

This license agreement is a DRAFT only. This agreement has not been approved by the following parties: The Secretary of Transportation, Office of Chief Counsel, the Governor’s Office of General Counsel, and the Office of the Attorney General. Sharing this agreement is only meant for the parties to review and comment on the provisions of the license Agreement so that an agreement may be reached that is acceptable to all parties. The Department reserves the right to change, alter, and amend this Draft Agreement.

This LICENSE AGREEMENT (this “Agreement”) is made and entered into as of this day of
by and among the COMMONWEALTH OF PENNSYLVANIA, acting through the Pennsylvania Department of Transportation (the “Commonwealth”) (the Commonwealth may also be referred to herein individually as a “Licensor”); and the SPORTS & EXHIBITION AUTHORITY OF PITTSBURGH AND ALLEGHENY COUNTY, a public body, corporate and politic, organized and existing under the laws of the Commonwealth of Pennsylvania (the “SEA”) and the CITY OF PITTSBURGH (“City”); each of the SEA and the City may be referred to herein individually as “Licensee” and collectively as “Licensees”: the Licensors and the Licensees may be referred to herein collectively as the “Parties”.

RECITALS:

WHEREAS, the Commonwealth has under its jurisdiction State Route (SR) 579 (a/k/a Interstate 579), Segment 0002/0780, Segment 0003/0675 (Centre Avenue Bridge) to Segment 0002/1172 and Segment 0003/1060 (Webster Avenue Bridge), located in the City of Pittsburgh, Allegheny County, Pennsylvania, and commonly known as the “Crosstown Expressway” (the “Expressway Property”); and,

WHEREAS, the Urban Redevelopment Authority of Pittsburgh (URA) owns an unimproved parcel of real property, located adjacent to the Expressway Property in the City of Pittsburgh, Allegheny County, Pennsylvania and designated as Block and Lot Number 2-B-257 in the Deed Registry Office of Allegheny County, Pennsylvania (the “URA Property”); and,

WHEREAS, the SEA owns an unimproved parcel of real property, located adjacent to the Expressway Property in the City of Pittsburgh, Allegheny County, Pennsylvania and designated as Block and Lot Number _____ in the Deed Registry Office of Allegheny County, Pennsylvania (the “SEA Property”); (the Expressway Property, the URA Property, and the SEA Property may be referred to herein collectively as the “Property”); and

WHEREAS, the Licensees desire to undertake a redevelopment of certain parcels of real property located adjacent to the Property by, among other things, creating a specially planned zoning district (the “SP District”) that would include such adjacent property and the Property; and,

WHEREAS, in connection with Licensees’ proposed redevelopment and the creation of the SP District, Licensees desire to construct a cover over a depressed section of the Expressway Property between Centre Avenue and Bigelow Boulevard and open green space and certain other improvements over such cover extending across the Property (“the Cap”), in such manner as contemplated by an approved Master Redevelopment Plan approved by the City;

WHEREAS, in order preserve the structure integrity of the state highways and ensure the Cap structure meets Commonwealth construction specifications, the Commonwealth will provide for the construction of the Cap through its bidding and contract awarding process and the SEA will reimburse the Commonwealth for all costs associated with the construction of the Cap in a separate agreement; and;

WHEREAS, the Cap will occupy portions of the URA and SEA property, and the SEA intends on acquiring the URA property. Therefore, prior to the beginning of construction, the SEA will acquire the URA property as set forth in the right-of-way plan, attached to and made part of this Agreement as Exhibit ____, and the SEA will execute a temporary construction easement in favor of the Commonwealth to use the land as necessary during the construction of the Cap. The temporary construction easement must be executed on Form RW-341 attached to and made part of this Agreement as Exhibit ____; and,

NOW, THEREFORE, in reliance upon the above Recitals which are incorporated by reference herein and made a part hereof, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the Parties hereby agree as follows:

1. Grant of License. Pursuant to 71 P.S. § 512(a)(10), granting the Department of Transportation exclusive jurisdiction over all State designated highways, and subject to the approval of FHWA, Licensors hereby grants to Licensees, acting individually or in concert with one another, and their respective employees, agents, representatives, consultants and contractors (collectively, "Licensee Representatives"), the right and license to occupy the Expressway Property with the Cap structure. This Agreement represents a license that is limited in purpose and scope to the least amount of access which is reasonably required to undertake and complete the Cap structure and does not represent a lease to or create any interest in the Expressway Property or any other property owned by Licensors or to create a partnership, joint venture or any association or relationship between Licensors and Licensees, or any of them.
2. Construction of Cap and Reimbursement.
 - a. The Commonwealth will, by contract, provide for the construction of the Cap which is estimated at _____ dollars, in accordance with the final plans and designs for the Cap prepared by the SEA and approved by the Commonwealth and the FHWA.
 - b. The SEA will, by separate agreement, reimburse the Commonwealth for all expenses associated with the construction of the Cap. It is estimated that the total costs associated with the construction of the Cap will be in the amount of _____ dollars. This agreement must be executed prior to beginning the construction of the Cap.
 - c. The Cap will occupy the Expressway property as well as portions of the SEA property and the parcel currently owned by the URA . Pursuant to the right-of-way plan attached to and made part of this Agreement as Exhibit ____. the SEA will acquire the URA property. This acquisition must be completed prior to beginning the construction of the Cap.
 - d. After the SEA acquires the URA property, but prior to beginning the construction of the Cap, the SEA will execute a Temporary Construction Easement using Exhibit ____ (RW-341) in favor of the Commonwealth to use the land as necessary during construction of the Cap.

The easement is required only until the construction or work indicated by the construction plans is completed, unless sooner relinquished in writing by the Commonwealth.

- e. The present general design for the Cap including necessary maps, plans, and sketches setting forth the pertinent features are on file with the Commonwealth and are incorporated herein by reference as though physically attached.

3. Maintenance. The parties hereto will observe and be governed by the following conditions:

- a. Licensees shall, at their sole cost and expense, be responsible for maintaining, developing, operating and policing all facilities developed on the Cap area subject to the supervision of the Licensor, it being clearly understood that the use and operation policy development of said Cap areas and the facilities thereon shall be without expense to the Licensor and/or FHWA.
- b. The Licensees shall not use the portion of the Cap located within the Expressway Property for any purpose not contemplated in this Agreement without the written consent of the Secretary of Transportation or her deputies of the Commonwealth, subject to concurrence by the FHWA.
- c. Wrecked vehicles shall not be parked on the Cap.
- d. Licensees shall not install facilities for, nor operate on the Cap, a gasoline supply station; nor shall vehicles used or designed for the transportation of gasoline or petroleum products be permitted on the Cap areas nor shall bulk storage of gasoline or petroleum products be permitted on, in or under the Cap structure.
- e. The Cap shall not be used for the manufacture or storage of flammable explosive or hazardous material or for any occupation which is deemed by the COMMONWEALTH or the FHWA to be a hazard to highway or nonhighway use.
- f. Any additional improvements or alterations not set forth in this Agreement, desired to be placed in, on or upon the Cap area located within the Expressway Property by the Licensees in order to enhance its use for the public purposes must be fire resistant in accordance with the provision of local applicable building codes and shall be made at the expense of the Licensees in conformity with a proposal to be submitted by the Licensees to the Licensor and the FHWA for their approval in writing before the same may be made. No other improvements shall be placed on, in or upon the Cap and no alterations shall be made on, in or upon the Cap without the consistent and approval of the Licensor and the FHWA first and obtained in writing under penalty of cancellation of this Agreement.
- g. Storage of materials or supplies of any nature will be permitted only with specific consent and approval of the Licensor.
- h. Licensees will, at their own cost and expense, pay for (a) all taxes and assessments or payments in lieu thereof, that may be legally assessed on the Licensees' possessory interest or on any improvements or equipment placed by the Licensees on said landscaped Cap during the continuance of the permission hereby granted, (b) all charges, if any, for water

and sanitary sewer furnished to or made available to the herein described landscaped Cap through a meter to be constructed for by the City, and (c) all charges, if any, for electricity furnished or supplied to or upon any part of the landscaped Cap and that said electricity shall enter said Cap through a meter to be contracted for by the City.

- i. Licensees shall not permit any illegal activity upon the Cap and furthermore shall police and enforce compliance by all persons authorized to use the same with all statutes, laws and ordinances of Federal, State and local government.
 - j. On-premises signs, displays or devices shall be subject to regulation by the COMMONWEALTH and the FHWA with respect to number, size, location and design. All signs shall be subject to the approval of the COMMONWEALTH and the FHWA.
 - k. Any proposed facilities on the Cap shall be designed and constructed in such a manner as not to interfere in any way with safety of highway use or to expose any member of the public, whether or not said member of the public is using the highway, to any hazardous or unsafe condition as a result of the Licensees' use of the Cap and the Expressway Property, but in such a manner as to permit access to the highway facility for the purpose of inspection, maintenance and reconstruction, when necessary, for which the Licensor reserves the right at all times to accomplish.
 - l. Licensees shall, at their sole expense, keep and maintain the Cap structure and the Expressway Property free of all weeds, debris, and inflammable materials of every description and at all times in an orderly, clean, safe and sanitary condition. In addition, Licensees shall, by pruning, spraying, feeding and watering, maintain all plantings in a healthy condition with replacement of dead or deceased plants as necessary.
 - m. Licensees shall take all steps necessary to effectively protect the Cap structures and all other highway structures from damage incident to the Licensees' use of the Cap and Expressway Property, all without expense to the COMMONWEALTH.
 - n. The COMMONWEALTH specifically reserves the right to enter by any authorized officer, engineer, employee, contractor, or agent of the COMMONWEALTH for the purpose of inspecting the Cap structure, or the doing of any and all acts necessary or proper on the Property in connection with the protection, maintenance, painting and operation of the highway structures and its appurtenances.
4. Term. This license shall be effective only, insofar as the rights of the COMMONWEALTH in the Expressway Property are concerned, for the duration of the use of the Cap by the licensees for the purposes stated in this Agreement subject to termination by the Licensor for the reasons set forth in this Agreement. The obtaining of permission as may be necessary on account of any other existing rights shall be accomplished by the Licensees, at their sole expense.
5. Laws; Permits. Licensees and their respective Licensee Representatives shall comply with all applicable environmental laws and all lawful orders of any governmental authority or agency. Licensees shall, at their sole cost and expense, secure all necessary authorized permits required in connection with operations on the premises and shall comply with all Federal, State and local

statutes, ordinances or regulations which may affect, in any respect, the Licensees' use of the premises.

6. Indemnification. To the extent permitted by law, Licensees hereby jointly and severally assume any and all risks associated with the Activities to be conducted by Licensees or their respective Representatives on the Property. Licensees hereby agree to indemnify, defend and hold Licensors harmless from and against any and all claims, demands, damages, expenses, losses, fees, liabilities and/or suits or other actions arising from or relating to the activities of Licensees and their respective Representatives in exercising their rights under this Agreement with respect to the property (collectively, the "Indemnity Events"); provided however, that the foregoing indemnity shall not apply to Indemnity Events that are caused by the negligence or willful misconduct of any Licensor or its respective agents, employees, or representatives.

7. Termination and Restoration.
 - a. The Licensor covenants and agrees with the Licensees that the Licensees, keeping and performing the covenants and agreements herein contained on the part of the Licensees to be kept and performed, shall at all times during the term of said permission peaceably and quietly have, hold and enjoy the Expressway Property without suit, trouble or hindrance from the Licensor provided, however, and it is further agreed, that if the Licensees shall not perform and fulfill each and every one of the conditions and covenants herein contained to be performed by the Licensees; or if the Licensees discontinue use of the Expressway Property for more than a continuous sixty (60) day period; or if the Licensees attempt to sell or assign the Cap Structure located within the Expressway Property without the written consent of the Licensor; said act or acts of omission or commission may at the option of the Licensor constitute a forfeiture of all rights under, the voiding of, and the ending of the term of this Agreement, and the future use of the Expressway Property after such forfeiture by said Licensees shall be deemed, held and taken as a forcible detainer thereof by the Licensees; and the Licensor, may without notice, re-enter and take possession thereof, and with or without force and with or without legal process, evict and dispossess the Licensees from the Expressway Property; and if any suit be brought by the Licensors against the Licensees for the breach of any condition or covenant herein contained by the Licensees or any summary action be brought by the Licensor for forfeiture of this Agreement, or to recover possession of the Expressway Property, the Licensees agree to pay reasonable attorney's fees and costs for commencing and prosecuting said action which shall be ascertained and fixed by the Court.
 - b. Notwithstanding anything herein contained to the contrary, this Agreement and the Permit and License to use the Expressway Property may be terminated by the Licensor upon ninety (90) days prior notice in writing by the Licensor. In the event of cancellation by the COMMONWEALTH, said notice shall be served upon the Licensees.
 - c. In the event of termination of this Agreement for any of the foregoing reasons, the LICENSEES will peaceably and quietly leave, surrender and yield up to the Licensor all and singular the State-owned Expressway Property with said highway structures and appurtenances and fixtures in good order, condition, and repair, reasonable use and wear

thereof and damage by earthquake, fire, public calamity by the elements, by act of God or by circumstances over which the Licensees have no control, excepted. Any park facilities, plantings, signs or other appurtenances placed on the portion of the Cap located within the Expressway Property pursuant to any provision hereof are the personal property of the Licensees and shall be removed by the Licensees upon the termination of the Agreement if required by the Licensor and/or the FHWA and the Expressway Property shall be restored to its previous condition, all the expense of the Licensees and without any expenditure of the COMMONWEALTH or FEDERAL funds, provided, that if any such park facilities, plantings, signs or other appurtenances are not so removed after thirty (30) days written notice from the Licensor to the Licensees, the Licensor may proceed to remove the same and to restore the Expressway Property to its previous condition at the Licensees' cost and expense and the Licensees shall pay the Licensor upon demand, the reasonable cost and expense to it of such removal and restoration, or the Licensor may, in its absolute discretion, elect to declare the same the property of the Licensor whereupon all right, title and interest of the Licensees therein shall terminate.

8. No Liens. Licensees shall not suffer or permit any lien to be filed against the Property for any labor or materials in connection with work of any character performed or claimed to have been performed on the Property at the discretion or sufferance of Licensees, or for any violation of Laws. In the event any such lien is filed, or threatened to be filed, against the Property, the applicable Licensor shall have the right, but not the obligation, to cause such lien to be released and Licensees shall pay, on demand, all of Licensor's costs in connection therewith, including without limitation, reasonable attorneys' fees. The provisions of this Section shall survive the termination or expiration of this Agreement and the License created hereby.
9. Insurance. Licensees shall carry, and shall cause all Licensee Representative engaged in any of the Activities which require physical access to the Property to carry, insurance throughout the term of this Agreement, at their respective sole cost and expense, with terms, coverages and companies reasonably satisfactory to Licensors and with such increases in limits as Licensors may reasonably request from time to time, but initially Licensees shall cause the Licensee representatives to maintain the following coverages in the following amounts:
 - a. Worker's compensation insurance in amounts required by applicable law, covering all persons employed in connection with any work done on or about the Property with respect to which claims for death or bodily injury could be asserted against the applicable Licensee Representative, Licensor, Licensee or the Property;
 - b. Employer's liability insurance in an amount not less than _____ per occurrence; and
 - c. Occurrence-based comprehensive general liability insurance and property damage insurance with minimum coverage of _____ per person and _____ per occurrence for bodily injury, including personal injury, sickness, disease or death of any of such Licensee Representative's employees or of any person, and for damages because of injury to or destruction of tangible property including loss of use resulting therefrom, and for damages because of injury to or destruction of tangible property including loss of use resulting from owned, scheduled, hired and non-owned automobiles.

- d. The Foregoing insurance shall cover each of the Licensees as named insured and Licensors as additional insureds and shall contain a waiver of subrogation clause in favor of the Parties. Certificates evidencing such insurance shall be furnished to the applicable Licensor prior to the commencement of any Activities on the Property. Such policy or policies shall provide that termination or cancellation will not occur without at least thirty (30) days' prior written notice to Licensors.
10. Relationship of Parties. Nothing contained herein shall be deemed or construed by the Parties, nor by any third party, as creating the relationship of principal and agent or of landlord and tenant or of partnership or of joint venture between the Parties, or any of them.
11. No Assignment. Licensees shall not transfer or assign this permit or license or any part thereof nor shall Licensees sublet or subcontract the use of the Expressway Property or any part thereof without the prior written consent of the Commonwealth and the FHWA.
12. Severability. If any term, covenant, or condition of this Agreement, or the application thereof to any party or circumstance, is held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to the parties or circumstances other than those to which the Agreement was held invalid or unenforceable, shall not be affected by the holding of invalidity or unenforceability. Each remaining term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
13. Clauses Independent. Performance of all the terms, covenants, and conditions of this Agreement shall be independent of the performance of all and every other term, covenant, and condition of this Agreement.
14. Integration Clause. Upon execution, the document, together with all exhibits and attachments annexed to and referenced in it, constitutes the entire agreement between the parties. All prior or contemporaneous agreements are hereby merged into this document. No amendment or modification of this Agreement shall be valid unless it is in writing and duly executed and approved by the parties.
15. No Implied Waiver. No obligation of any party under this Agreement shall be deemed waived, and no breach excused, unless such waiver or consent shall be in writing and signed by the authorized official. Any consent to, or waiver of a breach under this Agreement, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.
16. Rights cumulative. The rights and remedies provided by this Agreement are cumulative, and the use or non-use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

17. Commonwealth Standard Clauses. The Licensees shall comply, and shall cause their consultant(s) and contractor(s) to comply, with the current versions of the Contractor Integrity Provisions, Nondiscrimination/Sexual Harassment Clause, Provisions Concerning the Americans with Disabilities Act, Contractor Responsibility Provisions, and Contract provisions – Right to Know Law 8-K-1532, attached hereto and incorporated herein as Exhibits “A” through “E”. As used in these Exhibits, the term “Contractor” refers to the Licensees, their consultant(s), and their contractor(s).
18. Offset Provision. The Licensees agree that the Commonwealth may set off the amount of any state tax liability or other obligation of the Licensees or its subsidiaries to the Commonwealth against payments due to the Licensees under any contract with the Commonwealth.
19. Counterpart Originals. This Agreement may be executed in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as a single instrument.
20. Authority. Licensors and Licensees each hereby represent and warrant to the other that each has the requisite authority to enter into this Agreement and perform each party’s respective obligations hereunder. Without limitation of the foregoing, the Commonwealth hereby represents and warrants to Licensees that Licensees and their respective Licensee Representatives shall be permitted to conduct the Activities on and about the Commonwealth Property without the separate approval of the United States Department of Transportation or any other Federal agency or department.
21. Notices. All notices must be in writing and are effective only when deposited in the U.S. mail, certified and postage prepaid, or when sent via overnight delivery. Notices shall be addressed as follows:

If to Licensors:

If to Licensees:

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