

CITY OF SAN DIEGO RIGHT-OF-ENTRY PERMIT

THIS CITY OF SAN DIEGO RIGHT-OF-ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and COUNTY OF SAN DIEGO, DEPARTMENT OF ENVIRONMENTAL HEALTH AND QUALITY - COMMUNITY HEALTH DIVISION - VECTOR CONTROL PROGRAM (DEHQ-CHD-VCP) ("PERMITTEE"), to be effective on the first day of the following month of the date the Permit is signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

RECITALS

- A. CITY is the owner of that certain real property in located at 14103 Highland Valley Road, Escondido, California 92025, identified by San Diego County Assessor Parcel Numbers 272-140-01 and 276-071-01 ("Property"), as depicted on **Exhibit A: Property and Permit Area**, attached hereto.
- B. PERMITTEE wishes to enter upon and use a portion of the Property to breed and raise large volumes of mosquito fish (*Gambusia affinis*) to prevent and control mosquito larvae in breeding sites throughout the County and City of San Diego.

NOW THEREFORE, based upon the forgoing Recitals, which are incorporated into this Permit by this reference, and for valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. **Definitions.** As used in this Permit, the following terms shall be defined as follows:
 - A. **"Permit Area"** shall mean that portion of the Property containing one water tank/pond 23 and its water contents, as depicted on **Exhibit A: Property and Permit Area**, attached hereto.
 - B. **"Permit Use"** shall mean the non-exclusive access to the Permit Area to breed and raise large volumes of mosquito fish (*Gambusia affinis*) to prevent and control mosquito larvae in breeding sites throughout the County and the City of San Diego. PERMITTEE may use the roads on the Property solely for ingress and egress to the Permit Area and to transport the mosquito fish to distribution centers.
- 2. **Occupancy.** Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its officers, employees, agents, contractors, invitees, and guests to enter upon and occupy the Permit Area solely for the purpose of the Permit Use.
- 3. **Use of Permit Area.** PERMITTEE may use the Permit Area solely for the Permit Use and for no other purpose whatsoever without CITY'S prior written consent in each instance.

4. Noninterference. PERMITTEE shall not materially interfere with CITY's use, operations, and activities on the Permit Area, and PERMITTEE shall use such routes and follow such procedures on the Permit Area as shall result in the least damage and inconvenience to CITY and other users of the Permit Area.
5. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE'S use of the Permit Area. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
6. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the San Diego City Mayor, or his or her designee ("Mayor"), unless otherwise expressly provided or required by law. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided or required by law.
7. Term. The term of this Permit shall be month-to-month, commencing on the Effective Date ("Term"). The Term shall not exceed three (3) years.
8. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked at will by CITY, in its sole discretion, upon thirty (30) days prior written notice delivered to PERMITTEE. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S revocation or termination of this Permit.
9. Permit Fee. PERMITTEE shall pay CITY a one-time, non-refundable permit processing fee in the amount of Nine Hundred Eighty Dollars (\$980) payable to City Treasurer.
10. No Holdover. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area.
11. Termination. Either the CITY or the PERMITTEE may terminate this Permit at any time and for any reason, upon thirty (30) days prior written notice.
12. Restore and Vacate. Prior to the expiration of this Permit or immediately upon the early termination of this Permit, PERMITTEE shall restore the Permit Area to its condition on the Effective Date, normal wear and expected, and upon such expiration or earlier termination immediately cease all operations on the Permit Area and vacate the Permit Area.

13. **Superior Interests.** This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Permit Area, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area, relative to any such superior interest. If PERMITTEE'S use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
14. **Rent.** PERMITTEE shall not pay any rent to CITY for this Permit because of the public benefit. The purpose of this Permit is for PERMITTEE to breed and raise large volumes of mosquito fish (*Gambusia affinis*) to prevent and control mosquito larvae in breeding sites throughout the County and the City of San Diego, which is expected to benefit the public health, safety, and general welfare of the City of San Diego.
15. **Maintenance of the Permit Area.** As it relates to PERMITTEE's actual use and activities, PERMITTEE shall, at PERMITTEE's sole cost and expense and to CITY'S satisfaction, maintain the Permit Area in good order and repair, and in a safe, healthy, and sanitary condition at all times during the Term, subject to normal and ordinary wear and tear resulting from the Permit Use. CITY shall at no time during the Term be required to make any improvements or repairs to the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris and litter caused by the Permit Use.
16. **Inspection.** CITY may at all times enter and inspect the Permit Area.
17. **Improvements/Alterations.** PERMITTEE shall not construct any improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.
18. **Insurance.** PERMITTEE shall not begin operating under the Permit until it has: (i) obtained, and provided to CITY, insurance certificates reflecting evidence of all insurance as required in Section 18.b. herein; however, CITY reserves the right to request, and PERMITTEE shall submit, copies of any policy upon reasonable request by CITY; (ii) obtained CITY approval of each company or companies as required in Section 18.d herein; and (iii) confirmed that all policies contain the specific provisions and endorsements as required in this Section.
 - a. PERMITTEE's liabilities, including but not limited to PERMITTEE's indemnity obligations, under the Permit, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified

insurance coverage is a material element of the Permit and PERMITTEE's failure to maintain or renew coverage or to provide evidence of renewal during the Term may be treated as a material breach of contract by CITY. Further, PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the Term.

- b. Types of Insurance. At all times during the Term, the PERMITTEE shall maintain insurance coverage and shall require PERMITTEE's contractors and subcontractors conducting work on the Permit Area to maintain insurance coverage as follows:
 - i. Commercial General Liability. Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
 - ii. Commercial Automobile Liability. For all of PERMITTEE's automobiles including owned, hired, and non-owned automobiles, PERMITTEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
 - iii. Workers' Compensation. For all of PERMITTEE's employees who are subject to the Permit and to the extent required by the applicable state or federal law, PERMITTEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and PERMITTEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives.
- c. Deductibles. All deductibles on any policy shall be the responsibility of PERMITTEE and shall be disclosed to CITY at the time the evidence of insurance is provided.
- d. Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by the Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies

of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

- e. Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Permit Use.
- f. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Permit Area or otherwise related to the Permit Use. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, photographs and/or video, if any, and other pertinent information.
- g. Severability of Interest. Each policy shall provide that PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- h. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and obtain replacement insurance as soon as possible.
- i. Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any operations are initiated under the Permit.

- i. Commercial General Liability Insurance Endorsements

- 1. ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of (i) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf, (ii) PERMITTEE's products, (iii) PERMITTEE's work, including but not limited to

PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf, or (iv) premises owned, leased, controlled, or used by PERMITTEE.

2. **PRIMARY AND NON-CONTRIBUTORY COVERAGE.** The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents, and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of PERMITTEE's insurance and shall not contribute to it.

ii. **Automobile Liability Insurance Endorsements**

1. **ADDITIONAL INSURED.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of automobile owned, leased, hired, or borrowed by or on behalf of PERMITTEE.

iii. **Worker's Compensation Insurance Endorsements**

1. **Waiver of Subrogation.** The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for CITY.

- j. **Self-Insurance.** PERMITTEE shall have the right to self-insure with respect to any of the insurance required in this Section. PERMITTEE shall provide to CITY evidence of self-insurance satisfying the requirements in this Section and indicating PERMITTEE's self-insured status. Insurance or equivalent risk management coverage provided by a joint powers' insurance authority may also satisfy the provisions of this Section.

19. **Indemnification & Hold Harmless.** Lessee will protect, defend, indemnify, and hold City and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Lessee's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Lease or Lessee's occupancy, use, development, maintenance,

restoration, or improvement of the Premises, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that Lessee's duty to indemnify and hold City harmless will not include any established liability arising from the sole negligence or willful misconduct of City and its elected officials, officers, employees, representatives, and agents. City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Lessee will pay the City for all costs related thereto, including, without limitation, reasonable attorneys' fees and costs.

20. **No Discrimination.** PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, age, ethnicity, marital status, or disability in PERMITTEE's use of the Permit Area, including without limitation, the provision of goods, services, facilities, privileges, advantages, and accommodations, and the hiring and retention of employees and contractors.
21. **Equal Opportunity.** PERMITTEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. PERMITTEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. PERMITTEE shall cause the foregoing provisions to be inserted in all PERMITTEE's contracts for work related to this Permit so that such provisions will be binding upon each of PERMITTEE's contractors. PERMITTEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY's Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request PERMITTEE shall submit a current Workforce Report. PERMITTEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Permit and debarment from participating in CITY contracts for a period of not less than one (1) year.
22. **Equal Benefits.** Unless an exception applies, PERMITTEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require applicable parties of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Permit, PERMITTEE certifies that it will maintain such equal benefits throughout the Term of this Permit. PERMITTEE's failure to maintain equal benefits shall be a material breach of this Permit.
23. **Equal Pay Ordinance.** Unless an exception applies, PERMITTEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through

22.4809. By signing this Permit, PERMITTEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.

- 23.1. **PERMITTEE and Sub-Permittee Requirement.** The Equal Pay Ordinance applies to any sub-permittee of the Permit Area to the same extent as it would apply to PERMITTEE. PERMITTEE shall require sub-permittees to certify compliance with the Equal Pay Ordinance.
- 23.2 **Notice Requirement.** PERMITTEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.
24. **Disabled Access Compliance.** PERMITTEE shall, as applicable to the Permit Area and PERMITTEE's possession, use, and occupancy of the Permit Area, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable state and federal laws, rules, and regulations of competent governmental authority enacted protecting the rights of people with disabilities. When a conflict exists between any federal or state accessibility requirements, PERMITTEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). PERMITTEE's compliance shall include without limitation the following:
- 24.1 PERMITTEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment;
- 24.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of PERMITTEE;
- 24.3 PERMITTEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
- 24.4 Where required by law, all improvements, fixtures, structures, or installations on the Permit Area will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Permit Area which deny access to individuals with disabilities. All improvements and alterations will be at PERMITTEE's sole expense. PERMITTEE shall, at PERMITTEE's sole cost and in conformance with all applicable building codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the Permit Area which deny access to disabled persons; and
- 24.5 PERMITTEE shall include language in each sublicense agreement, if any, indicating the sub-licensee's agreement to abide by the foregoing provisions.

- 24.6 PERMITTEE and each of its sub-licensees shall be individually responsible for their own ADA compliance program.
- 24.7 PERMITTEE's failure to comply with the above accessibility requirements of this section and/or submitting false information in response to those accessibility requirements shall be a default under this Permit.
25. **CITY Employee Participation Policy.** CITY may unilaterally and immediately terminate this Permit if PERMITTEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of PERMITTEE for this Permit. It is not the intent of this policy that these provisions apply to members of the City Council.
26. **Local Business and Employment.** PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. PERMITTEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Permit from local residents and firms as opportunities occur. PERMITTEE agrees to hire qualified local residents and firms whenever feasible.
27. **PERMITTEE'S Risk.** PERMITTEE shall bear all risks and liability to PERMITTEE arising out of or in any manner directly or indirectly connected with the PERMITTEE'S use of the Permit Area, and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
28. **Nuisance and Noise Disturbances.** PERMITTEE shall not use the Permit Area in any manner which, in the opinion of the CITY creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area or that violates the CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).
29. **Assignment and Sublicense.** PERMITTEE shall not assign or sublicense any rights granted by this Permit nor any interest therein without the prior written approval of the CITY. Approval of any such proposed assignment or sublicense may be withheld at the sole and absolute discretion of the CITY. Any assignment by operation of law shall automatically terminate this Permit.
30. **Signs.** PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at PERMITTEE'S cost.

31. **Security and Safety of Permit Area.** PERMITTEE shall bear sole responsibility for the security and safety of the Permit Area affected by or relating to the Permit Use or activity during the Term. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of the Permit Area daily, as appropriate to ensure security and safety. PERMITTEE shall maintain the Permit Area in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY. PERMITTEE shall, at its cost and expense, obtain and maintain trash receptacles and trash-removal service, if necessary for the Permit Use. PERMITTEE shall comply with all applicable laws, rules, regulations and directives of competent governmental authorities, at PERMITTEE's sole cost and expense. CITY has no obligation to provide oversight of the Permit Use or activity or staffing or resources for the Permit Use or activity at the Permit Area during the Term.
32. **Encumbrances.** PERMITTEE shall keep the Permit Area free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or the Permitted Use. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation reasonable attorney fees and costs, relating to or charged against the Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
33. **Compliance with Laws.** PERMITTEE shall, at its sole cost and expense, comply with all applicable laws, rules, regulations, ordinances, and direction of all CITY, county, state and federal governing authorities now in effect or which may hereafter be in effect, which pertain to PERMITTEE's occupancy, use, development, maintenance, repair, or restoration of the Permit Area. At least annually, PERMITTEE shall deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to PERMITTEE (e.g., validation of periodic inspection of PERMITTEE's fire-suppression equipment in the Permit Area). Violation of this provision shall be cause for immediate revocation of this Permit.
34. **Permits & Approvals.** PERMITTEE, at PERMITTEE's sole cost and expense, shall obtain all required permits, licenses, and approvals from the applicable local, state, and federal authorities, including without limitation from CITY.
35. **California Public Records Act.** CITY shall determine, in its sole discretion, whether information provided by PERMITTEE pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). PERMITTEE shall hold CITY and its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
- 35.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by PERMITTEE as a result of CITY's disclosure or non-disclosure of this Permit or PERMITTEE information requested pursuant to the CPRA. PERMITTEE

EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH PERMITTEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF THIS PERMIT OR ANY PERMITTEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

36. **Taxes.** PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area by reason of PERMITTEE'S use of the Permit Area, including without limitation licenses and permits. PERMITTEE'S payment for such taxes, fees, and assessments shall not reduce any payment due CITY.
37. **Hazardous Materials.** PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Permit Area. PERMITTEE and PERMITTEE'S agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Permit Area without CITY'S prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.
- 37.1 **Release.** For all purposes of this Permit, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.
- 37.2 **Hazardous Substance.** For all purposes of this Permit, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- 37.3 **Remediation.** If PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a Hazardous Substance, PERMITTEE shall pay all costs of remediation and removal to the CITY'S satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 37.4 **Removal.** If PERMITTEE or PERMITTEE'S agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Permit Area, PERMITTEE or PERMITTEE'S agent shall remove all Hazardous Substances in any type of container, equipment or device from the Permit Area immediately upon or prior to the expiration or earlier termination of this Permit.

CITY reserves the right to conduct inspections of the Permit Area and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Permit Area. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

- 37.5 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 37.6 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Permit Area, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. PERMITTEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Permit Area.
- 37.7 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area resulted in any Hazardous Substance being released on, from or beneath the Permit Area, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by CITY, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Permit Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance

with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit Area and compliance with environmental laws and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefore.

38. Repair. PERMITTEE shall be responsible, at its sole cost and expense, for the repair or replacement of any damage to the Property caused directly or indirectly by PERMITTEE's use of the Property, including items that CITY staff has determined to be damaged. PERMITTEE shall comply with the direction of CITY's Real Estate Assets Department with respect to the method of any repairs or replacement arising under this Permit.
39. Water Quality – Best Management Practices. City and Lessee are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of City's precious water resources. It is Lessee's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, Lessee will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately Lessee's responsibility to prevent pollutant discharges to the storm drain system. Therefore, Lessee will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

40. Prevailing Wages. PERMITTEE acknowledges that PERMITTEE is the awarding body pursuant to California Labor Code section 1722, for any contracts related to PERMITTEE's use of the Permit Area that may require the payment of prevailing wages pursuant to State law and/or San Diego Municipal Code section 22.3019. PERMITTEE agrees to comply with all laws related to the payment of prevailing wages on public works contracts, including without limitation the requirements contained in California Labor Code sections 1720-1861. PERMITTEE shall deliver to City, upon request, evidence of compliance with the State prevailing wage laws in form and content reasonably satisfactory to CITY.
41. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Permit Area has not been inspected by a Certified Access Specialist (CAsp).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CAsp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility

standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

42. **Partial Invalidity.** If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
43. **Waiver.** The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY’s citizens. CITY’s failure to insist upon the strict performance of any of PERMITTEE’s obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY’s waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY’s delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY’s acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY’s failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
44. **Cumulative Remedies.** CITY’S rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY’S rights or remedies at law or in equity.
45. **Survival.** Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
46. **Joint and Several Liability.** If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Permit.
47. **No Affiliation.** Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.

48. **Charter Section 225.** Pursuant to City Charter Section 225, PERMITTEE and each of its assignees and sublicensees shall make a full and complete disclosure of the name and identity of all natural persons who will receive more than ten percent (10%) of the contracted amount or who owns more than ten percent (10%) of the entity entering into this Permit or receiving or assuming any rights or obligations under this Permit.
49. **Exhibits.** All exhibits referenced in this Permit are incorporated into this Permit by this reference. In the event of a conflict between this Permit and any exhibit to this Permit, the terms, conditions, and obligations of this Permit shall control.
50. **Entire Agreement.** This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and PERMITTEE'S use of the Permit Area. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
51. **Applicable Law, Venue, and Jurisdiction.** This Permit shall be governed by and construed in accordance with California law. Any action by a party to this Permit to enforce or interpret its terms shall be maintained in the San Diego County Superior Court or the Federal District Court for the Southern District of California.
52. **Legal Proceedings.** If any party brings an action or proceeding against another party under this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment. If, as a result of an action brought by or against PERMITTEE in connection with this Permit, CITY intervenes therein, becomes a party, or is made a party thereto, PERMITTEE shall pay all of CITY'S costs and expenses thereof, including without limitation reasonable attorney fees and costs.
53. **Counterparts.** This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
54. **Notices.** Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or PERMITTEE, respectively, as follows:

THE CITY OF SAN DIEGO

Attention: Director, Department of Real Estate and Airport Management

Address: 1200 Third Avenue, Suite 1700 (MS 51A)

San Diego, California 92101

Phone (619) 236-6020

COUNTY OF SAN DIEGO, DEPARTMENT OF ENVIRONMENTAL
HEALTH AND QUALITY - COMMUNITY HEALTH DIVISION - VECTOR
CONTROL PROGRAM – (DEHQ-CHD-VCP)

John-Ross Glueck, Deputy Director

5570 Overland Ave.

San Diego, CA 92123

55. **Authority to Contract.** Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Permit, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
56. **Acceptance of Permit Area.** By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Use. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition, and acknowledges and agrees that CITY has fulfilled all obligations it may have had to improve, modify, repair, replace, alter, or otherwise develop the Permit Area prior to the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation PERMITTEE'S employees, from any defects in the Permit Area, and shall be solely responsible therefore.
57. **Unauthorized Activities.** PERMITTEE shall not engage in any activity on the Permit Area other than the Permitted Use. Any use of the Permit Area that was not previously approved in writing by the CITY or otherwise authorized by this Permit, shall subject PERMITTEE to being liable for all costs and damages associated with inspecting, remediating, and/or taking other actions to ensure that the Property and the Permit Area shall be returned to its condition prior to PERMITTEE's use of the Permit Area, subject to the satisfaction of the CITY, at PERMITTEE's sole cost and expense, as well as being a basis for immediate termination of this Permit, all of which shall be subject to the sole discretion of the CITY.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: 03012022

THE CITY OF SAN DIEGO, a California municipal corporation

BY: 

Penny Maus, Director
Department of Real Estate and
Airport Management

Date: 3/23/2022

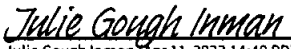
COUNTY OF SAN DIEGO, DEPARTMENT OF
ENVIRONMENTAL HEALTH AND QUALITY -
COMMUNITY HEALTH DIVISION - VECTOR
CONTROL PROGRAM (DEHQ-CHD- VCP)

BY: 

Name: Amy Harbert
Title: Director, DEHQ

Approved as to form this 11th day
of April, 2022.

MARA W. ELLIOTT, City Attorney

By: 
Julie Gough Inman (Apr 11, 2022 14:40 PDT)

Name: Julie Gough Inman
Title: Deputy City Attorney

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: 03012022

THE CITY OF SAN DIEGO, a California municipal corporation

BY: 

Penny Maus, Director
Department of Real Estate and
Airport Management

Date: 3/23/2022

COUNTY OF SAN DIEGO, DEPARTMENT OF
ENVIRONMENTAL HEALTH AND QUALITY -
COMMUNITY HEALTH DIVISION - VECTOR
CONTROL PROGRAM (DEHQ-CHD- VCP)

BY: 

Name: Amy Harbert

Title: Director, DEHQ

Approved as to form this _____ day
of _____, 2022.

MARA W. ELLIOTT, City Attorney

By: _____

Name: _____

Title: _____

Exhibit A: Property and Permit Area

