Francisco, CA 94102**
Telephone No: (415) 554-9825
Fax: (415) 252-3272

16. Successors and Assigns. The covenants and conditions contained herein shall inure and bind the heirs, successors, executors and assigns of the Port, DPT and the Licensee.

17. Severability. The invalidity or unenforceability of a particular provision of this MOU shall not affect the other provisions hereof.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the date first written above.

AGREED TO AS WRITTEN ABOVE:
SAN FRANCISCO PORT COMMISSION

AGREED TO AS WRITTEN ABOVE:
DEPARTMENT OF PARKING & TRAFFIC

Recommended By:

By: _____
MONIQUE MOYER
Executive Director
Port of San Francisco

By: _____
BOND YEE
Acting Director

Authorized for execution
by Port Commission
Resolution Number: _____

Date: _____

Date: _____

Approved:

By: _____
MICHAEL T. BURNS
Director of Transportation
Municipal Transportation Agency

Date: _____

REVIEWED:
DENNIS J. HERRERA, City Attorney

Municipal Transportation Agency
Board of Directors
Resolution No. _____

By: _____
Deputy City Attorney

Adopted: _____

Attest: _____
Secretary, MTA Board