

CONSTRUCTION STAGING AREA LICENSE

This Construction Staging Area License ("License") is entered into by FTC Ventures, LLC, a California limited liability company ("Property Owner"), and the City of San Diego, a California municipal corporation ("City"), to be effective when signed by the parties and approved by the San Diego City Attorney ("Effective Date"). The Property Owner and City may together be referred to in this License as the "Parties" and individually as a "Party."

RECITALS

- A. Property Owner is the owner of that certain 19,166-square foot parcel of unimproved vacant land located on the west side of Rachael Avenue between E. 20th and Cumberland Streets in National City, California, 91950, identified as Assessor's Parcel Number 558-320-21 (the "Property"), as more particularly described in **EXHIBIT A** and depicted in **EXHIBIT B**, attached hereto.
- B. The City is working on a storm drain capital improvement project (the "City CIP Project") on and beneath public right-of-way within the City and desires to use the Property to store construction materials and equipment necessary for completion of the City CIP Project.
- C. It is the mutual intention of the City of National City ("National City") and the City that the City CIP Project connect to National City's storm drain system at a location beneath the Property (the "NC Storm Drain Project"). National City will be responsible for and is in the process of procuring an appropriate drainage easement from Property Owner ("Drainage Easement") and an inter-agency agreement with the City for City forces to carry out the NC Storm Drain Project beneath the Property ("Inter-Agency Agreement").
- D. The timing of the NC Storm Drain Project is uncertain. The City's need for the Property to store materials and equipment necessary to carry out the City CIP Project is emergent.
- E. Property Owner agrees to allow the City to use the Property subject to the terms and conditions of this License.

AGREEMENT

FOR VALUABLE CONSIDERATION, the sufficiency and receipt of which is acknowledged, the Parties agree as follows:

- 1. PERMITTED USE. Property Owner hereby grants to City, its agents, employees, and contractors, permission to enter upon and use the Property for construction staging activities related to the City CIP Project (the "Permitted Use"). The Permitted Use shall include access to and exclusive use of the Property to store and retrieve materials and equipment necessary to complete the City CIP Project (together, the "Materials and Equipment"). By way of example, Materials and Equipment will include (but not be limited to) pipes, grates, rebar, wood, sand, crushed rock, soil, ladders, bathroom, light towers,

traffic control devices, steel plates, excavators, forklifts, Bobcats, and other construction-related vehicles. The Permitted Use shall be subject to City's use of Best Management Practices ("BMPs") for water quality protection, including but not limited placing shaker plates and gravel at the entrance to the Property in order to reduce sediment transported onto National City's and the City's right of way from the Property by City vehicles carrying Materials and Equipment onto and away from the Property. The Permitted Use shall also include City's replacement of the existing fence around the perimeter of the Property with a new fence, at City's sole cost and expense (the "New Fence").

2. APPROVALS; COMPLIANCE WITH LAWS. City shall obtain all necessary governmental approvals, including permits, from applicable government entities, including National City, prior to accessing and using the Property for the Permitted Use. City shall comply, at its sole cost and expense, with all applicable local, state, and federal laws in the course of carrying out the Permitted Use on the Property, including laws related to the management and control of dust and noise pollution, particularly within residential areas, as well as to the handling, storage, removal and disposal of any hazardous materials brought onto the Property by the City or soil contamination proximately caused by the City and arising from the Permitted Use on the Property ("Applicable Laws"). If the Property Owner receives a notice of violation ("NOV") from a government entity alleging that any Applicable Law has been violated, and the factual basis for such NOV arises from the City's actions to carry out the Permitted Use of the Property, then the City will take corrective action or mitigating measures to address the NOV at its sole cost and expense.
3. INSPECTION; RESTORATION. Upon the expiration or termination of this License, City shall, as soon as practicable, remove all Materials and Equipment from the Property. Upon complete removal of all Materials and Equipment, City shall notify Property Owner of the same, whereupon Property Owner shall have five (5) business days to notify City of its desire to inspect the Property ("Inspection Notice"). If City timely receives an Inspection Notice, the Parties will schedule a mutually convenient time to jointly inspect the Property to determine what work the City must do to restore any disturbed areas within the Property to the same condition as existed immediately prior to the Effective Date ("Restoration Work"); provided, however, Property Owner acknowledges that City will not expend more than \$20,000 on any Restoration Work (the "Restoration Work Cap"). If the City does not timely receive an Inspection Notice, City will use its best judgment and reasonably complete the Restoration Work within the Restoration Work Cap, and Property Owner will be deemed to have accepted such Restoration Work and waives any claim against City based on alleged inadequacy of the restoration of the Property.

GP

Property Owner's initials

The Parties agree that, as part of the Restoration Work, City shall not restore the fencing, but rather will leave the New Fence for Property Owner's continued use and benefit. Notwithstanding anything to the contrary in this Section 3, if the NC Storm Drain Project commences prior to the expiration or termination of this License, then the Restoration Work shall not include any restoration of the Property disturbed by work related to the NC

Storm Drain Project; rather, such restoration responsibility and scope shall be subject to the terms and conditions of the Drainage Easement and/or the Inter-Agency Agreement.

4. MONTHLY PAYMENT; SECURITY DEPOSIT. During the first year of the Term (as defined in Section 5), City shall pay Property Owner two thousand dollars five hundred dollars (\$2,500.00) per month as consideration for this License ("Monthly Payment"). For each successive year of the Term, the Monthly Payment will increase by six (6%) percent. City shall make the Monthly Payment to Property Owner at the address set forth in Section 6 below by no later than the fifth (5th) day of each month of the Term as consideration for that month's use. The first Monthly Payment will include the prorated amount for the time between the Effective Date and the last day of the month containing the Effective Date. On or before the Effective Date, City shall transfer the amount of one (1) Monthly Payment (i.e., \$2,500.00) to Property Owner to be held during the Term as a security deposit ("Security Deposit"), which deposit shall be returned to City at the end of the Term, unless the Parties agree in writing that it shall be applied to the final Monthly Payment or to the cost of Restoration Work (to be performed by Property Owner). If the Parties agree that any portion of the Security Deposit will be applied to Restoration Work (to be performed by Property Owner), the Restoration Work Cap shall be reduced by such amount of the Security Deposit.
5. TERM. The permission herein granted shall commence upon the Effective Date (even though actual entry upon the Property may be a later date determined by City) and shall be in effect until the date of completion of the City CIP Project, as determined by the City Engineer (the "Term"); provided, however, that in no event shall the Term of this License extend beyond the day immediately preceding the third (3rd) anniversary of the Effective Date, unless the License is amended and approved by the proper City authority according to the San Diego Municipal Code and City policy.
6. NOTICE. Property Owner may contact the City's Resident Engineer, Eric Swanson, at (619) 916-6353 or eswanson@sanidiego.gov, or the Project Manager, Amabelle Marchi, at (619) 613-1075 or amarchi@sanidiego.gov, with any questions or concerns about the City CIP Project or City's use of the Property under this License. Notwithstanding the foregoing, all formal notices submitted by one party to the other party under or as required by this License shall be sent by messenger for immediate personal delivery, nationally recognized overnight (one business day) delivery service (i.e., United Parcel Service, Federal Express, etc.), or registered or certified first-class mail, postage prepaid, return receipt requested through the United States Postal Service, to the address of the recipient party designated below in this Section 6. Notice shall be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day the notice is sent by messenger for immediate personal delivery, one (1) business day after delivery to a nationally recognized overnight delivery service, or three (3) days after the notice is deposited with the United States Postal Service. Any attorney representing a party may give any notice on behalf of such party. The notice addresses for the parties, as of the Effective Date and which may be changed from time to time by the parties, are as follows:

To City:

The City of San Diego
Attention: Mary Carlson, Assistant Deputy Director
Department of Real Estate
1200 Third Avenue, 17th Floor
San Diego, CA 92101

With a copy to:
San Diego City Attorney's Office
Attention: Real Property Unit
1200 Third Ave, 17th Floor
San Diego, CA 92101

To Property Owner:

FTC Ventures, LLC
Attention: Alex Carolino
7474 Collins Ranch Court
San Diego, CA 92130
(619) 434-9200

7. COORDINATION. City's Project Manager shall coordinate with Property Owner or Property Owner's representatives regarding any City CIP Project details that materially affect the Property. City shall use commercially reasonable efforts to minimize negative impacts to the Property.
8. CONTRACTOR INSURANCE; ADDITIONAL INSURED. City shall require contractor(s) accessing the Property to carry liability insurance as required in "Standard Specifications for Public Works Construction, 2021 Edition," as amended by all periodic supplemental amendments to such. "FTC Ventures, LLC" shall be designated as an "Additional Insured" on all insurance policies relevant to the Permitted Use on the Property.
9. INTEGRATION. This License sets forth the entire agreement and understanding between the Parties with respect to the subject matter of this License and may not be amended, modified, or altered except in a writing which is signed by all Parties and/or their successors or assigns.
10. INCORPORATION BY REFERENCE. All recitals and attached exhibits are incorporated into this License by this reference.
11. AUTHORIZED SIGNERS. Each individual executing this License on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this License 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 agreement, and that this License is binding upon such person or entity in accordance with its terms. Each person executing this License on behalf of another person or legal entity shall provide City with evidence, satisfactory to City, that such authority is valid and that 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.

12. COUNTERPARTS; ELECTRONIC SIGNATURES. This License may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument. Copies, electronic signatures, and "pdf"s shall be considered the equivalent of original signatures.

[Signatures on Following Page]

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

Date: 20/02/2024

FTC VENTURES, LLC, a California limited liability company

BY: Gregory Penetrante
Gregory Penetrante 11 Feb 20, 2024 15:08 PST

Name: Gregory Penetrante

Title: Manager

Date: 22/02/2024

THE CITY OF SAN DIEGO, a California municipal corporation

BY: 

Name: Christina Bibler

Title: Director, Department Economic Development

Approved as to Form:

MARA W. ELLIOTT, San Diego City Attorney

BY: Brian Byun
Brian Byun (Feb 22, 2024 12:14 PST)

Name: Brian Byun

Title: Deputy City Attorney

Date: 22/02/2024

EXHIBIT A: PROPERTY LEGAL DESCRIPTION

(APN: 558-320-21)

LOT 382 of Lincoln Acres Annex No. 2, in the City of National City, County of San Diego, State of California, according to Map thereof No. 1748, filed in the Office of the Recorder of said San Diego County, February 27, 1943.

EXHIBIT B: PROPERTY SITE MAP

(APN: 558-320-21)

