

**AGREEMENT FOR USE OF THE QUALCOMM STADIUM PARKING LOT
BETWEEN THE CITY OF SAN DIEGO
AND
SAN DIEGO AUTO CONNECTION**

THIS AGREEMENT FOR USE OF THE QUALCOMM STADIUM PARKING LOT BETWEEN THE CITY OF SAN DIEGO AND SAN DIEGO AUTO CONNECTION ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SAN DIEGO AUTO CONNECTION, INC., a California corporation ("PERMITTEE"), to be effective as of **January 1, 2009** (the "Effective Date"), upon execution by CITY and approval by the San Diego City Attorney, as follows:

RECITALS

- A. PERMITTEE has used the Qualcomm Stadium parking lot (the "Lot," as shown in Exhibit A, attached hereto) pursuant to that certain AMENDED AND RESTATED AGREEMENT FOR USE OF THE QUALCOMM STADIUM PARKING LOT BETWEEN THE CITY OF SAN DIEGO AND SAN DIEGO AUTO CONNECTION effective January 1, 2007, and filed in the Office of the City Clerk Document No. RR-302039 (the "Prior Agreement", which is cited for informational purposes and not incorporated herein). Under the terms of the Prior Agreement, Permittee was granted the exclusive right to conduct: (a) new and used automobile sales events; and (b) new and used automobile marketing events on the Lot.
- B. The Prior Agreement expires December 31, 2008.
- C. CITY issued a Request for Proposal ("RFP") for Automobile Sales Events at Qualcomm Stadium (attached hereto as Exhibit "B").
- D. Proposals were submitted and reviewed by the City. At the conclusion of the review, both CITY and PERMITTEE have expressed a desire to contract with each other.

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

Article I. TERM

Section 1.01 The term of this Agreement (the "Term") shall be three years, commencing **January 1, 2009**, and expiring **December 31, 2011**.

Section 1.02 Option to Extend. Subject to City Council approval, CITY reserves the option, in its sole discretion, to extend the TERM for two (2) years pursuant to the terms and conditions of this Agreement. The extension is contingent upon successful negotiation of new terms, to include Pricing, mutual agreement by CITY and PERMITTEE and execution of an Extension Agreement by PERMITTEE not less than one hundred eighty (180) days prior to expiration of the original TERM. PERMITTEE

may at any time prior to execution of the Extension Agreement by PERMITTEE decline to extend the Contract for any reason whatsoever; CITY may decline to extend the contract at any time and for any reason whatsoever.

Article II. PARTIAL OCCUPANCY AND USE

Section 2.01 Partial Occupancy and Use. PERMITTEE may have and enjoy the partial occupancy and use of the Lot for the following purpose(s) and under the following conditions:

- (a) Exclusive Events shall mean:
 - (i) New Car Sales Events which sells or offers to sell new cars; or,
 - (ii) Used Car Sales Events which sells or offers to sell used cars; or,
 - (iii) New car Ride and Drive sales events consisting of both dealer training events for salespersons and manufacturing marketing events open to the public.
- (b) Exclusive Right. PERMITTEE shall have the exclusive right to conduct Exclusive Events on the Event Area, (as set forth in Exhibit "C"), during the Term. CITY will not grant any use permits for, nor knowingly allow any other party to conduct, Exclusive Events on the Lot during the Term. In exchange for the annual rent provided under this Agreement, PERMITTEE may conduct thirteen (13) Exclusive Events ("Guaranteed Events") each year during the Term. An Exclusive Event may consist of a single New Car Sales Event, single Used Car Sales Event, Single New Car Ride and Drive Sales Event or any combination of these three events. PERMITTEE may be allowed to conduct additional Exclusive Events, on an availability basis, provided that PERMITTEE pays the applicable Lot rental fees for each such additional Exclusive Event.
- (c) Other Events. PERMITTEE'S exclusive right to conduct Exclusive Events under this Agreement shall not prohibit CITY from granting PERMITTEE or any other requesting party the right to conduct any of the following events on the Lot:
 - (i) After-Market Automobile Product Sales (e.g., wheels, bolt-on type products, lighting, and other decorative applications);
 - (ii) Classic Automobile Shows For the purpose of this Agreement, classic automobile shows shall include the display of vehicles at least 25 years old ("Classic Cars"). PERMITTEE acknowledges and agrees that the Classic Cars market is often made up of person-to-person sales. Person to person sales by individuals displaying Classic Cars at such events (e.g., the Big 3 Auto Parts Swap Meet) shall not constitute an Exclusive Event. CITY shall have the sole authority to determine if a Classic Automobile Show meets the definition listed above.
 - (iii) Custom Automobile Shows. "Custom Automobile Shows" shall mean the display of vehicles that have been either modified to improve their performance

by altering or replacing the engine and transmission, or otherwise altered to make them look "unique" ("Custom Cars," i.e., unlike any factory-finished car; always a personal "styling" statement by the re-styler/re-builder). PERMITTEE acknowledges and agrees that the Custom Car market is often made up of person-to-person sales. Person-to-person sales by individuals displaying Custom Cars at such events (e.g., the "Big 3 Auto Parts Swap Meet") shall not constitute an Exclusive Event. CITY shall have the sole authority to determine if a Custom Automobile Show meets the definition listed above.

- (iv) Motorcycle Sales Events;
- (v) Recreational Vehicle Sales Events;
- (vi) All Terrain Vehicle Sales Events; or
- (vii) Any other automobile-related event ("Non-Listed Event") that is either reasonably deemed by CITY not to interfere with PERMITTEE'S exclusive right to conduct Exclusive Events under this Agreement, or is consented to by PERMITTEE, which consent may be given or reasonably withheld by PERMITTEE in its sole discretion.

Section 2.02 Notice of Related Events. CITY shall notify PERMITTEE in writing of each future Non-Listed Event on the Lot. Within five (5) business days after such notice, PERMITTEE shall notify CITY'S Qualcomm Stadium Manager ("Stadium Manager") of any objections it has to the Non-Listed Event. If the Stadium Manager and PERMITTEE are unable to resolve the dispute within the next five (5) business days, the matter shall be submitted to the Mayor or his or her designee (other than the Stadium Manager) for resolution, subject to a fair and reasonable standard, which decision shall be binding on the parties.

Section 2.03 Notice to Prospective Promoters. CITY shall notify each prospective conductor of an automobile-related event on the Lot that Exclusive Events are prohibited. CITY shall include in the applicable Qualcomm Stadium Use Permit or other agreement with each such conductor the following language: *"Permittee shall not conduct any new or used car sales activities on the Qualcomm Stadium Parking Lot during the term of this Permit."*

Section 2.04 Use Permits. For each Exclusive Event, CITY shall issue to PERMITTEE a Qualcomm Stadium Use Permit ("Use Permit," a form of which is attached hereto as Exhibit D). Each such Use Permit shall provide the terms and conditions for conducting the applicable Exclusive Event. If any term or condition of a Use Permit conflicts with this Agreement, this Agreement shall control. The granting of any Use Permit to PERMITTEE shall not preclude CITY from granting other Use Permits to other parties for partial occupancy and use of the Qualcomm Stadium (the "Stadium") or the Lot on the same day as a PERMITTEE Exclusive Event, provided any

such Use Permit shall not unreasonably conflict with PERMITTEE'S exclusive rights under this Agreement.

Section 2.05 Event Set-Up and Breakdown. To accommodate setting up, breaking down, and clearing all equipment, automobiles, tents, or other materials used to conduct an Exclusive Event, PERMITTEE may have up to four (4) days prior to, and four (4) days after the Exclusive Event, but no more than a total of ten (10) calendar days to conduct an Exclusive Event. The Stadium Manager may limit the total days allowed to conduct any Exclusive Event to accommodate other events on the Lot, provided such limitation does not unreasonably interfere with PERMITTEE'S Exclusive Event.

Section 2.06 Contamination Enforcement Action. Notwithstanding the rights granted to PERMITTEE herein, PERMITTEE acknowledges it is aware that the Lot overlies an area which is contaminated as a result of a prior release of petroleum products at the Mission Valley Terminal, owned and operated by Kinder Morgan Energy Partners ("Kinder Morgan") and situated to the north of the Lot. The contamination is the subject of an ongoing enforcement action by the San Diego Regional Water Quality Control Board ("Regional Board") against the dischargers of the petroleum products.

- (a) PERMITTEE acknowledges and agrees that: (i) parking for Exclusive Events may be relocated to another location within the Lot that will reasonably accommodate the Exclusive Events; (ii) PERMITTEE'S rights under this Agreement may be limited by such enforcement action; and (iii) PERMITTEE may be required to make accommodations for remediation work by Kinder Morgan or its agents as a result of orders issued by the Regional Board, or as a result of agreements between CITY and Kinder Morgan relating to the clean-up of the contamination and/or the development of the Mission Valley aquifer.
- (i) If PERMITTEE is forced to relocate an Exclusive Event to another location within the Lot, PERMITTEE shall maintain its scheduling priority as set forth in Section 3.02 Priority, below, and any subordinate tenant shall be required to relocate or cancel their event to accommodate any relocation of PERMITTEE'S Exclusive Event pursuant to this section.
- (ii) PERMITTEE acknowledges and agrees that CITY shall not be responsible for any costs, expenses, damages, or losses PERMITTEE may suffer as a result of any relocation within the Lot or rescheduling of an Exclusive Event, limitations on the rights granted by this Agreement, or accommodations PERMITTEE may be required to make for remediation activities arising out of orders by the Regional Board or agreements between CITY and Kinder Morgan relating to the clean-up of the contamination and/or the development of the Mission Valley aquifer.
- (b) CITY shall make available for PERMITTEE'S review all public record notices, orders and other communications with and from the Regional Board and/or Kinder Morgan that may affect Exclusive Events, and shall use its best efforts to

keep PERMITTEE apprised of the progress and timing of any remediation or mitigation activities that may affect Exclusive Events.

Article III. SCHEDULING

Section 3.01 Booking Policy. PERMITTEE acknowledges and agrees to abide by the Qualcomm Stadium Booking Policy ("Booking Policy"), as outlined below:

- (a) Window of Selection Bookings. On April 1 and November 1 of each calendar year of the Term the Stadium Manager will designate a period of time (the "Window of Selection") during which promoters with contracted booking priority may book future dates for events on the Lot and in the Stadium, or any part of either or both (the "Stadium Premises").
- (b) Other Dates. All dates not booked during the Window of Selection will be available to all interested parties on a first-come, first-served basis.
- (c) On-Hold. A date will not be considered "on-hold" until the Stadium Manager receives a non-refundable deposit. This provision shall not apply to Guaranteed Events, the dates of which shall be deemed to be "on-hold" when Stadium Manager has provided written confirmation to Permittee.
- (d) On-Hold Confirmation. The Stadium Manager may challenge any "on-hold" date. When doing so, the promoter will be given forty-eight (48) hours to confirm the "on-hold" date and to sign a Use Permit. Should the promoter not confirm the date and sign a Use Permit, then the date may be released to another promoter and CITY will retain one hundred percent (100%) of any deposit therefor.

Section 3.02 Priority. PERMITTEE'S scheduling rights under this Agreement shall be subordinate to: (a) all events to be held inside the Stadium; and (b) the priority of exclusive rights to select dates and conduct events on the Stadium Premises previously granted to the San Diego Chargers, San Diego State University, the San Diego Bowl Games Association, Live Nation Motorsports, and the Watchtower Convention.

Section 3.03 Notice of Rescheduling. CITY may, upon thirty (30) days prior written notice to PERMITTEE, require PERMITTEE to reschedule an Exclusive Event in favor of any event to be held inside the Stadium.

Section 3.04 Other Bookings. CITY may enter into agreements for events such as flea markets, circuses, drive-ins, carnivals, etc. Such contracts may be for "one-off events" or long term agreements, at CITY'S discretion. Scheduling of such events shall be governed by the Booking Policy.

Section 3.05 PERMITTEE'S Priority. Except as to the subordination of PERMITTEE'S scheduling rights set forth in Section 3.02 Priority, above, when booking dates for Exclusive Events during a Window of Selection, PERMITTEE shall have priority over all other promoters for use of the Lot.

Article IV. RENT AND OTHER CHARGES

As consideration for the exclusive right to conduct Exclusive Events and as consideration for the use of the Event Area, PERMITTEE shall pay to CITY, the following amounts:

Section 4.01 Annual Rent. For the right to exclusivity for the Exclusive Events and as payment for right to conduct thirteen (13) Guaranteed Events in the Event Area per year, PERMITTEE shall pay to CITY:

- (a) Year One – Four Hundred Thirty Eight Thousand Dollars (\$438,000), payable in two (2) equal installments of Two Hundred Nineteen Thousand Dollars (\$219,000) on or before January 1, 2009 and July 1, 2009;
- (b) Year Two – Four Hundred Sixty Three Thousand Dollars (\$463,000), payable in two (2) equal installments of Two Hundred Thirty One Thousand Five Hundred Dollars (\$231,500) on or before January 1, 2010 and July 1, 2010;
- (c) Year Three – Four Hundred Eighty Eight Thousand Dollars (\$488,000), payable in two (2) equal installments of Two Hundred Forty Four Thousand Dollars on or before January 1, 2011 and July 1, 2011.

Section 4.02 Additional Rentals. For each Exclusive Event other than the Guaranteed Events, PERMITTEE shall pay to CITY the then-current Stadium Premises usage rates and charges applicable to such Exclusive Event.

Section 4.03 Additional Charges. PERMITTEE shall pay to CITY such other charges for facilities, goods and services, and personnel as may be necessary or incidental to the conducting of PERMITTEE'S Exclusive Events, including without limitation after-event cleanup, lighting, restrooms, utilities, and standby maintenance personnel. PERMITTEE shall pay for and/or provide in numbers to be approved by the Stadium Manager, in his or her sole discretion, traffic control personnel, gatemen, security personnel, handheld lights, first-aid personnel, and any other services, equipment, materials, or facilities deemed reasonably necessary for the operation of PERMITTEE'S Exclusive Events.

Section 4.04 Time and Place of Payments. PERMITTEE shall pay all rental and other charges for each Exclusive Event conducted on the Lot, other than the Guaranteed Events, within ten (10) business days after the Exclusive Event. Checks shall be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed at any time by CITY upon thirty (30) days prior written notice to PERMITTEE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, payments shall be deemed paid upon actual receipt by the City Treasurer.

PERMITTEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

Section 4.05 Delinquent Payments. If PERMITTEE fails to pay any amount due CITY under this Agreement when due, PERMITTEE shall pay, in addition to the unpaid amount, five percent (5 %) of the delinquent amount. If the payment is still unpaid after fifteen (15) days past due, PERMITTEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] of the delinquent payment, which is agreed to be appropriate to compensate CITY for loss resulting from such delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In no event shall the charge for late payment be less than Twenty-Five Dollars (\$25).

Article V. CONCESSIONS

PERMITTEE acknowledges that the Qualcomm Stadium concessionaire has the first right of refusal to provide food and beverage catering services on the Stadium Premises.

Article VI. EVENT PLAN

At the time each Exclusive Event is scheduled, PERMITTEE shall provide the Stadium Manager with a complete, detailed outline of the use PERMITTEE intends to make of the Lot, together with any other information regarding the use of the Lot that the Stadium Manager may reasonably request.

Article VII. RIGHT OF ENTRY

This Agreement is not a lease. It is a license to use CITY property. CITY may at all times enter upon the Stadium Premises. The Stadium Premises shall at all times be under the control of the Stadium Manager. Public health and safety and CITY'S structural inspection personnel may enter the Stadium Premises at any time.

Section 7.01 Repairs. CITY may enter upon and make repairs to the Stadium Premises at any time, provided such entry and repair does not unreasonably interfere with PERMITTEE'S use thereof.

Section 7.02 Locks. CITY shall lock and unlock entrances and exits to the Stadium Premises as and when reasonably required by PERMITTEE'S use thereof. PERMITTEE shall place, at its sole cost and expense, all security personnel deemed necessary by PERMITTEE at each unlocked entrance and exit. PERMITTEE shall not place its own or any additional locks on any portion of the Stadium Premises.

Section 7.03 Emergency. In the case of an emergency, the Stadium Manager may, in his or her discretion, require PERMITTEE to relocate, reschedule, or remove its Exclusive Event from the Stadium Premises. Prior to taking such action, the Stadium Manager shall reasonably endeavor to identify other measures to adequately address the emergency that would not require PERMITTEE to relocate, reschedule or remove its Exclusive Event. CITY shall not be obligated for any loss, financial or otherwise, which

may be incurred by PERMITTEE as a result of such relocation, rescheduling, or removal of any Exclusive Event. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of such emergency actions by CITY.

Section 7.04 No Other Access. PERMITTEE shall not access or use any portion of the Stadium Premises except that portion set forth in the Qualcomm Stadium Use Permit; such access and use shall be reserved to CITY and its lessees, licensees, contractors, agents, and employees, unless otherwise provided in writing.

Article VIII. POSTING OF MATERIALS

Section 8.01 Sign Requirements. Any signs of a commercial sponsor or entity must meet the following requirements:

- (a) Be no larger than 120 square feet;
- (b) No less than fifty percent (50%) of the total banner size must be devoted to the PERMITTEE'S name or nature of the event;
- (c) No sponsor's address, telephone, or sales message is allowed;
- (d) At least one week prior to PERMITTEE'S event, PERMITTEE must submit the copy for each sign to the Stadium Manager for approval, which may not be unreasonably withheld. Failure to submit a sign for approval may result in the sign being disallowed.

PERMITTEE shall not erect or display any other 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 24 hours after notice by CITY, or CITY may thereafter remove the item at PERMITTEE'S cost.

Section 8.02 Compliance with Sign Regulations. PERMITTEE shall comply with all laws, regulations, and direction of governmental authority regarding the placement of signs advertising PERMITTEE'S events in public rights-of-way or on private property ("Sign Regulations").

- (a) **Liquidated Damages.** The parties acknowledge and agree that it may be difficult or impracticable to calculate the damages to CITY resulting from PERMITTEE'S noncompliance with such Sign Regulations; therefore, if PERMITTEE fails to comply with any such Sign Regulation, PERMITTEE shall pay to CITY as liquidated damages, and not as a penalty, one day's minimum rental fee for the portion of the Stadium Premises directly associated with such noncompliance. Such liquidated damages shall not be affected by any fines levied against PERMITTEE by any jurisdiction.

- (b) Security Deposit. Upon CITY'S demand, based upon CITY'S reasonable belief that PERMITTEE failed to comply with a Sign Regulation, PERMITTEE shall deliver to CITY a security deposit in an amount equal to the prospective liquidated damages. CITY shall not be liable to PERMITTEE for any interest thereon. CITY may hold such security deposit pending final adjudication of PERMITTEE'S noncompliance. Upon such final adjudication, CITY may retain the deposit as liquidated damages under this section if PERMITTEE is found to have violated the Sign Regulations; otherwise, CITY shall promptly return the deposit to PERMITTEE. Any interest earned from such deposit shall be and remain CITY'S property.

Section 8.03 The San Diego Chargers have an exclusive right to all permanent and temporary signage revenue at Qualcomm Stadium. This limits the potential sponsorship opportunities available to PERMITTEE. Therefore, signage must be limited to use of PERMITTEE's and its contractor's and sub-contractor's names or the name of its EXCLUSIVE EVENT without the addition of other company names. A signage plan for each event must be submitted to the Stadium Manager for approval prior to each event.

Article IX. INSURANCE

Section 9.01 Precondition. PERMITTEE may not occupy or use any portion of the Stadium Premises unless and until it has satisfied its insurance obligations hereunder.

Section 9.02 Insurance Requirements. Before entering upon the Stadium Premises to conduct each of its Exclusive Events, PERMITTEE shall deliver to CITY a current certificate of insurance for each of the following policies, which certificate shall be filed with CITY:

- (a) Commercial General Liability policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of Five Million Dollars (\$5,000,000); AND
- (b) Causes of Loss - Special Form Property Insurance shall obtained and maintained by PERMITTEE, at its sole cost, on all of PERMITTEE'S insurable property on the PERMIT AREA in an amount to cover 100 percent (100%) of the replacement cost.
- (c) Commercial Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least Five Million Dollars (\$5,000,000) combined single limits. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the PERMIT AREA. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage; and
- (d) Fire, Extended Coverage, and Vandalism insurance on all insurable property on the Stadium Premises in an amount to cover one hundred percent (100%) of the

replacement cost. Insurance proceeds from a loss shall be payable jointly to CITY and PERMITTEE. Such proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property; AND

- (e) Worker's Compensation Insurance for all of PERMITTEE'S employees who are subject to PERMITTEE'S operations under this Agreement, to the extent required by the State of California, providing coverage for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence.
- (f) Crime Insurance, including employee dishonesty/fidelity coverage for a minimum of twenty-five thousand dollars (\$25,000.00) per employee or one hundred thousand dollars (\$100,000.00) blanket limit. This coverage protects the contractor against loss by the theft or mysterious disappearance of property by any of contractor's employees or third parties while said property is in the care, custody, or control of the contractor resulting directly or indirectly from the performance or execution of the contractor or subcontract thereunder.

Section 9.03 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "**The City of San Diego, the Qualcomm Stadium Advisory Board, the Public Facilities Financing Authority of the City of San Diego, and each of their respective elected officials, officers, employees, representatives, and agents**" shall be named as additional insureds in each insurance policy.

Section 9.04 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY, the Qualcomm Stadium Advisory Board, or the Public Facilities Financing Authority of the City of San Diego. The policies shall be kept in force for the duration of the TERM and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department.

Section 9.05 Waiver of Subrogation. Insurers must waive all right of subrogation against CITY, the Qualcomm Stadium Advisory Board, the Public Facilities Financing Authority of the City of San Diego, and each of their respective elected officials, officers, employees, agents, and representatives.

Section 9.06 Qualified Insurer(s). All insurance required by this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are reasonably included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

Section 9.07 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and reasonably acceptable to CITY at the time evidence of insurance is provided.

Section 9.08 Continuity of Coverage. All policies shall be in effect on or before PERMITTEE enters upon any portion of the Stadium Premises to conduct an Exclusive Event, and shall remain in force for the duration of each Exclusive Event during the Term and any extended use until PERMITTEE vacates the Stadium Premises.

Section 9.09 Modification. To assure protection from and against the kind and extent of risk existing on the Stadium Premises, CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving PERMITTEE at least ten (10) business 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 PERMITTEE'S use pursuant to this Agreement.

Section 9.10 Accident Reports. PERMITTEE shall report to CITY any accident causing property damage or injury to persons on that portion of the Stadium Premises being occupied or used by PERMITTEE. Such report shall be delivered to CITY as soon as practicable after the accident and 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.

Section 9.11 Failure to Comply. If PERMITTEE fails or refuses to obtain and maintain the insurance required under this Agreement, or fails to provide proof of coverage, CITY may obtain the required insurance. PERMITTEE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify PERMITTEE of such payment of premiums stating the amount(s) paid, the name(s) of the insurer(s), and the rate of interest. PERMITTEE shall pay such reimbursement and interest on demand. **Notwithstanding any provision of this Agreement, if PERMITTEE fails or refuses to obtain or maintain insurance as required by this Agreement, or fails to provide proof of insurance, CITY may immediately revoke PERMITTEE'S license to occupy and use the Stadium Premises. Upon such revocation, PERMITTEE shall immediately cease its use of the Stadium Premises and commence and diligently pursue the removal of its property from the Stadium Premises.**

Article X. INDEMNIFICATION

Section 10.01 General Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY, the Qualcomm Stadium Advisory Board, the Public Facilities Financing Authority of the City of San Diego, and each of their respective 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, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement or PERMITTEE'S occupancy, use, development, or maintenance of the Stadium Premises, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or

liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, the Qualcomm Stadium Advisory Board, the Public Facilities Financing Authority of the City of San Diego, or any of their respective 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 of the costs related thereto, including without limitation reasonable attorney fees and costs.

Section 10.02 Copyrighted Material. PERMITTEE warrants and guarantees that all copyrighted material to be distributed or performed on the Stadium Premises has been duly licensed or authorized by the copyright owners or their representatives, and PERMITTEE shall protect, defend, indemnify and hold CITY, the Qualcomm Stadium Advisory Board, the Public Facilities Financing Authority of the City of San Diego, and each of their respective elected officials, officers, representatives, agents and employees harmless from and against any and all claims, losses or expenses related thereto, including without limitation reasonable attorney fees and costs.

Article XI. ATTORNEY FEES

If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of or based upon this Agreement, including but not limited to the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recover its reasonable attorney fees and costs.

Article XII. DAMAGE TO STADIUM PREMISES

PERMITTEE shall not do, permit, or cause anything to be done upon the Stadium Premises that will damage, mar, or in any manner deface the Stadium Premises. PERMITTEE shall repair, at its sole cost and expense, any and all damage to the Stadium Premises related to or resulting from its occupancy, use, development, or maintenance of the Stadium Premises, normal wear and tear excepted.

Article XIII. RIGHT TO TERMINATE

Section 13.01 Default. PERMITTEE shall be in default of this Agreement if any of the following occurs:

- (a) PERMITTEE fails to make any payment required under this Agreement when due;
- (b) PERMITTEE breaches any of its obligations under this Agreement, other than those requiring payment to CITY, and fails to cure the breach within ten (10) days following written notice thereof from CITY, or if not curable within ten (10) days, fails to commence to cure the breach within ten (10) days and diligently pursue the cure to completion within thirty (30) days.

Section 13.02 Termination. Upon PERMITTEE'S breach of any of its obligations under this Agreement, CITY may immediately revoke PERMITTEE'S license to occupy and use the Stadium Premises. Upon PERMITTEE'S default of this Agreement, CITY may immediately terminate this Agreement upon notice to PERMITTEE.

Section 13.03 Cumulative Remedies. CITY'S rights and remedies under this Agreement are cumulative and shall not limit or otherwise waive or deny any of CITY'S rights or remedies at law or in equity, existing as of the Effective Date or hereafter enacted or established.

Section 13.04 Bankruptcy. If PERMITTEE files a voluntary petition in bankruptcy, is adjudicated a bankrupt, or makes a general assignment for the benefit of creditors, CITY may immediately revoke PERMITTEE'S license to occupy and use the Stadium Premises and may immediately terminate this Agreement upon notice to PERMITTEE.

Section 13.05 Notice. CITY or PERMITTEE may terminate this agreement for any reason by providing one hundred twenty (120) days notice to the other party of the date of termination. If City terminates this Agreement, then PERMITTEE is entitled to a pro rata refund of any Annual Rent pre-paid pursuant to Article IV.

Article XIV. COMPLIANCE WITH LAW

Section 14.01 Compliance. PERMITTEE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities (including without limitation those of Federal, State, County and Municipality) now in effect or which may hereafter be in effect, which pertain to PERMITTEE'S occupancy, use, development, and maintenance of the Stadium Premises.

Section 14.02 Form BOE-530-B. PERMITTEE shall file, and require each of its contractors or subcontractors for the sale of automobiles during an Exclusive Event to file, a Form BOE-530-B ("Local Tax Allocation for Temporary Sales Locations and Certain Auctioneers" form, as it may be amended or renumbered from time to time) for each automobile sold on the Stadium Premises during an Exclusive Event, together with PERMITTEE'S or such contractor's or subcontractor's normally scheduled sales and use tax returns, and report sales made at temporary locations for the purposes of collecting and allocating the local one percent (1%) Bradley-Burns tax to CITY. PERMITTEE shall provide CITY with a list of all contractors and subcontractors who participate in each Exclusive Event.

Section 14.03 Schedule C Audit. Within ten (10) days after each Exclusive Event, PERMITTEE shall deliver to CITY a written estimate of the unit quantity sales and gross dollar sales generated by and through the Exclusive Event. City shall place a provision in its Stadium Use Permit to require each Stadium sales-event participating dealer whose principal place of business is not within the San Diego city limits to provide to CITY annually a copy of its "Schedule C" to the California State Board of Equalization's "State, Local and District Sales and Use Tax Return" (or such equivalent form or schedule that

may by law replace either of them). PERMITTEE'S contract with each such sales-event participating dealer shall require the dealer to comply with all provisions of the Stadium Use Permit.

Article XV. HAZARDOUS SUBSTANCES

PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Stadium Premises. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Stadium Premises without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document No. 769704 and by this reference is incorporated into this Permit.

Section 15.01 Remediation. If any release of a hazardous substance occurs, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.

Section 15.02 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S occupancy, use, development, or maintenance of the Stadium Premises including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

Section 15.03 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Stadium Premises, PERMITTEE shall immediately notify the Stadium Manager and deliver a written notice thereof to CITY within three (3) days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger and shall notify the Stadium Manager immediately upon receipt of such knowledge or belief and shall deliver a written notice thereof to CITY within three (3) days thereafter. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to PERMITTEE'S occupancy, use, development, or maintenance of the Stadium Premises.

Section 15.04 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S occupancy, use, development, or maintenance of the Stadium Premises ("PERMITTEE'S Operations"), resulted in any hazardous substance being released on or beneath the Stadium Premises CITY may cause an environmental assessment of the affected part of the Stadium Premises (the "Affected 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, or under the Affected Area, and in what quantities. If any such hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect 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, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor.

Section 15.05 Water Quality Assurances. PERMITTEE shall comply with San Diego Municipal Code Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices" including a "Storm Water Pollution Prevention Plan" as those terms are defined by the Stormwater Code (collectively, "Prevention Plan") and as approved by CITY under its Stormwater Management Program. Within the first thirty (30) days of the Term, PERMITTEE shall submit a Prevention Plan satisfactory to CITY that will control erosion and reduce the amount of "Pollutants," as defined by the Stormwater Code, and other sediments discharged from the PERMIT AREA. CITY may review the Prevention Plan periodically. Within thirty (30) days after written notice from CITY requesting an update of the Prevention Plan, PERMITTEE shall submit an updated Prevention Plan to CITY'S satisfaction. PERMITTEE shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances, and regulations. PERMITTEE shall inform its employees, contractors, subcontractors, agents and vendors of the Prevention Plan and ensure their compliance therewith.

Article XVI. OTHER PROVISIONS

Section 16.01 Americans with Disabilities Act. PERMITTEE, at its sole cost and expense, shall comply with all provisions of the Americans with Disabilities Act ("ADA"), the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), and Title 24 of the California Code of Regulations ("CalADA"), which are applicable to the temporary use of and improvements, alterations, or modifications made to the Stadium Premises by PERMITTEE during the Term of this Agreement. PERMITTEE acknowledges and agrees that it is aware of and will comply with CITY'S City Council Policy 100-04, adopted by Resolution No. R-282153 and relating to the ADA.

PERMITTEE shall be solely responsible for its own ADA program and shall comply with all provisions of the ADA, ADAAG, and CalADA during the Term.

Section 16.02 No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S use of the Stadium Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

Section 16.03 Non-Discrimination Requirements.

- (a) Compliance with the City's Equal Opportunity Contracting Program. The Contractor shall comply with the City's Equal Opportunity Contracting Program Contractor Requirements. The Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Contractor shall provide equal opportunity in all employment practices. The Contractor shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Contractor Requirements. Nothing in this Section shall be interpreted to hold the Contractor liable for any discriminatory practice of its Subcontractors.
- (b) Non-Discrimination Ordinance. The Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or suppliers. The Contractor shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The 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. This language shall be in contracts between the Contractor and any Subcontractors, vendors and suppliers.
- (c) Compliance Investigations. Upon the City's request, the Contractor agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that the 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 the Contractor for each subcontract or supply contract. The Contractor further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] The Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Contractor up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Contractor further understands and agrees that the procedures, remedies and sanctions provided for in the

Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

Section 16.04 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 contracts for work associated with PERMITTEE'S occupancy, use, development, or maintenance of the Stadium Premises, from local residents and firms as opportunities occur. PERMITTEE agrees to hire qualified local residents and firms whenever feasible.

Section 16.05 Drug-free Workplace. The PERMITTEE agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference

Section 16.06 CITY'S Consent, Discretion. Whenever required under this Agreement, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. Such consent or approval may not be unreasonably withheld, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.

Section 16.07 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them and pertaining to this Agreement and PERMITTEE'S occupancy, use, development, and maintenance of the Stadium Premises. Any modification, alteration, or amendment of this Agreement shall be in writing and signed by all the parties hereto.

Section 16.08 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or PERMITTEE, respectively, as follows:

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

SAN DIEGO AUTO CONNECTION, INC.
Attention: Steve Hodsdon, President & CEO
9350 Waxie Way, Suite 550
San Diego, California 92123

Section 16.09 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal.

Section 16.10 Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.

Section 16.11 Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Agreement, 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 Stadium Premises 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 Agreement 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.

Section 16.12 Headings. All headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

Section 16.13 PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S occupancy, use, development, and maintenance of the Stadium Premises, and any damages to the improvements on, under, or in the vicinity of the Stadium Premises resulting directly or indirectly thereby.

Section 16.14 No Nuisance. PERMITTEE shall not use the Stadium Premises in any manner which, in CITY'S reasonable opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.

Section 16.15 No Assignment. PERMITTEE shall not assign any rights granted or obligations assumed under this Agreement, or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Agreement.

Section 16.16 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of the CITY as a charter city of the State of California.

Section 16.17 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. PERMITTEE covenants and agrees to submit to the personal jurisdiction of any state court in the State of California for any dispute, claim, or matter arising out of or related hereto.

Section 16.18 Governmental Approvals. By entering into this Agreement, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE'S occupancy, use, development, and maintenance of the Stadium Premises. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for PERMITTEE'S occupancy, use, development, and maintenance of the Stadium Premises.

Section 16.19 Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Stadium Premises by reason of PERMITTEE'S occupancy, use, development, or maintenance of the Stadium Premises. As used in the foregoing sentence, "Stadium Premises" shall include without limitation the land and any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE on the Stadium Premises. PERMITTEE shall pay for any and all licenses or permits required by and related to its occupancy, use, development, and maintenance of the Stadium Premises. PERMITTEE acknowledges that this Agreement 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 of taxes, fees, and assessments required hereby shall not reduce any payment due CITY under this Agreement.

Section 16.20 Encumbrances. PERMITTEE shall keep the Stadium Premises 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 PERMITTEE'S occupancy, use, development, or maintenance of the Stadium Premises. 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 Stadium Premises, 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 California Civil Code section 3181 or other applicable sections thereof.

Section 16.21 Retention of Records. PERMITTEE shall retain and maintain accurate records and documents relating to its occupancy, use, development, and maintenance of the Stadium Premises pursuant to this Agreement for at least three (3) years after the expiration or termination of this Agreement, and shall make such records available for inspection and audit by CITY at all reasonable times.

Section 16.22 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.

Section 16.23 No Affiliation. Nothing contained in this Agreement 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.

Section 16.24 Living Wage. To the extent the PERMITTEE hires service workers that are "covered employees" under San Diego's Living Wage Ordinance (San Diego

Municipal Code sections 22. 4201 et seq.), PERMITTEE agrees to comply with the requirements of that Ordinance.

Section 16.25 Boom Area. Unless said use interferes with other events in the Lot or Stadium, PERMITTEE shall have the right to utilize the sixteen (16) foot by thirty-two (32) foot area set forth in Exhibit "E" beginning on the date of move in for the event and remaining no longer than the last day of the event for the purpose of suspending a sign. The sign shall meet all requirements set forth in this Agreement.

Section 16.26 Force Majeure. Either party may terminate or suspend its obligations under this Agreement if such obligations are delayed, prevented or rendered impractical as a result of fire, flood, riot, earthquake, casualty, civil commotion, Act of God, or any law, ordinance, rule or regulation which becomes effective after the Effective Date, provided and to the extent such occurrence is beyond the reasonable control of the party whose performance is affected. In that event, the affected party shall not be liable to the other for delay or failure to perform its obligations, except there shall be a pro-rata reduction in any fees payable or otherwise due under this Agreement and/or a pro-rata refund of any deposits paid.

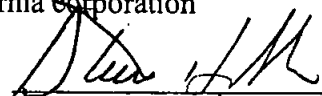
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Section 16.27 Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in 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 Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

Date: 11/14/08

SAN DIEGO AUTO CONNECTION, INC., a
California corporation

BY: 

Name: STEVEN HODSDON

Title: CEO

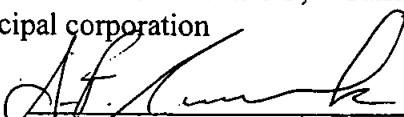
BY: _____

Name: _____

Title: _____

Date: 11/25/08

THE CITY OF SAN DIEGO, a California
municipal corporation

BY: 

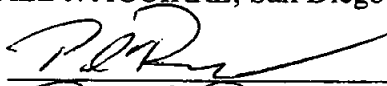
Name: James F. Barwick, CCIM

Title: Director, Real Estate Assets

APPROVED AS TO FORM AND LEGALITY:

Date: 11/25/08

MICHAEL J. AGUIRRE, San Diego City Attorney

BY: 

Name: Paul F. Paathen

Title: Deputy City Attorney

ATTACHED: EXHIBIT A - Lot
EXHIBIT B - Request for Proposal
EXHIBIT C - Event Area
EXHIBIT D - Form of Use Permit
EXHIBIT E - Boom Area

EXHIBIT A – Lot

EXHIBIT A - LOT

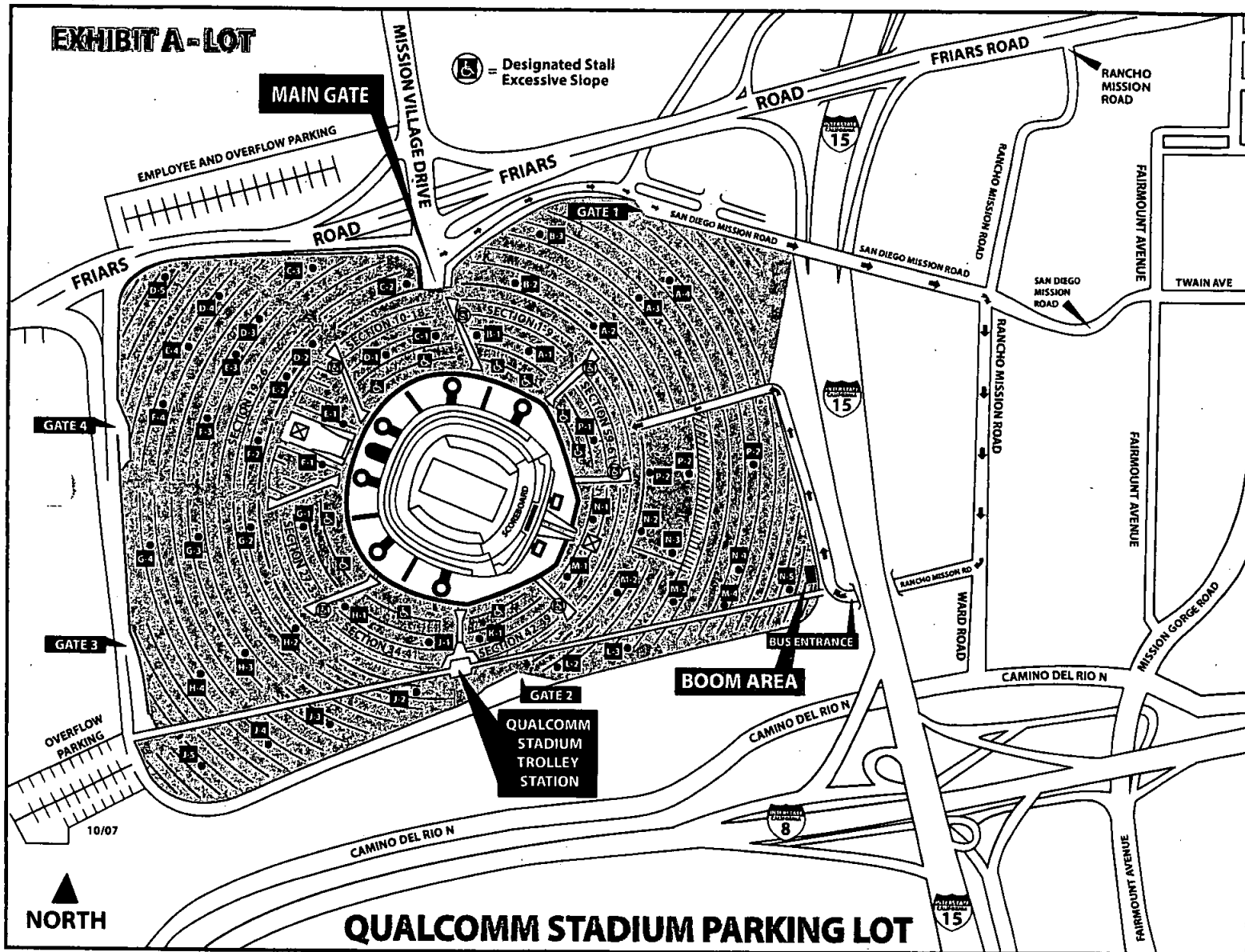


EXHIBIT B – Request for Proposal

**THE CITY OF SAN DIEGO
REQUEST FOR PROPOSAL**

AUTOMOBILE SALES EVENTS AT QUALCOMM STADIUM

PROPOSAL DEADLINE: May 9, 2008

SUBMIT TO: Qualcomm Stadium
9449 Friars Road
San Diego, CA 92108

CONTACT: Mike McSweeney
Acting Stadium Manager

TELEPHONE: (619) 641-3126

E-MAIL: MMcSweeney@sandiego.gov

I. BACKGROUND, SCOPE OF WORK, AND OBJECTIVE

A. BACKGROUND

Qualcomm Stadium ("Stadium") is owned and operated by the City of San Diego ("City"). It is home to the NFL's San Diego Chargers, San Diego State Aztecs, Holiday Bowl, Poinsettia Bowl and a variety of other highly attended special events. The Stadium parking lot, which is divided up into four quadrants as depicted on Attachment A, serves as the venue for such events as swap meets, Cirque du Soleil, RV sales events and festivals. Over two hundred events take place in the parking lot each year.

Over the last several years, the Stadium has proven to be a viable site for new and used car sales events. The current organizer of these automobile sales events has produced a series of well-managed, professionally run events that have built a strong reputation in San Diego. However, while the events conducted by the current contractor have been successful from a sales and attendance standpoint, the current contract is expiring, thus necessitating the issuance of this RFP to allow for its replacement.

This Request for Proposals (RFP) is for the exclusive right to conduct automobile sales events in one of the parking lot quadrants. If the successful Proposer wishes to expand any sales event(s) into an adjoining quadrant (or portion thereof), it may request to do so, but any such expansion will be: (1) at the sole discretion of the Stadium Manager; (2) based upon availability; (3) subject to event(s) of any other operator(s) already scheduled in the expanded area, and; (4) priced at the then-prevailing schedule of Stadium usage rates and charges. The definition of those events and the total number of events that may be scheduled are stated in the specifications portion of this RFP.

Past automobile sales events typically have been staged in the northeast quadrant of the parking lot, the gross area of which is 770,000 square feet. In recent years, the current contractor has averaged twelve (12) sales events annually.

B. SCOPE OF WORK

The scope of work includes conducting an organized, professionally managed series of new and/or used car sales events by qualified sales personnel in the Stadium parking lot ("Lot"). The scope also includes aggressive marketing and promotion of all new and used car sales events within the national marketplace, understanding the necessity of working amidst other Stadium events, working within the parameters of the Stadium's booking policy, continuing to build on the Stadium's reputation as a prime event venue, and maximizing the potential of bringing additional events to the property other than strictly sales events. Other sales events range from Corporate/Company picnics and holiday parties to trade shows.

C. OBJECTIVE

The objective of the RFP is to make an award to a qualified Proposer that delivers best overall value to the City considering the evaluation factors in the RFP. The City is interested in developing a relationship with a Proposer who is customer orientated, knowledgeable, experienced and able to provide the scheduled events in accordance with the requirements. The Proposer will be required to meet requirements of this RFP while maximizing quality and effective and efficient management of all promotional sales events, maximizing the potential of bringing additional events to the Stadium, and generating competitive revenue back to the City.

II. MARKETING PARTNERSHIP OPTION – (Not Considered In Award Evaluation)

A. CORPORATE PARTNERSHIP PROGRAM

The City's Corporate Partnership Program (CPP) seeks opportunities for the City to generate revenue from partnerships with the corporate community. Proposers to this RFP are encouraged to consider furnishing the products and services in conjunction with a Marketing Partnership with the City.

The City defines a Marketing Partnership as a mutually beneficial business arrangement between the City and a third person, wherein the third person provides cash and/or in-kind services to the City in return for access to the commercial marketing potential associated with the City.

In June 1999, the City adopted a Strategic Marketing Plan that established the Corporate Partnership Program as a framework to develop resources for the City through partnerships with the corporate community.

In March 2000, the City adopted a Marketing Partnership Policy "to provide guidelines for developing and managing municipal marketing partnerships which ensure that all marketing partnerships support the City of San Diego's goals of service to the community and remain responsive to the public's needs and values".

B. CURRENT PARTNERSHIPS

Ten major Marketing Partnerships have been developed and implemented under the Corporate Partnership Program: A beverage vending partnership with Pepsi Bottling Group of Southern California; two wireless communications partnerships with Verizon Wireless; a pre-paid calling card partnership with Travelex; two Public Access Defibrillation Partnership with Cardiac Science, a vehicle partnership with General Motors, a vehicle partnership with McCune Chrysler-Jeep of San Diego, a Regional Fire and Rescue Helicopter Partnership with Sunroad Enterprises and a credit union partnership with San Diego Metropolitan Credit Union. For a detailed description of these partnerships, please go the City's website at www.sandiego.gov. From the City's home page, click on "Department" then "Corporate Partnership Program" to reach the CPP home page.

C. PARTNERSHIP OPPORTUNITIES AND BENEFITS

A partial summary of potential partnership opportunities and benefits follow. This list is intended to be a starting point to give a potential marketing partner some initial ideas about the scope of the opportunities and benefits available as a Marketing Partner with the City. Examples of potential benefits may include, but are not limited to:

- Designation as the "Official Partner of the City of San Diego" or a similar designation
- Exclusively sponsored promotional events
- Promotional presence at various established City events
- Brand presence on the City's award winning website
- City facilitated communications with the City's 11,000 employees, 5,000 retirees and their families offering them your products and services
- City facilitated mailings and/or other communications to the City's 75,000+ permitted business owners offering them your products and services
- Temporary kiosks at City facilities that offer information about your products and services

D. STATEMENT OF INTEREST

If you are interested in discussing the potential for a Marketing Partnership with the City, as a convenience to you, and while it is not a requirement of this RFP, you may submit a Statement of Interest under separate cover along with your proposal to this RFP. You also may submit the Statement of Interest to the Point of Contact listed below. Your Statement of Interest is an indication that you are interested in meeting with representatives of the City to discuss the potential for a Marketing Partnership with the City.

The Statement of Interest can be limited to the following: "I am interested in discussing the potential for a Marketing Partnership between the City of San Diego and my company. Please contact me so that we can arrange for a meeting to discuss this in more detail." You are encouraged, but not required, to include any preliminary ideas, suggestions, benefits desired, related sponsorships or other information regarding your company's sponsorship experience at the time you submit your Statement of Interest.

Should you have any questions or require additional information regarding the Marketing Partnership Option, please contact::

Ms. Jenny Wolff
Development Director
Corporate Partnership Program
1200 Third Avenue, Ste. 1700
San Diego, CA 92101

Ms. Wolff also may be contacted by telephone at (619) 236-7002, via facsimile at (619) 236-7004 or via e-mail at JWolff@sandiego.gov.

III. RFP PROCESS

A. QUALCOMM STADIUM MANAGER – ISSUING OFFICE

Any Proposer(s) who has received this RFP from a source other than the Qualcomm Stadium Manager (“Stadium Manager”) listed on the cover page should immediately contact the Stadium Manager and provide his/her name and mailing address in order that addenda to the RFP, or other communications, can be sent to them. Proposers who fail to notify the Stadium Manager with this information assume complete responsibility in the event that they do not receive communications prior to the closing date.

B. PRE-PROPOSAL CONFERENCE AND SITE INSPECTION

A Pre-Proposal Conference and Site Inspection will be held on Wednesday, April 23, 2008, at 10:00 a.m. Pacific Daylight Saving Time, at the Security Office (Gate “A”) of the Stadium, which is located at 9449 Friars Road, San Diego, CA 92108.

The purpose of the Pre-Proposal Conference and Site Inspection will be to provide an overview of the RFP requirements, ensure that all participants have a common basis of understanding of the requirements and provide information that may be helpful in preparing proposals. Interested Proposers are strongly urged to attend this Pre-Proposal Conference and Site Inspection. However, attendance at the Pre-Proposal Conference and Site Inspection is not mandatory.

Failure of Proposers to attend the Pre-Proposal Conference and Site Inspection does not relieve Proposers of the responsibility to comprehend all information contained within this document, to be aware of any information discussed at the Pre-Proposal Conference and Site Inspection, or of any information contained in any issued addenda, and does not relieve the successful Proposer of its obligation to perform its duties in accordance with the contract document (“Contract” or “Agreement” or “Permit”) executed subsequent to award.

Proposers should anticipate the duration of the Pre-Proposal Conference and Site Inspection to be approximately one (1) hour and should plan accordingly. Proposers who do attend the Pre-Proposal Conference and Site Inspection should bring written copies of any questions they may have to the conference. The City may provide preliminary information at the Pre-Proposal Conference and Site Inspection in response to questions; however, answers will be provided in accordance with Section III.C., “Questions”, below.

C. QUESTIONS

Proposers are responsible for reading carefully and understanding fully the terms and conditions of this RFP. All contact between Proposers and the City will be formally

made at scheduled meetings or in writing through the Stadium Manager. Requests for clarification or additional information must be made in writing to the Stadium Manager no later than 5:00 p.m. Pacific Daylight Saving Time on Monday, April 28, 2008. Only written communications relative to the procurement shall be considered. Questions may only be submitted attached as an MS Word document via electronic mail. It is incumbent upon Proposers to verify the City's receipt of their questions.

All questions will be answered in writing. Both questions and answers will be posted on The City of San Diego Real Estate Assets Department (READ) website, without identification of the questioner(s), and available to the public. No oral communications can be relied upon for this Proposal.

To the extent that a question causes a change to any part of this RFP, an addendum shall be issued addressing such.

D. SUBMISSION OF PROPOSALS

All Proposals:

1. **SHALL BE SUBMITTED NOT LATER THAN 3:00 P.M. PACIFIC DAYLIGHT SAVING TIME ON Friday, MAY 9, 2008,** in envelopes clearly marked with the following information: **Automobile Sales RFP, Qualcomm Stadium, 9449 Friars Road, San Diego, CA 92108, ATTN: Acting Qualcomm Stadium Manager, Mike McSweeney;**
2. Shall be submitted in the format set forth herein;
3. Shall be made in the official name of the firm or individual under which Proposer's business is conducted (including the official business address);
4. Shall include a copy of the Cover Page of this RFP signed by a person duly authorized to commit successful Proposer to the contract;
5. Shall be separated into Technical and Price Proposal Volumes, and;
6. Must include a cashier's check or certified check in an amount equal to ten thousand dollars (\$10,000.00). The check should be made payable to the "City Treasurer" as a faithful performance deposit to assure that, if the proposal is selected by the City, the Proposer will enter in good faith into an Agreement containing substantially the same terms and conditions as set out in this RFP and in the selected Proposal. **No personal or company checks will be accepted, and no interest will be paid on deposits.** All performance deposits will be returned to unsuccessful Proposers within 30 days of the approval of the selected Proposer's Agreement. For the successful Proposer, the deposit will apply towards the security deposit, or additional security deposit, under the Agreement. Should the selected Proposer unilaterally withdraw from Agreement negotiations, the deposit will be forfeited to the City.

Proposers must submit: one (1) "original" and three (3) copies of a Technical Proposal Volume as one sealed package; and, one (1) "original" and three (3) copies of a Price Proposal Volume as one sealed package. The Technical and Price Proposal Volumes must include the information specified for each Volume in Section III.H., "TWO (2) VOLUME PROPOSALS", below. In addition, one (1) original and three (3) copies of the cover page shall be included with the Price Proposal Volume. The commingling of technical and price information, or failure to submit the Technical and Price Volumes bound and sealed separately from each other, may cause the Proposal to be rejected as non-responsive and unacceptable. The "original" copy of each of the volumes should be clearly identified as the **ORIGINAL** Technical Proposal Volume and the **ORIGINAL** Price Proposal Volume. Proposals transmitted via facsimile or electronic mail will not be considered and will be rejected as non-responsive.

E. CLOSING DATE

Proposals must arrive at the location, and by the date and time specified in Section III.D.1. above and in the format set forth herein. There will be no public opening of the Proposals. The names of Proposers will not be released until after award.

F. LATE SUBMISSIONS

Proposers mailing Proposals should allow sufficient mail delivery time to ensure timely receipt by the issuing office. Any Proposal arriving after the closing date and time will be considered late and will be rejected as non-responsive. Delivery of the Proposal to the specified location by the prescribed time and date is the sole responsibility of Proposers.

G. ECONOMY OF PREPARATION

Proposers should prepare Proposals simply and economically, providing a straightforward, concise description of their offers and capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content.

H. TWO (2) VOLUME PROPOSALS

The selection procedure for this RFP requires an independent evaluation of separate Technical and Price Proposal Volumes. This separation allows for evaluation of Technical Proposals on their technical merit only. Consequently, Proposers shall submit their Proposal in two (2) separately bound and sealed volumes as specified below and include a complete and clear listing of headings and pages to allow easy reference to key information.

Volume I – Technical Proposal

a. Executive/Management Summary

The Executive/Management Summary shall contain a brief narrative or synopsis of how the Proposal meets the needs of the City, incorporating the Proposer's understanding of the background, scope of work, and objective as specified in Section I. above.

Additionally, Proposers are required to describe their approach to the scope of work requirements and to provide ideas or actions intended to deal with these requirements.

b. Section IV, Specifications

The information specified in Section V., "Specifications", of this RFP must be addressed in the technical Proposal. The Proposer must expressly indicate that the Proposal satisfies and is fully capable of providing each point of the RFP. Proposers shall provide responses to each paragraph of the RFP, in the same order as they are listed in the RFP, by first citing the specific paragraph heading followed by the response. Simple "Yes", "No", or "Comply" responses to stated Specifications are insufficient. Rather, Proposers must describe in detail how the proposed products and/or services meet or exceed the requirements of this RFP and shall state their understanding of, and compliance with, the requirements. Additionally, Proposers must explain any exception or deviation from the requirements. Proposers should also include any other information they feel may be beneficial to the City.

Proposers are urged to read the RFP very carefully and to submit their questions, in writing, by the due date for questions. Misinterpretation of the RFP by the Proposer shall not relieve the Proposer of responsibility to perform the contract.

Failure to provide the required responses and/or submittals with the Proposal may be cause for the Proposal to be rejected as non-responsive and unacceptable.

2. Volume II – Price Proposal

This volume consists of and must include the following items only (Proposers shall not include any technical information or Specific Provisions and Specifications in the Price Proposal Volume).

a. Pricing Page

Proposers shall submit the Price Proposals on the City's Pricing Page provided in Section VII, "Pricing Page", of this RFP.

b. Additional Submittals/Forms

- (1) Proposer's Statement of Financial Responsibility form provided in Section VIII, "Forms", of this RFP.
- (2) Certification Survey form provided in Section VIII of this RFP.

Failure to provide the required responses and/or submittals with the Proposal may be cause for the Proposal to be rejected as non-responsive and unacceptable.

I. EXCEPTIONS

Proposers shall submit with the Proposal a written explanation of any exceptions and/or deviations from this RFP.

J. SUBMITTALS REQUIRED UPON PROVISIONAL AWARD

1. Request for Taxpayer Identification Number and Certification (IRS Form W-9).
2. Insurance Requirements as specified in Section IV.B. of this RFP, if not currently on file.
3. Business Tax License as specified in Section IV.K. Of this RFP, if not currently on file.

Failure to provide the required submittals upon provisional award, within the time period specified, may be cause for the provisional award to be voided and the Proposal to be rejected as non-responsive.

K. EVALUATION COMMITTEE

The Stadium Manager shall establish an Evaluation Committee ("Committee") to review and rate Proposals. The Committee shall be composed of the Stadium Manager and other individuals appointed by him.

L. ACCEPTABILITY OF PROPOSALS

The Stadium Manager shall determine which Proposers have met the requirements of the RFP. Failure to comply with any mandatory requirement will disqualify a Proposal. The Stadium Manager shall have the sole authority to determine whether any deviation from the requirements of this RFP is substantial in nature. The Stadium Manager may waive or permit to be cured minor irregularities or minor informalities in Proposals that are immaterial or inconsequential in nature, whenever it is determined to be in the City's best interest.

The Stadium Manager may conduct discussions with Proposers in any manner deemed necessary to best serve the interests of the City. The Stadium Manager may limit the competitive range to firms highly rated technically and whose prices are

considered to be reasonable by the City. The Stadium Manager may reject in whole or in part any and all Proposals if such is in the City's interest.

M. TECHNICAL EVALUATION

The Committee shall conduct its evaluation of the technical merit of the Proposals in accordance with this solicitation. The Proposal must satisfy and explicitly respond to all requirements of this RFP, including a detailed explanation of how each item listed in this RFP is to be met. The last phase of this technical evaluation will be the ranking by the Committee of each qualified Proposal on technical merit.

The criteria that will be used by the Committee for the technical evaluation of Proposals for this procurement are listed below; items "1" and "2" will be weighted at 40% and item "3" will be weighted at "20%."

1. Executive/Management Summary, Approach to Scope of Work, and Specifications;
2. Experience and past performance as indicated by references; and
3. Qualification of key personnel and rapport.

The Committee may request additional technical assistance from any source. References shall be used during the evaluation process.

N. PRICE EVALUATION

The Committee will use the information contained in the Price Proposal Volume to establish a ranking. However, the City may accept other than the highest priced offer.

Proposers are required to complete and submit as part of their Price Proposal Volume, the Proposer's Statement of Financial Responsibility form provided in Section VIII of this RFP.

O. ORAL PRESENTATION

Proposers may be required to make individual presentations to the Committee, or its designated representatives, in order to clarify their Proposals. Additionally, Proposers' key personnel may be required to be interviewed by the Committee, or its designated representatives. The purpose of the interview(s) of key personnel is to determine if the City is able to establish rapport and a productive professional working relationship with these individuals. If the City determines that such oral presentation and interview of the key personnel are needed, the Stadium Manager will schedule a time and place. Proposers are required to make the oral presentation and interview of key personnel within five (5) workdays after request by the City. Proposers should be prepared to discuss and substantiate any of the areas of the Proposal submitted, as well as their qualifications to furnish the specified products and services. Notwithstanding the possibility of a request for an oral presentation and

interview of key personnel, Proposers shall not rely on the possibility of such a request and shall submit a complete and comprehensive written response to this solicitation. Any costs incurred for the oral presentation and interview of key personnel are the responsibility of the Proposers.

P. NEGOTIATION

The City has the right to accept the Proposal, which serves the best interest of the City, as submitted, without discussion or negotiation. Proposers should, therefore, not rely on having a chance to discuss, negotiate, and adjust their Proposals.

Proposers who submit Proposals initially judged by the Stadium Manager to be reasonably capable of being selected for award may be asked to discuss their Proposals with the City to facilitate arrival at a contract most advantageous to the City. If the Stadium Manager determines that discussion is in the best interest of the City, the Stadium Manager will advise Proposers in the competitive range to submit a Best and Final Offer (BAFO) for consideration after discussions are held.

However, discussions may not be conducted if the Stadium Manager determines either that discussions are not in the best interests of the City or that discussions need not be conducted: (a) with respect to prices that are fixed by law or regulation, although consideration shall be given to competitive terms and conditions; (b) because the time of delivery or performance does not permit discussions; or (c) because it can be demonstrated clearly from the existence of adequate competition or accurate prior price experience with the particular item that acceptance of an initial offer without negotiation would result in a fair and reasonable price.

Q. CITY'S UNILATERAL RIGHT

The City reserves the unilateral right: to cancel this RFP, in whole or in part, or reject all Proposals submitted in response to this RFP when such action is determined to be fiscally advantageous to the City or otherwise in the best interest of the City; to award a contract in whole or in part; to waive or permit cure of minor irregularities; and, to conduct discussions with Proposers in any manner necessary to serve the best interest of the City.

R. EVIDENCE OF RESPONSIBILITY

Prior to the award of a contract pursuant to this RFP, the Stadium Manager may require Proposer to submit such additional information bearing upon Proposer's ability to perform the contract as the Stadium Manager deems appropriate. The Stadium Manager may also consider any available information other than price and technical information, including any other qualifications relative to the ability, capacity, integrity, ethics, performance record, and experience of the Proposer.

BASIS OF AWARD

The Stadium Manager will recommend contract award to the responsible Proposer, whose Proposal is determined to provide overall best value to the City, considering the evaluation factors in this RFP, including price.

Technical ranking of Proposals will be combined with the corresponding price ranking to determine a final ranking for each Proposal. Pricing will outweigh technical merit 60% to 40%.

S. INCURRED EXPENSES

The City will not be responsible for any expenses incurred by Proposers in preparing and submitting a Proposal or best and final offer or in making an oral presentation or demonstration.

IV. SPECIFIC PROVISIONS

A. ROLE OF THE STADIUM MANAGER

The Stadium Manager is the City of San Diego's authorized representative for all pre-contract matters related to this contract. Administration and oversight of a Contract that is awarded as a result of this RFP will also be provided by the Stadium Manager. The Stadium Manager or designee shall be the principal interface on behalf of the City for post-award technical matters, and shall have the authority to explain and provide further details regarding the City's expectations concerning the work to be performed hereunder and/or the items to be provided herein.

B. INSURANCE REQUIREMENTS

All required proof of insurance shall be submitted to the Stadium Manager within ten (10) days of provisional award. Failure to provide the insurance certificates within the time frame specified by the City shall be cause for the Proposal to be rejected as non-responsive and not acceptable. The Proposer shall maintain insurance in full force and effect during the entire period of performance under contract. Failure to do so shall be cause for termination of the contract.

All policies must have a thirty (30) day non-cancellation clause giving the City thirty (30) days prior written notice in the event a policy is canceled. At the end of each contract year, the City reserves the right to review insurance requirements and to require more or less coverage depending upon assessment of the risk, the Proposer's past experience, and the availability and affordability of increased liability insurance coverage.

Insurance coverage must be from insurers licensed in the State of California, rated at least "A-, VI" or better by the current A.M. Best Key Rating Guide and approved by the City. Non-admitted surplus lines insurers may be accepted provided they appear

on the current California List of Eligible Surplus Lines Insurers (LESLI list) and otherwise meet City requirements.

The following coverage is required:

1. **COMMERCIAL GENERAL LIABILITY:** the successful Proposer shall obtain, at its sole cost and expense, commercial general liability coverage with limits of at least two million dollars (\$2,000,000) per occurrence, five million dollars (\$5,000,000) aggregate. The City of San Diego and its respective elected officials, officers, employees, agents, representatives, and Qualcomm Advisory Board members must be named as additional insureds pursuant to a CG2010 (11/85) or similar endorsement which must be provided to the City, along with evidence of insurance.
2. **COMMERCIAL AUTO LIABILITY:** The successful Proposer shall obtain, at its sole cost and expense, Commercial Auto Liability coverage with limits of at least five million dollars (\$5,000,000) combined single limits. The policy must provide coverage for owned, non-owned and hired ("any auto") vehicles, and the City of San Diego and its respective elected officials, officers, employees, agents, representatives, and Qualcomm Advisory Board members must be named as additional insureds pursuant to a CG2010 (11/85) or similar endorsement which must be provided to the City, along with evidence of insurance.
3. **WORKERS' COMPENSATION:** The successful Proposer shall provide evidence of Workers' Compensation coverage sufficient to satisfy applicable statutory requirements. In addition, the successful Proposer must provide Employer's Liability coverage with limits of one million dollars (\$1,000,000) per occurrence. A waiver of subrogation endorsement must be provided in favor of the City of San Diego.
4. **DEDUCTIBLES AND/OR SELF-INSURED RETENTIONS:** The successful Proposer shall be responsible for the payment of all deductibles and self-insured retentions which must be disclosed to and accepted by City at the time evidence of insurance is provided.
5. **PRIMARY AND NON-CONTRIBUTING:** The policy or policies providing liability and auto coverage shall be primary and non-contributory to any insurance that may be carried by the City of San Diego, as reflected in an endorsement which shall be submitted to City.
6. **CRIME INSURANCE,** including employee dishonesty/fidelity coverage for a minimum of twenty-five thousand dollars (\$25,000.00) per employee or one hundred thousand dollars (\$100,000.00) blanket limit. This coverage protects the contractor against loss by the theft or mysterious disappearance of property by any of contractor's employees or third parties while said property is in the care, custody, or control of the contractor resulting directly or indirectly from the performance or execution of the contractor or subcontract thereunder.

C. INDEPENDENT CONTRACTOR

It is understood and agreed that the successful Proposer will be an Independent Contractor ("Contractor") of the City and not an employee. The City shall not withhold income taxes, social security, or any other sums from the payments made to the successful Proposer. If the successful Proposer employs additional persons in the performance of this contract, those persons shall in no way be considered employees of the City, but rather they shall be employees or subcontractors of the successful Proposer, and the successful Proposer bears full responsibility for compensating those persons.

Joint venture proposals, consortium of subject area experts are acceptable; however, the legal name must be disclosed along with the current address and contact information.

D. SUBCONTRACTING

The successful Proposer shall not subcontract all or any part of the work to be performed pursuant to this request for proposal without the prior written approval of the Stadium Manager.

E. DELAYS AND EXTENSIONS OF TIME

1. The successful Proposer agrees to perform the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances, from any cause whatsoever, during the progress of any portion of the work specified in this contract.
2. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the successful Proposer, including but not restricted to, acts of God, acts of the public enemy, acts of the City in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the successful Proposer or the subcontractors or suppliers.

F. SUSPENSION OF WORK

The Stadium Manager unilaterally may order the successful Proposer in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he or she may determine to be appropriate for the convenience of the City.

G. QUALITY ASSURANCE MEETINGS

The successful Proposer/Contractor may be required to schedule at least one (1) meeting with the Stadium Manager to discuss the Contractor's performance. This

meeting, should it be required, shall be scheduled at the Stadium Manager's request anytime during the term of the Contract. At this meeting the Stadium Manager will provide the Contractor with feedback and will note any deficiencies in Contract performance and provide the Contractor with an opportunity to address and correct these areas. Additional quality assurance meetings may be required, depending upon the Contractor's performance.

H. INSPECTION AND ACCEPTANCE

The City's Stadium Manager(s) or designee(s) shall inspect the work to determine if the specifications have been provided in accordance with the Contract. The City reserves the right to determine acceptability.

I. POST AWARD KICK-OFF MEETING

The Proposer receiving award under this solicitation may be required to attend a post award contract kick-off meeting to be scheduled by the Stadium Manager. The Stadium Manager will communicate the date, time, location, and agenda for this meeting to the successful Proposer. The Stadium Manager will provide any necessary documentation to the successful Proposer prior to this meeting.

J. CONFIDENTIAL INFORMATION

Any information submitted with a Proposal is a public record subject to disclosure unless a specific exemption applies. If a Proposer submits information clearly marked confidential or proprietary, it will be protected and treated with confidentiality to the extent permitted by law. However, it will be the Proposer's obligation and expense to defend any legal challenges seeking to obtain said information.

K. BUSINESS TAX LICENSE

Any company doing business with the City of San Diego is required to comply with Section 31.0301 of the San Diego Municipal Code regarding Business Tax. For more information please visit the City of San Diego website at www.sandiego.gov/treasurer/ or call (619) 615-1500.

The City requires each vendor to provide a copy of its Business Tax License, or a copy of its application receipt. Failure to provide the required documents within ten (10) business days of the City's request may result in a Proposal being declared non-responsive and rejected.

V. **SPECIFICATIONS**

A. SPECIFIC REQUIREMENTS

1. The site for this exclusive contract is defined as one of the four parking lot quadrants located at the Stadium and depicted on Appendix A. The northeast

quadrant has been most commonly used for automobile sales events. Contractor may use a different quadrant, subject to Stadium Manager approval, for its events. Additional rental charges will be applied should the Contractor use more than one quadrant, or any portion of an additional quadrant, for an automobile sales event.

2. A "form of" the exclusive contract, "City of San Diego Use and Occupancy Permit" ("Contract" or "Permit" or "Agreement") to be executed with the successful Proposer is included as Appendix B. It is provided as a "boilerplate" for information purposes only, and not all provisions will necessarily apply or be included in the final negotiated Contract. However, it should be thoroughly read and understood by Proposers prior to Proposal submission. Proposals requiring deviations from the provisions of the attached Contract should state the exact changes and specify alternate language. Other factors being equal, the CITY will discount a Proposal which requests major or numerous changes that are disadvantageous to the CITY.
3. Proposer shall provide with its Technical Proposal Volume a plan for the prevention of theft of Proposer's property from the Stadium premises. The City reserves the right to revise the plan throughout the life of the contract. Additionally, the City reserves the right to re-evaluate this plan and require modifications as may be in the City's best interest.
4. Proposer shall provide with its Technical Proposal Volume a media marketing concept and plan, which shall include but not be limited to advertising, press releases, special events, and internet postings, for each event held at the Stadium. Inclusion of the marketing concept and plan is required even if Proposer submits, either along with its Proposal or separately, the Statement of Interest in the Marketing Partnership with the City discussed in Section II.D of this RFP.
5. From time to time, the Contractor may be sharing the Lot with other contractors conducting events in other quadrants of the Lot, thus necessitating the requirement for additional staffing for security and/or traffic control. The Contractor shall share in traffic control costs during the times that such simultaneous events are conducted if in the opinion of the Stadium Manager it is necessary to maintain safety standards. Traffic control consists of special event traffic controllers and police as may be required.
6. Contractor shall at all times be compliant with the rules and regulations set forth by the City Fire Marshal.
7. Contractor shall provide adequate staffing for crowd control, admission to the event, emergency medical services, and traffic control on site. Proposer must use the Stadium's contracted service providers for these services. Current labor rates are available from the Stadium Manager.
8. Proposers shall provide with their Technical Proposal an emergency management plan. This plan shall apply during the entire period of performance. However, the

City reserves the right to re-evaluate this plan and require modifications as necessary.

9. Prior to setting up an event, Contractor shall perform a thorough review of the lot surface for utilities such as electric, plumbing and data lines whenever digging is needed for the installation of temporary event structures including but not limited to tents, canopies, and awnings. A copy of a Dig Alert report or acceptable equivalent report shall be obtained by Contractor and submitted to the Stadium Manager prior to setting up an event. Damage to any of these utility services as a result of installation, operation or removal of these structures shall be the sole responsibility of Contractor. Failure by Contractor to notify the Stadium Manager of any issues it may have with the functional condition of the lot prior to any event shall be deemed as acceptance by Contractor of the functional condition of the lot.
10. Contractor may use existing infrastructure such as electrical power, plumbing/water and data/telephone/internet services at no extra charge, excluding standard consumption fees which include, but not limited to, water usage fees, electricity fees, phone fees and internet service fees. Hook ups for phone and internet are available; however, Contractor must contract separately with a provider for these services.
11. Contractor may add new infrastructure to the existing infrastructure of the parking lot only with the written consent of the Stadium Manager and at the Contractor's sole expense. Any additional infrastructure and/or altered infrastructure shall become the immediate property of the City and may not be removed or disabled without the written consent of the Stadium Manager.
12. The Lot must be returned to its original functional condition immediately after each event. Therefore, Contractor shall be responsible for all damage and repair to the site including the repair of post holes used for tents, and any and all cleaning services and charges that are required as a result of any event. Contractor shall meet with the Stadium Manager to conduct an inspection of the lot immediately following removal of all event vehicles and materials to verify that the lot has been returned to its original condition. Approval by the Stadium Manager shall be provided to Contractor in writing immediately after the meeting. If not approved by the Stadium Manager, Contractor shall remedy any issue(s) within forty-eight (48) hours of notification by the Stadium Manager. If still not satisfactory to the Stadium Manager, the Stadium Manager will arrange for correction of the issue(s) and Contractor shall be responsible for any charges associated with correcting the issues(s).
13. During the term of the contract, the City will add content to the Qualcomm Stadium website promoting Contractor's events at the Stadium. Pictures, logo and copy must be submitted to the Stadium Manager for approval. The City reserves the right to edit copy and display the pages consistently with the rest of

the website at no charge to Contractor. For information purposes, a current example can be found at www.qualcommstadium.net.

14. The San Diego Chargers have an exclusive right to all permanent and temporary signage revenue at Qualcomm Stadium. This limits the potential sponsorship opportunities available to Contractor. Therefore, signage must be limited to use of Contractor's name without the addition of other company names. A signage plan for each event must be submitted to the Stadium Manager for approval prior to each event.
15. Contractor shall submit gross sales figures including number of units sold and sales price per unit, and the estimated sales tax revenue figures to the City within 72-hours after completion of the event.
16. Contractor shall anticipate necessity of changing plans mid-event and facilitating the changes. Contractor shall conduct frequent communication with tenants and Stadium Management, conduct frequent interfacing with Police and Fire, conduct seamless communication with Contractor's employees during the event, and respond immediately to emergency situations as they arise.
17. Contractor, at its sole cost and expense, shall comply with all provisions of the Americans with Disabilities Act ("ADA"), the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), and Title 24 of the California Code of Regulations ("CalADA"), which are applicable to the temporary use of and improvements, alterations, or modifications made to the Stadium premises by Contractor during the term of the Contract. Contractor acknowledges and agrees that it is aware of and will comply with CITY'S City Council Policy 100-04, adopted by Resolution No. R-282153 and relating to the ADA. Contractor shall be solely responsible for its own ADA program and shall comply with all provisions of the ADA, ADAAG, and CalADA during the Term.
18. The City has a contract granting exclusivity for merchandise and food and beverage sales to Centerplate. Proposer acknowledges Centerplate's, through its contract with the City, sole right to sell, barter or give away merchandise, food and beverages in the Stadium parking lot. Any requests to sell, barter or give away merchandise, food and beverages will be negotiated with the Stadium Manager and Centerplate.

B. AUTOMOBILE SALES EVENTS

1. Contractor may schedule up to thirteen (13) automobile sales events, consisting of any combination of new car, used car and new car Ride and Drive sales events, in each contract year during the term of the Contract. Contractor may also schedule additional automobile sales events in each contract year as the schedule permits and at the sole discretion of the Stadium Manager. For each of these additional events, Contractor shall pay to the City the then-prevailing Stadium usage rates and charges applicable to such events. Further clarification on scheduling events

and the Stadium's booking procedures can be found in Section V.C., "Scheduling", of this RFP.

2. A new car sales event is defined as an event open to the public that sells new automobiles; inclusion of used cars at new car sales events is strictly prohibited. A used car sales event is defined as an event open to the public that sells used automobiles; inclusion of new cars at used car sales events is strictly prohibited. New car Ride and Drive sales events consist of both dealer training events for salespersons and manufacturer marketing events open to the public; inclusion of these events in other new or used car sales events is strictly prohibited. Inclusion of other vehicles such as recreational vehicles, all-terrain vehicles, motorcycles, etc. at new car, used car and new car Ride and Drive sales events is strictly prohibited.
3. Automobile sales events may not be open to the public for more than four (4) days. The incorporation of set-up and breakdown days is outlined in Section V.C.7.
4. Custom Automobile Shows are not used car sales events and are not part of the exclusivity of this RFP. A Custom Automobile Show shall mean the display of vehicles that have been either modified to improve their performance by altering or replacing the engine and transmission, or otherwise altered to make them look "unique" ("Custom Automobiles," i.e., unlike any factory-finished car; always a personal "styling" statement by the re-styler/re-builder). Proposer acknowledges and agrees that the Custom Automobile market is often made up of person-to-person sales. Person-to-person sales by individuals displaying Custom Automobile at such events (e.g., the "Big 3 Auto Parts Swap Meet") is not considered part of the exclusivity of this RFP. City shall have the sole authority to determine if a Custom Automobile Show meets the definition listed above.
5. Classic Automobile Shows are not used car sales events and are not part of the exclusivity of this RFP. A Classic Automobile Show includes the display of vehicles at least 25 years old ("Classic Cars"). Proposer acknowledges and agrees that the Classic Car market is often made up of person-to-person sales. Person to person sales by individuals displaying Classic Cars at such events (e.g., the Big 3 Auto Parts Swap Meet) is not considered part of the exclusivity of this RFP. CITY shall have the sole authority to determine if a Classic Automobile Show meets the definition listed above.
6. Recreational Vehicle (RV) Sales Events, All-Terrain Vehicle Sales Events, Motorcycle Shows and other like events are not automobile sales events and are not part of the exclusivity of this RFP.
7. After-Market Automobile Product Sales (e.g., wheels, bolt-on type products, lighting, and other decorative applications) are not automobile sales events and are not part of the exclusivity of this RFP.

8. Contractor may schedule Custom and/or Classic Automobile Shows, as well as other automotive events (excluding RV Sales Events) at the sole discretion of the Stadium Manager. Should the Contractor schedule such an event it will not be governed by this exclusive agreement and will subject to separate terms and conditions. For each of these additional events, Contractor shall pay to City the then-prevailing Stadium usage rates and charges applicable to such events.).
9. Contractor **may not schedule RV sales events** at any time during the term of the Contract.
10. Contractor shall comply with all applicable State of California Department of Motor Vehicles rules and regulations, as well as the new car industry standards.
11. Contractor shall comply with all City, County and State laws relating to all applicable taxes.

C. SCHEDULING

1. EXCLUSIVITY

The Contract shall be exclusive with the Contractor relative to new, used and new car Ride and Drive sales events as they are defined in the Specifications portion of this RFP. However, City also is obligated to book other events with other contractors on a consistent basis while not interfering with the exclusivity of the Contractor.

2. TERM

The initial term of the Contract shall be for three (3) years commencing on January 1, 2009 and expiring on December 31, 2011 ("Term").

Subject to City Council approval, City reserves the option, in its sole discretion, to extend the Term of the Contract for two (2) years pursuant to Section VI.B., "Option to Extend", of this RFP and pursuant to the terms and conditions of the Contract.

3. NUMBER OF EVENTS

- a. Contractor may schedule up to thirteen (13) automobile sales events during each contract year for the term of the Contract. Contractor may also schedule additional automobile sales events during each contract year as the schedule permits and at the sole discretion of the Stadium Manager. For each of these additional automobile sales events, Contractor shall pay to City the then-prevailing Stadium usage rates and charges applicable to such events.
- b. Contractor may also schedule other events during each contract year as the schedule permits and at the sole discretion of the Stadium Manager. For each

of these events Contractor shall pay to City the then-prevailing Stadium usage rates and charges applicable to such events.

4. NOTICE OF RESCHEDULING

City may, upon thirty (30) days prior written notice to Contractor, require Contractor to reschedule an exclusive event in favor of any event to be held inside the stadium.

5. OTHER BOOKINGS

City may enter into agreements for events such as flea markets, circuses, drive-ins, carnivals, etc. Such contracts may be for "one-off events" or long term agreements, at City's discretion. Scheduling of such events shall be governed by the Qualcomm Stadium booking policy.

6. EVENT DATES

- a. Selection of event dates shall be based on priority. Contractor's rights are subject to the exclusive rights and priority to select dates and conduct events in the Stadium and Lot as follows: first priority for use of the Stadium is granted to major Stadium tenants like the San Diego Chargers, San Diego State University, San Diego Bowl Games Association, Live Nation Motorsports, Watchtower Convention and any other major events deemed so by the Stadium Manager; first booking priority in the parking lot is granted to Contractor and the second priority is granted to the current contractor having the exclusive right to conduct RV Sales Events.
- b. On April 1 and November 1 of each Contract year, the Stadium Manager will notify Contractor of the calendar dates available in the ensuing six (6) months for the scheduling of its automobile sales events. Should Contractor fail to contact the Stadium Manager to schedule its automobile sales events within fifteen (15) days of being notified of the available calendar dates, then Contractor's priority will be forfeited and all dates that had been placed on secondary hold will be made available to other tenants or applicants.

7. EVENT SET-UP AND BREAKDOWN

To accommodate setting up, breaking down, and clearing all equipment, automobiles, tents, or other materials used to conduct an automobile sales event, Contractor may have up to four (4) days prior to, and four (4) days after the event, but no more than a total of ten (10) calendar days to conduct an automobile sales event. The Stadium Manager may limit the total days allowed to conduct any event to accommodate other events in the Lot, provided such limitation does not unreasonably interfere with Contractor's event. If Contractor exceeds the allotted days of occupancy, City reserves the right to charge the standard daily rental fee for each day the quadrant(s) continues to be occupied. If the Stadium Manager is

compelled to remove any materials or items still within the occupied areas, Contractor will bear all expenses associated with the removal of said items. Removal methods are at the Stadium Manager's sole discretion.

If Contractor requests storage of materials, posting of signs or other event related activities not contained within the contracted quadrant, space will be made available based on an availability basis at the standard rates for parking lot space rental. It will be at the Stadium Manager's sole discretion. If adjoining spaces are rented to another tenant, Contractor may not interfere, occupy or otherwise intrude on the tenant's space. Other tenants are entitled to quiet enjoyment of their event.

Approval of any request by Contractor for Stadium personnel to assist or aid in the set up and/or take down of any permitted event shall be at the sole discretion of the Stadium Manager. In each case, Contractor will be asked to sign a Work Order outlining the work to be performed and an estimate of the cost of the work. Such work will be billed to the Contractor as an event expense due 30 days after the event.

8. ADDITIONAL RENTALS

For each automobile sales event over the permitted thirteen (13) per contract year, or for additional special events, Contractor shall pay to City the then-prevailing Stadium usage rates and charges applicable to such events.

D. EVENT QUALITY

Events shall incorporate the best quality promotional sales event practices possible within the industry and shall be conducted in a manner that includes, but is not limited to: presentable sales personnel, honest and forthcoming business practices and a customer-friendly atmosphere.

E. CONTAMINATION ENFORCEMENT ACTION. NOTWITHSTANDING THE RIGHTS PROPOSED IN THIS RFP, CONTRACTOR ACKNOWLEDGES IT IS AWARE THAT THE LOT OVERLIES AN AREA WHICH IS CONTAMINATED AS A RESULT OF A PRIOR RELEASE OF PETROLEUM PRODUCTS AT THE MISSION VALLEY TERMINAL, OWNED AND OPERATED BY KINDER MORGAN ENERGY PARTNERS ("KINDER MORGAN") AND SITUATED TO THE NORTH OF THE LOT. THE CONTAMINATION IS THE SUBJECT OF AN ONGOING ENFORCEMENT ACTION BY THE SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD ("REGIONAL BOARD") AGAINST THE DISCHARGERS OF THE PETROLEUM PRODUCTS.

1. Contractor acknowledges and agrees that: (i) parking for an automobile sales event may be relocated to another location within the Lot that will reasonably accommodate the event; (ii) Contractor's rights under the Contract may be limited by such enforcement action; and (iii) Contractor may be required to make

accommodations for remediation work by Kinder Morgan or its agents as a result of orders issued by the Regional Board, or as a result of agreements between City and Kinder Morgan relating to the clean-up of the contamination and/or the development of the Mission Valley aquifer.

- a. If Contractor is forced to relocate an automobile sales event to another location within the Lot, Contractor shall maintain its scheduling priority as set forth in this RFP, below, and any subordinate tenant shall be required to relocate or cancel their event to accommodate any relocation of Contractor's event pursuant to this section.
 - b. Contractor acknowledges and agrees that City shall not be responsible for any costs, expenses, damages, or losses Contractor may suffer as a result of any relocation within the Lot or rescheduling of an event, limitations on the rights granted by this RFP, or accommodations Contractor may be required to make for remediation activities arising out of orders by the Regional Board or agreements between CITY and Kinder Morgan relating to the clean-up of the contamination and/or the development of the Mission Valley aquifer.
2. City shall make available for Contractor's review all public record notices, orders and other communications with and from the Regional Board and/or Kinder Morgan that may affect automobile sales events, and shall use its best efforts to keep Contractor apprised of the progress and timing of any remediation or mitigation activities that may affect automobile sales events.

F. PAYMENT SCHEDULE

A specific payment schedule will be established by the Stadium Manager subsequent to award of a contract.

G. REVENUE

Contractor shall be responsible for accurately counting all event revenue as specified in Section V.A.15 of this RFP. The City reserves the right to audit any and all receipts.

H. PAST PERFORMANCE AND REFERENCES

Proposers are required to provide a minimum of three (3) references to demonstrate successful performance for work of similar size and scope as specified in this contract during the past five (5) years. The name of the project, a brief description of results, and the revenue figures of the contract shall be provided for each listed reference along with contact information. Each reference shall be listed consecutively with awarding and completion dates noted. If sub-contractors were used, the listed experience shall describe the exact tasks that each firm performed.

To enable the City to evaluate past performance and references of the Proposer, the following information must be included with the technical proposal:

- Proposer's References (use form provided in Section VIII of this RFP).

I. QUALIFICATIONS AND EXPERIENCE

Proposers must also demonstrate that they are qualified to perform the work as specified in this RFP. Previous experience in furnishing a record of proven new or used car sales events on large scale level and reputation within the San Diego area will be important considerations. This will enable the City to judge the Proposer's reliability, performance, and other information.

The City seeks a Contractor that could bring additional events to the Stadium other than strictly sales events. An example of that would be attracting an industry-related convention that rented all, or a portion of, the Stadium.

In addition, to enable the City to evaluate the responsibility, experience, skill, qualifications, and business standing of a Proposer, the following information must be included with the technical proposal:

1. The Proposer must demonstrate a history of proper reporting of sales to the State Board of Equalization.
2. Proposer shall provide a company/corporate organizational chart and staffing profile including sub-contractors if applicable. The staffing profile shall include: the leadership of the project team, the accountability of the Project Manager/Lead, the lines of authority and the identification of the day-to-day staff and their assignment and dedication to the Project expressed on a percentage basis. Less than full time dedication or one hundred percent (100%) of any members of the project team shall be explained.
3. Proposer shall provide background, knowledge, resumes, experience dealing with similar projects and years of tenure for key personnel who will be assigned and dedicated to City's account. Project team personnel shall be assigned and dedicated to City's account and shall not be substituted or replaced during the term of the Contract without the prior written acceptance of the Stadium Manager.
4. Proposer shall provide the names and contact information including e-mail addresses of the key personnel assigned and dedicated to the City's account.
5. Proposer shall provide a dedicated Project Manager/Lead (key personnel) who has a minimum of five (5) years prior experience in accounts of similar type, size, and scope.
6. Proposer shall clearly define what responsibilities the dedicated Project Manager/Lead, project team member(s) and key personnel will be charged with relative to the Project.
7. The dedicated Project Manager/Lead shall be accessible, at a minimum, by e-mail and local telephone numbers with an area code of 619, 858, or 760, or a toll free

number, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., Pacific Time, excluding the most recently published City holidays as specified on the City's website: www.sandiego.gov.

8. Proposer shall be the actual show producer. Proposals will not be accepted by Proposers who subcontract the event production to another producer.
9. Proposer's Statement of Subcontractors form (use form provided in Section VIII of this RFP).

VI. PRICE PROPOSAL SUBMITTAL

A. PRICING PAGE – INSTRUCTIONS

Proposers shall submit their Price Proposal utilizing the Pricing Page provided in Section VII of this RFP. Use of the Pricing Page will help ensure consistency in the price evaluation process. The Pricing Page is to be completed in full and shall be incorporated in the Price Proposal Volume. Only the Pricing Page provided herein will be accepted. Any deviations from the Pricing Page may be considered non-responsive and unacceptable.

Proposers are required to provide a fixed price, lump sum annual revenue (guarantee) to the City for the exclusive right to sell automobiles in the Lot at the Stadium in accordance with the scheduling parameters outlined in this RFP, all costs inclusive. Minimum pricing level shall begin at \$425,000 and will occur in year one of the Contract. Price evaluation will be based upon the total sum of Contract Years 1, 2 and 3. Pricing for an optional contract period, if any, will be based upon Section V, B, "Option to Renew", below.

Worksheets may be used to provide additional information, however evaluation will be based on information entered on the Pricing Page. No other charges will be considered.

Blanks on the Pricing Page will be interpreted as zero (0) and no price will be allowed.

B. OPTION TO EXTEND

Subject to City Council approval, City reserves the option, in its sole discretion, to extend the Term of the Contract for two (2) years pursuant to the terms and conditions of the Contract. The extension is contingent upon successful negotiation of new terms, to include Pricing, mutual agreement by City and Contractor and execution of an Extension Agreement by Contractor not less than sixty (60) days prior to expiration of the original Contract Term. Contractor may at any time prior to execution of the Extension Agreement by Contractor decline to extend the Contract for any reason whatsoever; City may decline to extend the contract at any time and for any reason whatsoever.

In lieu of extending the Contract Term as discussed above, upon expiration of the original Contract Term, City may desire to hold the Contract over on a month-to-month basis pursuant to the terms and conditions of the original Contract or any written and fully executed modification thereto.

This section will not be considered in the evaluation for award.

VII. PRICING PAGE

Revenue for Automobile Sales Events

Contract Year 1

\$_____ Lump Sum Fixed Annual Revenue (guarantee) to the City
for events, as specified in Section IV.

Contract Year 2

\$_____ Lump Sum Fixed Annual Revenue (guarantee) to the City
for events, as specified in Section IV.

Contract Year 3

\$_____ Lump Sum Fixed Annual Revenue (guarantee) to the City
for events, as specified in Section IV.

Total (Contract Years 1 – 3): \$_____

VIII. FORMS

PROPOSER'S STATEMENT OF FINANCIAL RESPONSIBILITY

The Proposer is required to furnish below a statement of financial responsibility, except when the Proposer has previously completed contracts with the City of San Diego covering work of similar scope.

I, _____, certify that my company, _____, has sufficient operating capital and/or financial reserves to properly fund the services identified in these contract specifications for a minimum of two (2) full months. I agree that upon notification of provisional award, I will promptly provide a copy of my company's most recent balance sheet, or other necessary financial statements, as supporting documentation for this statement, if requested. I understand that this balance sheet, as well as any other required financial records, will remain confidential information to the extent allowed under the California Public Records Act.

I certify under penalty of perjury under the laws of the State of California that the information contained in this statement is true and correct.

Dated: _____ Signature: _____

Certification Survey

For Small, Ethnically and Culturally Diverse,
Woman, Disadvantaged, Disabled Veteran, Or Other Businesses

All Contractors are required to complete this form and return it with their bid package.

Company Name: _____

Mailing Address: _____

Telephone No.: () _____

E-Mail Address: _____

1. Contractor's company is currently certified as small, ethnically and culturally diverse, woman, disadvantaged, disabled veteran, or other business? ☐ Yes ☐ No

Certification Number/Agency: _____

2. Contractor's company has applied for certification? ☐ Yes ☐ No

If yes, which agency? _____

3. Contractor's company is an independently owned business? ☐ Yes ☐ No

4. Contractor's company is 51% or more owned by a socially, economically, disadvantaged individual*? ☐ Yes ☐ No

5. SIC Code: _____

6. Number of Employees: _____

7. Annual Gross Receipts (three year average): _____

8. This is not an application for certification. If you would like to receive an application for certification, please check box: ☐

I certify that this information is correct: _____
Authorized Signature Date

* Black Americans, Native Americans, Hispanic Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Women, any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA) at such time as the SBA designation becomes effective.

PROPOSER'S REFERENCES

The Proposer is **required** to provide a minimum of three (3) references where work of a similar size and nature was performed within the past three (3) years. This will enable the City of San Diego to judge the responsibility, experience, skill, and business standing of the Proposer.

REFERENCES

Company Name: _____ Contact Name: _____

Address: _____ Phone Number: _____

_____ Fax Number: _____

Dollar Value of Contract: \$ _____ Contract Dates: _____

Requirements of Contract: _____

Company Name: _____ Contact Name: _____

Address: _____ Phone Number: _____

_____ Fax Number: _____

Dollar Value of Contract: \$ _____ Contract Dates: _____

Requirements of Contract: _____

Company Name: _____ Contact Name: _____

Address: _____ Phone Number: _____

_____ Fax Number: _____

Dollar Value of Contract: \$ _____ Contract Dates: _____

Requirements of Contract: _____

PROPOSER'S STATEMENT OF SUBCONTRACTORS

The Proposer is **required** to state below all subcontractors to be used in the performance of the proposed contract, and what portion of work will be assigned to each Subcontractor. Failure to provide details of Subcontractors may be grounds for rejection of proposal. NOTE: Add additional pages if necessary.

Company Name: _____ Contact Name: _____

Address: _____ Phone Number: _____

_____ Fax Number: _____

Dollar amount of sub-contract: \$ _____ Contract Dates: _____

Contractor's License #: _____

Requirements of contract: _____

What portion of work will be assigned to this subcontractor? _____

Company Name: _____ Contact Name: _____

Address: _____ Phone Number: _____

_____ Fax Number: _____

Dollar amount of sub-contract: \$ _____ Contract Dates: _____

Contractor's License #: _____

Requirements of contract: _____

What portion of work will be assigned to this subcontractor? _____

Company Name: _____ Contact Name: _____

Address: _____ Phone Number: _____

_____ Fax Number: _____

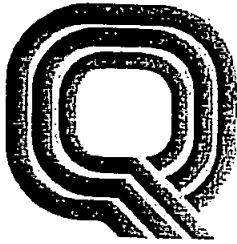
Dollar amount of sub-contract: \$ _____ Contract Dates: _____

Contractor's License #: _____

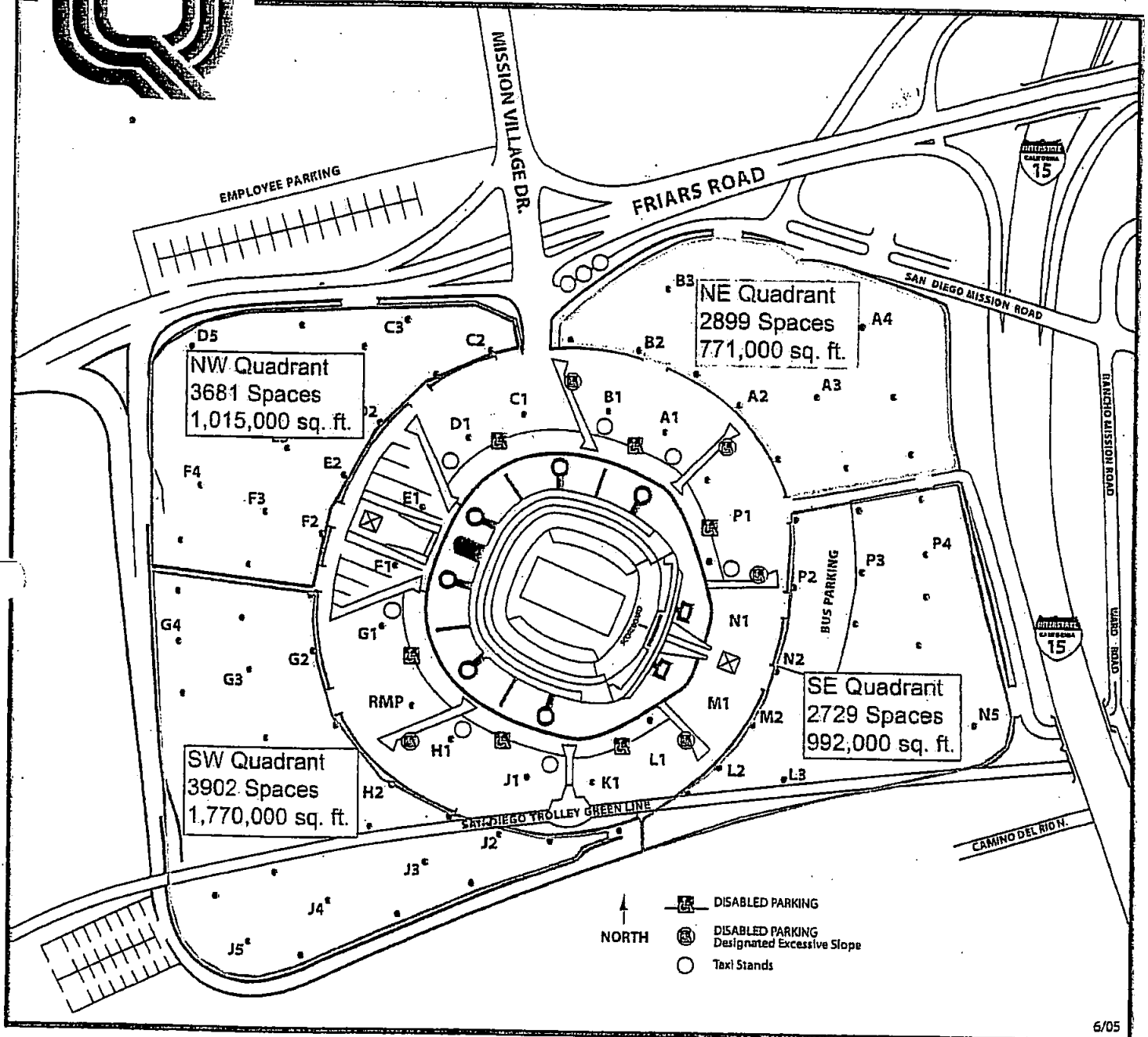
Requirements of contract: _____

What portion of work will be assigned to this subcontractor? _____

APPENDIX A



QUALCOMM STADIUM PARKING LOT



APPENDIX B

**CITY OF SAN DIEGO
USE AND OCCUPANCY PERMIT**

THIS CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and _____, a _____ ("PERMITTEE"), to be effective as of _____ (the "Effective Date") when signed by the parties and approved by the San Diego City Attorney, as follows:

DEFINITIONS

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

- A. "Permit Area" shall mean all or part of that certain CITY-owned real property commonly known as _____ and located at _____, and more particularly described in Exhibit A: Permit Area, attached hereto. *[DELETE HIGHLIGHTED LANGUAGE IF THERE IS NO COMMON NAME.]*
- B. "Permit Fee" shall mean a one-time, non-refundable permit processing fee in the amount of _____ (\$_____).
- C. "Permit Use" shall mean the ~~exclusive/nonexclusive~~ use of the Permit Area for _____.
- D. "PERMITTEE'S Address for Notices" shall be: _____

- E. "Monthly Rent" shall be as follows:
- a. First year: _____ (\$_____) per month;
- b. Second year: _____ (\$_____) per month; and
- c. Third year: _____ (\$_____) per month.
- F. "Security Deposit" shall mean an amount equal to _____ (\$_____).
- G. "Term" shall mean ~~three (3)~~ years; any partial month at the beginning of the Term shall be counted as a full month.

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 and contractors 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 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.
4. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee ("City Manager"), unless otherwise expressly provided, without need for further resolution by the City Council. CITY'S discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. All references to "City Manager" herein shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of The City Charter of the City of San Diego, California.
5. Term. The Term shall commence on the Effective Date. If the Effective Date is not the first day of a calendar month, the first, partial month shall be counted as a full month for purposes of determining the expiration date of this Permit, so that the Term shall expire on the last day of a calendar month, and not to 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. 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.
7. 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, PERMITTEE shall pay to CITY rent calculated on a per diem basis using three (3) times the 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 Permit, nor give PERMITTEE any rights in or to the Permit Area.
8. Termination. PERMITTEE may terminate this Permit for any reason upon thirty (30) days prior written notice.
9. Restore and Vacate. Prior to the expiration or PERMITTEE'S earlier termination of this

Permit, PERMITTEE shall restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and upon such expiration or earlier 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.

10. 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.
11. Permit Fee. PERMITTEE shall pay the Permit Fee to CITY upon execution of this Permit.
12. Rent. PERMITTEE shall pay the Monthly Rent in advance on the first day of each month during the Term. If the Effective Date is not the first day of a calendar month, then the Monthly Rent payable for the partial month at the beginning of the Term shall be prorated on a per diem basis.
13. Place of Payment. Monthly Rent checks shall be made payable to "City Treasurer" and delivered to the Office of the City Treasurer, Civic Center Plaza Building, 1200 Third Avenue, First Floor, San Diego, CA 92101, or mailed with an invoice to:

THE CITY OF SAN DIEGO
Office of the City Treasurer
P.O. Box 122289
San Diego, CA 92112-4165

14. Delinquent Monthly Rent. If PERMITTEE fails to pay Monthly Rent when due, PERMITTEE shall pay, in addition to the unpaid Monthly Rent, five percent (5%) of the delinquent Monthly Rent. If the Monthly 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 loss resulting from fee delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In no event shall the charge for late payments of Monthly Rent be less than Two Hundred Fifty Dollars (\$250). 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.
15. Security Deposit. Upon execution of this Permit, PERMITTEE shall deliver the Security

Deposit to CITY as security for the performance of PERMITTEE'S obligations under this Permit. CITY shall not be liable to PERMITTEE for any interest thereon. Any interest earned from such deposit or redeposit shall not become part of the security deposit, but shall be and remain the property of CITY. All or any portion of the security deposit shall be available unconditionally to CITY to cure, in whole or in part, any breach or default of this Permit by PERMITTEE, or for expenses incurred by CITY as a result of PERMITTEE'S breach or default of this Permit. PERMITTEE shall maintain the security deposit throughout the Term. Notwithstanding any other provision of this Permit to the contrary, if PERMITTEE fails or refuses to deposit or maintain the Security Deposit as required by this Permit, CITY may terminate this Permit immediately upon such breach. Upon such termination, PERMITTEE shall immediately cease its use of the Permit Area and commence and diligently pursue the removal of its property from the Permit Area.

- 15.1. Utilization. If CITY utilizes all or any portion of the Security Deposit, then upon 10 days prior written notice, PERMITTEE shall reimburse the Security Deposit to the full required amount.
- 15.2. Increase. Upon thirty (30) days prior written notice by CITY, PERMITTEE shall deliver to CITY such additional funds as CITY may reasonably require to adequately secure PERMITTEE'S obligations under this Permit.
- 15.3. Return. Provided PERMITTEE is not in breach or default of this Permit, CITY shall return the Security Deposit, or any balance thereof, to PERMITTEE within sixty (60) days after the expiration or termination of this Permit.
16. Maintenance of the Permit Area. PERMITTEE shall, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, maintain the Permit Area in good order and repair and in a safe, healthy and sanitary condition at all times during the Term, subject to normal and ordinary wear and tear resulting from the use of the Permit Use. CITY shall at no time during the Term of this Permit be required to make any improvements or repairs to the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris and litter at all times.
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.
19. Improvements/Alterations. PERMITTEE shall not construct any improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.
20. Ownership of Improvements and Personal Property.
 - 20.1. Improvements. Upon expiration or termination of this Permit, any and all

improvements, trade fixtures, structures, and installations or additions to the Permit Area now existing or constructed on the Permit Area by PERMITTEE shall be deemed to be part of the Permit Area and shall become CITY'S property free of all liens and claims. Notwithstanding the foregoing, CITY may, upon notice to PERMITTEE at termination or at any time prior to the expiration of the Term, elect not to assume ownership of all or any PERMITTEE-installed improvements, trade fixtures, structures, and installations. In that case, PERMITTEE shall, at PERMITTEE'S sole cost and expense, remove all PERMITTEE-installed improvements, trade fixtures, structures, and installations as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Permit. If any removal of such PERMITTEE-installed improvements, trade fixtures, structures, and installations by PERMITTEE results in damage to the Permit Area, PERMITTEE shall repair all such damage at its sole cost and expense. If PERMITTEE fails to remove any improvements, structures, and installations as required by this Permit, CITY may, at its option, remove them at PERMITTEE'S sole cost and expense.

20.2. Personal Property. PERMITTEE shall remove PERMITTEE-owned machines, appliances, equipment (other than 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 sixty (60) days after the expiration or earlier termination of this Permit. Any such items which PERMITTEE fails to remove shall be deemed abandoned and 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. If any removal of such personal property by PERMITTEE results in damage to the Permit Area, PERMITTEE shall repair all such damage at its sole cost and expense.

20.3. Late Removal. PERMITTEE shall pay to CITY rent calculated on a per diem basis using the rental rate in effect just prior to the expiration or earlier termination for any period of time needed to remove any improvements or personal property, whether by CITY or PERMITTEE, after the expiration or termination of this Permit.

20.4. CITY'S Right to Acquire. Notwithstanding the foregoing, if PERMITTEE elects 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 or purchase such personal property.

21. Insurance. PERMITTEE shall deliver to CITY a current certificate of insurance for:

- 1) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, 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 (\$5,000,000);
- 2) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a 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 on the Permit Area. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and

- 3) Workers' Compensation Insurance, as required by the laws of the State of California 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).
- 21.1. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
- 21.2. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department.
- 21.3. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 21.4. 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.
- 21.5. 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. 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.
- 21.6. Modification. To assure protection from and against the kind and extent of risk existing on the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term 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 PERMITTEE'S use of the Permit Area.
- 21.7. Accident Reports. PERMITTEE shall immediately report to CITY any accident

causing property damage or injury to persons on the Permit Area. 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.

- 21.8. 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 on the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver to CITY a certificate of such insurance.
22. Indemnification. 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, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole 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 of the costs related thereto, including without limitation reasonable attorney fees and costs.
23. No Discrimination. PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical 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 of employees and contractors.
24. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Permit and to the extent legally possible, PERMITTEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. PERMITTEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
25. Drug-free Workplace. PERMITTEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
 - 25.1. Publish a statement notifying employees that the unlawful manufacture, distribution,

dispensation, possession, or use of controlled substances are prohibited on the Permit Area and specifying the actions that will be taken against employees for violations of the prohibition; and

- 25.2. Establish a drug-free awareness program to inform employees about all of the following:
 - a) The dangers of drug abuse in the workplace;
 - b) PERMITTEE'S policy of maintaining a drug-free workplace;
 - c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d) The penalties that may be imposed upon employees for drug abuse violations.
- 25.3. PERMITTEE shall include in each of its sublicenses and contracts related to this Permit language obligating each sub-licensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. PERMITTEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.
26. Disabled Access Compliance. PERMITTEE shall comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations (commonly known as the "building code") as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.
27. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S occupancy, use, development maintenance and restoration of the Permit Area and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
28. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
29. Assignment and Sublease. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY'S prior written consent, which may be unreasonably withheld or delayed in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.
30. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within 24 hours after notice by CITY, or CITY may

thereafter remove the item at PERMITTEE'S cost.

31. Encumbrances. PERMITTEE shall keep the Permit Area and any CITY-owned property of which the Permit Area 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 Permit or PERMITTEE'S occupancy, use, development, maintenance or restoration of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
32. 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 PERMITTEE'S occupancy, use, development, maintenance and restoration of the Permit Area.
33. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area, 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 any licenses or permits. 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.
34. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area by PERMITTEE, its officers, employees, invitees, guests, agents, or contractors ("PERMITTEE Parties"). PERMITTEE Parties shall not store, utilize, or sell any hazardous substance on the Permit Area without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.
 - 34.1. Remediation. If any release of a hazardous substance occurs as a result of PERMITTEE'S use, development, or maintenance of the Permit Area

("PERMITTEE'S Operations"), PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.

34.2. Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S Operations, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

34.3. Notice of Release. If PERMITTEE knows or has reasonable cause to believe that any hazardous substance has been released on or within the Permit Area, PERMITTEE shall give written notice to CITY within three (3) business days after receipt of such knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall notify CITY by the most immediate means available and immediately upon receipt of such knowledge or belief and shall take all actions necessary to minimize the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private lawsuits related to the Permit Area.

34.4. Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S use, development, or maintenance of the Permit Area ("PERMITTEE'S Operations"), resulted in a hazardous substance being released on or from the Permit Area, CITY may cause an environmental assessment of the Permit 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 and in what quantities. If any such hazardous substances exist in quantities greater than allowed by municipal, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect 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, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor. If the environmental assessment conclusively establishes that PERMITTEE'S Operations did not result in a hazardous substance being released on or from the Permit Area, CITY shall reimburse PERMITTEE for the cost of the assessment.

35. Underground Storage Tanks.

- 35.1. Monitoring. PERMITTEE shall monitor each underground storage tank located within the Permit Area during the Term (individually and collectively, "Underground Tanks") as required by the County of San Diego Hazardous Material Management Division ("HMMD") or its successor agency.
- 35.2. Reporting. PERMITTEE shall report to CITY and HMMD any and all unauthorized releases from the Underground Tanks within twenty-four (24) hours of each such release.
- 35.3. Fees and Costs. PERMITTEE shall pay all fees and costs related to unauthorized releases of hazardous substances from the Underground Tanks, including without limitation investigative, surface, groundwater cleanup, and expert and agency fees. PERMITTEE shall maintain insurance or other financial means to ensure the fulfillment of its obligations hereunder to pay such fees and costs, including without limitation the costs of corrective actions, compensating third parties for personal injuries or property damage, and compensating CITY for damages to the Permit Area, directly or indirectly caused by any and all releases from Underground Tanks. PERMITTEE shall deliver to CITY and maintain evidence, satisfactory to CITY, of such financial responsibility. PERMITTEE shall pay all costs and expenses related to the Underground Tanks, including without limitation costs and expenses to comply with PERMITTEE'S obligations under this Permit.
- 35.4. Development, Maintenance and Repair. When developing, maintaining, repairing and closing Underground Tanks, PERMITTEE shall obtain all required permits, and produce and deliver such business plans and other documents as HMMD and all other responsible governmental agencies may require therefor.
- 35.5. Records and Inspection. PERMITTEE shall produce and maintain complete and accurate records related to the Underground Tanks, including without limitation permit applications; monitoring, inspections and testing data and results, equipment installation, repairing and closure of Underground Tanks, and all unauthorized releases of hazardous substances from Underground Tanks. PERMITTEE shall keep such records in a format and location readily accessible by CITY and HMMD and all other responsible governmental agencies for a period of not less than thirty-six (36) months after PERMITTEE vacates the Permit Area. PERMITTEE shall make all such records available for inspection by CITY, HMMD and all other responsible governmental agencies upon reasonable notice.
- 35.6. Operator Agreements. PERMITTEE shall include a copy of California Health and Safety Code, Chapter 6.7, Section 25299, as part of each agreement between PERMITTEE and each operator of an Underground Tank.
- 35.7. Legal Compliance. PERMITTEE shall comply with all laws, rules and regulations presently existing or hereafter enacted applicable to the Underground Tanks.
36. Aboveground Storage Tanks.

- 36.1. Monitoring. PERMITTEE shall monitor each aboveground storage tank located within the Permit Area during the Term (individually and collectively, "Aboveground Tanks") in compliance with this Permit and all applicable laws, rules and regulations. PERMITTEE shall conduct daily visual inspections of all Aboveground Tanks and shall permit the San Diego Regional Water Quality Control Board (the "Water Quality Board"), CITY, and all responsible governmental agencies, to conduct periodic inspections of all Aboveground Tanks.
- 36.2. Reporting. PERMITTEE shall report to CITY any and all unauthorized releases from Aboveground Tanks within twenty-four (24) hours of each such release.
- 36.3. Fees and Costs. PERMITTEE shall pay all fees and costs related to unauthorized releases of hazardous substances from Aboveground Tanks, including without limitation investigative, surface, groundwater cleanup, and expert and agency fees. PERMITTEE shall maintain insurance or other financial means to ensure the fulfillment of its obligations hereunder to pay such fees and costs, including without limitation the costs of corrective actions, compensating third parties for personal injuries or property damage, and compensating CITY for damages to the Permit Area, directly or indirectly caused by any and all releases from Aboveground Tanks. PERMITTEE shall deliver to CITY and maintain evidence, satisfactory to CITY, of such financial responsibility. PERMITTEE shall pay all costs and expenses related to Aboveground Tanks, including without limitation costs and expenses to comply with PERMITTEE'S obligations under this Permit.
- 36.4. Development, Maintenance and Repair. PERMITTEE shall develop, maintain and repair all Aboveground Tanks in compliance with all applicable laws, rules and regulations for aboveground storage tanks, including without limitation all of the requirements of California Health & Safety Code, Sections 25270 through 25170.13 as presently existing or as amended (the "Health & Safety Code"). PERMITTEE shall obtain all required permits and produce and deliver such documents as any and all responsible governmental agencies may require. PERMITTEE shall: (a) comply with all valid orders of the Water Quality Board; (b) file all required aboveground storage tank statements; (c) establish and maintain all required monitoring programs and systems; (d) report all spills as required; and (e) pay all lawfully imposed penalties and fines.
- 36.5. Records and Inspection. PERMITTEE shall produce and maintain complete and accurate records related to Aboveground Tanks, including without limitation permit applications, monitoring, inspections and testing data and results, equipment installation, repairing and removal of Aboveground Tanks, and all unauthorized releases of hazardous substances from Aboveground Tanks. PERMITTEE shall keep such records in a format and location readily accessible by CITY and all other responsible governmental agencies for a period of not less than thirty-six (36) months after PERMITTEE permanently vacates the Permit Area. PERMITTEE shall make all such records available for inspection by CITY and all responsible

governmental agencies upon reasonable notice.

- 36.6. Spill Prevention. PERMITTEE shall prepare and implement a spill prevention control countermeasure plan as required by the Health & Safety Code, and conduct periodic inspections to ensure compliance therewith.
- 36.7. Operator Agreements. PERMITTEE shall require each operator of an Aboveground Tank to comply with the Health and Safety Code as part of each agreement between PERMITTEE and each operator of an Aboveground Tank.
- 36.8. Legal Compliance. PERMITTEE shall comply with all laws, rules and regulations presently existing or hereafter enacted applicable to Aboveground Tanks.
37. Water Quality Assurances. PERMITTEE shall comply with San Diego Municipal Code Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices" including a "Storm Water Pollution Prevention Plan" as those terms are defined by the Stormwater Code (collectively, "Prevention Plan") and as approved by CITY under its Stormwater Management Program. Within the first thirty (30) days of the Term, PERMITTEE shall submit a Prevention Plan satisfactory to CITY that will control erosion and reduce the amount of "Pollutants," as defined by the Stormwater Code, and other sediments discharged from the Premises. CITY may review the Prevention Plan periodically. Within thirty (30) days after written notice from CITY requesting an update of the Prevention Plan, PERMITTEE shall submit an updated Prevention Plan to CITY'S satisfaction. PERMITTEE shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances, and regulations. PERMITTEE shall inform its employees, contractors, subcontractors, agents and vendors of the Prevention Plan and ensure their compliance therewith.
38. 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.
39. 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.

40. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
41. 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.
42. 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.
43. 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 occupancy, use, development, maintenance and restoration of the Permit Area. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
44. Legal Proceedings. If any party brings an action or proceeding against another party under this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment. If, as a result of an action brought by or against PERMITTEE in connection with this Permit, CITY intervenes therein, becomes a party, or is made a party thereto, PERMITTEE shall pay all of CITY'S costs and expenses thereof, including without limitation reasonable attorney fees and costs.
45. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE at PERMITTEE'S Address for Notices, and to CITY as follows:

THE CITY OF SAN DIEGO

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

With a copy by First Class Mail to: SAN DIEGO CITY ATTORNEY
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

46. 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

47. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Use. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition, and acknowledges and agrees that CITY has fulfilled all obligations it may have had to improve, modify, repair, replace, alter, or otherwise develop the Permit Area prior to the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation PERMITTEE'S employees, from any defects in the Permit Area, and shall be solely responsible therefor.

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

Date: _____, a California corporation

BY: _____
Name: _____
Title: _____

Date: _____ THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
Name: _____
Title: _____

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

Date: _____ BY: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: _____ MICHAEL J. AGUIRRE, City Attorney

BY: _____
Name: _____
Title: _____

Exhibit A: Permit Area

CITY OF SAN DIEGO REQUEST FOR PROPOSAL

QUALCOMM STADIUM
9449 Friars Road
San Diego, CA 92108

AUTOMOBILE SALES EVENTS AT QUALCOMM STADIUM

ADDENDUM A

PROPOSAL DEADLINE: May 9, 2008
@ 3:00 P.M.

The following changes to the Request for Proposal are hereby made effective as though they were originally shown and/or written:

1. *Delete* the original pages 24 through 26 and *replace* with the attached Addendum A pages 24 through 26.

(NOTE: Section V.I.8. on page 24 has been changed; Section VI.A. paragraphs 2, 3 and 4 on page 24 have been changed; and, Section VII. "Contract Year 1", "Contract Year 2", and "Contract Year 3" paragraphs on page 26 have been changed.)

CITY OF SAN DIEGO QUALCOMM STADIUM

Mike McSweeney
Acting Stadium Manager
(619) 641-3126

May 1, 2008

number, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., Pacific Time, excluding the most recently published City holidays as specified on the City's website: www.sandiego.gov.

8. Proposer shall be the actual show producer. Proposals received from Proposers known by the City (or subsequently discovered) to subcontract event productions to another producer(s) in its normal course of doing business, shall be considered unacceptable and rejected as non-responsive. However, on occasion, the successful Proposer may be allowed to subcontract all or any part of an event production to another producer(s) in accordance with Section IV.D., "INDEPENDENT CONTRACTOR", of this RFP.
9. Proposer's Statement of Subcontractors form (use form provided in Section VIII of this RFP).

VI. PRICE PROPOSAL SUBMITTAL

A. PRICING PAGE – INSTRUCTIONS

Proposers shall submit their Price Proposal utilizing the Pricing Page provided in Section VII of this RFP. Use of the Pricing Page will help ensure consistency in the price evaluation process. The Pricing Page is to be completed in full and shall be incorporated in the Price Proposal Volume. Only the Pricing Page provided herein will be accepted. Any deviations from the Pricing Page may be considered non-responsive and unacceptable.

Proposers are required to provide a fixed price, lump sum annual revenue guarantee to the City, net of all Proposer costs and expenses, for the exclusive right to schedule up to thirteen (13) automobile sales events, in each year of the Contract, in accordance with Section V.B.1., "AUTOMOBILE SALES EVENTS", and Section V.C., "SCHEDULING", located on pages 17 and 19, respectively, of this RFP. The Pricing Proposal is for the exclusive right to schedule and conduct up to thirteen (13) sales events in each Contract Year only and shall not include any additional revenue to the City which Proposer anticipates will be generated by conducting additional sales events over and above the thirteen. Any such additional events will be at the Stadium Manager's sole discretion, as the schedule at the time permits, and will be priced at that time at the then-prevailing Stadium usage rates. Minimum pricing level shall begin at \$425,000 for each year of the Contract. Price evaluation will be based upon the total sum of Contract Years 1, 2 and 3. Pricing for an optional contract period, if any, will be based upon Section V, B, "Option to Renew", below.

Worksheets may be used to provide additional information, however evaluation will be based on information entered on the Pricing Page. Proposers' costs and expenses will not be considered in the evaluation of the Pricing Proposal.

Any dollar amount space on the Pricing Page that is left blank will be interpreted as a proposal of zero (0) revenue to the City for that Contract Year.

B. OPTION TO EXTEND

Subject to City Council approval, City reserves the option, in its sole discretion, to extend the Term of the Contract for two (2) years pursuant to the terms and conditions of the Contract. The extension is contingent upon successful negotiation of new terms, to include Pricing, mutual agreement by City and Contractor and execution of an Extension Agreement by Contractor not less than sixty (60) days prior to expiration of the original Contract Term. Contractor may at any time prior to execution of the Extension Agreement by Contractor decline to extend the Contract for any reason whatsoever; City may decline to extend the contract at any time and for any reason whatsoever.

In lieu of extending the Contract Term as discussed above, upon expiration of the original Contract Term, City may desire to hold the Contract over on a month-to-month basis pursuant to the terms and conditions of the original Contract or any written and fully executed modification thereto.

This section will not be considered in the evaluation for award.

VII. PRICING PAGE

Revenue for Automobile Sales Events

Contract Year 1

\$ _____ Lump Sum Fixed Annual Revenue **Guarantee** to the City for **up to thirteen (13)** events, as specified in Section V.B.1., "AUTOMOBILE SALES EVENTS" (see page 17 of this RFP).

Contract Year 2

\$ _____ Lump Sum Fixed Annual Revenue **Guarantee** to the City for **up to thirteen (13)** events, as specified in Section V. B.1., "AUTOMOBILE SALES EVENTS" (see page 17 of this RFP).

Contract Year 3

\$ _____ Lump Sum Fixed Annual Revenue **Guarantee** to the City for **up to thirteen (13)** events, as specified in Section V. B.1., "AUTOMOBILE SALES EVENTS" (see page 17 of this RFP).

Total (Contract Years 1 – 3): \$ _____

City of San Diego
Automobile Sales Events at Qualcomm Stadium RFP
Questions and Answers

- 1. The City Tax Assessor has imposed a Possessory Interest Tax on this RFP of approximately \$100,000. Will the successful bidder be responsible for payment of the Possessory Interest Tax or will the City pay?**

The County of San Diego, not the City, levies Possessory Interest Taxes (PIT). The successful bidder will be responsible for the payment of PIT levied by the County, if any. Also, see Section 33., "Taxes", on page 9 of Appendix B to the RFP.

- 2. Historically, the City has prohibited the Contractor of automobile sales events from allowing dealers outside the County of San Diego to participate in sales events at Qualcomm Stadium. Will the Contractor be permitted to allow automobile dealers whose DMV license and principle place of business is based outside the County of San Diego to participate in an automobile sales event under the RFP?**

The RFP document does not contain such a prohibition; however, the successful bidder will be required to adhere to all local, state, and federal laws and regulations regarding the sales of motor vehicles, including any DMV regulations regarding the use out-of-city or out-of-county dealers.

- 3. Can an entity or individual whose principle business is selling vehicles and not promoting automobile sales by others (as demonstrated by references), be the Contractor under this RFP?**

Yes.

- 4. The RFP indicates that failure to comply with the "mandatory requirements will disqualify a Proposal." What are the "mandatory requirements" of the RFP?**

See answer below.

- a. Is it a "mandatory requirement" that the Contractor be the actual show producer and will not be permitted to subcontract the event production to another producer as set forth at Section V, I, paragraph 8 on page 24 of the RFP?**

See answer below.

- b. Is it a "mandatory requirement" that the Contractor have previous experience in furnishing a record of proven new or used car sales events on a large scale level and a reputation within the San Diego area as set forth in the Qualifications and Experience section at page 23 of the RFP?**

See answer below.

c. Is it a "mandatory requirement" that the Contractor have a dedicated Project Manager/Lead who has a minimum of five (5) years prior experience in accounts of similar type, size, and scope as set forth in page 23 para. 5 of the RFP?

d. Is it a "mandatory requirement" that the Contractor have a history of proper reporting of sales to the State Board of Equalization as set forth in page 23 para. 1 of the RFP?

See answer below.

e. Is it a "mandatory requirement" that the Contractor provide background, knowledge, resumes and experience dealing with similar projects and years of tenure for key personnel who will be assigned and dedicated to City's account as set forth in page 23 para. 3 of the RFP?

See answer below.

f. Is it a "mandatory requirement" that the Contractor provide a minimum of three (3) references to demonstrate successful performance for work of similar size and scope as specified in the RFP during the past five (5) years as set forth in Section H on page 22 of the RFP?

See answer below.

g. Is it a "mandatory requirement" of the RFP, that the successful bidder have its principle place of business in the County of San Diego?

In response to 4.a. through 4.g. above, not necessarily. Pursuant to Section III.L., "Acceptability of Proposals", on page 8 of the RFP, "The Stadium Manager shall determine which Proposers have met the requirements of the RFP. ... The Stadium Manager shall have the sole authority to determine whether any deviation from the requirements of this RFP is substantial in nature".

5. The RFP makes reference to "competitive range" in various places including on page 8 and page 10. What is the definition of "competitive range?"

The Stadium Manager will determine the "competitive range" after reviewing all proposals that have been submitted.

6. Will the RFP become the operative agreement between the City and the Contractor or will a separate Contract govern the rights and obligations of the parties?

No. See Section V.A.2. on page 15 of the RFP and Appendix B to the RFP.

7. Page 24 of the RFP indicates that "minimum pricing level shall begin at \$425,000 and will occur in year one of the Contract." Is there a minimum pricing level for years two and three, and if so at what level?

See Addendum A, page 24.

8. Will the failure to bid at this minimum level "disqualify" a Proposal? If not, will the City rank the price proposals on their merit?

The City may choose not to consider a proposal offering less than the Minimum Pricing. Additionally, any exception or deviation from the requirements of the RFP must be explained.

9. Have the members of the Evaluation Committee been chosen?

No, the City is in the process of putting the Evaluation Committee together.

10. Where will the pool of potential Evaluation Committee members come from?

A variety of sources, to best serve the needs of the City in this RFP, at the discretion of the Stadium Manager.

11. Will there be a separate Evaluation Committee for the Technical Proposal and the Price Proposal and will they be comprised of different membership?

No, the Evaluation Committee will evaluate both the Technical and Price Proposals.

12. What method or scale will be utilized by the Committee(s) to Rank the Technical Proposals and Price Proposals so that the proposal can ultimately be weighted 40% technical and 60% price as set forth in the RFP?

The Evaluation Committee will determine a rating/ranking system that in its opinion best serves the needs of the City in evaluating proposals based on the specifications of the RFP.

13. What is meant by the phrase "all costs inclusive" as set forth on page 24 Section VI, Paragraph A?

See Addendum A, page 24.

EXHIBIT C – Event Area

EXHIBIT C - EVENT AREA

 = Designated Stall Excessive Slope

MAIN GATE

EMPLOYEE AND OVERFLOW PARKING

ROAD

MISSION VILLAGE DRIVE

FRIARS

GATE 1

ROAD

FRIARS ROAD

RANCHO MISSION ROAD

FAIRMOUNT AVENUE

TWAIN AVE

SAN DIEGO MISSION ROAD

15

15

WARD ROAD

CAMINO DEL RIO N

MISSION GORGE ROAD

GATE 4

GATE 3

OVERFLOW PARKING

10/07

NORTH

QUALCOMM STADIUM PARKING LOT

GATE 2
QUALCOMM STADIUM TROLLEY STATION

BOOM AREA

BUS ENTRANCE

CAMINO DEL RIO N

8

15

FAIRMOUNT AVENUE

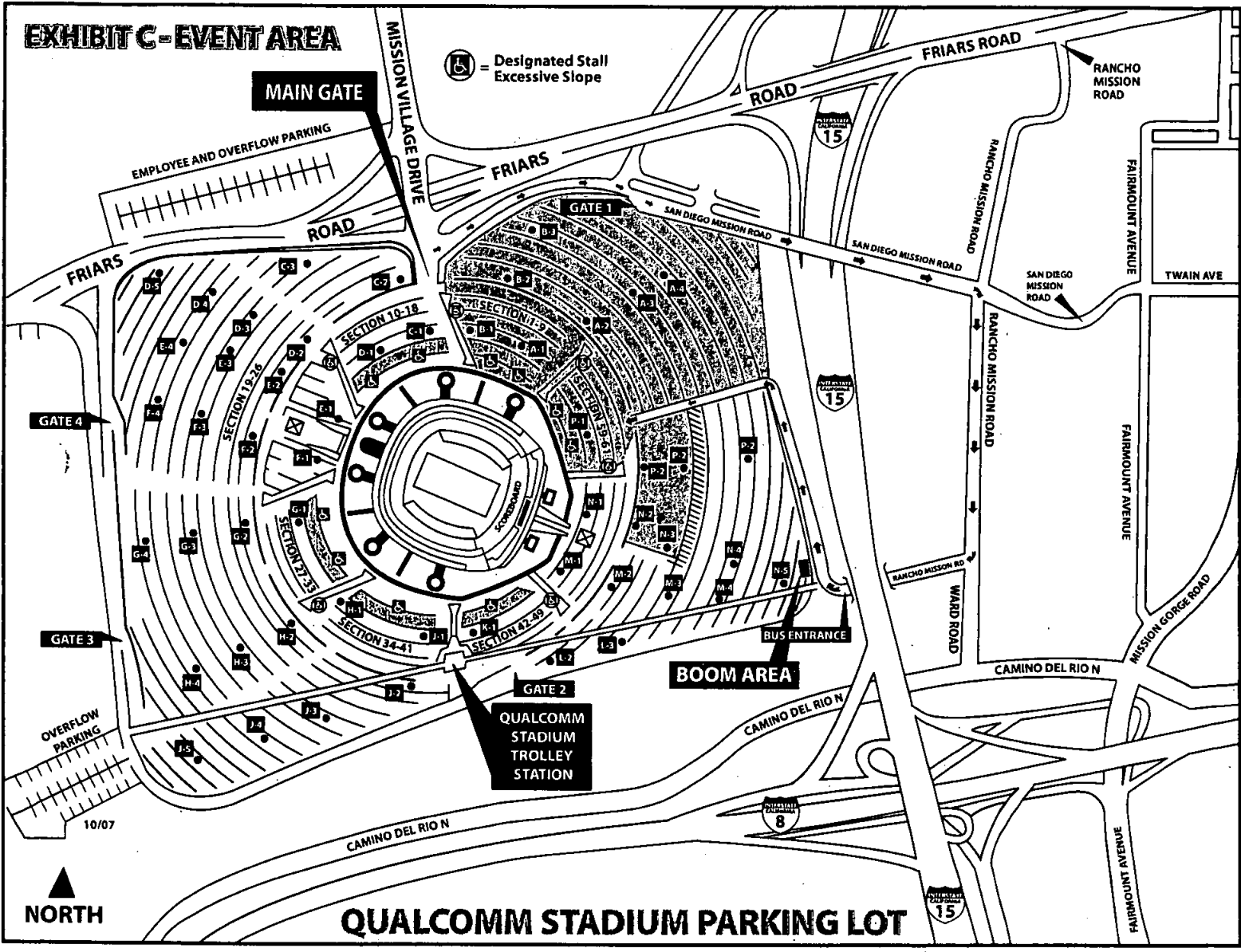


EXHIBIT D – Form of Use Permit

THE CITY OF SAN DIEGO
QUALCOMM STADIUM
9449 FRIARS ROAD
SAN DIEGO, CALIFORNIA 92108
(619) 641-3130

No. _____

- USE PERMIT -

1. The City of San Diego hereinafter called "City," acting by and through the City Manager, or his/her designated representative ("Manager"), does hereby give to _____, whose address is _____, and phone number is _____, hereinafter referred to as "Permittee," the permission to use and occupy those certain Qualcomm Stadium premises hereinafter described at time(s) and date(s), and for purpose(s) as follows:

PREMISES:

Area	Date	Time Period	
_____	_____	_____	Day(s)
_____	_____	_____	Day(s)
Non-Performance Days			
_____	_____	_____	Day(s)
_____	_____	_____	Day(s)
TOTAL MINIMUM RENTAL			\$ _____

Subject to such terms, conditions, limitations and restrictions hereinafter enumerated, Permittee may have and enjoy the use of the stated premises at the time or times aforesaid, for the following purpose(s) only:

This permit shall have no force or effect whatsoever unless and until the Manager shall have executed the same in the space hereinafter provided, and unless Permittee shall have signified acceptance thereof in the space hereinafter provided. Permittee covenants and agrees to perform and abide by each and every term, condition, limitation and restriction hereafter set forth, each of which shall be a condition subsequent to the effect of this Permit. Said conditions, terms, restrictions and limitations are as follows, to wit:

2. **RENT** - Permittee shall pay City as the charge for the use and occupancy of said premises, the following sum(s):

In addition thereto and as part of said charge, Permittee shall pay City for the below listed services, facilities or equipment, the following sum(s):

Gross receipts, if used pursuant to Section 2, shall include all money derived by Permittee from the use and occupancy of the premises whether received or to become due. Gross receipts shall not include, however, admissions taxes, sales taxes, possessory interest taxes, or excise taxes of the City, County, State or Federal Governments or any refund made on admissions. All deductions from gross receipts shall be substantiated to the satisfaction of the Manager.

3. **DEPOSITS** - By _____ Permittee shall deposit with City the sum of _____ Dollars, which sum shall be credited towards the above charges. In addition thereto, at the option of Manager, Permittee shall furnish the Manager by _____ cash in the sum of _____ Dollars.
4. **TIME OF PAYMENT** - Unless indicated otherwise in this Permit, Permittee shall pay all rent and expenses within ten (10) days after the end of the event.
5. **TICKET SALES** - Permittee shall furnish all admission tickets which shall be in a form approved by the Manager. Said tickets shall be purchased from a bonded ticket printing company and a certified copy of the ticket printer's manifest shall be delivered directly to the Manager. Unless indicated otherwise in this Permit, tickets shall be sold through a computerized distribution system. The price schedule for tickets shall be mutually agreed upon by Permittee and Manager and shall be sold only at said prices; provided, however, that Permittee may issue _____ free passes. The Permittee shall allow a representative of City to audit ticket sales and associated records at any time.
6. **CAPACITY** - Permittee shall not sell or distribute or permit to be sold or distributed tickets or passes in excess of the seating capacity of the premises hereinabove described, nor admit thereto a larger number of persons than can safely or freely move about therein. The decision of the Manager in this shall be final. Tickets for standing room shall be sold only upon permission having first been obtained in writing from the Manager and endorsed by the Fire Marshal.
7. **CONCESSIONS** - All concession rights for the sale and dispensing of programs, librettos, periodicals, books, magazines, newspapers, beverages, flowers, tobaccos, candies, concessions, novelties and related merchandise, for the renting of any article for use in the facilities, the taking and/or sale of photographs, and for the catering of food, and all advertising, radio and television broadcasting, transcription and recording rights and parking are hereby expressly reserved to City, and Permittee may not engage in or contract for any of said rights except as may be provided under Paragraph 30 below.
8. **TIME SCHEDULE** - Permittee shall file with the Manager, at least ten (10) days prior to the time scheduled for the use of the premises, a full and detailed outline of the use Permittee desires to make of the premises and any other information as is requested by the Manager.
9. **RIGHT TO ENTRY** - The premises, including the keys thereto, shall at all times be under the control of the Manager and he/her, or his/her duly authorized representative, and members of the Police and Fire Departments of the City of San Diego shall have the right to enter said premises at any time during Permittee's use thereof. City shall have the further right to enter the premises to make repairs thereto at any time which does not interfere with the use thereof by Permittee. Entrances and exits shall be locked and unlocked at such times as may be required by Permittee. Permittee, however, shall, at its own expense, place any necessary security at entrances or exits when the same are unlocked. At no time shall Permittee place its own or any other additional locks on any portion of the premises.
10. **POSTING OF MATERIALS** - Any signs of a commercial sponsor or entity must meet the following requirements: no larger than 120 sq. ft.; not less than 1/2 of the total banner size must be devoted for the Permittee's name or nature of the event; no sponsor's address, telephone, or sales message is allowed. Permittee must submit copy of all signs to the Manager, for approval, one week prior to the event. Failure to submit signs for approval may result in the signs not being permitted.

Permittee hereby agrees to abide by the ordinance of the City of San Diego and other jurisdictions that prohibit the placing of signs advertising the event in the public-right-of-way or on private property. If the Manager is provided with adequate evidence of Permittee's violation of such ordinance, then Permittee shall pay to the City as liquidated damages, not penalty, one days minimum rental fee of the Stadium. This payment is in addition of any fines levied by any jurisdiction. A deposit may be required by the Manager and held for sixty (60) days to recover any liquidated damages.

11. **FACILITY EQUIPMENT AND STAFF** - Rental of the facility may include after event Stadium clean-up, structure lights, rest room operation, and standby maintenance personnel. The Permittee must pay for and/or provide, in numbers to be approved by the Manager, ticket sellers, gatemen, ushers, security personnel, field lights, soundroom and scoreboard, public address announcer, organist, vocalist, and first aid personnel. The Permittee will not be allowed access or use of the "DIRECTORS" or "TEAM OWNER" area, "STADIUM CLUB," "RESTAURANTS," "LOGE LEVEL LOUNGE," and "SKY BOXES," and use or occupancy of these areas shall be reserved to the City or its Permittees unless indicated otherwise. Permittee may be allowed use of the team rooms designated: "VISITING TEAM LOCKER ROOMS," box offices and Press Area.

12. **INSURANCE**

- a. Permittee shall not use or occupy the Stadium until it has obtained all insurance required hereunder in a company or companies acceptable to the City, nor shall Permittee allow any subcontractor or other person use or occupy the Stadium until all insurance required of Permittee or the subcontractor has been obtained.
- b. At Permittee's sole cost and expense, Permittee shall take out and maintain at all times during the term of his Permit the following policies of insurance:
- All applicable insurance for personal injury, bodily injury, and property damage, providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence, subject to an annual aggregate of one million dollars (\$1,000,000) for general liability, completed operations, and personal injury, other than bodily injury, and,
 - Worker's Compensation insurance for all of Permittee's employees who are subject to this Permit, to the extent required by the State of California, providing coverage for combined single limit of at least one million dollars (\$1,000,000) per occurrence;

- c. All insurance required by express provision of this Permit shall be carried only by responsible insurance companies that have been given an "A" rating by AM Best, licensed to do business in the State of California and that have been approved by the City.
- d. The policies required shall expressly provide that:
- The City of San Diego, Qualcomm Stadium Advisory Board, Public Facilities Financing Authority, their officers and employees, are named as additional insured.
 - The insurer waives the right of subrogation against the City and the Stadium Authority and its respective elected officials, officers, employees, agents and representatives.
 - The policies are primary and non-contributing to any insurance that may be carried by the City or the Stadium Authority.
 - They cannot be cancelled or materially changed except after thirty (30) calendar days written notice by the insurer to the City by certified mail.
- e. Permittee shall furnish the City with a certificate evidencing the insurance or copies of all such policies. Permittee may effect, for its own account, insurance not required on this Permit.
13. **INDEMNIFICATION** - Permittee agrees to defend, indemnify, protect, and hold the City, Qualcomm Stadium Advisory Board, Public Facilities Financing Authority and all of its officers, agents and employees harmless from any and all actions, suits, proceedings, liability, claims, demands for, damages or injuries to any person, including injury to Permittee's officers, agents, and employees, and all claims which arise from, are directly connected with or attributed to the Permittee's use and occupancy of the Stadium, negligence or failure to perform services or other obligations of this Permit, or are caused or claim to be caused by the negligence of Permittee, its officers, agents, or employees, and all expenses of investigating and defending against same; provided, however, that this indemnification and hold harmless shall not include any claim arising from the sole negligence or willful misconduct of the City or the Stadium Authority, their officers, agents or employees.
- Permittee warrants and guarantees that all copyrighted material to be performed has been duly licensed or authorized by the copyright owners or their representatives and agrees to indemnify and holds harmless the San Diego Stadium Authority Board of Governors, the City of San Diego, and their officers, employees and agents from any and all claims, losses or expenses (including without limitations, litigation expenses and attorneys' fees) incurred with regard thereto.
14. **ATTORNEYS' FEES** - If either party brings any action or proceeding to enforce, protect or establish any right or remedy arising out of or based upon this Permit, including but not limited to the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees.
15. **INJURY TO PREMISES AND DAMAGES** - Permittee shall not do or permit to be done upon said premises, anything that will injure, mar or in any manner deface said premises. Permittee shall be responsible for repairing any damage to the premises as a result of the event taking place, except for normal wear and tear.
16. **CITY'S RIGHT TO TERMINATE FOR DEFAULT**
- If the Permittee fails to perform or adequately perform any obligation required by this Permit the Permittee's failure shall constitute a default.
 - If the Permittee fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from the City specifying the nature of the default, the City may immediately cancel and/or terminate this Permit, and terminate each and every right of the Permittee, and any person claiming any rights by or through the Permittee under this Permit.
 - The rights and remedies of the City enumerated herein are cumulative and shall not limit the City's rights under any other provision of this Permit, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Permit or hereinafter enacted or established, that may be available to the City against the Permittee.
17. **CITY'S RIGHT TO TERMINATE FOR BANKRUPTCY OR ASSIGNMENT FOR THE BENEFIT OF CREDITORS**
- If Permittee 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 Permittee, immediately cancel and/or terminate this Permit, and terminate each and every right of Permittee and any person claiming any rights or through Permittee under this Permit.
 - The rights and remedies of the City enumerated herein are cumulative and shall not limit the City's rights under any other provision of this Permit, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Permit or hereinafter enacted or established, that may be available to the City against Permittee.
18. **COVENANTS AND CONDITIONS** - All provisions hereof expressed as either covenants or conditions on the part of the City or Permittee to be performed or observed shall be deemed to be both covenants and conditions.
19. **COMPLIANCE WITH CONTROLLING LAW** - The Permittee shall comply with all applicable laws, ordinances, rules, regulations and policies of the federal, state and local governments as they pertain to this Permit. In addition to the foregoing, Permittee shall comply immediately with any and all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules or regulations. The laws of the State of California shall govern and control the terms and conditions of this Permit.
20. **AMERICANS WITH DISABILITIES ACT** - Every person or organization awarded a Permit, lease, or grant by the City of San Diego acknowledges and agrees that it is aware of and will comply with Council Policy 100-04, adopted by Resolution No. 282153 relating to the federally-mandated American with Disabilities Act (ADA). Permittee will be individually responsible for its own ADA program.
21. **INTEGRATED AGREEMENT** - This Permit including Attachments, Exhibits, and/or addends contains all of the agreements of the parties and all prior negotiations and agreements are merged herein. This Permit cannot be amended or modified except by written agreement, and mutually agreed upon by the City and Permittee.
22. **SEVERABILITY** - The unenforceability, invalidity or illegality of any provision of this Permit shall not render any other provision unenforceable, invalid or illegal.
23. **WAIVER** - The failure of the City to enforce a particular condition or provision of this Permit shall not constitute a waiver of that condition or provision or its enforceability.
24. **HEADINGS** - All headings in this permit are for convenience only and shall not affect the interpretation of this permit.
25. **NON-ASSIGNMENT** - Permittee shall not assign or delegate the rights and obligations under this Permit, nor any monies due or to become due, without the City's prior written approval. An assignment or delegation in violation of this paragraph shall constitute a default and is grounds for immediate termination of this Permit, at the sole discretion of the City.
26. **MUNICIPAL POWERS** - Nothing contained in this Permit shall be construed as a limitation upon the powers of the City as a chartered City of the State of California.
27. **CALIFORNIA LAW** - This Permit shall be construed and interpreted in accordance with the laws of the State of California. Permittee covenant agree to submit to the personal jurisdiction of any state court in the State of California for any dispute, claim or matter arising out of or related hereto.
28. **POSSESSORY INTEREST TAX** - A possessory interest subject to property taxation may be created by virtue of this Permit. In the event that a possessory interest is created Permittee agrees to pay all such possessory interest taxes and the City shall not be liable for the payment of such taxes. Permittee further agrees that the payment of an such taxes shall not reduce any consideration paid to the City pursuant to this Permit or any other agreement Permittee has with the City for the sharing of revenue generated by the use of the City's facilities authorized pursuant to this Permit.
29. **RETENTION OF RECORDS** - Permittee shall retain and maintain accurate records and documents relating to the use of the Stadium pursuant to this Permit for a minimum of three (3) years after final payment by the City, and shall make them available for inspection and audit by the City.
30. **MISCELLANEOUS PROVISIONS**

DATED at San Diego, California, _____, 20____.

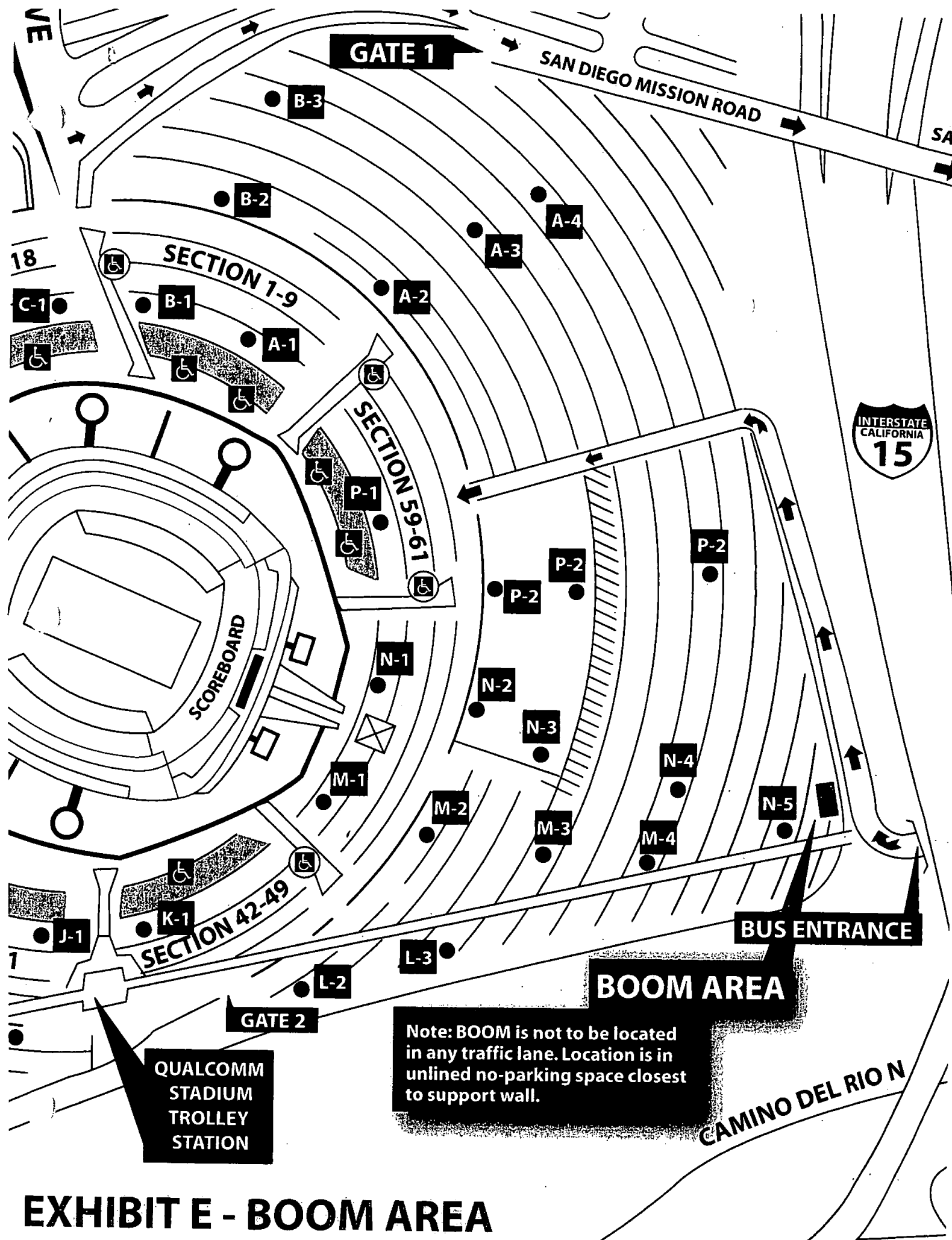
ACCEPTED this _____ day of _____, 20____.

THE CITY OF SAN DIEGO

By _____
PERMITTEE

By _____
STADIUM MANAGER

EXHIBIT E – Boom Area



GATE 1

SAN DIEGO MISSION ROAD

INTERSTATE CALIFORNIA 15

BUS ENTRANCE

BOOM AREA

CAMINO DEL RIO N

GATE 2

QUALCOMM STADIUM TROLLEY STATION

Note: BOOM is not to be located in any traffic lane. Location is in unlined no-parking space closest to support wall.

EXHIBIT E - BOOM AREA