

**Exhibit A**  
**Response to February 9, 2016 Port Commission Questions**

Program Benefits

The Association of Bay Area Governments (ABAG) and MTC, regional transportation and planning organizations, created the Communities of Concern designation to assist with targeting housing and transportation access to the Bay Area's low-income and otherwise disadvantaged populations. Using census data, MTC and ABAG designated these Communities of Concern (CoCs), which consider eight socio-economic factors including income and also target areas underserved by transit.

Twenty percent (20%) of all bike share bicycles will be placed CoCs, and in San Francisco, Motivate will include at least 30 bike share stations and 900 bikes in seven CoCs located in the following areas: Downtown/Chinatown; Tenderloin/Civic Center; South of Market; Western Addition; Inner Mission; Bayview Hunter's Point; and Outer Mission/Crocker-Amazon.

In addition to installing stations where transit service is limited, Motivate will provide discounted membership rates to low-income bike share program members who qualify for the PG&E lifeline program or muni care.

Program Growth Assumptions and Expectations

MTC and the program partners are pursuing an aggressive bike share expansion plan to achieve state-wide air pollution reduction goals and to increase the utility of the program. To meet the expansion goals, the program will grow to 7,000 bikes system wide. In San Francisco, the program will increase the number of bicycles in San Francisco from 350 to 4,500 and expand to all of San Francisco's neighborhoods among approximately 150 stations, providing vital station connection between home and work as well as convenient bike recreation access. Increasing the utility of the program requires increasing the bike share origination and destination options with additional bike share stations. This increase in bike share access is expected to increase new bike share memberships. The current Bay Area bike share membership is estimated at 3,780. Through the proposed expansion, this membership number is projected to increase to 19,000 by the end of the start-up phase, which is February 2018.

Motivate's membership growth projection is based on bike share membership growth in other locations and bike commuter growth throughout the nation. For example, through station expansion, the Boston bike share program membership increased four times its original membership amount of 3,200 in 2011 to 13,862 members by 2016. In the District of Columbia, the bike share program membership increased nearly 100 percent from its original size of 15,800 in 2011 to 30,000 members in 2016. Based on research from the League of American Bicyclists, bicycle friendly communities in the United States have experienced a 100% increase in bicycle commuters over the past decade. In San Francisco, the number of bicycle commuters doubled between 2000 and 2012.

## Motivate Business Plan

The funding sources for the Bay Area bike share program consists of start-up capital, debt, sponsorship and membership fees. Through its capital partners, Motivate acquired the former bike share operator, Alta Bike Share Inc., and its equipment. Through debt financing, Motivate will comply with aggressive bike share expansion by 2018 per the program agreement. Motivate requires financing (debt + equity) to fund the program capital costs because the current program membership revenue fees and projected sponsorship funding do not support the necessary capital outlay for the bike share expansion.

Motivate has projected the program membership fees and program *operating* costs over the term of the program. Based on these projections, during the start-up phase the operating costs will be more than double the membership fee revenue. During the full term of the program, membership fees are expected to eventually support these operating costs. The projected operating costs were used to estimate the revenue hurdle in the regional program agreement and to estimate the date the program membership funds will support program operating expenses.

To address the start-up *capital* costs, Motivate is currently seeking sponsorships for the Bay Area program; the anticipated revenue from such sponsorships is unknown at this time. Based on the financial performance of bike share programs in other U.S. cities, however, program sponsorships have enabled the long-term stability of these programs as they generally do not generate sufficient fee revenue to cover program capital costs.

## Exhibit B



June 6, 2016

2200 Jerrold Ave  
San Francisco, CA 94124

Jamie Hurley,  
Port of San Francisco, Real Estate  
Pier 1  
San Francisco, California 94111

Dear Mr. Hurley:

I am writing to provide more information with regards to one of my requests from a letter dated May 25, 2016, related to Draft License Number 16130, a License by and between the San Francisco Port and Bay Area Motivate to operate bike share stations on various locations within Port Jurisdiction. Bike share stations on Port property will be an integrated part of a vastly expanded public transportation network of 4500 bicycles and over 320 bicycle sharing stations across San Francisco made possible by agreements between the Metropolitan Planning Commission (MTC,) the City of San Francisco, and Motivate.

In the letter dated May 25, 2016, I requested a rent-free period through February 2018, and the Port has requested additional details supporting that request.

Motivate is delivering this expanded bike-sharing transportation system to the City of San Francisco at no cost to the taxpayer. Motivate will be funding program operations primarily through membership revenue and the capital cost primarily through sponsorship revenue. The deployment of stations, per the contract between MTC and Motivate, will take place rapidly over the course of four phases beginning in late 2016 and ending in early 2018.

2200 Jerrold Avenue, Unit J  
San Francisco, CA 94124

[bayareabikeshare.com](http://bayareabikeshare.com)



Because of this aggressive timeline, Motivate will be providing an enormous upfront capital outlay that will not be immediately matched by sponsorship or membership revenues and will, in fact, require debt financing.

Please see some information below to substantiate this request.

Total Estimated Equipment Cost between 2016 – February 2018

\$37.6M all paid between 2016-2018

Anticipated Sponsorship Revenue between 2016 – February 2018

~\$11M expected sponsorship revenue

Per the above, anticipated sponsorship revenue over this period does not come close to covering early year equipment costs. Further, total operating costs over this period are projected to be \$18M, while membership revenue is expected to be \$9M. The savings we can see from the rent-free period will reduce the amount of debt required to purchase capital and expand the program and will further our efforts to build a financially strong bike share program for the Bay Area.

Thank you for your time reviewing this request, and we appreciate the Port maintaining confidentiality of these estimates. Please reach me by phone or e-mail if you would like to discuss further.

The draft license agreement is in progress, with the Port's comments returned to Motivate June 3, 2016. Motivate is reviewing.

2200 Jerrold Avenue, Unit J  
San Francisco, CA 94124

[bayareabikeshare.com](http://bayareabikeshare.com)



Sincerely,

*Emily Stapleton*

Emily Stapleton  
General Manager, Bay Area Bike Share  
415.758.3658

2200 Jerrold Avenue, Unit J  
San Francisco, CA 94124

[bayareabikeshare.com](http://bayareabikeshare.com)

# Exhibit C



**PIER 1  
SAN FRANCISCO, CA 94111**

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## **LICENSE TO USE PROPERTY**

**LICENSE NO. 16130**

**BY AND BETWEEN**

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

**AND**

**BAY AREA MOTIVATE, LLC, A DELAWARE  
LIMITED LIABILITY COMPANY**

**VARIOUS LOCATIONS WITHIN PORT JURISDICTION**

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**ELAINE FORBES  
INTERIM EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION  
WILLIE ADAMS, PRESIDENT  
KIMBERLY BRANDON, VICE PRESIDENT  
LESLIE KATZ, COMMISSIONER  
ELENI KOUNALAKIS, COMMISSIONER  
DOREEN WOO HO, COMMISSIONER**

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### **EXHIBITS AND SCHEDULES**

**EXHIBIT A LICENSE AREA**

**EXHIBIT B COMMENCEMENT DATE MEMORANDUM**

**EXHIBIT C POTENTIAL LOCATIONS FOR NEW BIKE SHARE STATIONS**

**BASIC LICENSE INFORMATION**

<i>License Date:</i>	May 1, 2016
<i>License Number:</i>	16130
<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: Director of Real Estate  Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Licensee:</i>	Bay Area Motivate, LLC, a Delaware Limited Liability Company
<i>Licensee's Main Contact Person and Mailing Address:</i>	Emily Stapleton, General Manager Bay Area Motivate, LLC 2200 Jerrold Ave. Unit J San Francisco, CA 94124 Cell: (415)758-3658 Email: <a href="mailto:emilystapleton@motivateco.com">emilystapleton@motivateco.com</a>
<i>Licensee's Billing Contact and Address:</i>	Tyler Adams <a href="mailto:tyleradams@motivateco.com">mailto:</a> Bay Area Motivate, LLC 2200 Jerrold Ave, Unit J San Francisco, CA 94124 Telephone: (510) 435-7768 <a href="mailto:tyleradams@motivateco.com">tyleradams@motivateco.com</a>
<i>Licensee's Emergency Contact and Address:</i>	Lauren Dunbar, Safety + Worker's Compensation Coordinator 1135 SE Salmon St, Suite L5 Portland, Oregon 92124 Telephone: (206) 550-4135 Email: <a href="mailto:laurendunbar@motivateco.com">laurendunbar@motivateco.com</a>
<i>Licensee's Insurance Contact and Address (not broker):</i>	Grant Barkey, Risk Manager 5202 Third Avenue Brooklyn, NY 11220  Telephone: Facsimile Email:



<p><i>Licensee's Parking Contact and Address:</i></p>	<p>Carlos Valero, Deputy Operations Manager  2200 Jerrold St., Unit J  San Francisco, CA 94124  Telephone: 224-419-2741  Email: Carlosvalero@motivateco.com</p>
<p><i>Contact Information for Licensee's Agent for Service of Process:</i></p>	<p>Corporation Service Company  2711 Centerville Rd. Suite 400  Wilmington, DE 19808  Telephone: 302-636-5401</p>
<p><i>Background and Conflicts:</i></p>	<p>As part of an earlier regional effort, Licensee's predecessor in interest, Alta Bicycle Share, Inc., installed and operated five (5) bike share stations on Port property under Port License 15684 dated as of August 19, 2013, as amended (the "<b>Prior License</b>"). The Prior License was assigned to Licensee by the Second Amendment to License 15684 dated for references purposes as of August 13, 2015. The Prior License expires on August 18, 2016.</p> <p>In order to continue and expand the bike share program, in 2015, Licensee entered into the following two agreements for a new expanded permanent Bay Area-wide bike share program: (1) a Coordination Agreement among the Metropolitan Transportation Commission ("<b>MTC</b>") and the participating Bay Area cities, including the City and County of San Francisco (approved by Board of Supervisors Resolution 503-15 File No. 151144); and (2) a Program Agreement with the MTC, certain provisions of which are enforceable through the Coordination Agreement (together, the "<b>Bay Area Bike Share Agreements</b>"). The Bay Area Bike Share Agreements provide for the creation and operation of a bicycle sharing program, including an allotment of stations and bicycles, in Berkeley, Emeryville, Oakland, San Francisco, and San Jose, establish the rights, liabilities, and responsibilities of each party, and define the organizational, management, and operational structure for the successful development of the expanded bicycle sharing program.</p> <p>Certain provisions of the Bay Area Bike Share Agreements are hereby incorporated and applicable to this License; however, in the event of any conflict or inconsistency between the Bay Area Bike Share Agreements and the provisions of this License, this License will control. Specifically, the parties agree on the following:</p> <p>The exclusive rights granted to Licensee under Section 32 of the Coordination Agreement are not binding on Port and Port may in its sole discretion grant others the right to operate similar services on Port property.</p> <p>Notwithstanding any provision of the Bay Area Bike Share Agreements, this License is personal to Bay Area Motivate, LLC and cannot be assigned or transferred without Port's prior</p>

	<p>written consent in its sole discretion.</p> <p>The parties agree to generally conform to the provisions regarding temporary “deactivation” and “de-installation” as those terms are defined in the Coordination Agreement as applicable to the Port’s real property. Notwithstanding the foregoing, Licensee shall not de-install, replace or remove any Bike Share Station without all required Port building or encroachment permits.</p> <p>The parties agree that the provisions of Section 29 of the Coordination Agreement regarding advertising and sponsorship apply, subject also to Licensee’s compliance with Section 23 of this License.</p>
<p><i>License Area:</i></p>	<p>Approximately 1,397.2 square feet of public right-of-way space comprised of the following five (5) locations:</p> <ul style="list-style-type: none"> <li>(1) Roundhouse Plaza at The Embarcadero and Sansome Street,</li> <li>(2) The Embarcadero sidewalk bulb-out bordering Seawall Lot 324 between Vallejo and Broadway Streets,</li> <li>(3) Harry Bridges Plaza,</li> <li>(4) The terminus of Steuart Street at Gap Plaza on The Embarcadero, and</li> <li>(5) the terminus of Spear Street on The Embarcadero at Bryant Street</li> </ul> <p>(the “<b>Initial Bike Share Stations</b>”) 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>Additional Bike Share Station Locations:</i></p>	<p>In the Port’s sole discretion, this License may be amended by written agreement of the parties to expand any of the Initial Bike Share Stations and to include up to thirty (30) additional Bike Share Stations. Any expansion and/or additional station shall be subject to the same Fees, siting criteria, permitting, terms and conditions as the Initial Bike Share Stations.</p> <p>Potential additional Bike Share Stations are shown in <b><i>Exhibit C</i></b>.</p> <p>All locations must comply with the following requirements unless waived by the Port in writing:</p> <ul style="list-style-type: none"> <li>1. must be approximately seven (7) feet in width and from fifty (50) to one hundred fifty (150) feet in length and located in or near the public right-of-way in publicly accessible locations such as improved sidewalks and plazas;</li> <li>2. cannot be in revenue generating areas or potential revenue generating areas unless Licensee agrees to compensate Port for any potential loss of revenue;</li> <li>3. cannot be in areas that are incompatible with adjacent</li> </ul>

	<p>Port uses or hinder emergency ingress or egress access;</p> <p><b>4.</b> must be consistent with the City of San Francisco’s Better Streets Plan, San Francisco Municipal Transportation Authority’s bike parking standards, and spacing requirements and policies of federal and state disability laws; and</p> <p><b>5.</b> must be evaluated and approved through the Port permitting process and any other applicable Regulatory Approval, including without limitation by the Bay Conservation and Development Commission (“BCDC”) (subject to Port’s consent to seek such approval).</p> <p>In addition to the requirements set forth in (1) – (5) above, if additional Bike Share Station locations are within an area occupied by a Port tenant, licensee, contractor or other users (“leased areas”), Licensee must comply with the following procedure for location approval: (i) Licensee must request permission from the Port to pursue stations within leased areas in writing before approaching any tenant, licensee or other user regarding a bike share station location within a leased area; (ii) if Port approves the location, Licensee can contact the relevant party and seek a sublease, sublicense or other agreement which will be subject to Port’s consent (unless specified otherwise in the relevant agreement for such leased area). Any sublease, sublicense or other agreement with a Port tenant, licensee, contractor or other user to place a Bike Share Station will be subject to the relevant terms and conditions of the underlying lease, license or other agreement for such leased area.</p>
<i>California Environmental Quality Act:</i>	The City Planning Department determined that the bike share program and expansion stations are categorically exempt under (CEQA) Class 3, guideline section 15303 on October 19, 2015.
<i>Commencement Date:</i>	The date of Port’s execution of this License. Promptly following the actual Commencement Date, Port and Licensee shall execute a Commencement Date Memorandum substantially in the form attached hereto as <b>Exhibit B</b> , confirming the actual Commencement Date, but either party's failure to do so shall not affect the commencement of the Term
<i>Expiration Date:</i>	December 15, 2026
<i>Monthly License Fee:</i>	<p>One Thousand One Hundred Seventeen Dollars and Seventy-six cents (\$1,117.76).</p> <p>The Monthly Fee shown above is based on the total square footage of the Initial Bike Share Stations (1,397.2 square feet) multiplied times the currently effective Port Commission approved minimum per square foot fee for improved land (\$.80).</p> <p>Fees for any expanded or new Bike Share Stations added to this License by amendment will be based on the added square footage multiplied times the then-effective Port Commission</p>

	<p>approved minimum per square foot fee for the applicable category. The parties agree that, absent any more specific guidance in the then-effective Port Commission approved minimum rental rates, the rate for “improved land” includes areas on sidewalks or plazas on Port property and that all Initial and new Bike Share Stations located on sidewalks or plazas will be subject to the “improved land” rate. The rate for areas not on sidewalks or plazas will be subject to the “paved land” rate.</p> <p>The Fees due hereunder will be increased by three percent (3%) on each anniversary date of the Commencement Date.</p>
<i>Fee Waiver:</i>	<p>Pursuant to Port Commission Resolution No. _____, Licensee is granted a fee waiver through February 28, 2018. Licensee shall begin to pay the Fees specified above on March 1, 2018 subject to the annual 3% increase. Accordingly, the Fee starting on March 1, 2018 shall be One Thousand One Hundred Fifty Dollars and Fifty-one cents (\$1,150.51).</p> <p>Fees for any expanded or new Bike Share Stations added to this License by amendment during the fee waiver period will be calculated as provided above, but will be waived until March 1, 2018.</p>
<i>Additional Revenue Sharing:</i>	<p>As provided by the Bay Area Bike Share Agreements, based on required reports by Licensee to MTC, once specified thresholds are met (if ever), Licensee will pay to the MTC a certain portion of its revenues to be distributed to the participating cities under a formula established by the Bay Area Bike Share Agreements. Port is concurrently entering into a Memorandum of Understanding with the SF Municipal Transportation Agency (the “MOU”) to provide for distribution of Port’s share of any revenue sharing to which City is entitled. Accordingly, Licensee shall have no obligation to pay any portions of its revenues directly to Port.</p>
<i>Security Deposit:</i>	<p>Port will have access to the \$250,000 security fund provided by Licensee per the Bay Area Bike Share Agreements through the MOU (“<b>Security Fund</b>”). Licensee agrees that Port shall have the right to use the funds obtained as provided in Section 5 of this License.</p>
<i>Permitted Activity:</i>	<p>The License Area shall be used solely for the installation, maintenance, operation, promotion, and removal of bike share stations and appurtenant equipment (collectively, “<b>Bike Share Stations</b>”) and for no other purpose. The Bike Share Stations will not require excavation or surface bolts and will rely on solar power.</p> <p>Bike share station operations will include: (1) bike share customers checking out and in bicycles at the stations; and (2) Licensee’s staff stocking and restocking bicycles at the stations and occasionally repairing and replacing equipment and performing minor maintenance in compliance with Sections 9,</p>

	<p>15 and 21 of this License.</p> <p>Licensee shall operate the Bike Share Stations in a manner consistent with other stations it operates throughout the Bay Area under the Bay Area Bike Share Agreements.</p> <p>Licensee shall not place or remove any Bike Share Station without all required Port building or encroachment permits. The equipment shall be designed, installed, operated and maintained so as to prevent any unreasonable interference with general pedestrian use of the rights of way and to minimize any potential pedestrian tripping or other hazards. Licensee shall ensure that any installation of equipment complies with the provisions of California Government Code Sections 2416, et. seq., with regard to notification and location of possible underground facilities and underground utilities</p> <p>Licensee shall remove the Bike Share Stations upon the expiration or earlier termination of this License at the Licensee's sole cost and expense.</p> <p>Licensee must seek a separate license agreement and permits from Port for any special events at or near a Bike Share Station to be issued in Port's sole discretion and subject to applicable fees. Program demonstrations and press events that meet the following criteria will be a Permitted Activity and will not require a separate authorization as otherwise required by the previous sentence (x) attendance by no more than twenty (20) people; (y) activity cannot interfere with public access and use of any adjacent public right-of-way or public access area cannot use more than fifty percent (50%) of any adjacent right-of-way or public access area; (z) no signage, tents or other structures may be erected.</p>
<p><i>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>Licensee's and its customers' operations hereunder shall not unreasonably interfere with or impede the use of any roadway or sidewalk, within or adjacent to the License Area by the public, other Port tenants or Port, and except as to the Permitted Activities, Licensee's operations shall not interfere with the use of adjacent Port properties by their respective tenants.</p> <p>Port shall have all remedies set forth in this License and at law or equity in the event of licensee performs any of the prohibited uses.</p>
<p><i>Non-Compete Prohibition:</i></p>	<p>Licensee agrees not to directly compete with bike rental businesses on Port property by offering daily rentals with trips of unlimited duration at a lower daily rate.</p>
<p><i>Cure Period where applicable:</i></p>	<p>24 Hours</p>

<i>Maintenance and Repair:</i>	Sole responsibility of Licensee–no exceptions
<i>Utilities and Services:</i>	Sole responsibility of Licensee–no exceptions
<i>Manner of Use</i>	<p>Licensee shall be responsible for all security issues related to theft and vandalism of the Bike Share Stations or License Area and shall take appropriate actions to enforce these measures within in a reasonable time frame after the Licensee receives notice of any such issues. Licensee shall be solely responsible for any destruction, damage, theft or vandalism of, or to, the Bike Share Stations.</p> <p>All costs related to the Equipment including without limitation the installation, operation, and maintenance thereof, shall be the sole responsibility of Licensee. Changes in type or function of business or other changes in use shall be made only upon the express written consent of Port.</p>
<i>Termination of Prior License:</i>	The parties agree that as of the Commencement Date, the Prior License is hereby terminated; provided, however, that the parties shall 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>	Kanya Dorland, Planner

## 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 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 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. 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.

(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) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. 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 Port may, in its sole and absolute discretion, revoke or terminate this License at any time upon no less than thirty (30) days' prior written notice to Licensee prior to the Expiration Date, without cause and without obligation to pay any consideration to Licensee ("**Port's Termination Right**"). Failure of Licensee to initial below shall in no way affect or hinder Port's Termination Right.

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

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 use agreement upon the terms, conditions, and covenants of this License, except as provided in this Section. Either party may cancel the month-to-month agreement upon thirty (30) days written notice to the other party. Licensee shall Indemnify Port from and against any and all loss or liability resulting from Licensee's delay in vacating the License Area, together with, in each case, reasonable attorneys' fees and costs.

#### **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. Without limiting its right to revoke or terminate this License or any of its other rights hereunder, Port may increase the License Fee at any time and from time to time upon not less than thirty (30) days written notice to Licensee. 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/Habitual Late Payer.** 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. Additionally, in the event Licensee is notified by Port that Licensee is considered to be a Habitual Late Payer, 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) upon written notification from Port of Licensee's Habitual Late Payer status. 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 an Event of Default. 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 agrees that Port may (but shall not be required to) apply the Security Fund 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, (c) cure any default by Licensee, or (d) cure, or attempt to cure, any failure of Licensee to perform any covenant, term or condition of this License. The amount or use of the Security Fund 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 Port may apply all or any portion of the Security Fund 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.

#### **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. 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 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, provided however that if Port imposes rules or regulations on the License Area after the Commencement Date of this License, Licensee may elect to terminate this License immediately upon written notice to Port. 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. 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**").

## **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. 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.

**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. 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 the all federal or state disability access Laws.

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

**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. Licensee shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the License Area or to be used by Licensee. To the extent electricity is needed for Licensee's 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 Repairs.** Licensee shall at all times during the Term, at its sole cost and expense, maintain and repair in good and working order, condition and repair the License Area and all improvements and alterations thereon. 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. 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 immediately reimburse Port therefor. 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. Licensee shall report any assignment or other transfer of any interest in this License or any renewal or extension hereof to the County Assessor within 60 days after such assignment transaction or renewal or extension. 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, insurance with employer's liability limit not less than One Million Dollars (\$1,000,000) for each accident, on employees eligible for each.

(b) Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000.00) 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.

(c) Comprehensive or Business Automobile Liability Insurance with limits not less than \$1,000,000 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.

(d) Umbrella Insurance in the amount of \$4,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

(e) Property Insurance. Property Insurance covering Licensee's own business personal property and equipment to be used in performance of this License. Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property.

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

**11.2. Self-Insurance.** Licensee's obligation under Sections 11.1(d) and (e) above may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

**11.3. 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.

**11.4. 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.

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

**11.6. 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.

#### **11.7. 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, 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) Licensee shall provide written notice to Port thirty (30) days prior to any cancellation of coverage required under this License.

(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 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. Licensee may redact information from the policy if such information is a trade secret under State Laws.

(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 or the City's Risk Manager, but only if such additional coverage is reasonably commercially available and is generally required of operators operating a similar business as Licensee with respect to risks comparable to those associated with the use of the License Area. If Licensee does not agree to provide such additional coverage, Licensee may terminate this License with thirty (30) day's prior written notice to Port.

#### **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; or

(b) Failure to perform any other provisions of this License or any applicable provision of the Bay Area Bike Share Agreements, 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.

(c) An assignment, or attempted assignment, of this License by Licensee without Port's consent in its sole discretion;

(d) Failure by Licensee or Licensee's broker as applicable to provide evidence of insurance coverage complying with the provisions of Section 11, failure to maintain any insurance required to be maintained by Licensee pursuant to this License, or if any such insurance shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this License and Licensee or Licensee's broker's failure to deliver evidence of such coverage or failure to reinstate such coverage, all within three (3) business days following written notice from Port;

(e) 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; or (iii) the attachment, execution or other judicial seizure of substantially all of Licensee's interest in this License.

**13.2. *Port's Remedies.*** Upon default by Licensee, 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.*** Subject to the terms of Section 14.3, Licensee shall Indemnify Port, City, 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 or any other Port property, from any cause arising directly or indirectly out of this License, 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 or any other Port property.

#### **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, and (ii) Licensee's Exacerbation of any Hazardous Material Condition.

(b) 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 (vi) 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. Notwithstanding any other provision of this License, the Indemnification obligations of Licensee set forth in this License shall be enforceable except to the extent that (i) such Indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this License; or (ii) a Claim results from the willful misconduct or gross negligence of the Indemnified Parties.

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.** 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 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 Utilities, (v) Utilities 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 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.

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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

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 to Handle any Hazardous Material in, on, under or about the License Area or any other Port property, 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 office 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, any other or other Port property except as permitted under Section 15.1 (Requirements for Handling);

(b) will not cause or permit any Hazardous Material Condition; 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 any activity at the License Area or any other Port property, 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, 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, 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, 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, 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 Pollution 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

occurring during the Term or while Licensee or its Agents or Invitees otherwise occupy 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 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, Licensee will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Licensee's occupancy of the License Area; 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. 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 Design Guidelines, subject to review and permitting by the Port's Engineering Division.

**15.7. Presence of Hazardous Materials.** California Law requires landlords to disclose to Licensees 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: lead and other contaminants commonly associated with street operations. 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.

**15.8. *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 proper 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, including the Bike Share Stations, 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 the Bike Share Stations and any other personal property.

Without any prior notice, Port may elect to retain or dispose of Licensee's personal property, including the Bike Share Stations, 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 or other Port property 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. 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 provision of this License relating to any such code provision 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) HRC 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 San Francisco Human Rights Commission.

(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 Purchasing Department when it enters into such a Sublicense or Contract and shall certify to the Purchasing Department 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 the Contracting Department 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 HRC 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: <http://sfgov.org/cmd/lbe-certification-0>.

**21.5. Resource-Efficient Facilities and Green Building Requirements.** Licensee agrees to comply with all applicable provisions of Environment Code Chapter 7 relating to resource-efficiency and green building design requirements.

**21.6. Prohibition of Tobacco Sales and Advertising.** Licensee acknowledges and agrees that no sales or 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, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

**21.7. Prohibition of Alcoholic Beverages Advertising.** Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the License Area. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage

people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

**21.8. Graffiti Removal.** Licensee agrees to remove all graffiti from the License Area, including from its equipment, 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.).

**21.9. 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>.

**21.10. 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.

**21.11. 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.

**21.12. 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.

**21.13. 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 that it is familiar with 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 commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six 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 \$50,000 or more. Licensee further acknowledges that, if applicable, the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Licensee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensee. Additionally, Licensee acknowledges that if this Section 21.13 applies, Licensee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

**21.14. 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.

**21.15. *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.

**21.16. *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.

**21.17. *Prevailing Wages and Working Conditions.*** 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 the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party.

**21.18. *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.

**21.19. *Food Service Waste Reduction Ordinance.*** Licensee agrees to comply fully with and be bound by all of the provisions of the Food Service 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.

**21.20. 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 sublicenses 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 sublicenses shall post the notice prepared by the Office of Labor Standards Enforcement (“**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 sublicenses 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.

**21.21. 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.

**21.22. 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 plastic bottles with a capacity of twenty-one (21) fluid ounces or less at City-permitted events held on the License Area with attendance of more than 100 people.

## **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.** 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. Port and Licensee hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

**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 a duly authorized and existing entity, that Licensee has and is qualified to do business in California, 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.

**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 rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "**Concession**") without a written agreement executed by either the Executive Director of Port or the Deputy Director of Real Estate 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:

"**Agents**" when used with reference to either party to this License or any other person, means the officers, directors, 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.

"**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 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.

**"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, asbestos-containing materials, and presumed asbestos-containing materials, 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, the loss or restriction of the use or any amenity of the License Area or any other Port property, 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, 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, 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..

**"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. 2.2

**"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, 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, 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 15.6.

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

**"Waiving Party"** is defined in Section 11.6.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

*Licensee:* **BAY AREA MOTIVATE, 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: \_\_\_\_\_

Susan Reynolds,  
Deputy Director, Real Estate

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

*Approved as to Form:* DENNIS J. HERRERA, City Attorney

By: Rona H. Sandler \_\_\_\_\_

Deputy City Attorney

License Prepared by Kanya Dorland, Planner \_\_\_\_\_(initial)

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

(To be attached.)

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**EXHIBIT B**

**COMMENCEMENT DATE MEMORANDUM**

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

Licensee:

License Number:

License Date:

License Area: [\_\_\_\_\_, Suite \_\_\_\_]  
San Francisco, California

The Commencement Date of the License is hereby established as \_\_\_\_\_, 20\_\_\_\_ .

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

By: \_\_\_\_\_  
Susan Reynolds  
Deputy Director, Real Estate

Date Signed: \_\_\_\_\_

Licensee:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**EXHIBIT C**

**POTENTIAL LOCATIONS FOR NEW BIKE SHARE STATIONS**

Exhibit D



CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE, MAYOR  
MEMORANDUM OF UNDERSTANDING (“MOU”)

**M-16143**

BY AND BETWEEN

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY  
 (“SFMTA”)

AND

THE SAN FRANCISCO PORT COMMISSION

ELAINE FORBES  
INTERIM EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

WILLIE ADAMS, PRESIDENT  
KIMBERLY BRANDON, VICE PRESIDENT  
DOREEN WOO HO, COMMISSIONER  
LESLIE KATZ, COMMISSIONER  
ELENI KOUNALAKIS, COMMISSIONER



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EXHIBIT A: BAY AREA BIKE SHARE AGREEMENTS

EXHIBIT B: PORT BIKE SHARE STATIONS

EXHIBIT C: EXAMPLE REVENUE DISTRIBUTION

**MEMORANDUM OF UNDERSTANDING  
NUMBER M-16143**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into by and between the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY ("SFMTA"), an agency of the City and County of San Francisco, and the SAN FRANCISCO PORT COMMISSION ("Port"), an agency of the City and County of San Francisco.

RECITALS

A. Under the Burton Act (Chapter 1333 of Statutes 1968, as amended), and Section B 3.581 of the San Francisco City Charter, 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, including the area encompassing the real property which is the subject of this MOU, is vested in the Port.

B. In 2015, The Metropolitan Transportation Commission (MTC), the lead project sponsor for the Bay Area Regional Bike Share Program, selected Bay Area Motivate LLC (Motivate), as the Bay Area Bike Share Program operator through a sole source contract and with agreement from the Bay Area bike share program partners. To implement the "Bike Share Program," MTC and Motivate entered into two agreements for the program that were finalized on December 31, 2015: (1) Bay Area Bike Share Program agreement between Metropolitan Transportation Commission and Bay Area Motivate LLC or ("Program Agreement") and (2) Coordination agreement between MTC, Motivate and the Bay Area bike share partners which includes: the City of Berkeley; the City of Emeryville; the City of Oakland; the City and County of San Francisco; and the City of San Jose ("Coordination Agreement"). These agreements are referred to as the "Bike Share Agreements" and are attached as Exhibit A.

Through the Bike Share Agreements, Motivate has agreed to provide MTC and the partner cities a \$250,000 security deposit for the program, monthly program data including information on the financial status of the program and station activity, approved security deposit withdraw requests, and a share of program revenues once certain thresholds are met according to a revenue sharing formula.

C. In cooperation with Motivate, the Port and SFMTA agree to work together to identify 30 additional bike share stations on Port property. These locations will meet the Bay Area Bike Share program goals (being proximate to trip attractors/generators and transit connections, and maintaining density of system coverage) and the Port

location criteria (located in non-revenue generating areas, compliant with federal and state disability policies, and approvable through a Port encroachment permit). If applicable, these stations may also require Bay Conservation and Development Commission (BCDC) permit authorization if they are located in BCDC public access areas or view corridors and/or Port tenant agreements if they are located within a tenant leasehold areas.

D. This program represents a continuation and expansion of the service established with the Bay Area Bike Share pilot program, but is managed by a different group of parties and governed by a new set of agreements. As part of the new, expanded program, the Port has agreed to enter into a License to Use Property for Bike Share Stations ("Port License") on a form approved by the Port with Motivate ("Licensee") for the use of the five existing bike share station locations on Port property as shown on Exhibit B and to authorize up to 30 additional bike share station locations (the "Sites").

E. SFMTA is the City's representative for the Bike Share Agreements and, except as to the use of Port property as further described below, will coordinate all City obligations and benefits under the Bike Share Agreements on behalf of Port. Port and SFMTA agree to enter into this MOU to further delineate the parties' responsibilities with respect to the Bike Share Program and the Bike Share Agreements.

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. TERM.**

The term of this MOU will be from the effective date of the Port License ("Effective Date") through the date of expiration or earlier termination of the Port License ("Expiration Date").

**3. SFMTA ACKNOWLEDGEMENTS AND OBLIGATIONS.**

a. SFMTA acknowledges that the Port will enter into the Port License with Motivate for a term consistent with the expanded bike share program term (approximately 9 years and six months), on a form approved by Port, including standard provisions regarding rental fee, indemnity, insurance and City requirements for the existing five bike share stations and an additional 30 bike share stations if they are approved through a Port encroachment permit, which will also involve a fee.

SFMTA further acknowledges and agrees that the Port License and any subsequent amendments will be revocable at the Port's sole discretion.

b. SFMTA further acknowledges and agrees that the SFMTA is the City's Bike Share Program administrator/coordinator and agrees to designate multiple points of contact for the Bike Share Program. Licensee issues and complaints related to the bike share stations and their condition shall be directed to SFMTA Real Estate. All other

issues will be directed to the SFMTA Bicycle Sharing Program Manager.

c. SFMTA acknowledges that new bike share stations may be located within Port's tenant leaseholds and that there are or may be tenants with rights to the areas adjacent to the Sites and agrees to work cooperatively with these Port tenants and the Port to resolve any issues that may arise in a timely manner.

#### **4. SECURITY DEPOSIT.**

SFMTA agrees that the Port will have access to the \$250,000 bike share program Security Fund provided by Section 15 of the Program Agreement through the process set forth in Section 9 of the Coordination Agreement for purposes consistent with the Security Fund withdraw provisions in these agreements for the purpose of providing a Security Deposit as set forth in Section 5 of the Port License. Upon Port's notice to SFMTA of Motivate's default and failure to cure, SFMTA will work with Port and the MTC to expeditiously obtain monies from the Security Fund, including through any dispute resolution process initiated by Motivate, to address such default.

SFMTA will also notify the Port of any Security Fund withdraws, replenishments and the outcome of any dispute resolution.

Upon execution of a new license agreement with Motivate, the Port agrees to return to the SFMTA the remaining balance of the \$10,000 deposit held by the Port under the terms of the previous MOU (M-15112).

#### **5. DATA SHARING.**

Under Section 21 of the Program Agreement, Inspection and Audit Rights, and Section 7 of the Coordination Agreement, MTC will receive a monthly bike share program report from Motivate that includes information on the financial status of the program and trip activity for the entire regional bike share program, and will forward this information to the program participating cities, including the City and County of San Francisco. SFMTA agrees to provide the Port with these reports within a week of receiving them from MTC.

#### **6. REVENUE SHARING.**

As described in Section 8 of the Program Agreement and Sections 10 and 12 of the Coordination Agreement, Motivate will share revenues with the MTC and the participating cities once certain program revenue thresholds are met. The share of the individual bike share station docks in each participating City will account for 70% of any revenue allocation, and the share of the total bike share program trips in each participating City will account for 30% of any revenue allocation.

Should the City receive any revenue from MTC for the bike share program, within 30 days of receipt, based on the revenue distribution formula provided above and in the Bike Share Agreements, SFMTA agrees to provide the Port any amounts attributable to the number of bike share docks on Port property and the total bike share program trips originating at these docks.

For example if the City and County of San Francisco has 65% of the total program docks, and these docks generate 60% of the total bike share program trips, its share of an annual revenue allocation of \$100,000 would be approximately 63% or \$63,500. If the Port has 6% of

the total program docks, and these docks generate 16% of the total bike share program trips, the share of an annual revenue allocation of \$100,000 that the Port should receive is 9% or \$9,000. Exhibit C further illustrates this example of revenue distribution.

**7. PORT'S RIGHT OF TERMINATION.**

If either party fails to fulfill its obligations under this MOU, the Port and the SFMTA shall have the right to terminate this MOU upon 10 days prior written notice to the other party. If either party terminates this MOU, Port will immediately terminate the Port License.

**8. INDEMNIFICATION.**

It is the understanding of the parties that, with the exception of any administrative costs associated with executing necessary Port encroachment permits and license agreements, Port shall not expend any funds due to or in connection with the Bike Share Program, the Port License or the Sites (collectively "Bike Share Program Activities"). Therefore, should the Port incur any liability not covered by the Port License and/or the indemnification provisions of the Bike Sharing Agreements, or not otherwise connected to the Port's review and approval of encroachment permits and license agreements, the SFMTA agrees to be responsible for any costs associated with claims, damages, liabilities or losses that arise from the Bike Share Program Activities and do not result from the negligence or misconduct of the Port: including: (i) as a result of the handling of Hazardous Materials in connection with the Bike Share Program Activities by any person or entity other than Port; (ii) out of any injuries or death of any person or damage of any property occurring in, on or about a Site or which arise as a result of the Bike Share Program Activities; or (iii) out of Licensee's failure to comply with the terms of the Port License. The foregoing obligations shall survive the expiration or termination of this MOU.

**9. 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 SFMTA 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: (415) 274-0508  
Tel: (415) 274-0501

And if to SFMTA to: San Francisco Municipal Transportation Agency  
City and County of San Francisco  
Attention: Bicycle Sharing Program Manager  
1 South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103  
Tel: (415) 701-4605

Or, for property management-related issues, to:

Manager of Real Estate and Property Management  
San Francisco Municipal Transportation Agency  
City and County of San Francisco  
Finance Administration - Real Estate Group  
Attention: Ken Yee  
1 South Van Ness Avenue, 8th Floor  
San Francisco, California 94103  
Tel: 415-701-4794

10. **ENTIRE AGREEMENT.**

This MOU (including attached exhibits) contains the entire understanding between the parties with respect to the subject matter hereof.

**[REMAINDER OF PAGE LEFT BLANK.]**

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:  
MUNICIPAL TRANSPORTATION  
AGENCY

By: \_\_\_\_\_  
ELAINE FORBES  
Interim Executive Director  
Port of San Francisco

By: \_\_\_\_\_  
EDWARD REISKIN  
Director of Transportation  
San Francisco Municipal  
Transportation Agency

REVIEWED:  
DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
RONA SANDLER  
Deputy City Attorney

By: \_\_\_\_\_  
JOHN I. KENNEDY  
Deputy City Attorney

**EXHIBIT A**  
**BIKE SHARE AGREEMENTS**



**EXHIBIT B**  
**PORT BIKE SHARE PROGRAM SITES**

**EXHIBIT C**  
**EXAMPLE REVENUE DISTRIBUTION**

### Port of San Francisco Bike Share Locations

● Existing    ○ Proposed

○ Pier 27  
● Round House Plaza

○ SWL 320-324  
● Green St & Union St @ SWL321

○ Pier 1/2  
● Harry Bridges Plaza

● Embarcadero & Stuart

● Embarcadero & Bryant

○ Steamboat Plaza @ SWL 332

○ Pier 40

○ AT&T Park

○ Mission Rock

○ Terry Francois Blvd & Alameda St

○ Pier 70 North

○ Pier 70 South



0      1/2      1 mile

