

**AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND JEWISH FAMILY SERVICES
TO PROVIDE SERVICES FOR THE EXPANDED SAFE PARKING PROGRAM**

This Agreement (Agreement) is entered into by and between the CITY OF SAN DIEGO, a municipal corporation ("City"), and Jewish Family Services, a non-profit corporation ("JFS"). City and JFS are sometimes referred to in this Agreement, each individually, as a "Party" or, collectively, as the "Parties." This Agreement is entered into by City and JFS with reference to the following recited facts ("Recitals"):

RECITALS

A. City wishes to retain JFS to provide services to expand the Safe Parking Program as further described in the FY 2019 Scope of Services, attached hereto as Exhibit A; and

B. City wants to continue to aid in offering safe places for homeless individuals to sleep, allowing them access to critical assistance necessary to secure stable housing; and

C. JFS has the expertise, experience, equipment, and personnel necessary to provide the required Services.

D. The Parties wish to enter into an agreement whereby City will give JFS funds to expand the Safe Parking Program at the JFS location (Balboa Avenue) and the Aero Drive location (Aero Drive) to provide the Services necessary to those living in their vehicles. These Services will increase the program's effectiveness specifically with regard to moving individuals out of homelessness into stable housing.

E. JFS is a Non-Profit Organization under Section 501(c)(3) of the U.S. Internal Revenue Code. Pursuant to San Diego Municipal Code (SDMC) section 22.3210, the Purchasing Agent has certified that this Agreement is exempt from competitive bidding requirements because this Agreement furthers a specific public policy, is in the public interest, and does not exceed the threshold set forth in the SDMC.

F. By entering in this Agreement, the Parties also desire to: (1) confirm the FY 2019 amount of compensation; and (2) establish the FY 2019 Scope of Services and Budget.

For good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

**ARTICLE I
CONTRACTOR SERVICES**

1.1 Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated into this Agreement by this reference, as though fully set forth in this Agreement.

1.2 Scope of Services. JFS shall provide the Services described in Exhibit A, which is incorporated herein by reference.

1.3 Contract Administrator. The Purchasing & Contracting Department (Department) is the Contract Administrator for this Agreement. JFS shall provide the Services under the direction of a designated representative of the Department as follows:

Stephen Maduli-Williams, Program Manager
Economic Development Department
1200 Third Avenue, Suite 1400
San Diego, CA 92101
(619) 236-6000

1.4 General Terms and Provisions. This Agreement incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit B.

1.5 Submittals Required with the Contract. JFS is required to submit all forms and information listed in Exhibit C before this Agreement is executed.

1.6 Contract Term. This Agreement shall be for a term of one year with Services commencing on July 1, 2018. City may, in its sole discretion, extend this Agreement for three (3) one year option period(s). The term of this Agreement shall not exceed five years unless approved by the City Council by ordinance.

1.6.1 Effective Date. This Agreement shall be effective retroactive to July 1, 2018 upon execution by the last Party to sign the Agreement, and approval by the City Attorney in accordance with San Diego Charter Section 40.

1.7 Amount of Compensation. City shall pay JFS for performance of Services rendered in accordance with this Agreement in an amount not to exceed \$410,677.

1.8 Annual Appropriation of Funds. JFS acknowledges that the Agreement Term may extend over multiple City fiscal years, and JFS understands and agrees that work and compensation under this Agreement is contingent on the City Council appropriating funds for and authorizing such work and compensation for those fiscal years. City may terminate the Agreement if sufficient funds are not duly appropriated and authorized for any given fiscal year, or if funds appropriated and authorized for this Agreement are exhausted before the fiscal year concludes. City is not obligated to pay JFS for any amounts not duly appropriated and authorized by the City Council.

1.9 Manner of Payment. JFS will be paid monthly, in arrears, for services provided in accordance with the terms and provisions specified in the Agreement. JFS will provide invoices by the tenth business day of each month for services rendered in the months prior. A summary, or general ledger, is required with each monthly statement or invoice identifying all applicable costs being compensated, including labor and supplies.

1.10 Counterparts. This Agreement may be executed in counterparts originals, which when taken together, shall constitute a single signed original as though all Parties had executed the same page.

1.11 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both 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 this Agreement may be used in the singular, plural, past tense or future tense, regardless of how it is defined, 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 any document, including this Agreement refers to such document, as modified from time to time (excepting any modification that violates the 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 governmental requirement in this Agreement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

ARTICLE II

The City will provide an office space (trailer) at the Aero Drive location. JFS must comply with the City's authorization to use City-owned property in accordance with the following provisions:

2.1 Occupancy. City does hereby grant to JFS the exclusive use of the City-owned real property situated at the northwest corner of Aero Drive and Interstate 15 (APN 421-333-04), in the City of San Diego, County of San Diego, State of California, consisting of approximately 1.21 acres, and as more particularly described on Exhibit C attached hereto and by this reference made a part of this Agreement (Premises).

2.2 Use of Premises. The Premises shall be used only for the purpose of providing a Safe Parking Program as described in the Scope of Services. Subject to the terms and conditions of this Agreement, City hereby grants permission to JFS and its officers, employees, agents and contractors to enter upon and use the Premises to provide City with the services described in the Scope of Services. City also grants permission to JFS the use of the on-site City-owned office trailer. JFS will remove or cause the removal of any abandoned vehicles at the Premises within 3 days (72 hours) of abandonment, if the abandoned vehicles are Safe Parking Program users or employees. JFS will inform Safe Parking Program users of this rule, in writing, upon their entry into the program.

2.3 Governmental Approvals. By entering into this Agreement, neither City nor the San Diego City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to JFS's occupancy, use, development, maintenance or restoration of the Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.

2.4 No Holdover. If JFS continues to occupy the Premises after the expiration or earlier termination of this Agreement, such occupancy shall neither constitute a renewal or extension of City's permission to use the Premises, nor give JFS any rights in or to the Premises. If JFS continues to occupy the Premises after the expiration or earlier termination of this Permit, Contractor shall pay to City rent calculated on a per diem basis at the market rental rate in effect just prior to such expiration or earlier termination. City's acceptance of such rent shall neither constitute a renewal or extension of this Agreement, nor give JFS any rights in or to the Premises.

2.5 Restore and Vacate. Prior to the expiration or JFS's earlier termination of the Agreement, JFS shall restore the Premises to its condition on the Effective Date, normal wear and tear excepted, and upon such expiration or earlier termination immediately vacate the Premises. Upon City's termination of this Agreement, JFS shall immediately cease all operations on the Premises and as soon as practicable thereafter restore the Premises to its condition on the Effective Date, normal wear and tear excepted, and vacate the Premises.

2.6 Superior Interests. Permission granted to JFS to use the Premises is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. JFS 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 Premises, relative to any such superior interest.

2.7 Inspection. City may at all times enter and inspect the Premises.

2.8 Improvements/Alterations. JFS shall not make or cause any improvements, changes or alterations to be made to the Premises, without prior written City approval.

2.9 Maintenance of the Premises. JFS shall maintain the two offices in the City-owned on-site office trailer in a neat, clean, safe and sanitary condition. JFS shall keep the on-site trailer free and clear of rubbish, debris and litter at all times.

2.9.1 JFS shall not allow any person to wash the exterior of a vehicle resulting in water runoff or perform any mechanical work, including on any vehicles, within the Premises.

2.9.2 In portions of the Premises that do not have existing concrete or asphalt, JFS shall continuously maintain a rock substrate of decomposed granite over the Premises to City's reasonable satisfaction.

2.9.3 JFS shall install and maintain drip pans below each vehicle and any machinery stored on the Premises.

2.9.4 JFS shall ensure that debris and material scraps are not allowed to accumulate in the Premises. JFS shall keep Premises free and clear of rubbish, debris and litter at all times.

2.9.5 Notwithstanding anything to the contrary in this Agreement, JFS shall, at JFS's sole cost and expense, and to City's satisfaction, maintain the Premises 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 JFS's performance of the Scope of Services and authorized use of the Premises. City shall at no time during the Term of this Agreement be required to make any improvements or repairs to the Premises. JFS shall keep the Premises free and clear of weeds and brush as reasonably directed by City and to City's reasonable satisfaction.

2.10 Security and Safety of Premises. JFS shall bear sole responsibility for the security and safety of its activities and property kept at the Premises. JFS shall be responsible for the routine maintenance, cleanup, and securing of the Premises, as appropriate, to ensure security and safety of the Premises. JFS shall comply with all applicable laws, rules, regulations and directives of competent governmental authorities, at JFS's sole cost and expense, with respect to maintaining the Premises in a safe and secure manner during the Term. City has no

obligation to provide oversight of the Premises or staffing or resources for the maintenance of the Premises during the Term.

2.11 Utilities and Services. The City shall provide power and water at the Aero Drive location, as determined in the scope of services (Exhibit A). JFS is responsible for insuring that all gray water and sewage is handled appropriately by contracted vendor responsible for servicing of portable restroom facilities.

2.12 Disabled Access Compliance. JFS 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. JFS's compliance shall include without limitation the following:

2.12.1 JFS 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;

2.12.2 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 JFS;

2.12.3 JFS shall post a statement addressing the requirements of the ADA in a prominent place at the work site;

2.12.4 Where required by law, JFS shall, at JFS'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 Premises which deny access to disabled persons;

2.12.5 JFS shall include language in each sublicense agreement, if any, indicating the sub-licensee's agreement to abide by the foregoing provision; and,

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

2.13 Contractor's Risk. JFS shall bear all risks and liability arising out of or in any manner directly or indirectly connected with JFS's use or occupancy of the Premises and any damages to the improvements on, under or in the vicinity of the Premises resulting directly or indirectly thereby.

2.14 Encumbrances. JFS shall keep the Premises and any City-owned property of which the Premises is a part free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Agreement or Contractor's occupancy, use, development, maintenance or restoration of the Premises. Contractor 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 Premises, including without limitation JFS's failure or the failure of any contractor or

subcontractor hired by JFS to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

2.15 Hazardous Substances. JFS 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 Premises. Except for as to the Scope of Services, JFS and JFS's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises without City's prior written consent. JFS 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.

2.16 Release. For all purposes of this Agreement, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of Hazardous Substances.

2.17 Hazardous Substances. For all purposes of this Agreement, "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.

2.18 Remediation. If JFS's occupancy, use, development, maintenance, or restoration of the Premises ("Contractor's Operations") results in a release of a Hazardous Substance, JFS shall pay all costs of remediation and removal to the City's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.

2.19 Removal. If JFS or JFS's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances to the Premises, JFS and/or JFS's contractor or agent shall remove all Hazardous Substances in any type of container, equipment, or device from the Premises immediately upon or prior to the expiration or earlier termination of this Agreement. City reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Premises. JFS 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.

2.20 Storm Water Pollution Prevention Program. JFS shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the San Diego Municipal Code, as may be amended, and any and all applicable Minimum Best Management Practice requirements, as defined in the City's Jurisdictional Runoff Management Plan, in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

2.20.1 JFS shall comply with the City's Jurisdictional Runoff Management Plan encompassing City-wide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City's City Council on July 1, 2015, via

Resolution No. 309791, as may be amended.

2.20.2 JFS shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

2.21 Acceptance of Premises. By signing this Agreement, JFS represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Premises and its suitability for the Scope of Services. JFS further represents and warrants that it is not relying on any representation by City as to the condition of the Premises or its suitability for the Scope of Services, and that JFS is relying solely on its own and independent inspections, tests, investigations and observations of the Premises in entering into this Agreement. JFS accepts the Premises in its current condition. JFS 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 Premises at any time either prior to, on or after the Effective Date. JFS shall not hold City responsible for any defects in the Premises. JFS accepts and assumes all risk of harm to all persons and property, including without limitation JFS's employees, from any defects in the Premises, and shall be solely responsible therefore.

2.22 Right of Entry Permit. JFS acknowledges that the City has licensed use of the Premises to Kaiser Foundation Health Plan, Inc. during the hours of 7:30 a.m. to 5:30 p.m., Monday through Friday. JFS agrees not to interfere with the rights and obligations of Kaiser Foundation Health Plan, Inc. as established by the Right of Entry Permit entered into between the City and Kaiser Foundation Health Plan, Inc., a copy of which is attached as Exhibit D. In the event Kaiser Foundation Health Plan, Inc.'s use of the Premises interferes with the rights and obligations of JFS, JFS may contact:

Heide E. Farst, CSM
Property Agency
City of San Diego
Real Estate Assets Department
HEFarst@sandiego.gov
(619) 236-6727

In addition, JFS may remove or cause the removal of any abandoned vehicles at the Premises, resulting from Kaiser Foundation Health Plan, Inc.'s Right of Entry Permit, within 3 days (72 hours) of abandonment.

[Remainder of page intentionally blank. Signature page to follow.]

IN WITNESS WHEREOF, City and JFS sign and enter into this First Amendment, by and through the signatures of their respective authorized representatives, as follow:

CITY OF SAN DIEGO:

A Municipal Corporation

By: 
Name: Kristina Peralta
Title: Director, Purchasing and Contracting Department
Date: 9/27/2018

Jewish Family Services:

JFS, a Non-Profit Organization

By: 
Name: Dana Toppel
Title: Chief Operating Officer
Date: 9/25/18

APPROVED AS TO FORM this day of
9/28, 2018.

MARA W. ELLIOTT, City Attorney

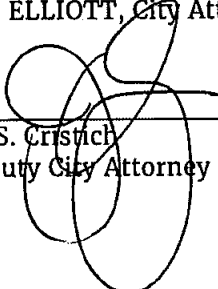
By: 
Jill S. Cristich
Deputy City Attorney

EXHIBIT A
FY 2019 SCOPE OF SERVICES AND FY 2019 BUDGET

A. OVERVIEW. The City is partnering with the Jewish Family Services (JFS), a non-profit organization under Section 501(c)(3) of the U.S. Internal Revenue Code, to continue the Safe Parking Program at two locations in the San Diego area of Council District Six.

One safe parking site is located at 8804 Balboa Avenue, San Diego, 92123 (Balboa) and the other location is on City-owned property located at 9882 Aero Drive, San Diego, 92123 (Aero). This program will provide not only a safe place for homeless individuals to sleep, it will also provide access to critical assistance necessary for these individuals to secure stable housing. The Safe Parking Program and partnership with JFS should increase the percentage of individuals and families that become housed through more comprehensive services and staff support.

Safe parking shall operate daily from 6:00 p.m. through 7:00 a.m. Staff is required to be on-site between the hours of 5:30 p.m. to 9:30 p.m. Case managers may be available outside of these hours, as needed.

B. REQUIREMENTS AND TASKS. JFS shall provide services that include, but are not limited to, the following:

1. Assessment, Intake, and Referrals
2. Case Management Services
3. Housing Navigation Services
4. Programming of Daily Operations
5. Equipment Rental
6. Program Coordination
7. Data Entry
8. Program Oversight and Fiscal Compliance
9. Performance Outcomes

Each of the above-mentioned requirements are detailed in Section C (JFS responsibilities).

C. JFS RESPONSIBILITIES

1. **Assessment, Intake, and Referrals.** Utilizing the Homeless Management Information System (HMIS) JFS will participate in the Coordinated Entry System (CES) as established by Regional Task Force on the Homeless (RTFH) and focus on:

1.1 Homeless eligibility using HUD's homeless definition and third-party verification preference;

1.2 CES standardized vulnerability assessment tool in screening, referral and admissions processes for Program residents, when appropriate; and

1.3 Participation in Housing Navigation, Case Conferencing or other integral components of CES.

The intent of the program will be to focus on serving clients from the City of San Diego, with the understanding that the client's city of origin will not be used to determine program eligibility.

2. **Case Management Services.** Case managers will provide supportive services to individuals who are clients of the program. The Case Manager will work on a team and will provide individualized client support by helping each client develop a plan to address their individual needs, increase their income, as well as to obtain and sustain permanent housing. Once housing is secured, the case manager will be responsible for providing home visits, facilitating group activities and resource linkages to assist with reintegration into the community.

The position is expected to use evidence-based practice models such as Trauma Informed Care, Motivational Interviewing, Harm Reduction and focus on the following:

2.1 Facilitate group interactions for program participants, such as weekly educational groups, support groups, social events.

2.2 Assist residents to develop, set, and achieve personal objectives as related to HUD's primary focus relating to housing stability, skills and income, and self-determination.

2.3 Maintain client charts according to agency policy and in compliance with HUD and other reporting mandates.

2.4 Record all interactions with residents that are related to their service plan goals, housing status, and all major life events/changes.

2.5 Maintain and input data into the Homeless Management Information System (HMIS) data.

2.6 Work in conjunction with service partners and assist in coordinating care through multiple service agencies.

2.7 Assist in building a sense of "community" in the program by reducing resident's tendency to isolate and encourage networking among residents/use of natural supports.

2.8 Be available to handle emergency situations if they arise. Situations can include individual emergencies/crises and situations that involve the program as a whole.

2.9 Other duties as assigned.

3. **Housing Navigation Services.** Housing Navigators are responsible for efficiently navigating individuals matched to housing resources through the match-to-lease-up process. The Housing Navigator is responsible for preparing housing applications and any documentation submitted to the Housing Authority, Permanent Supportive Housing providers, or private landlords on behalf of their program-enrolled clients as well as coordinating client move-ins. Other responsibilities are as follows:

3.1 Conduct initial and ongoing assessment of client needs and progress.

3.2 Work with clients to get them housing ready such as obtaining documents, ID and income verification.

3.3 Work with providers through the Coordinated Entry System (CES) to ensure clients are connected to the appropriate housing resources.

3.4 Maintain client charts according to agency policy and in compliance with HUD and other reporting mandates. Record all interactions with residents that are related to their housing plan goals, housing status, and all major life events/changes.

3.5 Conduct regular case management meetings.

3.6 Perform crisis intervention.

3.7 Refer clients, as appropriate to their individual needs, to outside resources (e.g. medical, dental, mental health, legal social services, veterans' benefits, etc.).

3.8 Interface with other staff as appropriate regarding client needs and progress. Maintain all required documentation in HMIS database.

3.9 Participate in weekly case conferring as appropriate.

3.10 Other duties as assigned.

4. **Programming of Daily Operations.** JFS is expected to provide the staffing, supplies and administrative support necessary for day-to-day operations. This includes, but is not limited to:

4.1 Maintaining a minimum number of 60 parking spaces available for the Safe Parking Program at the Balboa location and 60 parking spaces at the Aero location.

4.2 Adequate staffing with appropriate on-going training for service delivery and data analysis.

4.3 Staffing through the duration of the programs operating hours to ensure a safe environment at the Program.

4.4 Point-of-contact for clients, volunteers, and others who may encounter the Safe Parking Program.

4.5 Designated point-of-contact who is available at all times to address issues that may arise at the Safe Parking Program and coordinate security issues with the San Diego Police Department.

4.6 Appropriate policies and procedures for Safe Parking Program operations including intake, low barrier rules, and various means for clients to provide input into the Safe Parking Program.

4.7 Data entry, analysis and reporting in the RTFH-approved HMIS of all Safe Parking Program activities.

4.8 Site control

4.9 Janitorial services

4.10 Waste removal and disposal

4.11 Secure entry/exit for clients monitored by staff

4.12 A fire escape emergency plan

4.13 Upon the Safe Parking Program closing date, which shall be in the sole discretion of the City, JFS shall return all City procured equipment, less normal wear associated with operating the Safe Parking Program, to the storage site identified by the City and remove all such items from the site.

4.14 Upon the Safe Parking Program closing date, JFS shall return the site to the same condition as received.

4.15 Any other services as set forth in the scope of services and/or operating contract.

5. **Equipment Rental.** JFS shall rent portable restrooms and hand-washing stations for each site. JFS is responsible for the following tasks to maintain safe and sanitary facilities:

5.1 Routine replacement of operating supplies such as toilet paper, feminine hygiene products, and hand soap

5.2 Routine maintenance and repair of the equipment

6. **Program Coordination.** JFS shall coordinate all programs for clients which includes: supervising program staff, interns and volunteers, maintaining client intakes, assigning potential clients to available site and gathering data on program demographics and outcomes.

7. **Data Entry.** JFS shall record all data (client information and outcomes) in the Homeless Management Information System (HMIS) system for reporting, comparison and review.

7.1 The City of San Diego will be listed as a program administrator once the program has been enrolled in HMIS and registered with the RTFH.

7.2 JFS shall provide supplemental monthly reports to the Contract Administrator using the Economic Development Department's online grants management system ("ED Grants").

7.3 In addition, JFS shall post nightly occupancy rates on the City's Emergency/Bridge Shelter-Daily Count dashboard.

8. **Program Oversight and Fiscal Compliance.** JFS shall provide programmatic and fiscal oversight to their subcontractor(s).

8.1 The Safe Parking Program will utilize Trauma-Informed Care, Motivational Interviewing, and Harm Reduction models of care. The system design will

effectively serve the target population in a welcoming and solutions-focused environment. JFS shall adhere to all Continuum of Care and Regional Task Force on the Homeless (RTFH) performance standards and requirements including recommendations from the RTFH regional planning process for creation of a Homeless Crisis Response System.

8.2 Additionally, the Safe Parking Program will participate in the Coordinated Entry System (CES) Assessment Tool. This service delivery model helps the Program to:

8.2.1 Serve the community's most vulnerable individuals from each of the intervention categories;

8.2.2 Move clients into the most appropriate housing of their choice;
and

8.2.3 Meet client needs as quickly as possible.

8.3 The following criteria may not be used to determine program eligibility and continued stay:

8.3.1 Requirements to take medication if the resident has a mental illness;

8.3.2 Participation in religious services or activities;

8.3.3 Participation in drug treatment services (including NA/AA);

8.3.4 Payment or ability to pay;

8.3.5 Identification; nor

8.3.6 The city in which the individual or household was last stably housed, although there is an intended focus to serve individuals or households last stably housed within the City of San Diego.

9. Coordinated Entry System (CES). JFS will participate in CES as established by RTFH and focus on:

9.1 Homeless eligibility using HUD's homeless definition and third-party verification preference;

9.2 CES standardized vulnerability assessment tool in screening, referral and admissions processes for Program residents, when appropriate; and

9.3 Participation in Housing Navigation, Case Conferencing or other integral components of CES.

10. Housing First. In alignment with HUD, all homeless programming will adhere to Housing First principles as noted below:

10.1 Housing First is an approach to quickly and successfully connect individuals and families experiencing homelessness to permanent housing without preconditions and barriers to entry.

10.2 Supportive services are offered to maximize housing stability and prevent returns to homelessness as opposed to addressing predetermined treatment goals prior to permanent housing entry.

Source: United States Interagency Council on Homelessness, <https://www.usich.gov/tools-for-action/housing-first-checklist>

11. 2-1-1 San Diego Participation. JFS must list the Safe Parking Program along with relevant program details and services in the 2-1-1 San Diego database. To verify the Safe Parking Program is listed or for more information on how to apply for inclusion, please visit <http://211sandiego.org/for-agencies>.

12. Performance Outcomes. JFS is expected to track performance measures and report outcomes to the City, on a monthly basis, using the Economic Development Department's ED Grants online portal, the following performance metrics:

PERFORMANCE MEASURE	DEFINITION	FY 2019 GOAL
Clients Served	Unduplicated individuals served	600
Adults Served	Unduplicated individuals age 18 or older served	Reporting Only
Children Served	Unduplicated individuals under the age of 18 served	Reporting Only
Households/Cars Served	Unduplicated households served	300
Last Place of Residency at Intake (i.e., In what City were you last stably housed?)	Within the City of San Diego	Reporting Only
	Outside the City of San Diego	
Need for Mental Health or Substance Abuse Services	Number of individuals who self-report as having a mental health issues, an impairment caused by alcohol use, or an impairment caused by drug abuse.	Reporting Only
Service/Housing Plans	Percentage of client service/housing plans initiated within 72 hours of enrollment.	≥85%
Total Exits	Total Exits (equals the sum of Positive, Negative and Unknown Exits)	Reporting Only
Total Individual Exits	Individuals	Reporting Only
Total Household Exits	Households	Reporting Only
Positive Exits (Subtotal)	Percentage of client exits to permanent supportive housing,	≥30% at FYE

PERFORMANCE MEASURE	DEFINITION	FY 2019 GOAL
	rapid-rehousing or other permanent housing.	
	Individuals	
	Households	
Permanent Housing and/or Rapid Rehousing	Individuals	Reporting Only
	Households	
Shelter Placement	Individuals	Reporting Only
	Households	Reporting Only
Family Reunification	Individuals	Reporting Only -
	Households	Reporting Only
Transferred to another Safe Parking Program	Individuals	Reporting Only
	Households	Reporting Only
Negative Exits	Percentage of client exits to places other than permanent supportive housing, rapid rehousing or other permanent housing (i.e., involuntary discharge or law enforcement)	≤20% at FYE
	Individuals	
	Households	-
Unknown Exits	Individuals	-
	Households	-
Length of Stay	Median length of stay upon exit for individuals served	120 days
Recidivism	Percentage of individual positive exits that have returned to any shelter	≤5% at FYE
Housing Retention	Percentage of clients that have maintained housing stability 6, 12, 18 and 24 months after obtaining permanent housing at FYE	Narrative reporting only, as information is available
Occupancy Rate	Average percentage of overnight occupied spaces (vehicles parked and	≥95%

PERFORMANCE MEASURE	DEFINITION	FY 2019 GOAL
	spaces held) compared to program capacity	
Waitlist	Individuals	Reporting Only
	Households	
Increased Earned Income Upon Exit	# of individuals with increased income upon known exit	Reporting Only
Increased Non-Earned Income	# of individuals who did not have benefits upon entry but are enrolled/receiving benefits (i.e., SNAPs, SSI, Disability, etc.) upon known exit	Reporting Only
Data Quality	Missing or Incomplete Data	≤5% in HMIS
	Timeliness of Data Entry	Client data entered within 3 days Shelter Occupancy posted nightly Monthly reports to Economic Development Department
Customer Service	Participant Satisfaction Survey Results	Reporting Only
	Critical Incident Reports	Reporting Only
Income and Demographics	Non-identifiable client demographics, Reported via the EDD Online Grants Portal	Reporting Only
Participation in Shelter Board Count at:	https://www.sandiego.gov/homeless-services/shelter-daily-count	Reporting Only

FY 2019 BUDGET

Budget Category	Amount
Personnel Expenses: Salary and Wages	
Case Managers	101,560

Program Coordinator	52,000
Housing Specialist	43,500
Lot Attendants/Intake Specialists	55,000
Program Supervisors	7,643
Personnel Expenses: Fringe Benefits [WC, SUI and FICA)	46,375
SUBTOTAL PERSONNEL	\$306,078
Direct Program Delivery Costs	4,400
Supplies – Administrative	3,500
Supplies – Client Use	
Publications/Printing	0.00
Rent/Lease	0.00
Maintenance/Repair	3,500
Utilities	0.00
Communications (phone and internet)	3,600
Equipment Rental	51,000
Insurance	1,200
Approved Overhead (10% Program PE/NPE)	37,328
Consultant Services	0.00
SUBTOTAL NON-PERSONNEL	\$104,528
TOTAL FY 2019 BUDGET	\$410,606
Unobligated	\$71
TOTAL FY 2019 Allocation	\$410,677

EXHIBIT B



THE CITY OF SAN DIEGO
GENERAL CONTRACT TERMS AND PROVISIONS
APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

ARTICLE I SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

1.3 Contract Extension. The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

ARTICLE II CONTRACT ADMINISTRATOR

2.1 Contract Administrator. The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

2.1.1 Contractor Performance Evaluations. The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent
City of San Diego, Purchasing and Contracting Division
1200 3rd Avenue, Suite 200
San Diego, CA 92101-4195

ARTICLE III COMPENSATION

3.1 Manner of Payment. Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

3.2 Invoices.

3.2.1 Invoice Detail. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Goods Contracts. Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 Reporting Requirements. Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

3.2.6.1 Monthly Employment Utilization Reports. Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

3.2.6.2 Monthly Invoicing and Payments. Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

3.4 Price Adjustments. Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

ARTICLE IV SUSPENSION AND TERMINATION

4.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

4.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs

otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

4.3 City's Right to Terminate for Default. Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

4.3.1 If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

4.3.2 If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

4.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

4.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

4.6 Remedies Cumulative. City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Inspection and Acceptance. The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

5.4 Delivery. Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

5.7 Warranties. All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.10 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Safety Data Sheets. If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

5.13 Project Personnel. Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

5.14.3 Removal of Employees. City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

6.1 Rights in Data. If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

6.2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

6.3 Contractor Works. Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

6.4 Subcontracting. In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a “works for hire” as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

6.5 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor’s own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or

proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

6.6 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

6.7 Publication. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

6.8 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

ARTICLE VII INDEMNIFICATION AND INSURANCE

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

7.2.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

7.2.5.2 Primary Coverage. For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

7.2.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

7.2.5.4 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

7.2.5.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

7.3 Self Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

7.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.5 Verification of Coverage. Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right

to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

7.8 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

ARTICLE VIII BONDS

8.1 Payment and Performance Bond. Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

8.1.1 Bond Amount. The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

8.1.2 Bond Term. The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

8.1.3 Bond Surety. The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

8.1.4 Non-Renewal or Cancellation. The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or

material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

8.2 Alternate Security. City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

9.1.1 Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor 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, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of

subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

9.1.8 Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

9.1.10 Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

9.1.11 Equal Pay Ordinance. Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance throughout the duration of the Contract.

9.1.11.1 Contractor and Subcontract Requirement. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Contractor shall require subcontractors performing work for contractor under their contract with the City to certify compliance with the Equal Pay Ordinance in their written subcontracts.

9.1.11.2 Notice Requirement. Contractor must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom

Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

11.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

ARTICLE XIII MISCELLANEOUS

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

13.2 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

13.7 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

13.8 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

13.9 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

13.10 No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

13.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

13.15 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

**CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT**

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and KAISER FOUNDATION HEALTH PLAN, INC., a California non-profit benefit corporation ("PERMITTEE"), to be effective as of the date the Permit is signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

RECITALS

- A. CITY is the owner of real property located at 9882 Aero Drive, San Diego, California 92123 (the "Property"), and more particularly depicted on Exhibit A: Permit Area Depiction, attached hereto and by this reference incorporated herein.
- ~~B. CITY currently contracts with Jewish Family Services, a non-profit 501(c)(3)~~
corporation, to operate a Safe Parking Program between the hours of 6:00 p.m. through 7:00 a.m. Jewish Family Services staff are required to be on-site between 5:30 p.m. and 7:30 a.m., and have permission to access and use the temporary facilities on site.
- C. PERMITTEE wishes to enter upon and use the Property, which is currently fenced and highlighted in yellow on Exhibit A (the "Permit Area"), as temporary parking for ninety-eight parking spaces as depicted on Exhibit B: Parking Layout for employees of Permittee during the hours of 7:30 a.m. to 5:30 p.m. ("Permitted Hours") Monday through Friday.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE to enter upon the Permit Area.
2. Revocable License. This Permit is not a lease. It is a non-exclusive license to access the Permit Area during the Permitted Hours for the purposes stated herein, and may be revoked at will by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S revocation or termination of this Permit. CITY may at all times enter upon the Permit Area.
3. Term. The term of this Permit ("Term") shall commence on the Effective Date and expire December 31, 2019.
4. Holdover. Any holding over by PERMITTEE after the expiration or earlier termination of this Permit shall not be considered a renewal or extension of this Permit. The occupancy of the Permit Area after the expiration or earlier termination of this Permit shall constitute a month-to-month at will revocable license, and all other terms and

conditions of this Permit shall continue in full force and effect, except that PERMITTEE shall then pay to CITY fair market rent as determined by CITY.

5. Rent. PERMITTEE shall pay rent to CITY in the amount of Seven Thousand Three Hundred Fifty dollars and no cents (\$7,350.00) per month due on or before the first day of each month throughout the term of this Permit.

If the PERMITTEE fails to pay Rent when due PERMITTEE shall pay in addition to the unpaid Rent, (5%) of the delinquent Rent. If the Rent is still unpaid after fifteen (15) days past due, PERMITTEE shall pay an additional five percent (5%) being a total of ten percent (10%), which is agreed by the parties to be appropriate to compensate CITY for the cost of servicing the delinquent account. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE'S default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.

CITY may invoice PERMITTEE for amount due under this Permit. However any such invoice shall be deemed a courtesy only; PERMITTEE shall make all payment under this Permit on or before each applicable due date, regardless of being invoiced. No grace period shall apply to any amount due under this Permit.

6. Use of Permit Area. PERMITTEE may use the Permit Area during the Permitted Hours on a non-exclusive basis as parking for its employees, and for no other purpose whatsoever (referred to hereinafter as the "Permitted Use"). PERMITTEE shall not allow any person to clean vehicles or perform any mechanical work on any vehicles within the Permit Area. PERMITTEE shall not allow any vehicles to remain in the Permit Area during non-Permitted Hours.
7. 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 Property, 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 for the Permitted Use, 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.
8. Restoration of the Permit Area. Upon the expiration or termination of this Permit, PERMITTEE shall restore the Permit Area to the same condition as existed immediately prior to the Term's commencement, subject to the satisfaction of the City.
9. 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, and shall be made in the Mayor's discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.

10. Unauthorized Activities. PERMITTEE shall not engage in any activity on the Property other than the Permitted Use. Any use of the Property that was not previously approved in writing by the CITY or otherwise authorized by this Permit, shall subject PERMITTEE to being liable for all costs and damages associated with inspecting, remediating, and/or taking other actions to ensure that the Property and the Permit Area shall be returned to its condition on the Effective Date, as well as being a basis for immediate termination of this Permit, all of which shall be subject to the sole discretion of the CITY.
11. Improvements/Alterations. PERMITTEE shall not construct any improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area except as otherwise permitted hereunder. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.
12. Insurance. PERMITTEE shall not enter or come onto the Property, nor begin any use of the Property under this Agreement until it has done all of the following: (a) obtained, and provided to the CITY, insurance certificates reflecting evidence of all insurance required below, however, the CITY reserves the right to request, and the PERMITTEE shall submit, copies of any policy upon reasonable request by the CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. PERMITTEE's liabilities, including but not limited to PERMITTEE's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and PERMITTEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the CITY. The PERMITTEE shall not modify any policy or endorsement thereto which increases the CITY's exposure to loss for the duration of this Agreement.
 - 12.1 Types of Insurance. At all times during the term of this Permit, the PERMITTEE shall maintain insurance coverage as follows:
 - a. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
 - b. Commercial Automobile Liability. For all of the PERMITTEE's automobiles including owned, hired and non-owned automobiles, the PERMITTEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per

occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

- c. 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 Allowed Uses of the Premises under this Permit or the Premises in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver a certificate of such insurance to the CITY's Real Estate Assets Department.
- d. Workers' Compensation. For all of the PERMITTEE's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the PERMITTEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage, and the PERMITTEE shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.

- 12.1.2 Deductibles. All deductibles on any policy shall be the responsibility of the PERMITTEE and shall be disclosed to the CITY at the time the evidence of insurance is provided.
- 12.1.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Permit or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the CITY. The CITY will accept insurance provided by non-admitted, "surplus lines" carriers on if the carrier is authorized to do business in the State of California and is included on the list of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 12.1.4 Modification. To assure protection from and against the kind and extent of risk existing with the Permitted Uses, 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 Permitted Uses.
- 12.1.5 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Property or otherwise related to the Permitted Uses. 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.

- 12.1.6 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the CITY before entering onto the Property or initiating any of the Permitted Uses under this Permit.

Commercial General Liability Insurance Endorsements.

- i. Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you
- ii. Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.
- iii. Severability of Interest. The policy or policies must be endorsed to provide that the 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.

Automobile Liability Insurance Endorsements.

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

- vi. Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the CITY.
13. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees 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, agents, contractors, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area, including damages arising out of release of hazardous materials, 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 willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. 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 reasonable costs related thereto, including without limitation reasonable attorney fees and costs.
14. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender identity, gender expression, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
15. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. PERMITTEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Permit from local residents and firms as opportunities occur. PERMITTEE agrees to hire qualified local residents and firms whenever feasible.
16. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with the Permitted Use and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
17. Nuisance and Noise Disturbances. PERMITTEE shall not use the Permit Area in any manner which, in the opinion of the CITY creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area or that violates the CITY's Noise

Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).

18. No Assignment. PERMITTEE shall not assign any rights granted by this Permit nor any interest therein without the prior written approval of the CITY. Approval of any such proposed assignment may be withheld at the sole and absolute discretion of the CITY. Any assignment by operation of law shall automatically terminate this Permit.
19. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising in the Permit Area 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.
20. Security and Safety of Permit Area. During the Permitted Hours, PERMITTEE shall bear sole responsibility for the security and safety of the Permit Area during the Term. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of the Permit Area, as appropriate, immediately following each day's Permitted Hours to ensure security and safety. 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. CITY has no obligation to provide oversight of the Project or staffing or resources for the maintenance of the Permit Area during the Term.
21. Encumbrances. PERMITTEE shall keep the Permit Area free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or the Permitted Use. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation reasonable attorney fees and costs, relating to or charged against the Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
22. Compliance with Laws. PERMITTEE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to the Permitted Use.
23. Hazardous Materials. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Permit Area. PERMITTEE and PERMITTEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Permit Area without CITY's prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of

Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

23.1 Release. For all purposes of this Permit, a “release” shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.

23.2 Hazardous Substance. For all purposes of this Permit, “Hazardous Substance” shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.

23.3 Remediation. If PERMITTEE’s occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a Hazardous Substance, PERMITTEE shall pay all costs of remediation and removal to the CITY’s satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules, and regulations of governmental authorities.

23.4 Removal. If PERMITTEE or PERMITTEE’s agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Permit Area, PERMITTEE or PERMITTEE’s agent shall remove all Hazardous Substances in any type of container, equipment or device from the Permit Area immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Permit Area and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Permit Area. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

23.5 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE’s occupancy, use, development, maintenance, or restoration of the Permit Area, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE’s officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

23.6 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.

- 23.7 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area resulted in any Hazardous Substance being released on, from or beneath the Permit Area, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by CITY, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Permit Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit Area and compliance with environmental laws and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefore.
24. Repair. PERMITTEE shall be responsible, at its sole cost and expense, for the repair or replacement of any damage to the Property caused directly or indirectly by PERMITTEE's or PERMITTEE'S employees', agents', or invitees' use of the Property, including items that CITY staff has determined to be damaged. PERMITTEE shall comply with the direction of CITY's Real Estate Assets Department with respect to the method of any repairs or replacement arising under this Permit.
25. Vehicular Traffic. All vehicular traffic shall be confined to concrete, asphalt or decomposed aggregate surfaces unless otherwise approved in writing by CITY Contact prior to the commencement of the Project.

26. Security Service Vendors. PERMITTEE shall provide a list of any and all vendors providing security or other services at the Permit Area to CITY Contact, including name, address, email, facsimile and phone number. PERMITTEE shall ensure that any vendor providing a service that requires licensing is duly licensed and insured as required by federal, state, or local law.
27. 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.

28. Grading and Barriers. PERMITTEE shall not change the surface grade or construct any permanent barriers within the Permit Area. Any violations shall be corrected by PERMITTEE at its sole expense to the satisfaction of the CITY and are grounds, at the CITY's option, for immediate termination of this Permit.
29. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
30. 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. 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 Permitted Uses, 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 from any defects in the Permit Area or any improvements thereon, and shall be solely responsible therefore.

31. 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.
32. Termination. CITY may terminate this Permit for any reason upon thirty (30) days prior written notice delivered to PERMITTEE by CITY; however, in the event of a default or emergency during which the CITY in its sole discretion determines it necessary to terminate the Permit, termination may occur upon 24 hours prior written notice. PERMITTEE may terminate this Permit for any reason upon thirty (30) days prior written notice delivered to CITY by PERMITTEE.
33. 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.
34. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
35. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them and pertaining to this Permit and the Permitted Use. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
36. Legal Proceedings. If, as a result of an action brought by or against PERMITTEE in connection with this Permit, CITY intervenes therein, becomes a party, or is made a party thereto, PERMITTEE shall pay all of CITY'S costs and expenses thereof, including without limitation reasonable attorney fees and costs.
37. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY (referred to herein as the "CITY Contact") or PERMITTEE, respectively, as follows:

CITY: CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Cybele Thompson, Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, CA 92101

PERMITTEE: KAISER FOUNDATION HEALTH PLAN, INC.
Attention: Real Estate Department
393 E. Walnut Street
Pasadena, CA 91188

KAISER FOUNDATION HEALTH PLAN, INC.
Attention: Property Management
393 E. Walnut Street
Pasadena, CA 91188

KAISER FOUNDATION HEALTH PLAN, INC.
Attention: Legal Department
1800 Harrison Street, 19th Floor
Oakland, CA 94612

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38. 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 occupancy, use, development, maintenance or restoration of the Permit Area. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.

[Remainder of page intentionally left blank]

39. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is 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 shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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

THE CITY OF SAN DIEGO,
a California municipal corporation

By: [Signature]
Cybele L. Thompson
Director, Real Estate Assets

KAISER FOUNDATION HEALTH PLAN, INC.,
a California non-profit benefit corporation

By: [Signature] 8/21/18
Terry J. Wood
Vice President of Real Estate Acquisition

Environmental Analysis Section Environmental Clearance:

The City of San Diego conducted an environmental review and determined the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) and the project does not trigger any of the exceptions to the exemptions listed in CEQA Guidelines §15300.2.

Date: 8/23/18

By: [Signature]
Name: Tom Tomlinson
Title: ASSISTANT DIRECTOR

Approved as to form this 4th day
of September, 2018.

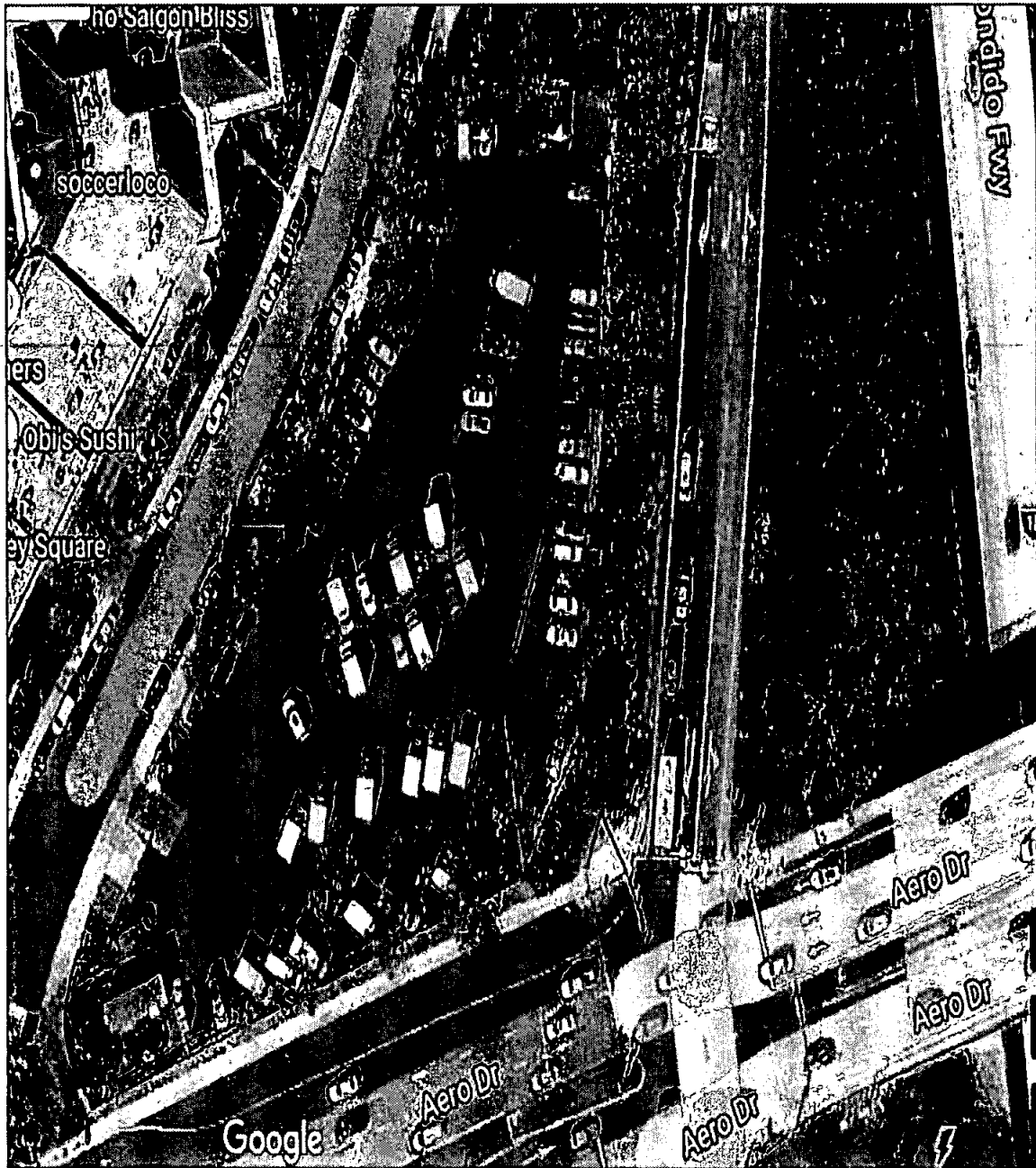
MARA W. ELLIOTT, City Attorney

By: [Signature]
Name: Melissa Ables
Title: Deputy City Attorney

I:\READ\FARST\Kaiser Permanente\Kaiser ROE - 5.18.18

Exhibit A: Permit Area

9882 Aero Drive, San Diego, CA 92123



9882 Aero Drive, San Diego, CA 92123

