



Real Estate Assets Department

SDC003

Waste Management of CA Inc.

M505PM - 003 - B00

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



53

Department of Real Estate and Airport Management

TERMINATION OF AGREEMENT

Rec 11/30/23
R 29795

The following agreement for use of City-owned property will terminate as noted:

LESSEE	Waste Management of CA
LEASEHOLD ID	M505PM-003-B00
ACTUAL TERMINATION DATE	10/31/23
SECURITY DEPOSITS	Yes ☒ No
TERMINATION INSPECTION DATE	11/28/23
Subtenants?	Yes ☒ No
Date Subtenants vacated property OR Date of new direct agreement with City	11/1/23

Agent Hyide Farst Date 11/28/23 Supervisor N Baldwin Date 11/28/23

*****Lease Billing Use Only*****

Lease Billing Supervisor

512

Date

12/5/23

Data Entry

Date

Lease Billing Supervisor Termination Checklist:

- ☒ Terminate Lease in REportfolio
- ☒ If termination is in the middle of billing period, prorate invoice. Check with agent if necessary.
- ☒ If rent paid beyond termination date, process refund.
- ☒ Void any invoices that have been issued for period after termination date.
- ☒ Refund security deposit per agent instructions.
- ☒ Notify agent that termination, proration, and refund (if any) are complete.



Department of Real Estate
and Airport Management

Document Routing Form

License Agreement

Title of document to be signed

Nick Baldwin

Program Manager/Supervisor Signature

Print name of City Attorney: Delmar Williams

Date City Attorney approval: 11/06/23

Heide Farst

Your Name/Property Agent's Name

Nov 16, 2023

Date

NORA: ☒ Yes Date: 10/18/23
☐ No, see explanation below

Appeal: ☐ Yes ☒ No ☐ N/A

Explanation/Notes:

Attached for your approval is the new License Agreement between the City of San Diego and Waste Management of California, Inc.

The site is a vacant lot consisting of approximately 0.193 acres. The site is a fenced lot and Waste Management uses the lot for container storage for drivers use. Waste Management has been utilizing this lot since 1982.

The License Agreement is for a term of three (3) years. The monthly rent will start at \$2,899.16 with three percent (3%) annual increases. The License Agreement will be effective November 1, 2023.

Thank you.

Environmental Determination Notes (if applicable):

Deputy Signature: *Phay C*

Date: 11/16/23

Attachments:

License Agreement

U & O Permit - 2017

CAO Email Approval

NORA - Attachment B

CITY OF SAN DIEGO

LICENSE AGREEMENT

(Waste Management: Portion of APN 346-032-04-00)

This LICENSE AGREEMENT (this "Agreement") is entered into by and between WASTE MANAGEMENT OF CALIFORNIA, INC., a California corporation ("Licensee"), and THE CITY OF SAN DIEGO, a California municipal corporation ("City"), as of November 1, 2023 ("Effective Date"), subject to approval as to form by the San Diego City Attorney.

IN CONSIDERATION OF THE RESPECTIVE PROMISES OF LICENSEE AND CITY SET FORTH IN THIS AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, LICENSEE AND CITY AGREE AS FOLLOWS:

1. **PURPOSE.** City owns certain real property commonly known as Assessor Parcel Number 346-032-04-00 located in the City of San Diego and more specifically identified in Section 39 of **EXHIBIT A** attached to this Agreement as the "Property." Licensee and City desire to enter into this Agreement to provide Licensee certain limited rights to undertake the Permitted Use (defined in Section 35 of **EXHIBIT A** attached to this Agreement) on the License Area (defined in Section 23 of **EXHIBIT A** attached to this Agreement).

2. **DEFINITIONS.** All defined terms or words indicated by initial capitalization in this Agreement and not specifically defined in the main body of this Agreement are defined in **EXHIBIT A** attached to this Agreement.

3. **LICENSE.**

3.1 License Area. Subject to the terms, conditions, and agreements of this Agreement, as of the Effective Date, City licenses, permits, and authorizes Licensee to use the License Area on a non-exclusive basis solely for the Permitted Use.

3.2 Personal Rights; Restriction on Transfers. The licenses, permits and authorizations provided by this Agreement are personal to Licensee. Licensee shall not have any right to make or allow any Transfer without the prior written consent of City, which may be given or withheld in the City's sole and absolute discretion. Licensee acknowledges and agrees that, under the circumstances that this Agreement is entered into by City and Licensee and the public nature of the Property, the restrictions in this Agreement on Transfers are reasonable.

3.3 No Limitation on Other City Use. Nothing contained in this Agreement is intended to limit, restrict, or prohibit City from entering into future agreements with other Persons regarding use of the Property, as long as such other uses do not materially interfere with the Permitted Use on the License Area.

3.4 No Property Estate or Interest Conveyed. Notwithstanding any provision of this Agreement to the contrary, City and Licensee do not intend to convey any estate or interest in real or personal property between them under this Agreement. Nothing in this Agreement shall be construed or interpreted as a conveyance of any estate or interest in any real or personal property. If this Agreement or any provision of this Agreement is finally (after all appeals) construed or

interpreted by a court of competent jurisdiction as conveying an estate or interest in real or personal property between City and Licensee, then the provision(s) of this Agreement interpreted as conveying any estate or interest in real or personal property between City and Licensee shall automatically be null and void, without further action by or Notice to City or Licensee.

3.5 Noise. Licensee shall not use or permit the use of the License Area in any manner that creates or maintains any noise or sound violating San Diego Municipal Code ("SDMC") Chapter 5, Article 9.5.

3.6 Nuisance. Licensee shall not create or allow a nuisance, as defined in State Civil Code section 3479, or a violation of Law on the License Area.

3.7 **ACCEPTANCE OF PROPERTY IN AS-IS CONDITION.** LICENSEE ACCEPTS ALL PHYSICAL CONDITIONS OF THE PROPERTY, AS OF THE EFFECTIVE DATE, AND RELEASES CITY FROM ALL LIABILITY WHATSOEVER FOR ALL KNOWN OR UNKNOWN CONDITIONS OF THE PROPERTY. LICENSEE SHALL ENTER THE PROPERTY FOR THE PERMITTED USES UNDER THIS AGREEMENT, IN THE PROPERTY'S "AS IS," "WHERE IS" AND "SUBJECT TO ALL FAULTS" CONDITION, AS OF THE EFFECTIVE DATE. LICENSEE ACKNOWLEDGES AND AGREES THAT IT IS RELYING SOLELY UPON ITS OWN KNOWLEDGE OR INVESTIGATION OF THE PROPERTY, AS IT DEEMS APPROPRIATE. LICENSEE IS NOT RELYING ON ANY STATEMENT OR REPRESENTATION BY ANY CITY PARTY RELATING TO THE CONDITION OF THE PROPERTY. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 3.7, CITY MAKES NO REPRESENTATION OR WARRANTY AS TO THE PHYSICAL CONDITION OF THE PROPERTY OR WHETHER THE PROPERTY PRESENTLY COMPLIES WITH ANY LAW. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 3.7, LICENSEE, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, WAIVES AND RELEASES CITY AND ITS SUCCESSORS AND ASSIGNS FROM ALL COSTS OR EXPENSES WHATSOEVER (INCLUDING LEGAL COSTS), WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATING TO THE PHYSICAL CONDITION OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY LAW APPLICABLE TO THE PROPERTY. LICENSEE EXPRESSLY WAIVES ALL RIGHTS OR BENEFITS AVAILABLE TO IT WITH RESPECT TO THE RELEASES CONTAINED IN THIS SECTION 3.7 UNDER ANY PROVISION OF APPLICABLE LAW PROVIDING THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY, INCLUDING STATE CIVIL CODE SECTION 1542. THE PROVISIONS OF THIS SECTION 3.7 SHALL SURVIVE THE TERMINATION DATE.

4. **TERM.** The "Term" of this Agreement starts on the Effective Date and ends at 11:59 p.m. on the date of the earliest to occur of the following events ("Termination Date"):

4.1 *Licensee Notice.* The ninetieth (90th) day after the date Licensee both gives City Notice of termination of this Agreement for any reason or no reason and performs all Licensee's obligations under Section 15;

4.2 *City Notice.* The ninetieth (90th) day after the date City gives Licensee Notice of termination of this Agreement for any reason or no reason;

4.3 *Expiration.* 11:59 p.m. Pacific Time on the day before the third (3rd) anniversary of the Effective Date;

4.4 *Eminent Domain.* Termination of this Agreement under Section 23;

4.5 *Event of Default.* Following the occurrence of an Event of Default, City giving Licensee Notice of termination of this Agreement;

4.6 *Casualty.* Termination of this Agreement under Section 10; or

4.7 *Breach of Warranty.* City termination of this Agreement under Section 31.

5. **LICENSE FEE.** Licensee shall pay each monthly License Fee to City in advance on or before the first day of each month, as part of the consideration to City for permitting Licensee to use the Property for the Permitted Use under this Agreement; provided, however, that the first monthly Licensee Fee payment shall be paid on or before the Effective Date.

5.1 **Payment.** License Fees are payable to the City Treasurer in lawful money of the United States of America by good and sufficient check, wire transfer, or electronic funds transfer, at City's election, in its sole and absolute discretion, to such account or address as City designates by Notice to Licensee from time to time. License Fee payments sent by mail shall be sent to City by first-class mail through the United States Postal Service with all postage pre-paid and addressed to:

The City of San Diego
Office of the City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

License Fee payments made in person shall be hand delivered to:

Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

5.2 **Required Payment Information.** Licensee shall include City's customer account number for Licensee with each License Fee payment so City can apply the License Fee to Licensee's account. Licensee's failure to include its customer account number may result in Licensee's payment not being timely applied to Licensee's account and the application of late payment charges. Licensee assumes all risk of loss and responsibility for all fees or penalties for its failure to include its customer account number with a License Fee payment. The place of payment may be changed at any time by City upon thirty (30) days prior Notice to Licensee. Payments shall be considered paid on the date the payment is actually received by the City, provided Licensee's customer account number is included with such payment as required in this Section 5.2. Licensee assumes all risk of loss and responsibility for late payment charges if payments are sent by mail.

5.3 Invoicing Courtesy. City may invoice Licensee for amounts payable under this Agreement. However, any such invoicing is a courtesy only. Licensee shall make all payments under this Agreement on or before each applicable due date, regardless of whether or not City invoiced the required payment.

5.4 No Offsets. Licensee shall pay all License Fees without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

5.5 City's Net Return. The License Fees shall give City an absolutely "net" return for the Term, free of any expenses or charges for the Property, except as this Agreement expressly provides.

5.6 Delinquent License Fees. If Licensee fails to pay the License Fee when due, Licensee shall pay, in addition to the unpaid License Fee, five percent (5%) of the delinquent License Fee. If the License Fee is still unpaid at the end of fifteen (15) days past due, Licensee shall pay an additional five percent (5%) (being a total of ten percent (10%)) of the delinquent License Fee, which is agreed by the Parties to be the appropriate amount to compensate City for the cost of servicing the delinquent account. In no event shall the charge for late payment of the License Fee be less than Twenty-Five Dollars (\$25). Acceptance of late charges or any portion of the late License Fee payment by City shall neither constitute a waiver of Licensee's Default regarding the late payment nor prevent City from exercising any rights or remedies available under this Agreement, at law, or in equity arising from such Default.

6. PERMITTED USE.

6.1 Approvals. Licensee shall not undertake the Permitted Use on the License Area without first obtaining all necessary Approvals for the Permitted Use. In obtaining each necessary Approval for the Permitted Use on the License Area, Licensee shall inform the applicable Government in writing that the Property is City-owned. Licensee shall promptly after City's request deliver to City documentary evidence of all Approvals obtained by Licensee regarding the Permitted Use.

6.2 Protection Against Claims or Liens. IF A CLAIM OR LIEN IS RECORDED OR ASSERTED AGAINST THE PROPERTY OR THE CITY FOR MATERIAL OR EQUIPMENT SUPPLIED TO OR LABOR OR SERVICES PERFORMED, DIRECTLY OR INDIRECTLY, FOR LICENSEE OR A CONTRACTOR OF LICENSEE RELATING TO WORK ON THE PROPERTY, LICENSEE SHALL SATISFY AND DISCHARGE SUCH CLAIM OR LIEN, AT THE SOLE COST AND EXPENSE OF LICENSEE, WITHIN TEN (10) DAYS FOLLOWING NOTICE OF THE EXISTENCE OR ASSERTION OF SUCH CLAIM OR LIEN. CITY SHALL NOT BE LIABLE FOR ANY SERVICES, LABOR, MATERIAL, OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO LICENSEE OR LICENSEE'S CONTRACTOR(S) UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY SERVICES, LABOR, MATERIAL, OR EQUIPMENT SHALL ATTACH TO OR AFFECT THE PROPERTY. NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE CITY'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, PROFESSIONAL, LABORER, EQUIPMENT, OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICE OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR THE BENEFIT OF CITY OR THE PROPERTY, NOR AS GIVING LICENSEE ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR

PERMIT THE RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT THAT WOULD GIVE RISE TO THE FILING OF ANY CLAIM OR LIEN AGAINST CITY OR THE PROPERTY.

6.3 No Liens Against Public Property. LICENSEE ACKNOWLEDGES AND AGREES THAT ON THE EFFECTIVE DATE THE PROPERTY IS OWNED BY CITY, WHICH IS A PUBLIC ENTITY, AND THE PROPERTY IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE PROPERTY. LICENSEE FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE PROPERTY HIRED BY OR FOR THE BENEFIT OF ONE OR MORE LICENSEE PARTIES OF SUCH FACT AND THAT CITY AND THE PROPERTY ARE NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT.

6.4 Signs. Licensee shall not place any banner, pennant, flag, poster, sign, decoration, marquee, awning, or similar device or advertising (each, a "Sign") on the License Area without City's prior written consent, in each instance, which consent may be given or withheld in City's sole and absolute discretion. All Signs on the License Area will be maintained by Licensee in good, clean, and operating condition during the Term. Licensee will remove all Signs placed by Licensee from the License Area on or before the Termination Date and repair all damage caused by placement, installation, or removal of Signs, all at Licensee's sole cost and expense. Licensee shall comply with all Laws requiring the posting of Signs on the License Area. If any unauthorized Sign is found on the License Area, Licensee shall remove the Sign at Licensee's sole cost and expense within twenty-four (24) hours after Notice from City requesting the removal. If Licensee does not remove an unauthorized Sign within twenty-four (24) hours after Notice from City requesting the removal, City may enter the License Area and remove the Sign at Licensee's sole cost and expense. If City performs work required of Licensee under this Section 6.4, Licensee shall reimburse City for all costs and expenses reasonably incurred by City in performing such work (including the costs of City's staff time, administrative overhead, and Legal Costs), within thirty (30) days after Notice to Licensee of such costs. All amounts reimbursable to City by Licensee under this Section 6.4 that are not paid within thirty (30) days after Notice to Licensee of the amount shall accrue Default Interest from the expiration of such thirty (30) day period until paid in full.

6.5 Costs. Licensee shall pay all costs and expenses related to the Permitted Use.

6.6 Security and Safety. Licensee shall be solely responsible for the security and safety of the License Area. Licensee shall be responsible for the cleanup and securing of the License Area disturbed by Licensee, as appropriate, immediately following each day's work to ensure the daily security and safety of the License Area. In conducting the Permitted Use, Licensee shall comply with all Laws, at Licensee's sole cost and expense, with respect to maintaining the License Area in a safe and secure manner during the Term.

6.7 City Work. City reserves the right to perform work on the License Area at any time. If City intends to perform work on the License Area, City shall give Licensee at least forty-eight (48) hours' Notice prior to commencing the work (except in the event of an emergency, in which case, no prior Notice is required). Licensee shall comply with all safety instructions issued by City to ensure the safety of City personnel or contractors performing work on the License Area. In

exercising its rights under this Section 6.7, City shall use reasonable efforts not to unreasonably interfere with Licensee's Permitted Use of the License Area.

6.8 Inspection. City may, at any time, for any reason or no reason, without any obligation to do so, enter the License Area for the purposes of inspecting the License Area and the Permitted Use conducted on the License Area for compliance with this Agreement. Licensee shall make a Licensee representative available to be present at any City inspection under this Section 6.8 on, at least, 48 hours' advance Notice from City; provided, however, the presence of a Licensee representative is not required for City to exercise its inspection rights under this Section 6.8.

6.9 Utilities. Licensee shall order, obtain, install, and pay for all utilities, including installation and service charges, required or desired for the Permitted Use. Utilities shall be temporary and constructed and located in accordance with plans approved by City, in City's sole and absolute discretion, before any utility construction or installation commences.

6.10 Superior Interests. This Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, licenses, easements, permits, or rights-of-way pertaining to the Property existing as of the Effective Date, whether or not of record. Licensee shall obtain all licenses, permits, or agreements required from Third Persons holding a superior interest to allow the Permitted Use on the License Area in compliance with all such superior interests. If the Permitted Use is or becomes inconsistent or incompatible with a preexisting, superior interest, Licensee shall take all action and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

6.11 Vehicular Traffic. All vehicular traffic shall be confined to concrete, asphalt or decomposed aggregate surfaces unless otherwise approved in writing by City, in City's sole and absolute discretion, prior to the commencement of the Permitted Use.

6.12 Limitation on Construction. Licensee shall not perform any construction on or related to the License Area that is not restoration, repair, or maintenance required to be performed by Licensee under this Agreement.

6.13 Contractors. Licensee shall provide City with a list of all contractors and subcontractors that will perform any of the Permitted Use, including name, address, email, fax, and phone number. All work requiring a licensed contractor under the State Contractors' State License Law (State Business & Professions Code sections 7000-7191) shall be done by contractors licensed by the State.

6.14 Unauthorized Use Charge. Licensee shall pay City one hundred (100%) of the Gross Revenue, without any deduction, credit, or set-off, from any use of the License Area that is not a Permitted Use within thirty (30) days after Licensee receives such revenue. Nothing in this Section 6.14 or City's acceptance of any payment under this Section 6.14 is intended to authorize any use of the License Area that is not a Permitted Use, waive Licensee's Default for conducting or allowing such use, or waive any City right or remedy under this Agreement.

7. MAINTENANCE.

7.1 Obligation to Maintain. Licensee shall keep and maintain the License Area in good order, condition, and repair, in accordance with the Maintenance Standard, subject to reasonable wear and tear and any other condition this Agreement expressly does not require Licensee to repair

or restore. Licensee's obligation to maintain the License Area includes an obligation to make all repairs that the License Area may require under applicable Law. City has no obligation to maintain or repair the License Area, except repairs required as a result of the negligence or willful misconduct of a City Party occurring after the Effective Date.

7.2 Maintenance Standard. Licensee's obligation to maintain the License Area under Section 7.1 includes maintenance, repair, reconstruction, and replacement of all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the License Area, now existing or made in the future, as necessary to maintain the appearance, character and level of quality of the License Area. Licensee's obligation to maintain the License Area described in the immediately preceding sentence shall include: (a) maintaining the surfaces of the License Area in an evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability; (b) removing all papers, mud, sand, debris, filth, and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep such areas in a clean and orderly condition; (c) removing or covering graffiti in accordance with Section 7.4; (d) placing, keeping in repair and replacing all necessary and appropriate directional signs, markers, and lines; (e) operating, keeping in repair, and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (f) providing security services and taking all reasonably appropriate measures to ensure the safety of Persons using the License Area; and (g) maintaining, mowing, weeding, trimming, and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance, character and level of quality of the landscaping, all at the sole cost and expense of Licensee. Licensee's obligation to maintain the License Area described in the two immediately preceding sentences is, collectively, referred to in this Agreement as the "**Maintenance Standard.**"

7.3 Maintenance Default. If an adverse condition occurs on the License Area in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then City may Notify Licensee of the Maintenance Deficiency. If Licensee fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days following Licensee's receipt of Notice of the Maintenance Deficiency, City shall have the right (but no obligation) to enter the License Area following five (5) days advance Notice and perform all acts necessary to cure the Maintenance Deficiency or to take any other action at law or in equity that may then be available to City to accomplish the abatement of the Maintenance Deficiency. Any reasonable amount of money expended by City for the cure or abatement of a Maintenance Deficiency under this Section 7.3 shall be reimbursed to City by Licensee within thirty (30) days after Notice to Licensee of the amount with reasonable documentation of such amount. Any reasonable amount of money expended by City for the cure or abatement of a Maintenance Deficiency under this Section 7.3 that is not reimbursed to City by Licensee within thirty (30) days after Notice to Licensee of such amount shall accrue Default Interest from the expiration of such thirty (30) day period until paid in full.

7.4 Graffiti. Graffiti, as defined in Government Code section 38772, applied to any exterior surface on the License Area and visible from outside the License Area shall be removed by Licensee by either painting over the evidence of such vandalism with a paint color-matched to the surface on which the paint is applied or removed with solvents, detergents, or water, as appropriate. Notwithstanding Section 7.3, if any such graffiti is not removed within seventy-two (72) hours after the time Licensee discovers or receives Notice of the graffiti or, in the case of

graffiti that cannot reasonably be removed within seventy-two (72) hours after the time Licensee discovers or receives Notice of the graffiti, whichever is earlier, if Licensee does not duly commence and diligently complete such cure within a reasonable time under the circumstances, then after Notice to Licensee, City shall have the right (but no obligation) to enter the License Area and remove the graffiti. Any reasonable amount of money expended by City for removal of graffiti from the License Area under this Section 7.4 shall be reimbursed to City by Licensee, within thirty (30) days after Notice to Licensee of such amount with reasonable documentation of such amount. Any reasonable amount of money expended by City for removal of graffiti under this Section 7.4 not reimbursed to City by Licensee within thirty (30) days after Notice to Licensee of such amount shall accrue Default Interest from the expiration of such thirty (30) day period until paid in full.

8. **PREVAILING WAGE LAWS.** On the Effective Date, no public funds are provided by City or any other Person to Licensee relating to Licensee's use of the License Area. If Licensee obtains any public funds after the Effective Date from City or another Person relating to Licensee's use of the License Area, Licensee shall comply with Prevailing Wage Laws in performing all restoration, repair, or maintenance required to be performed by Licensee under this Agreement.

9. **LICENSEE INSURANCE.** Licensee shall maintain, to protect the City Parties against all insurable Claims arising from or relating to this Agreement, the License Area, or the Permitted Use, at the sole cost and expense of Licensee, all the insurance coverage required in **EXHIBIT C** attached to this Agreement.

10. **WASTE OR DAMAGE.** Licensee shall promptly Notify City of any waste, casualty, or damage to the License Area or adjacent areas of the Property of which Licensee becomes aware. Licensee shall not commit, or allow to be committed, any waste, casualty, or damage to property or injury to person on or around the License Area or other parts of the Property. If waste, casualty, or damage to the Property arises from the Permitted Use or the action of a Licensee Party or failure to act by a Licensee Party that had a duty to act, at City's election, in City's sole and absolute discretion, Licensee shall make, or cause to be made, full repair of the waste, casualty, or damage and restore the Property to its condition existing immediately prior to the waste, casualty, or damage. After the occurrence of waste, casualty, or damage to the Property and Notice from City electing to have Licensee repair or restore the Property, Licensee shall commence repair or restoration of the Property as soon as reasonably possible after the date the waste, casualty, or damage occurs and complete such repair or restoration within a reasonable time. Licensee must obtain all Approvals required for repair or restoration of all waste, casualty, or damage to the Property. Following the occurrence of any waste, casualty, or damage that materially restricts use of the License Area or access to the License Area for the Permitted Use for more than one hundred eighty (180) days, City or Licensee may terminate this Agreement by seven (7) days' Notice to the other Party. This Section 10 shall survive the Termination Date.

11. **ENVIRONMENTAL CONDITIONS.** Licensee shall not cause or permit any Environmental Condition. If Licensee discovers or becomes aware of an Environmental Condition, Licensee shall Notify City of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following the Licensee becoming aware of such Environmental Condition.

11.1 **Remediation.** If an Environmental Condition occurs, Licensee shall remediate the Environmental Condition in accordance with Law to allow all uses of the Property permitted by Law immediately before the Environmental Condition is discovered, at Licensee's sole cost and expense. If Licensee knows or has reasonable cause to believe that an Environmental Condition is

an imminent danger to public health and safety, Licensee shall take all actions necessary to alleviate the imminent danger, at Licensee's sole cost and expense.

11.2 Removal. If a Licensee Party stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Property in accordance with Law, Licensee shall remove all such Hazardous Substances from the Property prior to the Termination Date and provide City with documentation demonstrating the legal removal and disposal of the Hazardous Substances. Licensee shall be responsible for all reasonable costs incurred by City to remove or dispose of any Hazardous Substances not removed from the Property by Licensee in accordance with this Section 11.2.

11.3 Reports. Licensee shall deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to City within three (3) days after Notifying City of the Environmental Condition. Licensee shall also submit all required reports relating to the Environmental Condition to other Governments as required by Law.

11.4 Environmental Assessment. Upon reasonable cause to believe that an Environmental Condition has occurred, City may cause an environmental assessment of the Property to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Licensee shall reimburse City for all costs and expenses reasonably incurred by City in performing the environmental assessment within fifteen (15) days after Notice to Licensee of the amount of such costs and expenses. Any amount reimbursable to City by Licensee under this Section 11.4 that is not paid within fifteen (15) days after Notice to Licensee of such amount, shall accrue Default Interest from the expiration of such fifteen (15) day period until paid in full.

12. COMPLIANCE WITH LAW.

12.1 General. The Permitted Use shall comply with all Laws, at Licensee's sole cost and expense. Licensee shall comply with all notices, orders, directives, or the like issued by City or any other Government under the authority of current or future Law.

12.2 Compliance with City Standard Contract Provisions. In entering the License Area or performing the Permitted Use under this Agreement, Licensee shall comply with all City standard contract provisions set forth in **EXHIBIT D** attached to this Agreement.

13. INDEMNIFICATION.

13.1 Licensee Indemnity Obligations. In addition to Licensee's obligations to Indemnify the City Parties under other provisions of this Agreement, Licensee shall Indemnify the City Parties against all Claims arising from: (a) Licensee's use of the License Area; (b) this Agreement; (c) personal injury (including death) or property damage (to property of one or more of the Licensee Parties or any other Person) occurring on the License Area or adjoining real property to the extent resulting from Licensee's use of the License Area; (d) a wrongful intentional act or negligence of one or more of the Licensee Parties; (e) strict liability relating to Licensee's use of the License Area; (f) all applications for Approvals made by or on behalf of one or more Licensee Parties; (g) all agreements that one or more Licensee Parties makes with a Third Person regarding this Agreement or the License Area; (h) services, labor, material, or equipment supplied to, for, on behalf of, or at the request of one or more Licensee Parties; (i) a workers' compensation claim by one or more employees or contractors of one or more Licensee Parties; (j) all Prevailing Wage

Determinations, except to the extent prohibited by Law, including State Labor Code sections 1773.3 or 1781; or (k) all Environmental Conditions occurring on or after the Effective Date. Notwithstanding anything to the contrary in this Agreement, Licensee's obligations to Indemnify the City Parties excludes Claims arising solely from the established active negligence or willful misconduct of a City Party.

13.2 Independence of Insurance and Indemnity Obligations. Licensee's obligations to Indemnify the City Parties under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Licensee's insurance or other obligations under this Agreement. Licensee's obligations to Indemnify the City Parties under this Agreement are independent of Licensee's insurance and other obligations under this Agreement. Licensee's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify Licensee's obligations to Indemnify the City Parties under this Agreement and are independent of Licensee's obligations to Indemnify the City Parties and other obligations under this Agreement.

13.3 Survival of Indemnification Obligations. Licensee's obligations to Indemnify the City Parties under this Agreement shall survive the Termination Date, until all actual or prospective Claims subject to Licensee's obligations to Indemnify the City Parties under this Agreement are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

13.4 Indemnification Procedures. Wherever this Agreement requires Licensee to Indemnify the City Parties:

13.4.1 *Notice.* The affected City Parties shall Notify Licensee of the Claim within a reasonable time.

13.4.2 *Selection of Counsel.* Licensee shall select counsel reasonably acceptable to City's City Council. Even though Licensee shall defend the Claim, the affected City Parties may, at their respective options, engage separate legal counsel, at Licensee's expense, to advise them regarding the Claim and their defense. The affected City Parties' separate legal counsel(s) may attend all proceedings and meetings. Licensee's legal counsel shall actively consult with the City Parties' separate legal counsel, subject to applicable conflict of interest and privileged communication limitations.

13.4.3 *Cooperation.* The affected City Parties shall reasonably cooperate with Licensee's defense of the City Parties.

13.4.4 *Settlement.* Licensee may only settle a Claim with the prior written consent of the affected City Parties, in their respective sole and absolute discretion.

13.5 Immediate Duty to Defend. The duty to defend that is within Licensee's obligations to Indemnify the City Parties under this Agreement includes Claims for which the City Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Licensee or the City Parties have been determined. The duty to defend applies immediately, regardless of whether the City Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Parties that the City Parties be entitled to obtain summary adjudication or summary judgment regarding Licensee's duty to defend the City Parties at any

stage of a Claim within the scope of Licensee's obligations to Indemnify the City Parties under this Agreement.

13.6 Savings Provision. Notwithstanding anything in this Agreement to the contrary, if the extent of Licensee's obligation to Indemnify the City Parties under this Agreement exceeds the indemnity obligation allowed by applicable Law, Licensee's obligation to Indemnify the City Parties shall be reduced to the extent required to comply with applicable Law.

14. TAXES; POSSESSORY INTEREST TAX. Licensee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Licensee, this Agreement, the Permitted Use, or the License Area. Licensee acknowledges and agrees that this Agreement may create a possessory interest in the Property subject to property taxation and that Licensee may be subject to payment of property taxes levied on such interest. Any such possessory interest tax imposed shall be solely a tax liability of Licensee and shall be paid before delinquency by Licensee. In addition, Licensee shall pay before delinquency all personal property taxes becoming due for equipment, fixtures, inventory, or other personal property of Licensee or any other Licensee Party installed, maintained, or present at or on the License Area. Licensee acknowledges and agrees that it shall bear all responsibility, liability, costs, and expenses connected in any way with any tax consequences experienced by Licensee related to this Agreement or the Permitted Use.

15. END OF TERM. Before the Termination Date, Licensee shall remove or cause the removal of all the personal property of the Licensee Parties from the License Area and place the License Area in a condition as close as possible to the condition of the License Area on the day before the Effective Date, reasonable wear and tear excepted. Without limiting the obligation of Licensee to remove all the personal property of the Licensee Parties from the License Area before the Termination Date, Licensee agrees that City may dispose of all personal property on the License Area after the Termination Date, at Licensee's sole cost and expense.

16. HOLDOVER. Any continued use of the License Area by Licensee or receipt or acceptance of License Fee payment(s) by City after the Termination Date shall not renew or extend the Term or this Agreement and all terms and conditions of this Agreement shall apply to such use except: (1) City may terminate this Agreement for any reason or no reason on seven (7) days' Notice to Licensee; and (2) the License Fee shall be adjusted to equal the fair market value of such use of the License Area, as determined by City.

17. CITY CURE RIGHT. After the occurrence of an Event of Default by Licensee, without waiving, or releasing Licensee from, any obligation, Default, or Event of Default or waiving City's right to take any action this Agreement permits City to take as a result of a Default or Event of Default by Licensee, City may (but need not) perform, in whole or in part, the obligation(s) not performed by Licensee resulting in the Event of Default by Licensee. Licensee shall reimburse City for all reasonable costs (including the costs of City staff time, administrative overhead, and Legal Costs) incurred by City in exercising its rights under this Section 17, within thirty (30) days after Notice to Licensee of such costs with reasonable documentation of such costs. All amounts reimbursable to City by Licensee under this Section 17 that are not paid within thirty (30) days after Notice to Licensee of the amount shall accrue Default Interest from the expiration of such thirty (30) day period until paid in full. Nothing in this Section 17 is intended to modify any other right or remedy provided to City under this Agreement or Law.

18. REMEDIES. After the occurrence of an Event of Default by the other Party, the non-defaulting Party shall be entitled to take any or all action authorized by this Agreement after the

occurrence of an Event of Default by the other Party, including legal proceedings to enforce any or all contractual rights or remedies or pursue any or all other remedies or damages relating to such Event of Default available to the non-defaulting Party at law or in equity.

19. **LEGAL ACTIONS.** Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages.

20. **CUMULATIVE RIGHTS AND REMEDIES.** The rights and remedies of the Parties under this Agreement are cumulative with all other rights or remedies of the Parties under this Agreement, at law, or in equity. The exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or a different time, of any other right or remedy for the same Default or Event of Default by the other Party or the same right or remedy for any other Default or Event of Default by the other Party.

21. **LEGAL CHALLENGE OR CHANGE IN LAW.** If a lawsuit is filed against City or Licensee to prevent or prohibit Licensee's Operations on the License Area, or a subsequent change in Law prohibits Licensee's Operations on the License Area, either Party shall have the right to terminate this Agreement, in its respective sole and absolute discretion, on thirty (30) days' Notice to the other Party.

22. **CITY'S RESERVATION OF RIGHTS.**

22.1 Government Action. By entering into this Agreement, neither City nor the City Council is obligating itself or any other Government regarding any discretionary action relating to the development, occupancy, use, or maintenance of the License Area, including re-zonings, variances, environmental clearances, or any Approval required to conduct the Permitted Use.

22.2 Resources. City reserves all right, title, and interest in all natural resources relating to the Property, including subsurface natural gas, oil, minerals, and water, on or within the Property.

23. **EMINENT DOMAIN.** If all or part of the License Area or any other part of the Property is taken through eminent domain proceedings or under threat of the exercise of the power of eminent domain by any Government with the power of eminent domain, the interests of City and Licensee shall be as follows:

23.1 Full Taking. If all or substantially all the Property is taken, this Agreement shall terminate on the date of the transfer of title or possession of the Property to the condemning Government, whichever first occurs.

23.2 Partial Taking - Remainder Unusable. If a partial taking of the Property occurs that affects the License Area and, in City's sole and absolute discretion, the remaining part of the License Area is unsuitable for the Permitted Use, this Agreement shall terminate on the date of the transfer of title or possession of the part of the Property taken to the condemning Government, whichever first occurs.

23.3 Partial Taking - Remainder Usable. If a partial taking of the Property occurs that affects the License Area and, in City's sole and absolute discretion, the unaffected part of the License Area is suitable for the Permitted Use, this Agreement shall terminate regarding the part of the Property taken on the date of the transfer of title or possession the part of the Property taken

to the condemning Government, whichever first occurs, but shall continue for the part of the Property not taken that is subject to this Agreement.

23.4 Award. Notwithstanding anything to the contrary in this Agreement, in all eminent domain proceedings, settlements, agreements, or other means by which a Government taking of the Property by exercise or threat of exercise of the power of eminent domain is pursued or resolved, all money paid or awarded in such process shall be the sole property of City.

23.5 Transfer. City may transfer its title or interest in the Property in lieu of eminent domain proceedings to any Government entitled to exercise the power of eminent domain over the Property.

23.6 No Inverse Condemnation. City's exercise of any right or power under this Agreement shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation.

24. **NO DISCRIMINATION OR SEGREGATION**. Licensee covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all Persons claiming under or through it, him or her, that neither Licensee nor any Person claiming under or through Licensee shall establish or allow any discrimination against or segregation of any Person or group of Persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the use of the License Area.

25. **NOTICES**. All Notices submitted by a Party to the other Party under or as required by this Agreement 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 25. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 25. 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 in accordance with this Section 25. 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, are as follows:

To City: The City of San Diego
 Attention: Director, Department of Real Estate and Airport Management
 1200 Third Avenue, Suite 1700 (MS 51A)
 San Diego, CA 92101
 (619) 236-6020

To Licensee: Waste Management of California, Inc.
 Attention: Director of Real Estate
 720 E. Butterfield Road, 4th Floor
 Lombard, IL 60148
 (281) 220-9653

26. **TIME PERIOD CALCULATION.** Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months, and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

27. **INTERPRETATION PRINCIPLES.** No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Agreement. The Parties participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term, or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this Agreement, refers to such document, as modified from time to time (excepting any modification violating this Agreement), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" in this Agreement includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar Government requirement refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

28. **GOVERNING LAW.** The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the County. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

29. **PRIOR AGREEMENT TERMINATION.** As of the Effective Date, all leases, right-of-entry permits, use and occupancy permits, or other agreements between City and Licensee concerning the Permitted Use on the Property, other than this Agreement, are terminated, except as to any rents, fees, rights, or remedies accrued to either Party under those agreements prior to the Effective Date.

30. **RELATIONSHIP OF PARTIES.** The Parties each intend and agree that City and Licensee are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

31. **WARRANTY AGAINST PAYMENT OF CONSIDERATION FOR AGREEMENT.** Licensee represents and warrants to City that: (a) Licensee has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Licensee; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Licensee or any of Licensee's agents, employees, or representatives to any elected or appointed official or employee of City in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties in this Section 31 shall entitle City to terminate this Agreement immediately, without liability. Upon any termination of this Agreement

under this Section 31, Licensee shall immediately repay to City all payments made to or on behalf of Licensee by City (if any) under this Agreement prior to the Termination Date.

32. UNAVOIDABLE DELAY; EXTENSION OF TIME FOR PERFORMANCE.

Performance by either Party under this Agreement shall not be considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of the Unavoidable Delay; and (b) within twenty (20) days after the Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time. Notwithstanding anything to the contrary in this Agreement, no obligation of Licensee for payment of money under this Agreement may be delayed by the occurrence of an Unavoidable Delay, unless the delay in payment of money is due to an Unavoidable Delay that prevents or materially limits the ability to transfer funds by or between Federal or State chartered financial institutions.

33. NO OTHER REPRESENTATIONS OR WARRANTIES. Except as expressly set forth in this Agreement, no Party makes any representation or warranty material to this Agreement to the other Party.

34. NO THIRD-PARTY BENEFICIARIES. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns (if any), nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

35. TIME OF THE ESSENCE. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence of this Agreement.

36. WAIVERS AND AMENDMENTS. Each waiver of a term, provision, covenant, condition, restriction, or agreement contained in this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. Failure to insist on strict compliance with a term, provision, covenant, condition, restriction, or agreement contained in this Agreement at any time or times shall not constitute a waiver of such term, provision, covenant, condition, restriction, or agreement at any other time, nor shall any waiver or relinquishment of any right or power under this Agreement at any time or times constitute a waiver or relinquishment of such right or power at any other time. Each amendment to this Agreement must be in writing and signed by the authorized representative(s) of both City and Licensee.

37. ACCESSIBILITY ASSESSMENT. City discloses to Licensee that the Property has not been inspected by a Certified Access Specialist (CASp). City further states:

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.

38. **SURVIVAL OF AGREEMENT.** All the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or after the Termination Date, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment, or expiration of all applicable statutory limitations periods, and all terms and conditions of this Agreement relating to dispute resolution and remedies shall survive the Termination Date.

39. **INTEGRATION.** This Agreement includes eighteen (18) pages and five (5) exhibits (the exhibits are incorporated into this Agreement by reference) constituting the entire understanding and agreement of the Parties regarding the subject matter of this Agreement and supersedes all previous negotiations or agreements between the Parties relating to the subject matter of this Agreement.

40. **TITLES AND HEADINGS FOR REFERENCE ONLY.** The titles and headings of the articles, paragraphs, or sections of this Agreement are for convenience of reference only, are not to be considered a part of this Agreement, and shall not in any way interpret, modify, or restrict the meaning of any term, provision, covenant, condition, restriction, reservation, or agreement in this Agreement.

41. **SEVERABILITY.** If a term, provision, covenant, condition, restriction, or agreement contained in this Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such a term, provision, covenant, condition, restriction, or agreement to Persons or circumstances other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity. All remaining terms, provisions, covenants, conditions, restrictions, or agreements contained in this Agreement shall be valid and enforced to the fullest extent Law allows.

42. **COUNTERPARTS.** This Agreement may be signed in multiple counterpart originals, each of which shall be considered an original, and all of which shall constitute one and the same agreement.

43. **ELECTRONIC SIGNATURES.** The Parties agree: (a) to deliver and accept signatures on or under this Agreement by e-mail or electronic means (including digital signatures); and (b) that signatures delivered by e-mail or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

44. **EXHIBITS.** All the exhibits attached to this Agreement are described as follows:

EXHIBIT A	Definitions
EXHIBIT B	Property and License Area Description
EXHIBIT C	Insurance Requirements

EXHIBIT D City Standard Contract Provisions

EXHIBIT E Prevailing Wage Requirements

[Remainder of page intentionally blank. Signatures appear on immediately following page.]

**SIGNATURE PAGE
TO
LICENSE AGREEMENT
(Waste Management: Portion of APN 346-032-04-00)**

Licensee and City sign and enter into this Agreement by and through the signatures of their respective authorized representatives, as follow:

CITY:

The City of San Diego,
a California municipal corporation

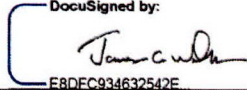
By: 

Name: Casey Smith

Title: Deputy Chief Deputy Attorney

LICENSEE:

Waste Management of California, Inc.,
a California corporation

By: 

James A. Wilson
Vice President

DocuSigned by:

E8DFC934632542E

11/16/2023

Approved as to form on:

Nov 22, 2023

MARA W. ELLIOTT
City Attorney

By: 

Delmar G. Williams
Deputy City Attorney

Delmar Williams (Nov 22, 2023 10:07 PST)

EXHIBIT A
TO
LICENSE AGREEMENT
(Waste Management: Portion of APN 346-032-04-00)

DEFINITIONS

1. Approval. Excluding this Agreement, all licenses, permits (including building, grading, demolition, alteration, use and special permits), approvals, consents, certificates, rulings, variances, authorizations, conditional use permits, or amendments to any of the foregoing, necessary or appropriate under any Law to commence, perform, or complete the Permitted Use on the License Area.
2. Business Day. Any weekday on which City is open to conduct regular City functions with City personnel.
3. City. Defined in the first paragraph of this Agreement.
4. City Parties. Collectively, City, the City Council, and all City elected officials, employees, agents, and attorneys.
5. City Party. Individually, City, the City Council, and each City elected official, employee, agent, or attorney.
6. Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity, or otherwise, or foreseeable or unforeseeable), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and Legal Costs) and any judgment.
7. County. The County of San Diego, California.
8. Default. Any Monetary Default or Non-Monetary Default.
9. Default Interest. The lesser of eight percent (8%) annually or the maximum rate allowed by Law.
10. Effective Date. Defined in the first paragraph of this Agreement.
11. Environmental Condition. Any of the following events relating to the Property and arising from the Permitted Use, any action by a Licensee Party, or any failure to act by a Licensee Party that had a duty to act: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.
12. Environmental Law. All Federal, State, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government, now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning: (a) any Hazardous Substance; (b) occupational health or industrial hygiene (only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate

to Hazardous Substances on, under or about the Property or relating to the Permitted Use); (c) occupational or environmental conditions on, under or about the Property or relating to the Permitted Use; (d) or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

13. Equity Interest. Any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in a Person.

14. Event of Default. The occurrence of any one or more of the following:

14.1 *Monetary Default*. A Monetary Default continuing for seven (7) days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid, including the nature and calculation of each such amount, or the evidence of insurance not delivered;

14.2 *Sign Removal*. Licensee's failure to remove an unauthorized Sign in accordance with Section 6.4 in the main body of this Agreement;

14.3 *Licensee Transfer*. The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of Section 3.2 in the main body of this Agreement;

14.4 *Non-Monetary Default*. Any Non-Monetary Default, other than those specifically addressed in Sections 14.2 or 14.3 that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the date of Notice of the Non-Monetary Default to the Party in Default, the Party in Default shall not be in Default if it does all the following: (a) within thirty (30) days after the date of Notice of such Non-Monetary Default, Notify the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) within thirty (30) days after the date of Notice of such Non-Monetary Default, commence curing the Non-Monetary Default; and (c) complete the cure of the Non-Monetary Default within a reasonable time.

15. Federal. Relating to or under the authority of the federal government of the United States of America.

16. Government. Every governmental agency, authority, bureau, department, quasi-governmental body, utility, utility service provider, or other entity or instrumentality having or claiming jurisdiction over the Property or the Permitted Use, including the Federal, State, County, City (in City's governmental capacity) governments and their subdivisions and municipalities, including City, any planning commission, board of standards and appeals, building department, zoning board of appeals, design review board or committee, the California Coastal Commission, and all other applicable governmental agencies, authorities, and subdivisions having or claiming jurisdiction over the Property or any activities on or at the Property.

17. Gross Revenue. The sum of all the following: (a) the gross amount of cash paid, or to be paid; (b) the fair market value of all other estates, interests, or rights transferred or to be transferred; (c) the outstanding amount of Licensee liabilities assumed or to be assumed; (d) the value of any

liability forgiveness provided or to be provided to Licensee; or (e) in the case of a Transfer without any of the previously described forms of consideration, the fair market value of the estate, interest, or right in the property transferred. Any fair market value determination shall be as of the date of the subject Transfer.

18. Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to the State to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any "hazardous" or "toxic" material, substance, or waste defined by those or similar terms or regulated as such under any Law, any matter, waste, or substance subject to any Law regulating, relating to, or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property, or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor, or any form of energy, from whatever source.

19. Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the Property, or during transportation of any Hazardous Substance to or from the Property, or arising at any time from activities conducted at, on, under, or from the Property, whether or not caused by a Party.

20. Indemnify. Indemnify, defend, and hold harmless the specified Person(s) from and against the Claim (alleged or otherwise), including Legal Costs and other costs incurred in enforcing the Party's indemnity obligation(s) relating to the Claim.

21. Law. Every law, ordinance, requirement, order, proclamation, directive, rule, or regulation of any Government applicable to a Party, the Property or the Permitted Use, or otherwise relating to a Party, this Agreement, the Permitted Use, or any Party's rights, obligations, or remedies under this Agreement, whether in force on the Effective Date or passed, enacted, modified, amended, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

22. Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses, and reasonable consultant and expert witness fees and expenses.

23. License Area. That part of the Property specifically described as the "License Area" in **EXHIBIT B** attached to this Agreement.

24. Licensee. Defined in the first paragraph of this Agreement.

25. License Fee. The following table shows the monthly License Fee amount for each Year (The following monthly License Fee table reflects an increase of three percent (3%) above the monthly License Fee payable for the immediately preceding Year):

Year 1	\$2,899.16 per month
Year 2	\$2,986.13 per month

Year 3

\$3,075.71 per month

26. Licensee Parties. Collectively, Licensee, its directors, officers, members, partners, employees, agents, contractors, attorneys, and all other Persons whom Licensee authorizes or allows to enter the License Area.
27. Licensee Party. Individually, Licensee, its directors, officers, members, partners, employees, agents, attorneys, or other Person whom Licensee authorizes or allows to enter the License Area.
28. Mayor. The Mayor of City or his or her designee or successor in function.
29. Monetary Default. Any failure by a Party to pay or deposit, when and as this Agreement requires, any amount of money required to be paid or any evidence of insurance coverage required to be provided under this Agreement, whether to or with a Party or a Third Person.
30. Non-Monetary Default. The occurrence of any of the following events, except to the extent constituting a Monetary Default: (a) the failure of a Party to perform one of its obligations under this Agreement; (b) the failure of a Party to comply with a material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement.
31. Notice. Any consent, demand, designation, election, notice, or request relating to this Agreement. All Notices must be in writing.
32. Notify. To give a Notice.
33. Parties. Collectively, City and Licensee.
34. Party. Individually, either City or Licensee, as applicable.
35. Permitted Use. Non-exclusive use of the License Area for the purpose of transfer container storage for driver use and other incidental uses as City may allow by separate written consent.
36. Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.
37. Prevailing Wage Law. Defined in **EXHIBIT E**, Section 1.
38. Prevailing Wage Determination. Any of the following: (a) any determination by the State or Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State or Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any Prevailing Wage Law, including the obligation to maintain certified payroll records under California Labor Code section 1776; or (d) any administrative or legal action

or proceeding to recover wage amounts or impose penalties or sanctions, at law or in equity, including under California Labor Code section 1781 or 1782.

39. Property. That certain real property owned by City specifically described as County Assessor Parcel Number 346-032-04-00 located in portion Lot 78 Rancho Mission of San Diego, Section 25 per Map 211.
40. SDMC. Defined in Section 3.5 in the main body of this Agreement.
41. Sign. Defined in Section 6.4 in the main body of this Agreement.
42. State. The State of California.
43. Term. Defined in Section 4 in the main body of this Agreement.
44. Termination Date. Defined in Section 4 in the main body of this Agreement.
45. Third Person. Any Person that is not a City Party, a Licensee Party, or an affiliate of a Party.
46. Transfer. Any of the following events, whether occurring by operation of law, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, license (including sublicense), or other transfer, whether direct or indirect, of all or any part of Licensee's legal, beneficial, or equitable interest in this Agreement; (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in Licensee by the owner(s) of such Equity Interest(s); (c) any transaction described in clause "(b)" affecting any Equity Interest(s) or any owner of Equity Interests (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the transactions described in clauses "(a)" through "(c)" of this Section 46. A transaction affecting Equity Interests, as referred to in clauses "(b)" through "(d)" of this Section 46, shall be deemed a Transfer by Licensee even though Licensee is not technically the transferor. A "Transfer" shall not, however, include any transaction (provided that the other Party receives Notice of such transaction at least fifteen (15) days before the transaction is final) relating to any Equity Interest: (a) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; or (b) to any Person that, as of the Effective Date, holds an Equity Interest in, or is under common control with, the Person whose Equity Interest is being transferred.
47. Unavoidable Delay. A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strike, labor trouble or other union activity, casualty, war, act of terrorism, riot, litigation, Government action, regional natural disaster, pandemic, or inability to obtain materials. Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.
48. Year. Each of: (a) the twelve (12) calendar month period beginning on the Effective Date and continuing through the day before the immediately following anniversary of the Effective Date; and (b) every subsequent period of twelve (12) calendar months beginning on each

anniversary of the Effective Date and ending on the day before the immediately following anniversary of the Effective Date. Each Year is referred to in this Agreement in consecutive chronological order, starting with "Year 1" and continuing with "Year 2," "Year 3," etc.

**EXHIBIT B
TO
LICENSE AGREEMENT
(Waste Management: Portion of APN 346-032-04-00)**

LICENSE AREA DESCRIPTION

The License Area is that portion of Assessor Parcel No. 346-032-04-00, consisting of approximately 8,400 square feet of land, which is an unimproved fenced lot located at the west side of Kearny Mesa Road, just to the south of Magnatron Boulevard, San Diego, California 92111, and generally identified in the following photograph with yellow highlighting:

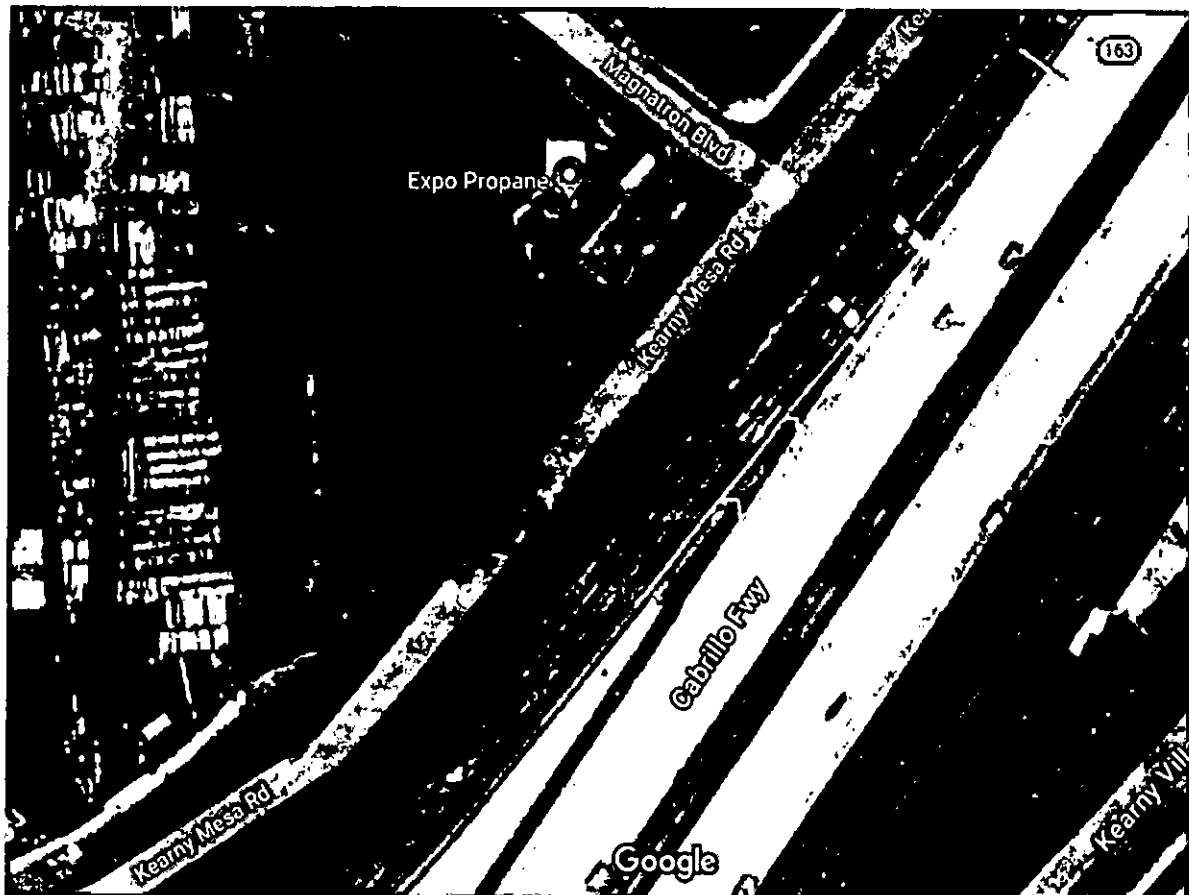


EXHIBIT C
TO
LICENSE AGREEMENT
(Waste Management: Portion of APN 346-032-04-00)

INSURANCE REQUIREMENTS

1. Required Insurance Coverage.

- 1.1. *Automobile Liability Insurance.* Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Licensee, with minimum limits for bodily injury and property damage of Two Million Dollars (\$2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by City, which pre-approval shall not be unreasonably withheld.
- 1.2. *Liability Insurance.* Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the License Area or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Four Million Dollars (\$4,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to the License Area.
- 1.3. *Property Insurance.* Insurance providing coverage for the License Area and all improvements on or to the License Area against loss, damage, or destruction by fire or other hazards encompassed under Cause of Loss - Special Form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the License Area, an "increased cost of construction" endorsement and an endorsement covering demolition and cost of debris removal.
- 1.4. *Workers Compensation Insurance.* Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury, or disease, covering all employees of Licensee.

2. **Nature of Insurance.** The contents of this **EXHIBIT C** are sometimes referred to as the **"Insurance Requirements."** All Liability Insurance, Automobile Liability Insurance, Property Insurance, and Workers Compensation Insurance policies required by these Insurance Requirements shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Licensee may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the License Area, which amount(s) shall equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements.
3. **Policy Requirements and Endorsements.** All insurance policies required by these Insurance Requirements shall contain (by endorsement or otherwise) the following provisions:
 - 3.1. *Insured.* Liability Insurance policies shall name the City Parties as "additional insured." The coverage afforded to the City Parties shall be at least as broad as that afforded to Licensee regarding the License Area and may not contain any terms, conditions, exclusions, or limitations applicable to the City Parties that do not apply to Licensee.
 - 3.2. *Primary Coverage.* Any insurance or self-insurance maintained by the City Parties shall be excess of all insurance required to be maintained by Licensee under these Insurance Requirements and shall not contribute with any insurance required to be maintained by Licensee under these Insurance Requirements.
 - 3.3. *Contractual Liability.* Liability Insurance policies shall contain contractual liability coverage for Licensee's Indemnity obligations under this Agreement. Licensee's obtaining or failing to obtain such contractual liability coverage shall not relieve Licensee from nor satisfy any Indemnity obligation of Licensee under this Agreement.
 - 3.4. *Deliveries to City.* Evidence of Licensee's maintenance of all insurance policies required by these Insurance Requirements shall be delivered to City before the Effective Date. No later than ten (10) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Licensee shall deliver to City evidence of Licensee's maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days' advance Notice of such action to City. Phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation

wording of any certificates or policies of insurance applicable to the City Parties under these Insurance Requirements.

- 3.5. *Waiver of Certain Claims.* Licensee shall cause each insurance carrier providing any Liability Insurance, Worker's Compensation Insurance, or Automobile Liability Insurance coverage under these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the City Parties, if not originally in the policy. To the extent Licensee obtains an insurance policy covering both the Licensee Parties and the City Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. "Waiver of Subrogation" means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the City Parties for any loss such insurance policy covers.
- 3.6. *No Representation.* No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.
- 3.7. *No Claims Made Coverage.* None of the insurance coverage required by these Insurance Requirements may be written on a claims-made basis.
- 3.8. *Fully Paid and Non-Assessable.* All insurance obtained and maintained by Licensee in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.
- 3.9. *Separation of Insured.* All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Licensee and the City Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but shall not exclude suits between named insured Persons and additional insured Persons.
- 3.10. *Deductibles and Self-Insured Retentions.* All deductibles or self-insured retentions under insurance policies required by these Insurance Requirements shall be declared to and approved by City. Licensee shall pay all such deductibles or self-insured retentions regarding the City Parties. Each insurance policy issued in satisfaction of these Insurance Requirements shall provide that, to the extent Licensee fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, City may pay the unpaid portion of such self-insured retention, in City's sole and absolute discretion. All amounts paid by City toward self-insured retentions regarding insurance policies covering the City Parties under these Insurance Requirements shall be reimbursed to City by Licensee in the same manner that insurance costs are reimbursable to City from Licensee under Section 5 of these Insurance Requirements.
- 3.11. *No Separate Insurance.* Licensee shall not carry separate or additional insurance coverage concurrent in form or contributing in the event of loss with insurance

coverage required by these Insurance Requirements unless the City Parties are made additional insured under such insurance coverage.

4. **Insurance Independent of Indemnification.** These Insurance Requirements, are independent of the Parties' Indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Agreement, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor shall the provision of such insurance preclude City from taking such other actions as are available to City under any other provision of this Agreement or otherwise at law or in equity.
5. **City Option to Obtain Coverage.** During the continuance of an Event of Default arising from the failure of Licensee to carry any insurance coverage required by these Insurance Requirements, City may, in City's sole and absolute discretion, purchase such required insurance coverage. City shall be entitled to immediate payment from Licensee of all premiums and associated reasonable costs paid by City to obtain such insurance coverage. Each amount becoming due and payable to City under this Section 5 that is not paid within fifteen (15) days after Notice from City with an explanation of the amounts owed, will accrue Default Interest from the expiration of such fifteen (15) day period until paid in full. Election by City to purchase or not to purchase insurance coverage otherwise required by these Insurance Requirements to be carried by Licensee shall not relieve Licensee of any Default or Event of Default or Licensee's obligation to obtain and maintain any insurance coverage required by these Insurance Requirements.

EXHIBIT D
TO
LICENSE AGREEMENT
(Waste Management: Portion of APN 346-032-04-00)

CITY STANDARD CONTRACT PROVISIONS

1. **Licensee Certifications of Compliance.** By signing this Agreement, Licensee agrees and certifies that Licensee is aware of, and will comply with, all the following requirements in performance of this Agreement:

1.1. Licensee Certification for Americans with Disabilities Act ("ADA") and State Access Laws and Regulations. Licensee shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Licensee shall comply with the most restrictive requirement (i.e., that which provides the most access). Licensee also shall comply with the City's ADA Compliance/City Contractors requirements set forth in Council Policy 100-04, which is incorporated into this Agreement by reference. Licensee warrants and certifies compliance with all Federal and State access laws and regulations and further certifies that all subcontracts relating to this Agreement, or the License Area will contain the subcontractor's agreement to abide by the provisions of Council Policy 100-04 and all applicable Federal and State access laws and regulations.

1.2. Compliance with City's Equal Opportunity Contracting Program ("EOCP"). Licensee shall comply with all EOCP requirements. Licensee shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Licensee shall provide equal opportunity in all employment practices. Licensee shall ensure that its subcontractors comply with the EOCP. Nothing in this Section 1.2 shall be interpreted to hold Licensee liable for any discriminatory practice of its subcontractors. Prior to commencing the Permitted Use on the License Area, Licensee shall contact the EOCP staff to determine compliance with all applicable rules and regulations.

1.3. Equal Benefits Ordinance Certification. Unless an exception applies, Licensee shall comply with the "Equal Benefits Ordinance" codified in SDMC section 22.4308.

1.4. Equal Pay Ordinance. Unless an exception applies, Licensee shall comply with the "Equal Pay Ordinance" codified in SDMC sections 22.4801 through 22.4809. Licensee shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of Licensee to the same extent as it would apply to Licensee. Licensee shall require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts.

1.5. Product Endorsement. Licensee shall comply with Council Policy 000-41 concerning product endorsement requiring that any advertisement referring to City as a user of a good or service must have the prior written approval of the Mayor.

1.6. Business Tax Certificate. Unless City's City Treasurer determines in writing that Licensee is exempt from the payment of business tax, Licensee is required to obtain a City business tax certificate and provide a copy of such certificate to City before commencing the Permitted Use.

EXHIBIT E
TO
LICENSE AGREEMENT
(Waste Management: Portion of APN 346-032-04-00)

PREVAILING WAGE REQUIREMENTS

1. **PREVAILING WAGES.** Under San Diego Municipal Code section 22.3019, construction work performed or funded under this Agreement cumulatively exceeding \$25,000 and alteration, demolition, repair and maintenance work performed, or funded under this Agreement cumulatively exceeding \$15,000 is subject to the State prevailing wage law set forth in State Labor Code sections 1720 through 1862, and in undertaking any and all such work, Licensee and Licensee's contractors and subcontractors shall comply with State Labor Code sections 1720 through 1862 and the requirements set forth in this **EXHIBIT E** (collectively, "**Prevailing Wage Law**"). This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay "living wage" under San Diego Municipal Code sections 22.4201 through 22.4245 ("**LWO**"). If both Prevailing Wage Law and the LWO are applicable to particular work, Licensee and Licensee's contractors and subcontractors must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

1.1 Compliance with Prevailing Wage Requirements. Under Prevailing Wage Law, Licensee and Licensee's contractors and subcontractors shall all ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations ("**DIR**"), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.

1.1.1 Copies of the prevailing rate of per diem wages are on file with City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Licensee and Licensee's contractors and subcontractors shall all post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to all interested Persons upon request. Licensee and Licensee's contractors and subcontractors shall all deliver evidence of the required job site posting to City, within five (5) days after such posting.

1.1.2 The wage rates determined by DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the Term. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with DIR, such predetermined wage rate shall become effective on the date following the expiration date of the previous wage rate and shall apply to this Agreement in the same manner as if it had been published. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of

such predetermined wage rates expire during the Term, such wage rate shall apply to the balance of the Term.

1.2 Penalties for Violations. Licensee and Licensee's contractors and subcontractors shall all comply with State Labor Code section 1775, in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with State Labor Code section 1775 shall be in addition to all other applicable penalties allowed under State Labor Code sections 1720-1861.

1.3 Payroll Records. Licensee and Licensee's contractors and subcontractors shall all comply with State Labor Code section 1776, which generally requires keeping accurate payroll records, verifying, and certifying payroll records, and making them available for inspection. Licensee and Licensee's contractors and subcontractors shall all comply with State Labor Code section 1776, including having provisions requiring such compliance in all contracts with subcontractors. Any requirement to submit certified payroll records to DIR shall include submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR. Further, Licensee and Licensee's contractors and subcontractors shall all furnish the records specified in State Labor Code section 1776 directly to the State Labor Commissioner in the manner required in State Labor Code section 1771.4. Licensee is responsible for ensuring that Licensee's contractors and subcontractors submit certified payroll records to City, the State Labor Commissioner, and DIR.

1.4 Apprentices. Licensee and Licensee's contractors and subcontractors shall all comply with State Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Licensee shall be held responsible for its compliance and the compliance of Licensee's contractors and subcontractors with State Labor Code sections 1777.5, 1777.6, and 1777.7.

1.5 Working Hours. Licensee and Licensee's contractors and subcontractors shall all comply with State Labor Code sections 1810 through 1815, including: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals, contractors, and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of State Labor Code sections 1810 through 1815.

1.6 Required Provisions for Subcontracts. Licensee shall include, at a minimum, a copy of the following provisions in any contract it enters into with a contractor or subcontractor: State Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

1.7 Labor Code Section 1861 Certification. In accordance with State Labor Code section 3700, Licensee and Licensee's contractors and subcontractors are all required to secure the payment of compensation of their respective employees and by signing this Agreement or any contract or subcontract, respectively, Licensee and Licensee's contractors and subcontractors all certify that "I am aware of the provisions of section 3700 of the State Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Licensee shall include this certification in all contracts with each contractor or subcontractor.

1.8 Registration Requirements. All work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of State Public Contract Code section 4104 or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work under State Labor Code section 1725.5. In accordance with State Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the State Business and Professions Code or by section 10164 or 2103.5 of the State Public Contract Code, provided the contractor is registered to perform public work under section 1725.5 at the time the contract is awarded."

1.8.1 A contractor's inadvertent error in listing a subcontractor who is not registered under State Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in State Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor under State Public Contract Code section 4107.

1.8.2 A contract entered into with any contractor or subcontractor in violation of State Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of State Labor Code section 1725.5.

1.8.3 By entering into this Agreement, Licensee is certifying that it has verified or will verify that all contractors and subcontractors used on work subject to Prevailing Wage Law are registered with DIR in compliance with State Labor Code sections 1771.1 and 1725.5 and shall provide proof of such registration to City.

1.9 Filing of Form PWC-100. Licensee shall timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed form to City.

1.10 Filing of Notice of Completion. Licensee shall record a notice of completion in accordance with State Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of such recorded notice of completion to City.

Farst, Heide

From: Williams, Delmar
Sent: Monday, November 06, 2023 8:26 AM
To: Farst, Heide
Cc: Smith, Casey
Subject: CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION: Waste Management License Agreement for Lot in Kearny Mesa

Hi Heide,

Please revise the first paragraph of the license agreement to read as follows:

This LICENSE AGREEMENT (this "Agreement") is entered into by and between WASTE MANAGEMENT OF CALIFORNIA, INC., a California corporation ("Licensee"), and THE CITY OF SAN DIEGO, a California municipal corporation ("City"), as of November 1, 2023 ("Effective Date"), subject to approval as to form by the San Diego City Attorney.

I know you sent the agreement to me by Adobe Sign for approval, but the above change will need to be made before I can approve the agreement.

If you have any questions, please let me know. Thank you.

Delmar Williams
Deputy City Attorney
Real Property & Public Finance Section
1200 Third Avenue, Suite 1620
San Diego, CA 92101
Telephone: (619) 533-5576

PLEASE NOTE: This email is for the sole use of the intended recipient(s) and may contain information protected by the ATTORNEY-CLIENT PRIVILEGE and/or by the ATTORNEY WORK PRODUCT DOCTRINE. The contents of this email may include confidential and/or inside information and may be legally privileged or protected and should not be communicated to or relied upon by any person without express consent of the sender. If you are not the intended recipient of this communication, you are hereby notified that any unauthorized review, use, dissemination, distribution, downloading, or copying of this communication is strictly prohibited and may be unlawful. If you have received this email in error, please immediately notify the sender by reply email, delete the original communication, and destroy all copies.

From: Farst, Heide <HFarst@sandiego.gov>
Sent: Thursday, October 19, 2023 11:36 AM
To: Williams, Delmar <DGWilliams@sandiego.gov>
Subject: RE: CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION: Waste Management License Agreement for Lot in Kearny Mesa

Hi Delmar,

Waste Management has asked if the License Agreement can have an Effective Date of November 1, 2023. I made a change in the first paragraph and wanted to ensure that you agree with this change or prefer a different way to define the Effective Date as November 1, 2023.

10/19/2023



Attachment B

Environmental Determination (NORA)	
Environmental Planner	Edgar Ramirez Manriquez (EdgarR@san Diego.gov)
Project Name	License Agreement – Waste Management of California, Inc.
Environmental Determination	This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) and Section 15304 (Minor Alterations to Land).
Date NORA Posted	10/11/2023
Date NORA Removed	10/18/2023

CITY OF SAN DIEGO
USE AND OCCUPANCY PERMIT

THIS CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT ("Permit") is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation ("CITY"), and **WASTE MANAGEMENT OF CALIFORNIA, INC.**, a California Corporation, ("PERMITTEE"), to be effective on the first of the month following the execution by the City Attorney ("Effective Date").

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:
 - 1.1 **"Permit Area"** shall mean that certain portion of CITY-owned real property known as Assessor Parcel No.: 346-032-04-00, consisting of approximately 8,400 square feet of land, which is an unimproved fenced lot located on the west side of Kearny Mesa Road, just to the south of Magnatron Boulevard, San Diego, CA 92111, as more particularly depicted on **Exhibit A: Permit Area**, attached hereto.
 - 1.2 **"Permit Administrative Fee"** shall mean a one-time, non-refundable permit processing fee in the amount of Nine Hundred Eighty Dollars (\$980), which CITY has received.
 - 1.3 **"Monthly Rent"** shall mean monetary consideration payable to CITY by PERMITTEE in the initial amount of Two Thousand Four Hundred Twenty-eight Dollars (\$2,428.00) per month on the first day of each month. The Monthly Rent is subject to annual increases as set forth in Section 5.
 - 1.4 **"Permit Use"** shall mean the nonexclusive use of the Permit Area for the purpose of storage of large metal containers for driver use, and other incidental uses as CITY may allow by written consent. The subject parcel is zoned IL-2-1, which allows the current use of land for storage of containers.
 - 1.4 **"PERMITTEE's Address for Notices"** shall be:

Waste Management of California, Inc.
Attn: Craig Post
720 E. Butterfield Road, 4th Floor
Lombard, Illinois 60148
 - 1.5 **"Term"** shall mean three (3) years, commencing on the Effective Date.
2. **Revocable License.** CITY may revoke this Permit upon 90 days prior written notice, if the revocation is for CITY's convenience; however, if the revocation is based on a default of any of the terms and conditions of this agreement, or an emergency situation wherein CITY

in its sole discretion determines the Permit needs to be revoked, CITY may revoke the Permit immediately upon verbal notice provided to PERMITTEE

3. Term. The Term of this Permit shall commence on the Effective Date.
4. 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. Subject to Section 15.4 Late Removal, if PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, CITY may increase monthly rental rate, at the City's sole discretion, up to two times the then current monthly Rent, calculated on a per diem basis. CITY's acceptance of such rent shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area.
5. Rent. PERMITTEE shall pay the Monthly Rent in advance on the first day of each month during the Term. If the Effective Date is not the first day of a calendar month, then the Monthly Rent payable for the partial month at the beginning of the Term shall be prorated on a per diem basis.

On the first day of each Permit year the monthly rent shall be increased by three percent (3%) as follows:

October 1, 2018: \$2,500.84 per month

October 1, 2019: \$2,575.87 per month

6. Place of Payment. All payments to be paid by PERMITTEE under this Permit shall be made payable to "City Treasurer" and be mailed with an invoice to:

San Diego City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or be hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to PERMITTEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

7. Delinquent Payments. If PERMITTEE fails to make any payments under this Permit when due, PERMITTEE shall pay to CITY, in addition to the unpaid amount, five percent (5%)

of the unpaid amount which shall be additional Rent. If any amount of such payment remains unpaid after fifteen (15) days past due, PERMITTEE shall pay to CITY an additional five percent (5%) of the unpaid amount (being a total of ten percent [10%]), which shall be additional Rent. Notwithstanding the foregoing, in no event shall the charge for the late payment of Rent be less than One Hundred Dollars (\$100). After thirty (30) days past due, unpaid amounts due CITY under this Permit may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. PERMITTEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may be charged by the CITY's City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, PERMITTEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

8. CITY's Right to Inspect and Audit. In the event that a CITY audit, if applicable, discloses that PERMITTEE's payments, which payments shall include the payment of any delinquency charges, for the audited period, have been underpaid in excess of five percent (5%) of the total required payments, then PERMITTEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said payments were underpaid ("Underpayment Audit Cost"). PERMITTEE agrees to pay said Underpayment Audit Cost and further agrees that the Underpayment Audit Cost represents a fair and reasonable estimate of the costs that CITY will incur from PERMITTEE's under payment. Acceptance of any Underpayment Audit Costs and/or any portion of late PERMITTEE payments of any kind by CITY shall in no event constitute a waiver of any PERMITTEE default with respect to late payment(s), nor prevent CITY from exercising any of the other rights and remedies granted in this Permit.
9. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit. Any assignment by operation of law shall automatically terminate this Permit.
10. Unauthorized Activities. PERMITTEE shall not engage in any activity on the Permit Area, or any adjacent CITY-owned property, other than as pre-approved by this Permit. Any work performed/activities conducted by PERMITTEE on the Permit Area that were not previously approved or otherwise authorized by this Permit, shall be considered a default of this Permit and shall subject this Permit to immediate termination by CITY, at CITY's sole discretion.
11. Maintenance of the Permit Area. 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 PERMITTEE's authorized use of the Permit Area. CITY shall at no time during the Term of this Permit 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 at all times. PERMITTEE shall keep the Permit Area

free and clear of weeds and brush as reasonably directed by CITY and to CITY's reasonable satisfaction.

12. Security and Safety of Permit Area. PERMITTEE shall bear sole responsibility for the security and safety of its activities and property kept at the Permit Area. PERMITTEE shall be responsible for the routine maintenance, cleanup, and securing of the Permit Area, as appropriate, to ensure security and safety of the Permit Area. PERMITTEE shall comply with all applicable laws, rules, regulations and directives of competent governmental authorities, at PERMITTEE's sole cost and expense, with respect to maintaining the Permit Area in a safe and secure manner during the Term.
13. Inspection of Permit Area. CITY may at all times enter and inspect the Permit Area; however, CITY is not obligated to do so.
14. Utilities. Upon prior written approval by CITY in all instances, PERMITTEE shall order, obtain, and pay for all utilities and service and installation charges in connection with its use of the Permit Area.
15. Improvements and Personal Property.
 - 15.1 Improvements. Upon expiration or termination of this Permit, PERMITTEE shall remove any and all other improvements, fixtures, structures, and installations or additions to the Permit Area that were constructed or installed on the Permit Area by PERMITTEE ("PERMITTEE Improvements"); this requirement to remove said PERMITTEE Improvements shall apply to PERMITTEE whether PERMITTEE constructed or installed said PERMITTEE Improvements during the current Term or during any previous time period wherein PERMITTEE was authorized to use the Permit Area. PERMITTEE shall, at PERMITTEE's sole cost and expense, remove PERMITTEE Improvements as soon as practicable, but in no event later than (60) calendar days after the expiration or earlier termination of this Permit. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such PERMITTEE Improvements as required by this Permit. If PERMITTEE fails to remove PERMITTEE Improvements as required, CITY may, at its option, remove the same at PERMITTEE's sole cost and expense. Notwithstanding the foregoing, CITY may, upon notice to PERMITTEE at termination or at any time prior to the expiration of the Term, elect to assume ownership of all or any PERMITTEE Improvements as of the expiration or earlier termination of this Permit, at no cost to CITY. If CITY elects to assume ownership of all or any PERMITTEE Improvements, PERMITTEE shall honor such assumption and execute and deliver all necessary and appropriate documents, materials and other items reasonably needed to affect such transfer of ownership to CITY.
 - 15.2 Personal Property. PERMITTEE shall remove from the Permit Area all PERMITTEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after earlier termination, but in no event later than ten (10) calendar days after the expiration or earlier termination of this Permit. Any such items which PERMITTEE

fails to remove shall be deemed abandoned and, subject to applicable law, become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at PERMITTEE's sole cost and expense. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Permit Area.

- 15.3 Post-Permit License. CITY grants permission to PERMITTEE to enter upon and occupy the Permit Area after the expiration or earlier termination of this Permit solely for the purpose of removing PERMITTEE Improvements and PERMITTEE's personal property as provided by this Permit. This provision shall survive the expiration or earlier termination of this Permit for the limited time periods stated above.
- 15.4 Late Removal. Notwithstanding any provision of this Permit to the contrary, PERMITTEE shall pay Rent to CITY for any period of time after the expiration or earlier termination of this Permit needed to remove PERMITTEE Improvements or personal property as required by this Permit, whether by CITY or PERMITTEE. Such Rent shall be calculated on a per diem basis using the Rental rate in effect just prior to the expiration or earlier termination of this Permit.
16. Insurance. PERMITTEE shall obtain and maintain throughout the Term of this Permit, at its sole cost and expense, all insurance required by this Permit. PERMITTEE's liabilities under this Permit, including without limitation PERMITTEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. PERMITTEE's maintenance of the required insurance coverage is a material consideration for this Permit. Notwithstanding any provision of this Permit to the contrary, if PERMITTEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, PERMITTEE shall be in default of this Permit. PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. PERMITTEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for the following insurance, which shall be subject to CITY's written approval thereof:
- (a) Commercial General Liability Insurance ("CGL") 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, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). 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.
 - (b) Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle

(including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit.

- (c) Workers' Compensation Insurance, as required by applicable laws, for all of PERMITTEE's employees who are subject to this Permit, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.

- 16.1 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as insureds "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf; (b) PERMITTEE's products; (c) PERMITTEE's work, including without limitation PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf; or (d) the Permit Area.
- 16.2 Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of PERMITTEE's insurance and shall not contribute to it.
- 16.3 Severability of Interest. Each policy must be endorsed to 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.
- 16.4 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VT" 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 may 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 (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.
- 16.5 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.

- 16.6 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 and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- 16.7 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.
- 16.8 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, and other pertinent information.
- 16.9 Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE's insurable property related to the Permit Use of the Permit Area under this Permit or the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.
17. Indemnification & Hold Harmless. PERMITTEE shall 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 PERMITTEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE's exercising of the rights granted to PERMITTEE herein, and all expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any established liability arising from the sole negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim

related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

18. Restore and Vacate. Subject to the exception set forth in Section 15 Improvements and Personal Property above, prior to the expiration of this Permit or upon earlier termination of this Permit, PERMITTEE shall immediately cease all operation on the Permit Area, restore the Permit Area to the same or similar condition that existed on the Effective Date, normal wear and tear excepted for authorized Permit Uses, and upon such expiration or earlier termination immediately vacate the Permit Area.
19. 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, or, in the alternative, PERMITTEE may terminate this Permit.
20. Governmental Approvals. By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to PERMITTEE or 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.
21. CITY's Consent, Discretion. CITY's consent or approval under this Permit shall mean the written consent or approval of the Mayor of San Diego, or his designee ("Mayor"), unless otherwise required by law or expressly provided herein. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided or required by law.
22. Compliance with Laws. PERMITTEE shall at all times in its use, occupancy, and maintenance of the Permit Area comply with all applicable laws, rules and regulations and direction by competent governmental authorities, and all at PERMITTEE's sole cost and expense. 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 used for/in conjunction with PERMITTEE's use of the Permit Area).
23. 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.

24. No Discrimination. PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, sexual orientation, gender identity, gender expression, medical status, national origin, age, 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.
25. 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.
26. Equal Benefits. PERMITTEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require applicable parties to offer the same employment benefits to employees with spouses and employees with domestic partners. PERMITTEE shall certify 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.
27. Disabled Access Compliance. PERMITTEE shall comply with Title 24 of the California Code of Regulations (i.e., the "Building Code"); the Americans with Disabilities Act of 1990 ("ADA"); and any other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. PERMITTEE's compliance shall include without limitation the following:
 - 29.1 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;
 - 29.2 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;
 - 29.3 PERMITTEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;

29.4 Where required by law, PERMITTEE shall, at PERMITTEE's sole cost in conformance with all applicable 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,

29.5 PERMITTEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.

PERMITTEE and each of its sublicensees shall be individually responsible for their own ADA compliance program. PERMITTEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Permit.

30. 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.
31. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Permit and to the extent legally possible, PERMITTEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. PERMITTEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
32. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE's use or occupancy 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.
33. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
34. 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 summarily remove the item at PERMITTEE's cost.
35. 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 PERMITTEE's use or occupancy of the Permit Area. 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 all 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 entitled to lien or encumber the Permit Area pursuant to California Civil Code.

36. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area during the Term, including the land, any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE, or levied by reason of PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, including without limitation licensing and permitting costs and fees. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE's payment for such taxes, fees, and assessments shall not reduce any payment due CITY.
37. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of 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 Hazardous Substances.
- 37.2 Hazardous Substances. 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 ("PERMITTEE's Operations") 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 contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances to the Permit Area, PERMITTEE and/or PERMITTEE's contractor or 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 Operations 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 Operations 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 Operations on, in, from or under 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 therefor.

38. Water Quality - Best Management Practices. The CITY and PERMITTEE 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 the City of San Diego's precious water resources. It is the PERMITTEE'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 Section 43.0301 to 43.0312).

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

39. 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 instances, 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.
40. 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.

41. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
42. 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.
43. 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.
44. 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 PERMITTEE at PERMITTEE's Address for Notices, and to CITY as follows:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

45. 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. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
46. 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.
47. 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 agreement, 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.
48. 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

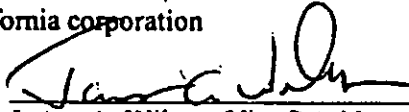
relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition. PERMITTEE acknowledges and agrees that unless set forth in this Permit, CITY has no obligation to improve, modify, repair, replace, alter, secure, or otherwise develop the Permit Area at any time either prior to, on or after 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.

[Remainder of page intentionally left blank.]

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

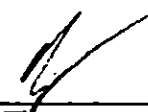
Date: 09/13/2017

WASTE MANAGEMENT OF CALIFORNIA, INC., a
California corporation

BY: 
James A. Wilson, Vice President

Date: 9/21/17

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: 
Cybele Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

This activity has been determined to be exempt from CEQA pursuant to CEQA Section 15301 (Existing Facilities) which allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use; and where the exceptions listed in CEQA Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effect on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the action, and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

Date: 9/21/17

BY: 
Name: Alyssa Munro
Title: Deputy Director, Planning Dept.

Approved as to form this 22nd day of
September, 2017.

MARA W. ELLIOTT, San Diego City Attorney

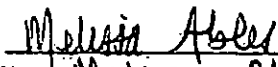
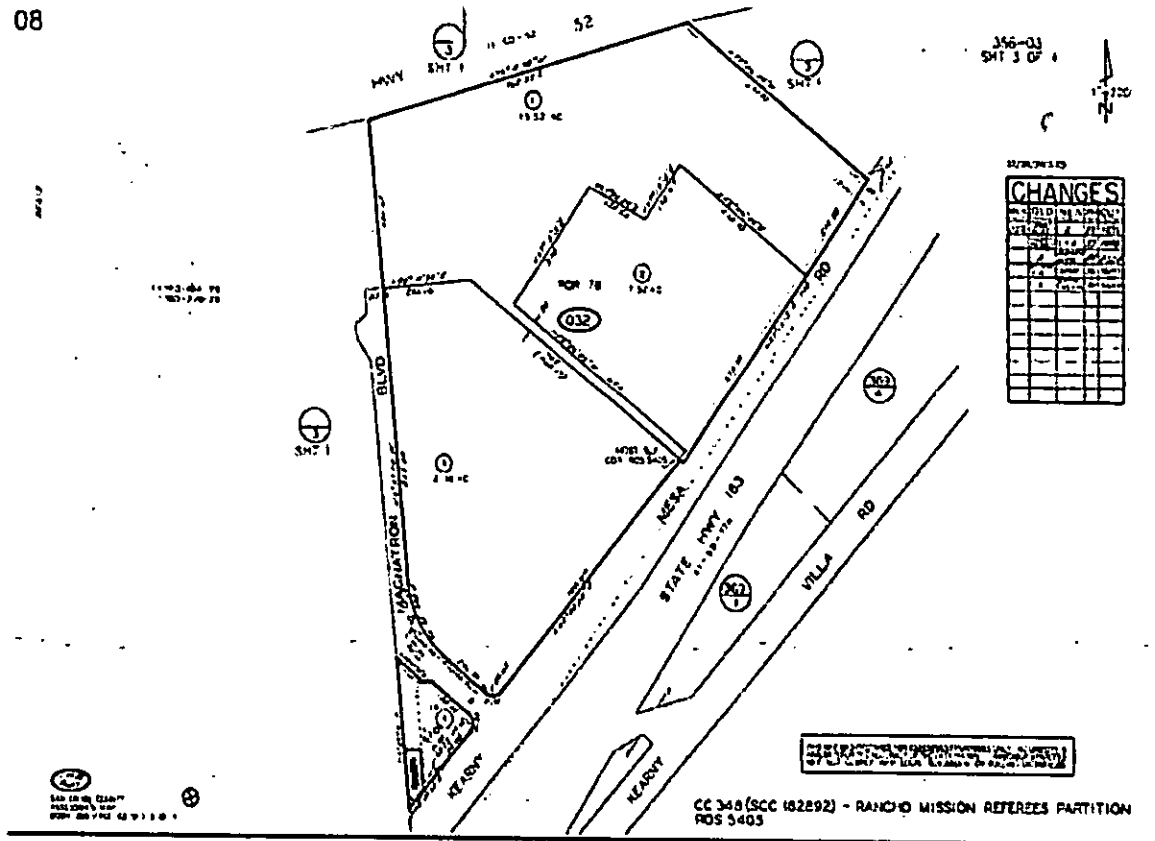
BY: 
Name: Melissa Ables
Title: Deputy City Attorney

Exhibit A: Permit Area

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[Permit Area Highlighted in Yellow.]