



Office of the City Manager

CONSENT CALENDAR  
May 12, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation and Waterfront

Subject: License Agreement – Aqua SuperPower, Inc. for Marine Electric Vessel Charging Station at K Dock at the Berkeley Marina

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a license agreement with Aqua SuperPower, Inc. to install and operate a marine electric vessel charging station at K Dock at the Berkeley Marina for a period of 12 years.

FISCAL IMPACTS OF RECOMMENDATION

The contractor, Aqua SuperPower, will cover the full cost of the project, including the initial installation valued at \$80,000, as well as operations, maintenance, and removal for the duration of the license term of 12 years.

Because the City has an existing account with PG&E for electrical service at the Berkeley Marina, the City will make payments to PG&E for the electricity used by the new charger for the boating public, and then get reimbursed by Aqua SuperPower on a quarterly basis, estimated at up to \$5,000 per quarter. Aqua will provide quarterly reporting on power usage and associated costs calculated using applicable Pacific Gas and Electric commercial rates, including time-of-use pricing. The City will also have access to a digital dashboard to monitor usage of the charger and to verify reported data. The City will also receive a net profit share of 10%, increasing to 15% once the charger generates more than \$10,000 in net profit annually, as detailed in the license agreement (Exhibit A to the Resolution). The revenue is expected to be nominal (estimated at under \$250 per year) and is not the primary objective of this project.

CURRENT SITUATION AND ITS EFFECTS

Staff have been working with Aqua SuperPower to explore the installation of marine electric vessel charging infrastructure at the Berkeley Marina since 2023. Aqua SuperPower recently revised the project to reduce scope and cost by eliminating the need for trenching and new conduit and new PG&E service, and by providing project management. Aqua SuperPower will cover the cost of the project by using funds from the California Air Resources Board (CARB) CORE program<sup>1</sup> as well as their own

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<sup>1</sup> The **Clean Off-Road Equipment Voucher Incentive Project (CORE)** is CARB's multi-million dollar incentive project to encourage California off-road equipment owners to purchase or lease currently

funding. This part of the CORE funding program for new electrical infrastructure in California was recently extended until mid-May 2026.

### BACKGROUND

On December 12, 2023, the City Council authorized the submission of a grant application to the California Air Resources Board (CARB) Advanced Technology Demonstration and Pilots Program to procure an electric harbor patrol boat and install a marine electric vessel charging station.

The grant application proposed a project comprised of an electric vessel and electric charging infrastructure to reduce greenhouse gas emissions from recreational boating vessels, support the adoption of electric boats, and position the Berkeley Marina as a regional leader in marine electrification because it is an early stop along the San Francisco Bay's marine charging corridor.

While the CARB grant was not awarded, the City and Aqua SuperPower worked together to successfully obtain a CORE purchasing voucher from CARB to acquire its first all-electric harbor patrol vessel (boat model name Vita Seal) at a cost of \$99,662 (discounted from the original cost by 63%). The vessel is currently charged overnight using existing shore power infrastructure at the Berkeley Marina.

Aqua SuperPower, Inc. is the first company to provide a network of fast charge stations for electric boats. With over 134 charging points, they operate at marinas in the UK, Italy, France, Spain, Portugal, Sweden, and locations in California (Sausalito, Redwood City, Lake Tahoe, and planned sites in San Francisco and other locations).

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This project will help reduce the environmental impact of boating in the San Francisco Bay by allowing recreational boaters to transition from combustion engines to electric vessels. This project supports the City's climate action goals by providing new electric charging facilities which reduces reliance on fossil-fuel-powered vessels. The project also helps the City to advance Strategic Goal Number 7 to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

### RATIONALE FOR RECOMMENDATION

The proposed license agreement with Aqua SuperPower Inc. allows the City to implement marine electric charging infrastructure with virtually no City funds. This new boating amenity will improve the experience of boaters at the Berkeley Marina, set Berkeley apart from other marinas, and will increase the potential for new boat slip rentals and more long-term revenue for the Marina Fund to continue quality operations.

### CONTACT PERSON

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available commercial zero-emission off-road equipment, and also helps fund electrical charging infrastructure.

License Agreement: Aqua SuperPower, Inc. for  
Marine Electric Vessel Charging Station

CONSENT CALENDAR  
May 12, 2026

Ali Endress, Waterfront Manager, (510) 981-6737

Attachments:

1: Resolution

Exhibit A: License Agreement

RESOLUTION NO. -N.S.

LICENSE AGREEMENT WITH AQUA SUPERPOWER, INC. FOR MARINE ELECTRIC VESSEL CHARGING STATION AT K DOCK AT THE BERKELEY MARINA

WHEREAS, on December 12, 2023, the City Council authorized the submission of a grant application to the California Air Resources Board (CARB) Advanced Technology Demonstration and Pilots Program to procure an electric harbor patrol boat and install a marine electric vessel charging station; and

WHEREAS, the grant application proposed a project comprised of an electric vessel and electric charging infrastructure to reduce greenhouse gas emissions from recreational boating vessels, support the adoption of electric boats, and position the Berkeley Marina as a regional leader in marine electrification because it is an early stop along the San Francisco Bay's marine charging corridor; and

WHEREAS, while the CARB grant was not awarded, the City and Aqua SuperPower worked together to successfully obtain a CORE purchasing voucher from CARB to acquire its first all-electric harbor patrol vessel (boat model name Vita Seal) at a cost of \$99,662 (discounted from the original cost by 63%). Since 2023, staff continued to work with Aqua SuperPower to explore the installation of marine electric vessel charging infrastructure at the Berkeley Marina; and

WHEREAS, Aqua SuperPower recently revised the project to reduce scope by eliminating the need for trenching and new conduit and new PG&E service, and by providing project management; and

WHEREAS, Aqua SuperPower, Inc. will cover the full cost of the project, including the initial installation valued at \$80,000, as well as operations, maintenance, and removal for the duration of the license term of 12 years using funds from the California Air Resources Board (CARB) as well as their own funding.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a license agreement with Aqua SuperPower, Inc. to install and operate a marine electric vessel charging station at K Dock at the Berkeley Marina for a period of 12 years, and to make any necessary amendments consistent with the intent of this Resolution. A record signature copy of said agreement shall be on file in the Office of the City Clerk.

Exhibits

A: License Agreement

## LICENSE AGREEMENT

This LICENSE AGREEMENT (“**Agreement**”) dated for reference purposes as of May 15, 2026 (“**Effective Date**”), is entered into by and between the CITY OF BERKELEY, a charter city organized and existing under the laws of the State of California (“**City**”) and Aqua Superpower (USA), Inc., a California limited liability company doing business as Aqua Superpower at 60C Gate 5 Road, Sausalito, CA 94965 (“**Licensee**”).

### 1. LICENSE

a. City hereby grants a non-exclusive license (“**License**”) to Licensee, subject to all the terms and conditions herein, for the Licensee’s use of the City’s property located at the Premises at the K-102 area of K-Dock at the Berkeley Marina, 201 University Avenue, Berkeley, California, (the “**License Area**”), as more particularly described in and shown on the map attached hereto as Exhibit A and made a part hereof. City hereby reserves the right to use or allow third parties to use the License Area for Waterfront-related activities, if deemed necessary by the City Manager or their designee.

b. Licensee may use the License Area solely for the operation of a Marine Electric Vessel Charging Station as more particularly described in Exhibit B, attached hereto and made a part hereof, and for no other purpose. If Licensee fails to use the License Area for such purposes or uses the License Area for unauthorized purposes, City may, in its sole discretion, immediately terminate this Agreement.

c. Licensee acknowledges that this Agreement grants Licensee the personal privilege to occupy and use the License Area for the purposes stated herein, but does not convey an estate in land or a leasehold interest in the License Area, nor does it create a landlord/tenant relationship.

d. Licensee agrees that neither City nor anyone acting on City’s behalf has made any representation or warranty of any kind or nature whatsoever respecting the physical condition of the License Area, its suitability for Licensee’s use, or any other matter relating to the License Area (including, but not limited to, the environmental condition of the License Area) or this Agreement, and Licensee accepts the License Area in its “AS-IS CONDITION AND WITH ALL FAULTS.”

### 2. TERM

This Agreement shall take effect only upon approval by the City Manager (the “**Effective Date**”) and execution by both City and Licensee, subject to the following:

a. The term of the License be 12 years, and shall expire at midnight on May 14, 2038 (“**Termination Date**”).

b. Either party may terminate this Agreement for any reason or for no reason with sixty (60) days' prior written notice to the other party.

c. In addition, the City has the right to terminate this Agreement by written notice to Licensee in the event of Licensee's failure to comply with any of the terms and conditions herein set forth or if, in the City Manager's exercise of reasonable discretion, revocation is necessary in the interest of public health or safety.

d. If Licensee desires to extend this Agreement, it must submit such request to City in writing not less than sixty (60) days prior to the Termination Date. No extension will be effective unless the parties execute a written agreement extending the term of this Agreement. Licensee agrees that City has complete discretion to grant or withhold consent to any proposed extension.

e. If, after expiration of the term, Licensee continues in possession and the City does not object, all provisions of the Agreement shall continue in effect, subject to the following: (1) the Agreement and License shall be on a month-to-month basis and shall be terminable by either party upon thirty (30) days prior written notice; and (2) the license may not continue beyond 6 months total, without City Council approval.

### **3. FEE**

In consideration for the rights conveyed by this Agreement, Licensee shall pay to City a net profit share equal to ten percent (10%) of annual net profits derived from operation of the Marine Electric Vessel Charging Station, increasing to fifteen percent (15%) once annual net profits exceed \$10,000, as further described and provided in Exhibit C, attached hereto. No base rent or fixed monthly fee shall apply.

### **4. SECURITY DEPOSIT**

No security deposit is required under this Agreement.

### **5. NOTICES**

A written notice shall be deemed served upon (i) personal delivery or delivery by a nationally recognized overnight courier; or (ii) three days after mailing said notice to the other party and depositing the same with the U.S. Post Office, first class mail, with postage paid. For purposes of this Agreement, all notices to the City shall be addressed to:

City of Berkeley  
Parks, Recreation & Waterfront Department  
2180 Milvia St., 3<sup>rd</sup> Floor  
Berkeley, CA 94704

with a copy sent to:

Waterfront Manager  
Parks Recreation and Waterfront Department  
Marina Office  
201 University Avenue  
Berkeley, CA 94710

For purposes of this Agreement, all notices to Licensee shall be addressed to the address below. Licensee shall promptly notify City of any change of address.

Aqua SuperPower (USA), Inc.  
Attn: Scott Canning  
60C Gate 5 Road  
Sausalito, CA 94965

## **6. MAINTENANCE AND ALTERATIONS**

a. Licensee shall, to the City's satisfaction, maintain the License Area, and any improvements thereto, in good order, condition and repair and reasonably free and clear of all debris, trash and rubbish.

b. Licensee shall not construct any facilities or improvements, install any equipment, or make any alterations to the License Area without the City's prior written consent. Except as set forth in this Section, Licensee shall not construct any facilities or improvements, install any equipment, or make any alterations to the License Area without the City's prior written consent. Licensee, at its expense, may install the following improvements on the timetable indicated and will obtain all necessary approvals and permits, subject to compliance with applicable environmental laws, including the California Environmental Quality Act:

- Over the term of this License, Licensee may conduct the following non-permanent "placements" in the License Area, subject to the specifications in Exhibit E.
  - i. Placement of one (1) approximately 3-foot long by 18-inch deep by 7-foot tall non-permanent marine electric vessel charging unit in the location described in Exhibit A.
  - ii. Installation of associated electrical conduit and wiring connecting the charging unit to existing electrical infrastructure, as shown in Exhibit A.
  - iii. All improvements shall be non-permanent, removable, and shall not result in a substantive permanent alteration of the premises.

c. Licensee shall be solely responsible for, and shall pay costs of, all approved "placements" at existing facilities used by Licensee. Upon termination or expiration of this

Agreement, City may require Licensee to remove some or all approved “placements” upon the License Area by Licensee. If Licensee fails to remove such “placements” within 10 days following City’s demand therefor, City may arrange to have such alterations and improvements removed and may recover costs of such removal from Licensee. Any and all improvements to the License Area which City does not require to be removed shall remain in place and become the property of the City.

d. Permits and Regularly Compliance. Licensee shall be solely responsible, at its sole cost and expense, for obtaining and maintaining all permits, approvals, and authorizations required for installation, operation, and maintenance of the Marine Electric Vessel Charging Station, including but not limited to electrical permits, building permits, and any approvals required by the Bay Conservation and Development Commission (BCDC), if applicable.

e. City shall have no responsibility for securing permits or regulatory approvals associated with the project. Licensee shall ensure all work complies with applicable federal, state, and local laws, codes, and regulations.

f. All work performed by Licensee shall be subject to required permits and approvals, which shall be obtained by Licensee prior to commencement of work.

## **7. CITY ACCESS AND ENTRY TO THE LICENSE AREA**

City, its agents, employees, and representatives, shall have the right to enter the License Area at any time, provided such entry does not cause unreasonable interference with Licensee’s activities.

## **8. USE OF PUBLIC PROPERTY; RISK OF LOSS**

a. Licensee shall keep any public and/or common areas adjacent to the License Area free and clear of any obstructions, barricades or barriers placed or created by Licensee or resulting from Licensee’s operations or use of the License Area.

b. Except as otherwise expressly provided in this Agreement, Licensee agrees that it is not a covenant or condition of this Agreement or of any other agreement between City and Licensee that City undertake or cause to be undertaken any development or redevelopment of the License Area or surrounding areas or any improvement thereto, and City shall incur no liability whatsoever to Licensee for failure to undertake such development or redevelopment.

c. City at all times shall have the right and privilege of making such changes in and to the License Area and to the public and/or common areas adjacent to the License Area which City deems to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited

areas, landscaped areas, utilities and all other facilities; provided, however, that the foregoing is not intended to entitle City to unreasonably effect changes that would materially and adversely affect access to or visibility of the License Area, except temporarily during periods of construction. City shall have the right to establish, promulgate and enforce such reasonable rules and regulations concerning the License Area and adjacent areas as it may deem necessary or advisable for the proper, safe and efficient management, operation, maintenance and use thereof, and Licensee shall comply with the same.

d. City at all times shall have the right to lease, license or permit the use of space within the License Area and adjacent areas to persons for water-related uses if deemed necessary for the management and operation of the Berkeley Waterfront.

e. Nothing contained herein shall be deemed to create any liability to City for any personal or bodily injury or death, or any damage to motor vehicles, vessels, or other property of Licensee's principals, partners, shareholders, members, employees, contractors or representatives, unless solely caused by the sole active negligence or willful misconduct of City, its agents, servants or employees. Licensee is solely responsible for the security of the License Area, and for the safety of those using the License Area. Licensee acknowledges that if City provides security or police patrols for the License Area or any portion thereof, City does not represent, guarantee or assume responsibility that Licensee or any person or entity will be secure from losses, injury or death caused by the acts of third parties and does not assume responsibility for any such acts. To induce City to provide such security, if any, as City in its sole discretion deems reasonable, appropriate and economically feasible, Licensee hereby waives any present or future claims Licensee may have against City, whether known or unknown, for bodily injury, death or property damage or loss arising from the performance of such security or policing activities. City shall not be obligated to provide any public liability or property damage or loss insurance for the benefit of Licensee or any other person or entity.

f. Licensee acknowledges that City holds the License Area property and the Marina in trust pursuant to Chapter 347 of the California Statutes of 1913, as amended (the "**Grant**") subject to the conditions, restrictions, limitations, right, powers, duties, reversionary rights and other rights created or reserved in the Grant. Licensee agrees that, notwithstanding anything in this Agreement to the contrary, Licensee shall use the License Area consistently with, and in a manner that will not result in a violation of the Grant or of the provisions of the Berkeley City Charter, California law and/or the California Constitution.

g. City reserves to itself the right to grant to others in the future nonexclusive utility easements over, under, through, across or on the License Area in locations that will not unreasonably interfere with Licensee's access to or use of the License Area. Licensee

shall be given reasonable notice before commencement of any utility work on the License Area.

h. Licensee agrees that it shall not interfere with the free and unobstructed access by the people to the waters of the San Francisco Bay and the Waterfront of such waters; provided, however, that Licensee shall be obligated to permit such access only as required for consistency with applicable laws of the State of California, Alameda County, the City of Berkeley, the Grant, and/or City of Berkeley's and/or City's plans adopted from time to time. Nothing in this Agreement is intended to, and shall not be construed to, confer any third-party beneficiary rights or other right of action in favor of any third party.

## **9. TAXES, ASSESSMENTS, AND OTHER CHARGES**

Licensee acknowledges this Agreement may give rise to a possessory interest subject to property taxation, and to the extent that any such possessory interest tax is assessed against such interest, Licensee shall be solely responsible for the payment thereof, this notice having been given pursuant to Section 107.6 of the Revenue and Taxation Code. Licensee shall pay all applicable personal property taxes lawfully levied on account of Licensee's personal property located on the License Area, and pay any in-lieu, possessory interest, or use taxes lawfully imposed by reason of Licensee's use or occupancy of the License Area. Licensee shall obtain and pay for all local, state and federal permits and licenses necessary for the operation of its business.

## **10. UTILITIES AND SERVICE FEES, DATA ACCESS, AND REPORTING**

Licensee shall reimburse City for all electricity costs associated with operation of the Marine Electric Vessel Charging Station on a quarterly basis.

Reimbursement shall be based on actual energy usage and calculated using applicable Pacific Gas and Electric commercial rates, including time-of-use pricing.

Licensee shall provide quarterly reporting detailing total energy usage, timing of use, and associated costs. City shall be provided access to a digital dashboard or equivalent platform to independently monitor usage and verify reported data.

Data Access and Reporting. Licensee shall provide City with access to a digital dashboard or equivalent system providing real-time and historical data regarding charger usage, including but not limited to energy consumption, session duration, and time-of-use information.

## **11. ASSIGNMENT AND SUBLICENSING PROHIBITED**

The License is personal to Licensee. Licensee may not assign or sublicense the License or this Agreement in whole or in part, and any attempt to assign or sublicense the License or this Agreement shall be void ab initio.

## 12. INDEMNIFICATION

Licensee, for itself and its successors and assigns, agrees to release, defend, indemnify and hold harmless City, its elected officials, officers, agents, volunteers, contractors and employees (collectively, "**City Parties**") from and against any and all claims, demands, liability, damages, lawsuits or other actions (including attorneys' fees and costs), including without limitation actions for bodily injury or death or property damage arising out of or caused by the use of the License Area by Licensee or Licensee's officers, agents, representatives, employees, contractors, subcontractors, guests, invited visitors, and customers (collectively, "**Licensee Parties**"), Licensee's or Licensee Parties' operations under this Agreement, Licensee's or Licensee Parties' failure to comply with Laws in connection with the use of or any activities conducted on the License Area, or the performance of this Agreement by Licensee.

Except to the extent caused by City's sole or active negligence or willful misconduct, Licensee shall protect, indemnify, defend and hold City and City Parties harmless from and against any and all demands, liability, claims, actions, damages, costs and expenses, including attorneys' fees, consultants' fees, litigation costs, and investigation, removal, remediation, cleanup and monitoring costs, asserted against or incurred at any time and from time-to-time by reason of or arising out of (a) the use, generation, storage, treatment, handling, transportation, disposal or release of any Hazardous Materials at, from or near the License Area by or for Licensee, Licensee Parties or anyone under Licensee's control, or (b) the violation of any Hazardous Materials law by Licensee or any of Licensee Parties or by anyone under Licensee's control. Such indemnity obligation shall include any demands, liability, claims or actions for tangible or intangible property damage; compensation for lost wages, business income, profits or other economic loss; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment. Licensee's indemnity obligations under this Section 12 shall survive the termination or expiration of this Agreement.

"**Hazardous Materials**" means substances that now or in the future are defined or regulated by Environmental Laws as "contamination," "contaminants," "hazardous," "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants," "pollution," "toxic," "toxic substances," "toxins," or "ultra-hazardous" or are otherwise listed or regulated under any Environmental Laws. "**Environmental Laws**" means a) any and all federal, state, and local laws relating to protection of human health or the environment (including air, surface water, groundwater, land surface, or subsurface), whether currently in force, previously enforced, or subsequently enacted, including the following laws: 15 United States Code §§2601–2629 (the Toxic Substances Control Act of 1976, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act (TSCA)); 33 United States Code §§1251–1388 (the Clean Water Act); 42 United States Code §§6901–6992k (the Resource Conservation and Recovery Act of 1976 (RCRA)); 42 United States Code §§7401–7671q (the Clean Air Act); 42 USC §§9601–9675 (the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)); 49 United States Code §§5101–5128 (the Hazardous Materials Transportation Act); 33 United States Code §§2701–2762, 43 United States Code §1656 (the Oil Pollution Act of 1990); California Health and Safety Code §§25100–25259 (the

Hazardous Waste Control Law); California Health and Safety Code §§25270–25270.13 (the Aboveground Petroleum Storage Act); California Health and Safety Code §§25300–25395.45 (the Carpenter-Presley-Tanner Hazardous Substance Account Act); California Health and Safety Code §§25404–25404.9 (Unified Hazardous Waste and Hazardous Materials Management Regulatory Program); California Health and Safety Code §§25500–25547.8 (Hazardous Materials Release Response Plans and Inventory); California Health and Safety Code §§25249.5–25249.14 (the California Safe Drinking Water and Toxic Enforcement Act of 1986, or Proposition 65); California Health and Safety Code §§25280–25299.8 (Underground Storage of Hazardous Substances); California Health and Safety Code §§18901–18949.31 (California Building Standards Law); California Water Code §§13000–16104 (which includes the Porter-Cologne Water Quality Control Act); and California Fish and Game Code §§5650–5656; (b) all regulations that have been adopted or promulgated under such statutes or that are adopted under such statutes after the Effective Date of this Agreement; and (c) all enforceable demands, directives, and orders of any court, administrative body, or government entity relating to Hazardous Materials, whether currently in force, previously enforced, or enacted after the Effective Date of this Agreement.

### **13. INSURANCE**

Licensee at its expense shall obtain and maintain at all times during the term of this Agreement, insurance consistent with the insurance requirements set forth in Exhibit D attached hereto and incorporated herein.

### **14. COMPLIANCE WITH LAWS**

a. Licensee, at its expense, shall observe and comply with all applicable laws, ordinances, rules, orders, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the activities of Licensee hereunder, including without limitation the Occupational Safety and Health Act of 1979 as amended, and all California Occupational Safety and Health and Environmental Laws (collectively, “**Laws**”). All activities conducted by Licensee and Licensee Parties on the License Area must be in accordance with all such Laws. Licensee shall defend, indemnify and hold harmless City and City Parties from and against any and all damages, liability, fines, penalties and consequences arising from any actual or alleged noncompliance or violation of Laws by Licensee, or any of the Licensee Parties.

b. If a death, serious bodily injury or substantial property damage occurs in connection with the performance of this Agreement or use of the License Area, Licensee shall immediately notify the City’s Risk Manager. If any accident occurs in connection with this Agreement, Licensee shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Licensee’s liability insurance carrier; and 3) a detailed description of the accident, including whether any City’s equipment, tools or materials were involved.

c. If a release of Hazardous Materials occurs in connection with the performance of this Agreement or Licensee's use of the License Area or if any Hazardous Materials come to be released or otherwise located in, on, under or about the License Area, other than as previously consented to by City, Licensee shall immediately notify the Berkeley Police Department and the City's Toxics Management office, in addition to any other governmental agencies or persons as required by applicable Laws.

d. Licensee shall not store Hazardous Materials on the License Area without a proper permit and prior written consent from the City.

## **15. RELOCATION WAIVER**

Licensee fully waives and releases and discharges City from any and all manner of rights, demands, liabilities, obligations, claims, or causes of action, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to the sale of the License Area or the full or partial termination or expiration of Licensee's right to use the License Area as permitted under this Agreement, including, without limitation, the specific waiver and release of any right to any relocation benefits, assistance and/or payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 United State Code Section 4601 et seq. and/or the California Relocation Assistance Law, as amended, Government Code Section 7260 et seq.

**16. LIENS.** Licensee shall not suffer or permit to be enforced against the License Area, or any part thereof, any mechanics', materialmen's, contractors' or subcontractors liens or any claim for damage arising from the work of any construction, excavation, survey, tests, grading, repair, restoration, replacement or improvement, or any other work, performed by Licensee or any Licensee Parties, but Licensee shall pay or cause to be paid all of said liens, claims or demands before any action is brought to enforce the same against the License Area or any City property. Licensee expressly agrees to indemnify, defend and hold harmless City, all of the other City Parties, and the License Area free from all liability for any and all such liens, claims and demands, together with reasonable attorneys' fees and all costs and expenses in connection therewith. Notwithstanding anything to the contrary set forth above, if Licensee shall in good faith contest the validity of any such lien, claim or demand, then Licensee shall, at its expense, defend itself and the City and City Parties against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before any enforcement thereof against City or the License Area, but only upon the condition that if City shall so require, Licensee shall procure and record or furnish to City a surety bond or other acceptable security satisfactory to City in an amount at least equal to such contested lien, claim or demand indemnifying the City and City Parties against liability for the same, and holding the License Area and City owned property free from the effect

of any such lien or claim. City reserves the right at any time and from time to time to post and maintain on said License Area, or any portion thereof or improvement thereon, such notices of non-responsibility or otherwise as may be necessary to protect the City and City Parties against liability for all such liens and claims.

**17. SURRENDER OF PROPERTY, REMOVAL OF PERSONAL PROPERTY**

At the expiration or earlier termination of this Agreement, Licensee shall: 1) return and surrender the License Area, broom swept clean and in good order and condition, reasonable wear and tear and damage by casualty excepted; and 2) remove all personal property, material, equipment, supplies and any improvements or alterations that City requests Licensee to remove pursuant to Section 6.

**18. REMEDIES**

In no event shall Licensee be entitled to recover any actual, consequential, punitive, or other monetary damages against City for breach of this Agreement. City and Licensee agree that, in the event of a breach of this Agreement, each of the Parties hereto may pursue specific performance or suits for declaratory or injunctive relief. In addition to the foregoing remedies, City shall be entitled to recover monetary damages with respect to amounts payable by Licensee to City under this Agreement, but in no event may City seek to recover any consequential or punitive damages.

**19. CITY NON-DISCRIMINATION ORDINANCE**

Licensee shall comply with the provisions of the Berkeley Municipal Code (B.M.C.) Chapter 13.26 as amended from time to time. In the performance of this Agreement, Licensee agrees as follows:

a. Licensee shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. Licensee shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this nondiscrimination provision. In addition, Licensee shall fill out in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

**20. CITY NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

a. If Licensee provides any aid, service or benefit to others on the City's behalf, Licensee shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Licensee shall further observe and comply with all applicable Laws

prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City.

b. If Licensee is or becomes a “public accommodation” as defined in Title III of the Americans with Disabilities Act of 1990 (“**ADA**”), Licensee shall observe and comply with all applicable provisions of the ADA and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Licensee. All Licensee’s activities must be in accordance with such Laws and Licensee, at its expense, shall be solely responsible for complying therewith.

## **21. CONFLICT OF INTEREST PROHIBITED**

a. In accordance with Government Code section 1090, Berkeley City Charter section 36, and B.M.C. Chapter 3.64, neither Licensee nor any employee, officer, director, partner or member of Licensee, or immediate family member of any of the preceding, shall have served with the City as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Agreement.

b. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee, employee or consultant of the Licensee, or immediate family of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Licensee.

c. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

## **24. CITY BUSINESS LICENSE, PAYMENT TAXES, TAX I.D. NUMBER**

Licensee has obtained a City business license as required by B.M.C. Chapter 9.04 and its license number is written below; or, Licensee is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Licensee shall pay all state and federal income taxes and any other taxes lawfully assessed and due. Licensee certifies under penalty of perjury that the taxpayer identification number written below is correct.

**25. BERKELEY LIVING WAGE ORDINANCE**

a. Licensee agrees to comply with B.M.C. Chapter 13.27, the Berkeley Living Wage Ordinance (LWO). If Licensee employs six (6) or more part-time, full-time or stipend employees, and generates \$350,000 or more in annual gross receipts, Licensee will be required to provide all eligible employees with the City of Berkeley mandated minimum compensation during the term of this Agreement, as defined in B.M.C. Chapter 13.27, as well as comply with the terms as enumerated herein.

b. Licensee shall be required to maintain all reasonable records and documents that would establish whether Licensee is subject to the LWO. If Licensee is subject to the LWO, as defined therein, Licensee shall be further required to maintain monthly records of those employees located on the License Area. These records shall include the total number of hours worked, the number of hours spent providing service on the License Area, the hourly rate paid, and the amount paid by Licensee for health benefits, if any, for each of its employees providing services under the Agreement. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default of the Licensee.

c. If Licensee is subject to the LWO, Licensee shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all sublicenses Licensee enters with regard to the License Area. Sublicensees shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the License Area.

d. If Licensee fails to comply with the requirements of the LWO and this Agreement, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Licensee's failure to comply with this Section shall constitute default hereunder, upon which City may terminate this Agreement.

e. In addition, at City's sole discretion, Licensee may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Licensee's failure to pay all of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Licensee's breach.

**26. BERKELEY EQUAL BENEFITS ORDINANCE**

a. Licensee hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Licensee is currently subject to the Berkeley Equal Benefits Ordinance, Licensee will be required to provide all eligible employees with City mandated equal benefits during the term of this Agreement, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

b. If Licensee is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Licensee agrees to supply the City with any records the City deems necessary to determine compliance with this provision.

c. If Licensee fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law and equity. Licensee's failure to comply with this Section shall constitute default of the Agreement.

In addition, at City's sole discretion, Licensee shall be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Licensee's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Licensee's breach.

**27. NUCLEAR FREE BERKELEY**

Licensee agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**28. OPPRESSIVE STATES**

a. In accordance with Resolution No. 59,583-N.S., Licensee certifies that it has no contractual relations with, and agrees during the term of this Agreement to forgo contractual relations to provide personal services to, the following entities:

(1) The governing regime in any Oppressive State.  
(2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.

(3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Agreement) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. For purposes of this Agreement, the Tibet Autonomous Region and the provinces of Abo, Kham, and V-Tsang shall be deemed Oppressive States.

c. Licensee's failure to comply with this Section shall constitute a default hereunder and City may terminate this Agreement. In the event that City terminates this Agreement due to a default under this provision, City may deem Licensee a non-responsible bidder for five (5) years from the date this Agreement is terminated.

### **29. PESTICIDES**

All use of pesticides on the License Area shall be in compliance with the City of Berkeley's Pesticide Use Policy as it exists at the time of such use.

### **30. SIGNS**

Licensee shall not install or letter any signs on the License Area without the prior written consent of City. All signs on the License Area shall conform to the provisions of B.M.C. Chapter 20.04 and any other City design guidelines for signs.

### **31. SEVERABILITY**

If any part of this Agreement or the application thereof is declared invalid for any reason, such invalidity shall not affect the other terms of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

### **32. WAIVER**

No waiver by City of any breach or default of any provision of this Agreement shall be deemed a waiver of any other provision hereof or of any subsequent breach or default by Licensee of the same or any other provision.

### **33. GOVERNING LAW**

The laws of the State of California shall govern this Agreement, without regard to its conflict of laws principles. The parties agree that in any dispute, venue shall be in Alameda County, California.

### **34. AMENDMENTS**

The terms of this Agreement shall not be altered or otherwise modified except by a written amendment to this Agreement executed by City and Licensee.

**35. INTERPRETATION**

The titles to the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both Parties.

**36. AUTHORITY.**

The individual executing this Agreement has full power and authority to execute and deliver the Agreement on behalf of Licensee.

**37. EFFECT ON SUCCESSORS AND ASSIGNS**

Without limiting the provisions of Section 11 above, all of the covenants, conditions and provisions of this Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

**38. ENTIRE AGREEMENT**

a. The terms and conditions of this Agreement, all exhibits attached and any documents expressly incorporated by reference represent the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between City and Licensee.

b. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.

**39. ATTORNEYS' FEES**

In the event either party to this Agreement institutes an action or proceeding to interpret or enforce any of the terms hereof, or to obtain money damages, the prevailing party shall be entitled to recover from the other, in addition to costs and judgment as ordered by the court, its reasonable attorneys' fees, together with out-of-pocket expenses.

**40. COUNTERPARTS; ELECTRONIC SIGNATURES**

This Agreement may be executed in any number or counterparts, each of which will be an original, but all of which together will constitute one instrument. The parties agree that electronic signatures on this Agreement, including those transmitted by electronic

email or other electronic means, including, without limitation, via Adobe DocuSign, shall be sufficient to bind the parties].

*[Signature Page Follows]*

IN WITNESS WHEREOF, City and Licensee have executed this Agreement as of the date written below.

CITY:

CITY OF BERKELEY

Paul Buddenhagen, City Manager

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

Approved as to form:

*Farimah Brown, City Attorney*

By \_\_\_\_\_

Registered by:

Attest:

Jenny Wong, City Auditor  
Clerk

Mark Numainville, City

LICENSEE

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

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

Title: Licensee/Owner of  
\_\_\_\_\_

LICENSEE INFORMATION

Tax Identification No.: \_\_\_\_\_

Berkeley Business License No.: BL-\_\_\_\_\_ (forms online)

Incorporated: Yes \_\_\_ No \_\_\_

Approved as to form: Yes \_\_\_ No \_\_\_

Certified Woman Business Enterprise: Yes \_\_\_ No \_\_\_

Certified Minority Business Enterprise: Yes \_\_\_ No \_\_\_

Certified Disadvantaged Business Enterprise: Yes \_\_\_ No \_\_\_

**EXHIBIT A**

**LICENSE AREA**

The license area is in the K-102 to K-104 area of K Dock at the Berkeley Marina Harbor.

**EXHIBIT B**

**LICENSE AREA PERMITTED USES**

Licensee shall only use the License Area described on Exhibit A as follows and for no other purpose: Operation of a marine electric vessel charging station for use by electric marine vessels, including associated equipment, cables, and app-based access and payment systems. City may require an after-meter power gauge to track power usage.

## EXHIBIT C

### PAYMENT AND REIMBURSEMENT

1. Net Profit Share
  - a. Licensee shall pay City an annual net profit share equal to:
    - i. Ten percent (10%) of annual net profits;
    - ii. Increasing to fifteen percent (15%) once annual net profits exceed \$10,000.
    - iii. "Net profit" shall be defined as gross revenues less documented operating expenses associated with the charging station.
    - iv. Licensee shall provide City with an annual Profit and Loss Statement for the City to review and audit if deemed necessary.
2. Electricity Reimbursement
  - a. Licensee shall reimburse City quarterly for all electricity costs associated with operation of the charging station.
  - b. This requires Licensee to accurately report all data and run all calculations, and submit them to the City for review along with quarterly reimbursement payments.
3. Reporting Requirements
  - a. Each quarterly payment shall include a report detailing:
    - i. Total kilowatt-hour usage by day and month for each quarter
    - ii. Time-of-use breakdown (peak/off-peak)
    - iii. Applicable PG&E Rate Schedule for each quarter with associated applicable rates.
    - iv. Applicable rate calculations showing math and data inputs
    - v. Total reimbursement amount
4. Payment Timing
  - a. Payments for electricity reimbursement shall be made within 30 days of the end of each calendar quarter.
  - b. Payments for annual net profit share, along with the annual Profit and Loss Statement, shall be due no later than January 31<sup>st</sup> of each year for the prior calendar year.
5. Quarters shall be as follows: Q1: January through March. Q2: April through June. Q3: July through September. Q4: October through December. First and last quarterly payment and report under this agreement shall be pro-rated to align with standard reporting quarters. If mutually agreed, reports and payments may be reduced to annual after initial 12 months of operation. Payments must be received no later than thirty (30) calendar days from the end of each quarter. Any payment

received after this thirty (30) day time period will be assessed a ten percent (10%) late penalty.

6. Payments shall be made payable to the "City of Berkeley" and paid in person or by mail to the

Finance Department  
Customer Service Counter  
1947 Center Street, 1<sup>st</sup> Floor  
Berkeley, CA 94704

Failure of Licensee to make full payments on time is grounds for termination of this Agreement by the City.

EXHIBIT D

**INSURANCE REQUIREMENTS**

- a. Permittee, at its own expense, shall maintain at all times during the performance of this Permit a commercial general liability insurance policy with a combined single limit of not less than \$1,000,000 for injury or death to one or more persons in any one accident or occurrence to cover any claims arising out Permittee's use of the Premises and performance of services under this Permit. All such insurance shall insure performance by Permittee of the preceding indemnity provisions. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insured and shall provide primary coverage with respect to the City.
- b. If the insurance referred to above is written on a Claims Made Form, then following termination of this Permit, coverage shall survive for a period of not less than five years. Coverage shall also provide for retroactive date of placement coinciding with the effective date of this Permit.
- c. Permittee at its cost shall maintain on all its personal property, Permittee's improvements, and alterations, in on, or about the premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Permittee for the replacement of personal property or the restoration of Permittee's improvements or alterations.
- d. If Permittee employees any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel; terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the City; provide for a waiver of any right of subrogation against City to the extent permitted by law; and be approved as to form and sufficiency by the City's Risk Manager.
- e. Permittee shall forward all insurance documents to:  
Berkeley Marina  
201 University Ave  
Berkeley, CA 94710

**EXHIBIT E**

**AESTHETIC STANDARDS**

1. All publicly visible equipment shall be subject to review and approval by the Waterfront Manager to ensure compatibility with the surrounding marina environment.
2. Utility lines shall be screened as they enter/exit the station whenever feasible.
3. The charging station itself has brand recognition within the San Francisco Bay, and is generally expected to appear substantially similar to the charging station image below. The final design shall be reviewed and approved by the Waterfront Manager in writing prior to installation.
4. Licensee will inspect the station biannually for wear and tear, and will ensure that any faded or damaged portions are replaced.

**AQUA**  
superPower



- + Marinated IP65 DC charger
- + Slim, compact, stylish
- + Liquid cooled
- + Aqua superPower certified
- + Latest safety standards
- + Durable, low maintenance
- + Increased reliability
- + Whisper quiet operation mode
- + Secure access via RFID / Aqua app
- + Plug & Charge

## Aqua 75 – 75kW

### Specifications

Building the electric marine ecosystem

## EXHIBIT F

TERM SHEET

<b>LICENSEE</b>	Aqua SuperPower (USA), Inc.
<b>LANDLORD</b>	City of Berkeley
<b>PREMISES</b>	K Dock area within the Berkeley Marina, as depicted in Exhibit A
<b>RENT</b>	No base rent.
<b>PERCENTAGE RENT</b>	Licensee shall pay the City a net profit share equal to ten percent (10%) of annual net profits, increasing to fifteen percent (15%) once annual net profits exceed \$10,000, as further described in Exhibit C.
<b>TERM</b>	Twelve (12) years
<b>PERMITTED USE</b>	Installation, operation, and maintenance of a marine electric vessel charging station, including associated equipment, electrical connections, and app-based access and payment systems.
<b>PERMITS &amp; APPROVALS</b>	Licensee shall be solely responsible, at its sole cost and expense, for obtaining and maintaining all permits, approvals, and authorizations required for installation, operation, and maintenance of the charging station, including but not limited to electrical and building permits and any approvals required by the Bay Conservation and Development Commission (BCDC), if applicable. Licensee acknowledges that City as Landlord (PRW Department) is different than the City as a permitting entity (i.e. building and electrical permits).
<b>UTILITIES &amp; SERVICES</b>	Licensee shall reimburse the City quarterly for all electricity costs associated with operation of the charging station, based on actual usage and calculated using applicable Pacific Gas and Electric commercial rates, including time-of-use pricing. Licensee shall provide quarterly usage reports and City shall have access to a usage monitoring dashboard.
<b>SECURITY DEPOSIT</b>	<u>None required</u>

