

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE LOS ANGELES DEPARTMENT OF WATER AND POWER
AND
THE LOS ANGELES HARBOR DEPARTMENT
FOR THE USE OF PROPERTY FOR
THE WILMINGTON WATERFRONT PROMENADE AND AVALON PEDESTRIAN
BRIDGE/PROMENADE AND GATEWAY PROJECTS**

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its DEPARTMENT OF WATER AND POWER, Licensor (sometimes hereinafter referred to as "LADWP" or "Licensor"), for and in consideration of the keeping and performance by THE CITY OF LOS ANGELES, acting by and through its HARBOR DEPARTMENT, Port of Los Angeles, Licensee, whose address is 425 South Palos Verdes Street, San Pedro, California, of the terms and conditions hereof, gives permission to Licensee to use certain real property commonly referred to as Parcel A (sometimes hereinafter referred to as "Licensed Area"), as depicted in Exhibit A, attached hereto and made a part hereof by this reference, which is owned by the City of Los Angeles and under the jurisdiction and control of said LADWP, for the purpose of constructing, operating and maintaining a public park. LADWP finds that: (1) the Licensed Area is not presently needed for LADWP purposes; (2) the grant of the license pursuant to this Memorandum of Understanding (MOU) will not interfere with LADWP's purposes.

RECITALS

This MOU is made with reference to the following facts:

- A. WHEREAS, Licensor and Licensee have proposed a property exchange ("Exchange") whereby Licensee would acquire from LADWP property generally described as Parcels A, B and C, and in return LADWP would acquire from Licensee property generally described as Parcels K, L, P, T, and U, as well as Fries Avenue, portions of W. A Street, and a portion of North Lagoon Avenue, shown as Parcels N and S, through a street vacation to be requested by Licensor and supported by Licensee and the Los Angeles City Council Office, as depicted on Exhibit A; and
- B. WHEREAS, Licensor and Licensee entered into a Term Sheet dated October 4, 2018, setting forth certain terms and conditions of the Exchange subject to all approvals required by law; and
- C. WHEREAS, Licensor and Licensee entered into a Right of Entry Permit dated February 20, 2019, allowing Licensee to enter Parcel A to commence certain construction activities in connection with the Exchange, which permit expires February 20, 2024; and
- D. WHEREAS, it is the intent of Licensor and Licensee to negotiate in good faith for an equitable Exchange, as set forth above, including the exchange of additional

properties; and

- E. WHEREAS, the proposed Exchange is incidental to Licensee's development of the Wilmington Waterfront Promenade and Avalon Pedestrian Bridge/Promenade and Gateway Projects ("Projects") and Licensor's need and desire to acquire property in the Wilmington area for its essential operational needs; and
- F. WHEREAS, Licensee has completed development of the Wilmington Waterfront Promenade on the Licensed Area;
- G. WHEREAS, neither Licensor nor Licensee can convey an interest in real property via a transfer of jurisdiction without the approval of the Board of Water and Power Commissioners (LADWP Board) and the Board of Harbor Commissioners (POLA Board) and the Los Angeles City Council, in their discretion; and
- H. WHEREAS, Licensee wishes to continue to enter on the Licensed Area to operate and maintain the improvements it constructed thereon prior to the LADWP Board, POLA Board, and City Council's consideration of the proposed Exchange, and Licensee agrees to continue to assume all risks associated with such advanced entry on the Licensed Area including the risk that the LADWP Board, POLA Board, and/or the City Council does not approve the proposed Exchange.

NOW, THEREFORE, THE FOREGOING PERMISSION is given upon and subject to the following terms and conditions:

1. The right and permission of Licensee to enter on the Licensed Area granted by this MOU is subordinate to the prior and paramount right of Licensor to use said Licensed Area for Licensor's purposes. Licensee undertakes and agrees to use said Licensed Area and to exercise these MOU rights jointly with Licensor, and will at all times exercise the permission herein given in such manner as will not interfere with the full use and enjoyment of said Licensed Area by Licensor, unless and until the proposed Exchange is completed.
2. Licensee acknowledges Licensor's jurisdiction of the Licensed Area and agrees never to assail or resist the same, and further agrees that Licensee's use and occupancy of the Licensed Area shall be referable solely to the permission given in this MOU, unless and until the proposed Exchange is completed.
3. Licensee's rights to enter on the Licensed Area under this MOU shall be exclusive, except for the operations of the Licensor and its licensees specified herein and any preexisting rights, easements and reservations. Licensee's rights to use the Licensed Area under this MOU shall be for all purposes consistent with a public park including recreational use by the general public and temporary, short-term use by third parties for public events including but not limited to food vending and event operations or promotions.
4. Licensee hereby represents, warrants and covenants that it has existing and

complete control of and is responsible for all components of developing, improving, maintaining, and operating a public park facility on the Licensed Area, depicted as Parcel A on Exhibit A, at its sole cost and expense. All plans for any future development of the Licensed Area, excluding the existing approved park improvements, both above and below grade for the duration of the MOU shall be submitted to Licensor for its review and written approval at least ninety (90) calendar days prior to the commencement of any construction activities.

5. Licensee hereby represents, warrants and covenants that it has complete control of and is responsible for all components of developing, improving, maintaining, and operating the private street and road improvements generally referred to as W. Water Street on the Licensed Area, as depicted on Exhibit B, attached hereto and made a part hereof by this reference, at its sole cost and expense.
6. This MOU shall commence upon full execution after approval by the LADWP Board and POLA Board, or approval by the parties' respective authorized designee(s), and shall terminate on the earlier of five (5) years after the commencement date, or such date that the proposed Exchange is completed ("Term").
7. Licensee accepts and acknowledges the existing "AS IS" condition of the Licensed Area, including, but not limited to, all patent and latent defects thereon, and agrees to obey all applicable laws, ordinances and regulations governing and regulating the use of the Licensed Area and any recorded covenants, conditions, restrictions, easements, or licenses. Licensee has had the opportunity to inspect the Licensed Area, and Licensee accepts and acknowledges that Licensor makes no representations or warranties with respect to the condition of the Licensed Area, the uses that may be permitted thereon, or any patent or latent defects.
8. This MOU is of mutual benefit to Licensor and Licensee with consideration being in the form of the Exchange referenced in the Recitals.
9. In the event that the Exchange is not approved or is otherwise terminated at the expiration or earlier termination of this MOU, Licensor, in its sole discretion, may permit in writing, certain improvements related to Licensee's park facilities to remain on the Licensed Area.
10. If Licensee remains in possession of all or any part of the Licensed Area after the expiration or termination of the Term hereof, with or without the express or implied consent of Licensor, such license shall be from month to month only, and not a renewal hereof or an extension for any further term and such month to month license shall be subject to every other provision, covenant and agreement contained herein. The foregoing provisions of this Section 10 are in addition to and do not affect right of re-entry or any rights of Licensor hereunder or as otherwise provided by law, and in no way shall affect any right which Licensor may otherwise have to recover damages from Licensee for loss or liability incurred by Licensor

resulting from such failure by Licensee to surrender the Licensed Area. Nothing contained in this Section 10 shall be construed as consent by Licensor to any holding over by Licensee, and Licensor expressly reserves the right to require Licensee to surrender possession of the Licensed Area to Licensor as provided in this MOU upon the expiration or other termination of this MOU.

11. Notices

- a. All notices from one party to the other given pursuant to the terms of this MOU under the laws of the State of California, including but not limited to notice under the provisions of Section 1161 of the California Code of Civil Procedure, shall be in writing and shall be deemed to have been fully given when deposited in the United States mail, certified or registered, postage prepaid, and addressed to Licensee or Licensor at the addresses respectively specified below or to such other place as Licensee or Licensor may from time to time designate in a written notice to the other; or, in the case of Licensee delivered to Licensee at the Licensed Area or at any place where Licensee or any agent or employee of Licensee may be found. Licensee hereby agrees that service of notice in accordance with the terms of this MOU shall be in lieu of the methods of service specified in Section 1161 of the California Code of Civil Procedure. The provisions of subdivision (a) of Section 1013 of the California Code of Civil Procedure, extending the time within which a right may be exercised or an act may be done, shall not apply to a notice given pursuant to this MOU.

Notice to Licensor:

Los Angeles Department of Water and Power
Attention: Director of Real Estate
Real Estate Services Section
221 N. Figueroa Street, Suite 1600
Los Angeles, CA 90012

Notice to Licensee:

City of Los Angeles Harbor Department, Port of Los Angeles
Attention: Executive Director
425 South Palos Verdes Street,
San Pedro, California 90731

- b. Licensee shall notify Licensor of any changes in Licensee's mailing address and daytime telephone number within ten (10) days of changes. Any notice to Licensor shall be given by delivering such notice to the Real Estate Business Group of said Department or by sending such notice by mail addressed to the Real Estate Business Group, Department of Water and Power, P. O. Box 51111, Los Angeles, California 90051-0100.

12. Regardless of the manner or duration of use or occupancy of said Licensed Area by Licensee, and regardless of the permanent character of any works, improvements or structures constructed or installed therein or thereon by Licensee, Licensor may terminate this MOU without cause in the event Licensor must repossess and use the Licensed Area for LADWP's essential operations by giving at least one hundred eighty (180) days' written notice of termination to Licensee. LADWP shall retain its unfettered discretion in determining whether the Licensed Area is needed for LADWP's essential operations and Licensee shall not contest LADWP's determination of need of the Licensed Area for LADWP's essential operations and its election to terminate this MOU pursuant to this Section.
13. This MOU may be revoked by Licensor in the event of any failure or refusal on the part of Licensee to comply with or perform any of the terms or conditions herein. Notice of revocation shall be given by delivering the same to Licensee personally or by mailing the same to Licensee. Failure by Licensor to revoke this MOU for noncompliance of the terms or conditions by Licensee shall not constitute a waiver of the terms or conditions.
14. Upon the expiration or termination of this MOU, Licensee shall surrender the Licensed Area in a neat, clean and orderly condition. Licensee shall complete restoration of the Licensed Area to its original condition at the commencement date of this MOU or better prior to the expiration or termination of this MOU, except as to those improvements for which Licensor has agreed may remain pursuant to Section 9 hereinabove. Licensee shall call LADWP's Real Estate Services at (213) 367-0564 to make arrangements for a site inspection of Licensee's improvements on the Licensed Area in order to determine which improvements, if any, will be allowed to remain.

Upon expiration or termination of this MOU, Licensor shall expeditiously conduct an inspection of the Licensed Area to determine if restoration has been completed by Licensee. If Licensor determines that restoration has not been completed upon expiration or termination of this MOU, Licensor shall give Licensee written notice detailing the deficiencies of Licensee's restoration efforts. If Licensee fails to correct such deficiencies within sixty (60) days of the written notice, Licensor may restore said Licensed Area entirely at the expense of the Licensee. The cost for said restoration by Licensor shall be billed to Licensee, and Licensee shall promptly pay Licensor for the restoration costs within thirty (30) days of the billing date.

15. All work completed and the use of the Licensed Area, pursuant to the terms of this MOU, shall be completed in accordance with the terms and conditions specified in ordinances, statutes, permits, and regulations governing such instances; and the provisions of such ordinances, statutes, permits, and regulations are, by reference, made a part hereof as though incorporated verbatim herein.

16. Subject to the terms and provisions of this MOU, Licensee has inspected the Licensed Area, knows the condition thereof, and on behalf of itself and its successors, assigns, and sub-licensees, undertakes and agrees to indemnify and hold Licensor harmless from and against any and all liens and claims of liens, suits, causes of action, claims, administrative proceedings, charges, damages (including but not limited to indirect, consequential, and incidental), demands, judgments, civil fines, penalties, including but not limited to costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation, penalties and fines arising from the violation of any local, regional, state, or federal law, or regulation, disbursements, and other environmental response costs or losses of any kind or nature whatsoever that are incurred by or asserted against Licensor (collectively, "Claims"), for death, bodily injury or personal injury to any person, including but not limited to Licensee's employees, customers, invitees and agents, or persons who enter onto the Licensed Area, or damage or destruction or loss of use of any property of either party hereto, or third persons in any manner arising by reason of, incidental to, or connected in any manner to: 1) this MOU; 2) the Licensed Area; 3) the acts, errors or omissions to act or willful misconduct, or non-performance or breach by Licensee of any term and/or condition of this MOU; or 4) the release or spill of any legally designated hazardous material or waste, resulting from or incident to the presence upon or performance of activities by Licensee or its officers, agents, employees, contractors or sub-licensees with respect to the Licensed Area covered under this MOU, or 5) any demands, actions or causes of action, assessments, expenses, liabilities, interest and penalties or fees suffered, incurred, or sustained by any of the indemnified parties in connection with any of Licensee's or any Licensee party's construction activities at the Licensed Area, and in particular, the re-routing and establishment of W. Water Street as a street open to traffic.

Licensee's obligations under this Section 16 shall not apply to any Claims arising solely from the sole negligence or willful misconduct of Licensor.

This indemnity shall be in addition to any other rights or remedies which indemnitees have under law or under this MOU. This obligation under this Section 16 shall survive the expiration or termination of this MOU.

17. Licensee shall not seek indemnity from Licensor for any damage to the Licensee's or Licensee's invitees' equipment and/or improvements due to future construction or reconstruction by Licensor within the Licensed Area, except where such damage is caused by the sole negligence or willful misconduct of LADWP. Before commencing any such construction or reconstruction of the Licensed Area, Licensor shall provide Licensee with ten (10) business days' prior written notice to enable Licensee to protect its equipment and/or improvements, unless such construction or reconstruction is necessitated by an emergency.
18. Licensee shall pay for all materials placed upon, joined, or affixed to said Licensed

Area by or at the instance of Licensee, shall pay in full all persons who perform labor upon said Licensed Area at the instance of Licensee, and shall not cause or permit any liens of any kind or nature to be levied against said Licensed Area for any work completed or materials furnished thereon at the instance or request of Licensee. Licensee shall provide Licensor notice in writing of any liens levied against the Licensed Area. Licensee shall have fifteen (15) calendar days to cause the removal of any such liens and if such liens are not removed, Licensor may pay any amount owed and cause their removal. Licensor shall bill the Licensee for the amount paid out by Licensor in removing such liens. Licensee shall have fifteen (15) calendar days to repay the funds expended by Licensor necessary to remove such lien. Failure to comply with the requirements of this Section shall be considered a default and Licensor shall have the right but not the obligation to terminate this MOU. The exercise by Licensor of its right to terminate under this Section shall not be construed as a waiver of any of its right to any other remedy or lawful action to recover funds paid by Licensor.

19. **Assignment and Subletting:** Licensee shall not assign, sublease or, except where elsewhere stated, permit the use of the Licensed Area by any persons other than Licensee and its employees, or otherwise transfer (voluntarily, involuntarily, by operation of law) all or any part of its interest in this MOU or the Licensed Area without the prior written consent of Licensor, which shall not be unreasonably withheld or delayed.

Licensee may delegate the authority to authorize the use of the Licensed Area to a third party for public events consistent with the Licensed Area's use as a public park, as described in Section 3, with the prior written consent of Licensor.

20. Insurance

Self-Insurance: It is hereby understood that Licensee is self-insured concerning any claims that may arise as a result of the approved work and use of the Licensed Area. Licensee and its contractors shall ensure that any of its contractors obtain and keep in force during the term of this MOU, insurance coverages by insurers licensed and/or admitted to do business in California. Licensee shall be solely responsible for its independent contractors and subcontractors and shall cause its subcontractors to maintain insurance coverage consistent with usual and customary practices in their respective industries with limits applicable to the scope of work being performed.

21. Licensee hereby acknowledges that this MOU is a license only and does not constitute a lease of, invitation or obligation to lease, or any present or future interest in the Licensed Area.
22. Licensee, by executing this MOU and accepting the benefits hereof, understands that a property right pursuant to applicable ordinances and codes under tax law, may be created known as "possessory interest" and may be subject to property

taxation. Licensee will be responsible for payment of any property taxes upon such right. Licensee herewith acknowledges that notice required by Revenue and Taxation Code, Section 107.6 has been provided.

23. For information about a specific Possessory Interest assessment, please contact the Assessor's Office, Possessory Interest Section at (213) 974-3108, Los Angeles County Assessor, c/o Possessory Interest Section, Room 180, 500 West Temple Street Los Angeles, CA 90012, or via the internet at <http://assessor.lacounty.gov/possessory-interests/>.
24. Licensee is hereby notified that facilities of other licensees of Licensor may exist on the Licensed Area. Licensee shall take reasonable precautions and actions to avoid infringement, interference, or damage to all such installations. Licensor and any of its licensees will take reasonable precautions and actions to avoid infringement, interference, or damage to Licensee's equipment and/or improvements. Licensee shall be responsible for the identification and protection of the existing facilities during construction of approved improvements. Licensee shall provide reasonable access to any other licensees, users, or easement holders.
25. There is expressly reserved unto Licensor and unto all authorized employees of Licensor the right of continuous access.
26. Licensee shall be responsible for the training of its personnel under all applicable laws including, but not limited to, training with regard to the operation of equipment, and the handling and disposal of hazardous materials and wastes in connection with the permission herein given.
27. During and upon expiration or termination of this MOU for whatever reason, the Licensee shall only be responsible, to the extent caused by or introduced onto the Licensed Area as a result of the use of the Licensed Area by Licensee, its Affiliates and/or invitees, for all investigations, cleanup costs and expenses including, but not limited to, any fines, penalties, judgments, litigation costs, and attorneys' fees incurred as a result of any and all discharge, leakage, spillage, emission of material which is, or becomes, defined as any pollutant, contaminant, hazardous waste or hazardous substance, under all Federal, State, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, or imposing liability or standards of conduct concerning any hazardous substance on, under, or about the Licensed Area, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 CFR §§9601 et seq.]; the Resource Conservation and Recovery Act of 1976 [42 CFR §§6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act [33 CFR §§1251 et seq.]; the Toxic Substances Control Act [15 CFR §§2601 et seq.]; the Hazardous Materials Transportation Act [49 CFR §§5101 et seq.]; the Federal Insecticide, Fungicide, Rodenticide Act [7 CFR §§136 et seq.]; the Superfund Amendments and Reauthorization Act [42 CFR §§9601

et seq.]; the Clean Air Act [42 CFR §§7401 et seq.]; the Safe Drinking Water Act [42 CFR §§300f et seq.]; the Solid Waste Disposal Act [42 CFR §§6901 et seq.]; the Surface Mining Control and Reclamation Act [30 CFR §§1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 CFR §§11001 et seq.]; the Occupational Safety and Health Act [29 CFR §§651 et seq.]; the California Underground Storage of Hazardous Substances Act [H&SC §§25280 et seq.]; the California Hazardous Substances Account Act [H&SC §§25300 et seq.]; the California Hazardous Waste Control Act [H&SC §§25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [H&SC §§25249.5 et seq.]; the Porter- Cologne Water Quality Control Act [Wat.C. §§13000 et seq.] together with any amendments of, or regulations promulgated under the statutes cited above, and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to hazardous substances on, under, or about the Licensed Area, including ambient air, soil, soil vapor, groundwater, surface water, or land use. Said cleanup shall be accomplished to the satisfaction of Licensor and any governmental body having jurisdiction there over.

28. Licensee shall pay for all costs, fees, or charges for the application, installation, operation, maintenance, use, or removal of any utilities or services required in the exercise of the permission herein given. Licensee shall not use any existing utility system prior to the transfer of financial responsibility to Licensee with the appropriate utility company supplying existing service.
29. Licensee may allow vehicles, licensed and approved for operation by the California Department of Motor Vehicles containing motor vehicle fluids (gasoline, diesel fuel or motor oil and fluids), on the Licensed Area, subject to the terms and conditions of this MOU. The Licensee will be responsible for appropriately monitoring all motor vehicles and Licensee shall be responsible for cleanup and damages caused by any motor vehicle fluids or hazardous materials deposited on the Licensed Area as a result of Licensee's operations and use of the Licensed Area.
30. All activities not directly related to vehicular access including, but not limited to, auto repair, refueling, washing, and change of oil are prohibited within the Licensed Area.
31. Flammable liquids and fueling of vehicles or equipment shall not be allowed on the Licensed Area at any time.
32. Licensee shall not use Licensor's property to satisfy any zoning demands, zoning variances, open space or parking requirements, and any other governmentally imposed conditions for building plans and permits.
33. At Licensee's expense, Licensee shall be responsible for obtaining all required permits (e.g. conditional use permits or other entitlements) and environmental review necessary to use the Licensed Area.

34. Licensee shall take all necessary measures to minimize disturbances to neighboring businesses or nearby residences and shall assume the responsibility of resolving any complaints/disputes from adjacent property owners or the public, arising out of Licensee's use and enjoyment of the Licensed Area. Any inquiries or complaints brought to the attention of Licensor shall be directed to the Licensee. Licensee must post and maintain on site the required signage, which includes but not limited to the following information, at a designated location approved by Licensor:
 - a. For Information, requests, or to report issues, call 311 or (213) 473-3231.
35. During the term of this MOU, Licensee shall comply with Los Angeles Municipal Code Section 121, relating to water conservation as it pertains to the Licensed Area.
36. Licensee agrees that this MOU will not be recorded.
37. **Laws, Rules, and Regulations**
 - a. Licensee shall be, at its sole cost and expense, solely responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state, and/or local government authority regarding its use of the Licensed Area.
 - b. Licensee shall be solely responsible for any and all civil and/or criminal penalties assessed as a result of its failure to comply with any of these rules, regulations, restrictions, ordinances, statutes, laws, orders, directives and or conditions.
38. Licensee agrees and obligates itself in performing this MOU not to discriminate against any employee or applicant for employment because of his/her race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition.
39. This MOU shall be interpreted, governed by, and construed under the laws of the State of California and venue shall lie in the County of Los Angeles.
40. The parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this MOU or of any duty, covenant, obligation, or undertaking established under this MOU.
41. Any waiver at any time by either party of its rights with respect to a default under this MOU, or with respect to any other matter arising in connection with this MOU, shall not be deemed a waiver with respect to any subsequent default or other matter arising in connection therewith. Any delay in assessing or enforcing any right, shall not be deemed to be a waiver of such right, provided that all applicable

statutory periods of limitation shall apply.

42. If any excavations are required by Licensee for its use of the Licensed Area, utility agencies within the proposed excavation sites shall be notified of impending work. Licensee shall be responsible for coordinating relocation of utilities, if any, within the project boundaries. Before commencing any excavations, Underground Service Alert (a.k.a. Dig Alert) shall be notified.
43. This MOU (including exhibits attached hereto) is the final expression of, and contains the entire agreement amongst the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto.
44. This MOU may not be modified, changed, or supplemented except by written mutual agreement between Licensor and Licensee.
45. This MOU may be executed in one or more counterparts, and by the parties in separate counterparts, each of which, when executed, shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by Licensor) and sent by e-mail shall be deemed original signatures.

[SIGNATURE PAGE TO FOLLOW]

Date _____

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES BY
BOARD OF WATER AND POWER COMMISSIONERS

By: _____
MARTIN L. ADAMS
General Manager and Chief Engineer

SIMON ZEWDU
Interim Senior Assistant General Manager
Power System

Date: _____

And: _____
CHANTE L. MITCHELL
Board Secretary

CITY OF LOS ANGELES HARBOR
DEPARTMENT BY BOARD OF HARBOR
COMMISSIONERS

By: _____
EUGENE SEROKA
Executive Director

By: _____
AMBER M. KLESGES
Board Secretary

LICENSEE



