

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 LAMPS PLUS, INC. a California corporation ("PERMITTEE"), to be effective the first day of the following month when executed by the parties and as of the date approved by the San Diego City Attorney (the "Effective Date").

DEFINITIONS:

As used in this Permit, the following terms shall be defined as follows:

- A. **"Permit Area"** shall mean a portion of that certain 6,999 square foot CITY-owned real property located on a portion of Lot 10, Lot 9 and Lot 40 adjacent to 1303 West Morena Boulevard located in the City of San Diego, California, as more particularly described in **Exhibit A: Permit Area**, attached hereto.
- B. **"Permit Fee"** shall mean a one-time, non-refundable permit processing fee in the amount of Nine Hundred Eighty dollars (\$980.00).
- C. **"Permit Use"** shall mean the non-exclusive use of the Permit Area solely for parking, storage of five (5) large container bins and two (2) trash dumpsters, and for no other purpose.
- D. **"PERMITTEE'S Address for Notices"** shall be:

LAMPS PLUS, INC.
20250 PLUMMER STREET
CHATSWORTH, CA 91311
Attn: Sabrina Frucht, CLS, CSM, CPM
(818) 428-4239
sfrucht@lampsplus.com
- E. **"Rent"** shall mean monetary consideration to CITY paid monthly, in advance on or before the first of each month. The initial monthly rent shall \$1,400.00 per month with three percent (3%) annual increases. PERMITTEE shall pay rent to the City Treasurer on the first day of each month beginning on the Effective Date.
- F. **"Term"** shall mean three (3) years from the Effective Date.

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

1. Occupancy. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its officers, employees, agents, contractors, invitees, and guests to enter upon and occupy the Permit Area solely for the purpose of the Permit Use.
2. Use of Permit Area. PERMITTEE may use the Permit Area solely for the Permit Use and for no other purpose whatsoever without CITY'S prior written consent in each instance.
3. Governmental Approvals. By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to PERMITTEE or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE'S use of the Permit Area. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
4. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of CITY'S Mayor, or his or her designee, ("Mayor"), unless otherwise expressly provided or required by law. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided or required by law.
5. Term. The Term shall commence on the Effective Date. The Term shall not exceed three (3) years.
6. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked at will by CITY, in its sole discretion, upon thirty (30) days prior written notice delivered to PERMITTEE. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense, burden or loss which PERMITTEE might incur as a result of CITY'S revocation or termination of this Permit.
7. Future Sale of City Property. PERMITTEE understands and acknowledges that CITY intends to sell the Permit Area which will result in termination of the Permit in accordance with Section 6 above and Section 9 below.
8. No Holdover. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, CITY may demand and receive from PERMITTEE rent for the Permit Area calculated on a per diem basis using up to two (2) times the fair market rental rate to be determined as of the date of the expiration or termination of this Permit by an appraisal prepared by an appraiser selected by the CITY in its sole discretion. CITY'S acceptance of such rent shall neither constitute a renewal or extension of the license, nor give PERMITTEE any rights in or to the Permit Area.

9. Termination. Either the CITY or the PERMITTEE may terminate this Permit for any reason upon thirty (30) days prior written notice to either party.
10. Restore and Vacate. Prior to the expiration or early termination of this Permit, for any damages or adverse impacts caused by PERMITTEE, PERMITTEE shall restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and upon such expiration or termination immediately vacate the Permit Area. Upon CITY'S termination of this Permit, PERMITTEE shall immediately cease all operations on the Permit Area and as soon as practicable thereafter restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and vacate the Permit Area.
11. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits, and licenses, easements, and rights-of-way pertaining to the Permit Area, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area, relative to any such superior interest. If PERMITTEE'S use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
12. Rent Adjustment. The Rent will be adjusted upward three percent (3%) on an annual basis. The adjustment will take effect on the first day of the first full month following the anniversary date of this Permit.
13. Rent. Rent shall be paid monthly on or before the first of each month. Rent for a lesser period shall be prorated on the basis of a 30-day month.
14. Time and Place of Payment. All payments to be paid by PERMITTEE under this Permit shall be made payable to "City Treasurer" and be mailed to:

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

Or hand-delivered to:

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

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

15. Delinquent Rent. If PERMITTEE fails to pay Rent when due, PERMITTEE shall pay, in addition to the unpaid Rent, five percent (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. In no event shall the charge for late payments of Rent be less than Twenty-Five Dollars (\$25). 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.
16. Maintenance of the Permit Area. As it relates to PERMITTEE'S actual use and activities, PERMITTEE shall, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, maintain the Permit Area in good order and repair and in a safe, healthy, and sanitary condition at all times during the Term, subject to normal and ordinary wear and tear resulting from the Permit Use. CITY shall at no time during the Term be required to make any improvements or repairs to the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris, and litter caused by the Permit Use. PERMITTEE hereby acknowledges that the Permit Area is a vital public work providing benefit to the public. PERMITTEE hereby agrees that PERMITTEE'S use of and activities in the Permit Area shall not compromise or otherwise interfere with the integrity or function of the Permit Area or any portion thereof.
17. Inspection. CITY may at all times enter and inspect the Permit Area.
18. Utilities. PERMITTEE shall order, obtain, and pay for all utilities and service and installation charges in connection with its use of the Permit Area. PERMITTEE shall not install any utilities without the express written consent of CITY.
19. Improvements and Personal Property.
 - 18.1 Improvements. Upon expiration or termination of this Permit, PERMITTEE shall remove any and all improvements, fixtures, structures, and installations or additions to the Permit Area that were constructed or installed on the Permit Area by PERMITTEE ("PERMITTEE Improvements"). PERMITTEE shall, at PERMITTEE'S sole cost and expense, remove PERMITTEE Improvements as soon as practicable, but in no event later than (60) days after the expiration or termination of this Permit. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such PERMITTEE Improvements as required by this Permit. If PERMITTEE fails to remove PERMITTEE Improvements as required, CITY may, at its option, remove them at PERMITTEE'S sole cost and expense. Notwithstanding the foregoing, CITY may, upon notice to PERMITTEE at termination or at any time prior to the expiration of the Term, elect to assume ownership of all or any PERMITTEE Improvements as of the expiration or earlier termination of this Permit, at no cost to CITY. If CITY elects to assume ownership of all or any PERMITTEE Improvements, PERMITTEE shall honor such assumption and execute and deliver all necessary and appropriate

documents, materials and other items reasonably needed to affect such transfer of ownership to CITY.

- 18.2 Personal Property. PERMITTEE shall remove from the Permit Area all PERMITTEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or termination of this Permit. Any such items which PERMITTEE fails to remove shall be deemed abandoned and, subject to applicable law, become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at PERMITTEE's sole cost and expense. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Permit Area.
- 18.3 Late Removal. Notwithstanding any provision of this Permit to the contrary, PERMITTEE shall pay rent to CITY for any period of time after the expiration or termination of this Permit needed to remove PERMITTEE Improvements or personal property as required by this Permit, whether by CITY or PERMITTEE. Such rent shall be calculated on a per diem basis using the rental rate in effect just prior to the expiration or termination of this Permit.
- 18.4 CITY's Right to Acquire Personal Property. If PERMITTEE wants to dispose of any of its personal property used in its operations on the Permit Area upon expiration or termination of this Permit, CITY shall have the first right to acquire such personal property.
- 18.5 Post-Permit License. CITY grants permission to PERMITTEE to enter upon and occupy the Permit Area, under the same terms and conditions of this Permit, after the expiration or termination of this Permit solely for the purpose of removing PERMITTEE Improvements and PERMITTEE's personal property as provided by this Permit. This provision shall survive the expiration or termination of this Permit for the limited time periods stated above.
20. Insurance. PERMITTEE shall obtain and maintain throughout the term of this Permit, at its sole cost and expense, all insurance required by this Permit. PERMITTEE's liabilities under this Permit, including without limitation PERMITTEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. PERMITTEE's maintenance of the required insurance coverage is a material consideration for this Permit. Notwithstanding any provision of this Permit to the contrary, if PERMITTEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, PERMITTEE shall be in default of this Permit. PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. Prior to the Effective Date, PERMITTEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for (and subject to CITY's written approval of same) insurance coverage as follows:

- (a) Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
 - (b) Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit.
 - (c) Causes of Loss – Special Form Property Insurance, as required, PERMITTEE shall obtain and maintain, at its sole cost and expense, Causes of Loss – Special Form Property Insurance on all of PERMITTEE's insurable property related to the Allowed Uses of the Premises under the Permit of the Premises in an amount to cover 100 percent (100%) of the replacement costs. PERMITTEE shall deliver a certificate if such insurance to CITY's Real Estate Assets Department.
 - (d) Workers' Compensation Insurance, as required by applicable laws, for all of PERMITTEE's employees who are subject to this Permit, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
- 19.1 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an additional insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf; (b) PERMITTEE's products; (c) PERMITTEE's work, including without limitation PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf; or (d) the Permit Area.
- 19.2 Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of PERMITTEE's insurance and shall not contribute to it.

- 19.3 Severability of Interest. Each policy must be endorsed to provide that PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is bought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- 19.4 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.
- 19.5 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 19.6 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- 19.7 Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Permit Use.
- 19.8 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Permit Area or otherwise related to the Permit Use. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

- 19.9 Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE's insurable property related to the Permit Use of the Permit Area under this Permit or the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.
21. Subcontractors' Insurance and Indemnification of CITY. Unless PERMITTEE's insurance covers work performed by all of PERMITTEE's subcontractors working on or in the Permit Area, PERMITTEE shall require PERMITTEE's subcontractors to indemnify the CITY and to maintain insurance coverage to the same extent that PERMITTEE is required to indemnify the CITY and maintain insurance coverage pursuant to Section 21 herein, including all obligations to provide documentation and all of the endorsements set forth in Section 21, including naming the City of San Diego and its respective elected officials, officers, employees, agents, and representatives as an Additional Insured in each insurance policy.
22. Indemnification & Hold Harmless. PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, including damages arising out of the release of hazardous materials, and all expenses of investigating and defending against same, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'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 CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all reasonable costs related thereto, including without limitation, reasonable attorney fees and costs.
23. Liability for Loss, Injury or Damage. In addition to any other assumption of liability set forth herein, and excluding any loss or damage to the extent resulting from the CITY's sole negligence or willful misconduct, PERMITTEE agrees that it assumes the sole risk and responsibility for any damage, destruction or theft of PERMITTEE's equipment, materials, or personal property placed on the Permit Area and for any injury to persons which occurs on the Permit Area as a result of the Permitted Use.
24. Compliance with Laws. PERMITTEE shall, at its sole cost and expense, comply with all applicable laws, rules, regulations, ordinances, and direction of all CITY, county, state and federal governing authorities now in effect or which may hereafter be in effect, which pertain to PERMITTEE's occupancy, use, development, maintenance, repair, or restoration of the Permit Area. At least annually, PERMITTEE shall deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to PERMITTEE (e.g.,

validation of periodic inspection of PERMITTEE's fire-suppression equipment in the Permit Area). Violation of this provision shall be cause for immediate revocation of this Permit.

24. Permits & Approvals. PERMITTEE, at PERMITTEE's sole cost and expense, shall obtain all required permits, licenses, and approvals from the applicable local, state, and federal authorities, including without limitation from CITY.
25. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided by PERMITTEE pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). PERMITTEE shall hold CITY and its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
 - 25.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by PERMITTEE as a result of CITY's disclosure or non-disclosure of this Permit or PERMITTEE information requested pursuant to the CPRA. PERMITTEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH PERMITTEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF THIS PERMIT OR ANY PERMITTEE INFORMATION REQUESTED PURSUANT TO THE CPRA.
26. No Discrimination. PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, age, ethnicity, marital status, or disability in PERMITTEE's use of the Permit Area, including without limitation, the provision of goods, services, facilities, privileges, advantages, and accommodations, and the hiring and retention of employees and contractors.
27. Equal Opportunity. PERMITTEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. PERMITTEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. PERMITTEE shall cause the foregoing provisions to be inserted in all PERMITTEE's contracts for work related to this Permit so that such provisions will be binding upon each of PERMITTEE's contractors. PERMITTEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY's Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request PERMITTEE shall submit a current Workforce Report. PERMITTEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Permit and debarment from participating in CITY contracts for a period of not less than one (1) year.

28. Equal Benefits. PERMITTEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require applicable parties of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Permit, PERMITTEE certifies that it will maintain such equal benefits throughout the Term of this Permit. PERMITTEE's failure to maintain equal benefits shall be a material breach of this Permit.
29. Equal Pay Ordinance. Unless an exception applies, PERMITTEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Permit, PERMITTEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
- 29.1. PERMITTEE and Sub-Permittee Requirement. The Equal Pay Ordinance applies to any sub-permittee of the Permit Area to the same extent as it would apply to PERMITTEE. PERMITTEE shall require sub-permittees to certify compliance with the Equal Pay Ordinance.
- 29.2 Notice Requirement. PERMITTEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.
30. Disabled Access Compliance. PERMITTEE shall, as applicable to the Permit Area and PERMITTEE's possession, use, and occupancy of the Permit Area, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable state and federal laws, rules, and regulations of competent governmental authority enacted protecting the rights of people with disabilities. When a conflict exists between any federal or state accessibility requirements, PERMITTEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). PERMITTEE's compliance shall include without limitation the following:
- 30.1 PERMITTEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment;
- 30.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of PERMITTEE;
- 30.3 PERMITTEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
- 30.4 Where required by law, all improvements, fixtures, structures, or installations on the Permit Area will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Permit Area which deny access to individuals with disabilities. All improvements and alterations will be at

PERMITTEE's sole expense. PERMITTEE shall, at PERMITTEE's sole cost and in conformance with all applicable building codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the Permit Area which deny access to disabled persons; and

- 30.5 PERMITTEE shall include language in each sublicense agreement, if any, indicating the sub-licensee's agreement to abide by the foregoing provisions.
- 30.6 PERMITTEE and each of its sub-licensees shall be individually responsible for their own ADA compliance program.
- 30.7 PERMITTEE's failure to comply with the above accessibility requirements of this section and/or submitting false information in response to those accessibility requirements shall be a default under this Permit.
- 31. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Permit if PERMITTEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of PERMITTEE for this Permit. It is not the intent of this policy that these provisions apply to members of the City Council.
- 32. 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.
- 33. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S use or occupancy of the Permit Area and any damages to the improvements on, under or in the vicinity of the Permit Area resulting directly or indirectly thereby.
- 34. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which in the opinion of the City creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area or 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). PERMITTEE shall apply for and obtain a City of San Diego Noise Permit for nighttime work prior to conducting activity in the Permit Area between 7:00 PM and 7:00 AM.
- 35. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's written prior consent in each instance. 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.

36. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at PERMITTEE's cost.
37. Security and Safety of Permit Area. PERMITTEE shall bear sole responsibility for the security and safety of the Permit Area affected by or relating to the Permit Use or activity during the Term. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of the Permit Area daily, as appropriate to ensure security and safety. PERMITTEE shall maintain the Permit Area in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY. PERMITTEE shall, at its cost and expense, obtain and maintain trash receptacles and trash-removal service, if necessary for the Permit Use. PERMITTEE shall comply with all applicable laws, rules, regulations and directives of competent governmental authorities, at PERMITTEE's sole cost and expense. CITY has no obligation to provide oversight of the Permit Use or activity or staffing or resources for the Permit Use or activity at the Permit Area during the Term.
38. Encumbrances. PERMITTEE shall keep the Permit Area and the property of which it is a part (the "Property") free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with PERMITTEE's use or occupancy of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Permit Area in connection with such encumbrances and/or liens, including without limitation PERMITTEE's failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to lien or encumber the Permit Area pursuant to California Civil Code.
39. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area during the Term, including the land, any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE, or levied by reason of PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, including without limitation licensing and permitting costs and fees. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE's payment for such taxes, fees, and assessments shall not reduce any payment due CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from PERMITTEE's possession, use, or occupancy of the Permit Area.
40. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substance (as defined below) or otherwise regulated substances in, on, under or from the Permit Area. Except for as to the Permit Use, PERMITTEE and PERMITTEE's agents, contractors and subcontractors 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.

- 40.1 Release. For all purposes of this Permit, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of Hazardous Substances.
- 40.2 Hazardous Substances. For all purposes of this Permit, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- 40.3 Remediation. If PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area ("PERMITTEE's Operations") results in a release of a Hazardous Substance, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 40.4 Removal. If PERMITTEE or PERMITTEE's employees, contractors, subcontractors, or agents has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances to the Permit Area, PERMITTEE and/or PERMITTEE's employees, contractors, subcontractors, or agents 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 Substances and/or hazardous, wastes, 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.
- 40.5 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE's Operations including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

- 40.6 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance or petroleum related substance or its chemical constituents 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 all 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.
- 40.7 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's Operations resulted in any Hazardous Substance being released on, from or beneath the Permit Area, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by PERMITTEE'S Operations on, in, from or under the Permit Area, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Permit Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit Area and compliance with environmental laws and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.
42. Storm Water Management. PERMITTEE 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 on behalf of CITY regardless of location.

PERMITTEE shall comply with all applicable provisions in the CITY's Jurisdictional Runoff Management Plan encompassing citywide 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.

PERMITTEE 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.

43. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Permit Area has not been inspected by a Certified Access Specialist (CASP).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

44. Waiver. The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
45. 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.
46. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
47. Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Permit.

48. 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.
49. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and PERMITTEE's Operations of the Permit Area. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Permit is binding upon such party in accordance with its terms.
50. Charter Section 225. Pursuant to City Charter Section 225, PERMITTEE and each of its assignees and subtenants shall make a full and complete disclosure of the name and identity of all persons and/or entities directly or indirectly involved in this Permit and the precise nature of all interests of all such persons. Each and every person and/or entity proposed to have an interest in this Permit shall be subject to CITY's review and approval, in CITY's sole discretion.
51. Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
52. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE at PERMITTEE's Address for Notices, and to CITY as follows:
- THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department (619) 236-6020
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
53. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
54. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Use. PERMITTEE further represents and warrants that it is not

relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering this Permit. PERMITTEE accepts the Permit Area in its current condition. PERMITTEE acknowledges and agrees that unless set forth in this Permit, CITY has no obligation to improve, modify, repair, replace, alter, secure, or otherwise develop the Permit Area at any time either prior to, on or after the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation PERMITTEE's employees, from any defects in the Permit Area, and shall be solely responsible therefore.

55. Unauthorized Activities. PERMITTEE shall not engage in any activity on the Permit Area other than the Permitted Use. Any use of the Permit Area that was not previously approved in writing by the CITY or otherwise authorized by this Permit, shall subject PERMITTEE to being liable for all costs and damages associated with inspecting, remediating, and/or taking other actions to ensure that the Property and the Permit Area shall be returned to its condition prior to PERMITTEE's use of the Permit Area, subject to the satisfaction of the CITY, at PERMITTEE's sole cost and expense, as well as being a basis for immediate termination of this Permit, all of which shall be subject to the sole discretion of the CITY.
56. Repair. PERMITTEE shall be responsible, at its sole cost and expense, for the repair or replacement of any damage to the Permit Area caused directly or indirectly by PERMITTEE's use of the Permit Area, 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.
57. Equal Opportunity. PERMITTEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. PERMITTEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth. PERMITTEE shall cause the foregoing provisions to be inserted in all of PERMITTEE's contracts for work related to this Permit so that such provisions will be binding upon each of PERMITTEE's contractors. PERMITTEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request PERMITTEE shall submit a current Workforce Report. PERMITTEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Permit and debarment from participating in CITY contracts for a period of not less than one (1) year.
58. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

59. Exhibits. All exhibits referenced in this Permit are incorporated into this Permit by this reference. In the event of a conflict between this Permit and any exhibit to this Permit, the terms, conditions, and obligations of this Permit shall control.
60. PERMITTEE Contact. The following are designated by PERMITTEE as PERMITTEE's contacts for all purposes of this Permit:

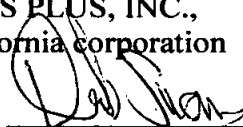
Name: Sabrina Frucht
Phone Number: (818) 428-4239
Email: sfrucht@lampsplus.com

[Remainder of page intentionally left blank.]

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

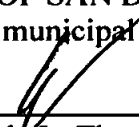
Date: 3/12/2020

LAMPS PLUS, INC.,
a California corporation

BY: 
Dennis K. Swanson
President

Date: 3/16/20

THE CITY OF SAN DIEGO,
a California municipal corporation

BY: 
Cybele L. Thompson
Director, Real Estate Assets

Environmental Analysis Section Environmental Clearance
Categorically exempt from CEQA pursuant to State CEQA guidelines Section 15301 (Existing Facilities)
and Section 15304 (Minor Alterations to Land).

Date: _____

BY: _____
Alyssa Mutto, Deputy Director
Environment & Policy Analysis

Approved as to form this _____ day of
_____, 2020.

MARA W. ELLIOTT, City Attorney

BY: _____
Name: _____
Title: _____

I:\READ\FARST\LAMPS PLUS\ROE LAMPS PLUS 3.10.20

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

Date: 3/12/2020

LAMPS PLUS, INC.,
a California corporation

BY: [Signature]
Dennis K. Swanson
President

Date: 3/16/20

THE CITY OF SAN DIEGO,
a California municipal corporation

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

Environmental Analysis Section Environmental Clearance
Categorically exempt from CEQA pursuant to State CEQA guidelines Section 15301 (Existing Facilities)
and Section 15304 (Minor Alterations to Land).

Date: _____

BY: _____
Alyssa Mutto, Deputy Director
Environment & Policy Analysis

Approved as to form this 22nd day of
April, 2020.

MARA W. ELLIOTT, City Attorney

BY: [Signature]
Name: Hilda R. Mendoza
Title: Deputy City Attorney

I:\READ\FARST\LAMPS PLUS\ROE LAMPS PLUS 3.10.20

Exhibit A: Permit Area

