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 MEDIA ARTS CENTER SAN DIEGO, a California non-profit public benefit corporation ("PERMITTEE"), to be effective the first day of the following month as of the date the Permit is signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

RECITALS

A. CITY is the owner of real property located at 3795 Fairmount Avenue, Suite C, San Diego, California 92105, consisting of approximately 8,403 square feet (the "Property"), commonly known as City Heights Idea Lab Broadcasting Hub, and as depicted on **Exhibit A: Property**, attached hereto.

B. PERMITTEE wishes to enter upon and use a portion of the Property, as depicted on **Exhibit B: Permit Area**, including approximately 1,290 square feet (the "Permit Area"), to provide video production training/education opportunities for youth and adults, to ensure there is regular content produced by City Heights residents, and to promote such content via Speak City Heights and/or other cable access/online/media outlets.

NOW THEREFORE, based upon the forgoing Recitals, which are incorporated into this Permit by this reference, and for valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

1. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE to enter upon and occupy the Permit Area solely for the Permitted Use, defined below.

2. Revocable License. This Permit is not a lease. It is a non-exclusive license to access and use the Permit Area for the purposes stated herein and may be revoked at will by CITY pursuant to requirements of Paragraph 38, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S revocation or termination of this Permit. CITY may at all times enter upon the Permit Area.

3. Term. The term of this Permit ("Term") shall be three (3) years, commencing on the Effective Date.

4. Permit Fee. The processing fee for this Permit is hereby waived because the Permitted Use, as defined in Section 6 below, provides a public benefit by (1) providing youth and adults in the City Heights community access to video production training and educational

opportunities, and (2) allowing City Heights residents to produce their own live stream television shows and/or short-form video content via grants and foundation support (*e.g.*, California Endowment for year one).

5. Holdover. Any hold over by PERMITTEE after the expiration or earlier termination of this Permit shall not be considered a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area. The occupancy of the Permit Area after the expiration or earlier termination of this Permit shall constitute a month-to-month at will revocable license, and all other terms and conditions of this Permit shall continue in full force and effect, except that PERMITTEE shall then pay to CITY fair market rent as determined by CITY.

6. Use of Permit Area. PERMITTEE may utilize the Property only for ingress and egress to the Permit Area, which PERMITTEE shall coordinate with CITY. PERMITTEE shall use the Permit Area solely to (1) provide video production training/educational opportunities for youth and adults; and (2) manage day-to-day operations of PERMITTEE's production studio/hub, allowing City Heights residents to produce their own live stream television shows and/or short-form video content (collectively, the "Permitted Use"). PERMITTEE shall use the Permit Area solely for the Permitted Use and for no other purpose whatsoever without CITY's prior written consent in each instance. PERMITTEE shall not allow any person to clean vehicles or perform any mechanical work on any vehicles within the Permit Area. PERMITTEE shall install and maintain drip pans under each vehicle parked in the Permit Area.

7. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights of way pertaining to the Property, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area for the Permitted Use, relative to any such superior interest. If PERMITTEE's use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

8. Restoration of the Permit Area. Upon thirty (30) days after the expiration or earlier termination of this Permit, PERMITTEE shall restore the Permit Area to the same condition as existed immediately prior to the Term's commencement, subject to the satisfaction of the City.

9. CITY's Consent, Discretion. CITY's consent or approval under this Permit shall mean the written consent or approval of the Mayor of San Diego or his or her designee ("Mayor"), unless otherwise required by law or expressly provided herein, and shall be made in the Mayor's discretion, subject to all applicable laws, rules, regulations, and directives of competent governmental authorities.

10. Unauthorized Activities. PERMITTEE shall not engage in any activity on the Property other than the Permitted Use. Any use of the Property that was not previously approved in

writing by the CITY or otherwise authorized by this Permit, shall subject PERMITTEE to being liable for all costs and damages associated with inspecting, remediating, and/or taking other actions to ensure that the Property and the Permit Area shall be returned to its condition on the Effective Date, at PERMITTEE's sole cost and expense and subject to the CITY's satisfaction, as well as being a basis for immediate termination of this Permit, all of which shall be subject to the sole discretion of the CITY.

11. Improvements/Alterations. PERMITTEE shall not construct any improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area except as otherwise permitted hereunder. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.

12. Insurance. PERMITTEE shall not enter or come onto the Property, nor begin any use of the Property under this Permit until it has done all of the following: (a) obtained, and provided to the CITY, insurance certificates reflecting evidence of all insurance required below, however, the CITY reserves the right to request, and the PERMITTEE shall submit, copies of any policy upon reasonable request by the CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. PERMITTEE's liabilities, including but not limited to PERMITTEE's indemnity obligations, under this Permit, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Permit and PERMITTEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Permit may be treated as a material breach of contract by the CITY. The PERMITTEE shall not modify any policy or endorsement thereto which increases the CITY's exposure to loss for the duration of this Permit.

12.1 Types of Insurance. At all times during the term of this Permit, the PERMITTEE shall maintain insurance coverage as follows:

a. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of $2 million per occurrence and subject to an annual aggregate of $4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

b. Commercial Automobile Liability. For all of the PERMITTEE's automobiles including owned, hired, and non-owned automobiles, the PERMITTEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or

an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of $1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

c. Causes of Loss-Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss-Special Form Property Insurance on all of PERMITTEE's insurable property related to the Permitted Use of the Permit Area under this Permit or the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver a certificate of such insurance to the CITY's Real Estate Assets Department.

d. Workers' Compensation. For all of the PERMITTEE's employees who are subject to this Permit and to the extent required by the applicable state or federal law, the PERMITTEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of $1 million of employer's liability coverage, and the PERMITTEE shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents, and representatives.

12.1.2 Deductibles. All deductibles on any policy shall be the responsibility of the PERMITTEE and shall be disclosed to the CITY at the time the evidence of insurance is provided.

12.1.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the CITY. The CITY will accept insurance provided by non-admitted, "surplus lines" carriers on if the carrier is authorized to do business in the State of California and is included on the list of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

12.1.4 Modification. To assure protection from and against the kind and extent of risk existing with the Permitted Use, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Permitted Use.

12.1.5 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Property or otherwise related

to the Permitted Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, photos or video, if any, and other pertinent information.

12.1.6 Severability of Interest. Each policy (except Workers' Compensation and Employers Liability) shall provide that PERMITTEE'S insurance shall apply separately to each insured against whom claim is made or suit is bought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

12.1.7 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and obtain replacement insurance as soon as possible.

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

Commercial General Liability Insurance Endorsements.

i. Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of (a) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf, (b) PERMITTEE's products, (c) PERMITTEE's work, including but not limited to PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf, or (d) premises owned, leased, controlled or used by PERMITTEE.

ii. Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents, and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers,

employees, agents and representatives shall be in excess of PERMITTEE"s insurance and shall not contribute to it.

iii. Severability of Interest. The policy or policies must be endorsed to provide that the PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Automobile Liability Insurance Endorsements.

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

v. Severability of Interest. The policy or policies must be endorsed to provide that PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Worker's Compensation Insurance Endorsements

vi. Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the CITY and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the CITY.

12.2 PERMITTEE shall have the right to self-insure with respect to any of the insurance required in this section. PERMITTEE shall provide to CITY evidence of self-insurance satisfying the requirements in this section and indicating PERMITTEE's self-insured status. Insurance or equivalent risk management covered by a joint powers' insurance authority may also satisfy the provisions of this section.

13. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE's officers, employees, agents, contractors, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area, including damages arising out of release of hazardous materials, and all expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any established liability arising from the sole negligence or willful misconduct of CITY, its elected

officials, officers, representatives, agents, and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

14. Subcontractors' Insurance and Indemnification of CITY. Unless PERMITTEE's insurance covers work performed by all of PERMITTEE's subcontractors working on or in the Permit Area, PERMITTEE shall require PERMITTEE's subcontractors to indemnify the CITY and to maintain insurance coverage to the same extent that PERMITTEE is required to indemnify the CITY and maintain insurance coverage pursuant to Sections 12 and 13 herein, including all obligations to provide documentation and all of the endorsements set forth in Section 12, including naming the City of San Diego and its respective elected officials, officers, employees, agents, and representatives as an Additional Insured in each insurance policy.

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

16. Equal Opportunity. PERMITTEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. PERMITTEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. PERMITTEE shall cause the foregoing provisions to be inserted in all of PERMITTEE's contracts for work related to this Permit so that such provisions will be binding upon each of PERMITTEE's contractors. PERMITTEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request PERMITTEE shall submit a current Workforce Report. PERMITTEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Permit and debarment from participating in CITY contracts for a period of not less than one (1) year.

17. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. PERMITTEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Permit from local residents and firms as opportunities occur. PERMITTEE agrees to hire qualified local residents and firms whenever feasible.

18. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with the Permitted Use and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.

19. Nuisance and Noise Disturbances. PERMITTEE shall not use the Permit Area in any manner which, in the opinion of the CITY creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area or that violates the CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).

20. No Assignment. PERMITTEE shall not assign or sublicense any rights granted by this Permit nor any interest therein without the prior written approval of the CITY. Approval of any such proposed assignment may be withheld at the sole and absolute discretion of the CITY. Any assignment by operation of law shall automatically terminate this Permit.

21. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising in the Permit Area without CITY's prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at PERMITTEE's cost.

22. Security and Safety of Permit Area. PERMITTEE shall bear sole responsibility for the security and safety of the Permit Area during the Term relating to any work performed as authorized by this Permit or under the direction of PERMITTEE. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of the Permit Area, as appropriate, immediately following each day's work to ensure security and safety. PERMITTEE shall comply with all applicable laws, rules, regulations, and directives of competent governmental authorities, at PERMITTEE's sole cost and expense, with respect to maintaining the Permit Area in a safe and secure manner during the Term. CITY has no obligation to provide oversight of the Permitted Use or staffing or resources for the maintenance of the Permit Area during the Term.

23. Maintenance of Permit Area. PERMITTEE shall, at PERMITTEE's sole cost and expense, maintain the Permit Area and all improvements, fixtures, structures, or installations thereon in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris, litter, weeds, and brush to CITY's reasonable satisfaction. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair, or replace improvements, fixtures, structures, or installations on the Permit Area.

24. Entry and Inspection. CITY, upon reasonable notice to PERMITTEE, may enter upon the Permit Area to inspect and maintain the Permit Area as CITY deems necessary.

25. Encumbrances. PERMITTEE shall keep the Permit Area free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected

with this Permit or the Permitted Use. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost, or expense, including without limitation reasonable attorney fees and costs, relating to or charged against the Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to lien or encumber the Permit Area pursuant to the California Civil Code.

26. Compliance with Laws. PERMITTEE shall, at all times in its use, occupancy, and maintenance of the Permit Area, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws, and direction of competent governing authorities now in effect or which may hereafter be in effect, which pertain to the Permitted Use.

27. Hazardous Materials. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale, or release of any Hazardous Substance or otherwise regulated substances in, on, under, or from the Permit Area. PERMITTEE and PERMITTEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Permit Area without CITY's prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a Hazardous Substance or hazardous waste.

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

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

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

27.4 Removal. If PERMITTEE or PERMITTEE's agent has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances to the Permit Area, PERMITTEE or PERMITTEE's contractor or agent shall remove all Hazardous Substances in any type of container, equipment or

device from the Permit Area immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Permit Area and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Permit Area. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.

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

27.6 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Permit Area, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. PERMITTEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Permit Area.

27.7 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area resulted in any Hazardous Substance being released on, from or beneath the Permit Area, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by CITY, county, state, or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Permit Area, then the environmental assessment shall include a discussion of such substances

with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit Area and compliance with environmental laws and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

28. Repair. PERMITTEE shall be responsible, at its sole cost and expense, for the repair or replacement of any damage to the Property caused directly or indirectly by PERMITTEE's use of the Property, including items that CITY staff has determined to be damaged. PERMITTEE shall comply with the direction of CITY's Real Estate Assets Department with respect to the method of any repairs or replacement arising under this Permit.

29. Vehicular Traffic. All vehicular traffic shall be confined to concrete, asphalt or decomposed aggregate surfaces unless otherwise approved in writing by CITY Contact prior to the commencement of the Permit.

30. Utilities. PERMITTEE shall order, obtain and pay for all utilities and service charges in connection with its use of the Permit Area.

31. Liability for Loss, Injury or Damage. In addition to any other assumption of liability set forth herein, and excluding any loss or damage to the extent resulting from the CITY's sole negligence or willful misconduct, PERMITTEE agrees that it assumes the sole risk and responsibility for any damage, destruction or theft of PERMITTEE's equipment, materials, or personal property placed on the Permit Area and for any injury to persons which occurs on the Permit Area as a result of the Permitted Use.

32. Subcontractors. PERMITTEE shall provide a list of any and all contractors and subcontractors to CITY Contact, including name, address, email, facsimile and phone number. All construction work requiring a licensed contractor pursuant to the Contractors' State Licensing Laws (California Business & Professions Code sections 7000-7191) shall be done by contractors licensed within the State of California.

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

PERMITTEE shall comply with the CITY's Jurisdictional Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries as adopted by the CITY's City Council on July 1, 2015, via Resolution No. 309791, as may be amended.

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

34. Prevailing Wages. PERMITTEE acknowledges that PERMITTEE is the awarding body pursuant to California Labor Code section 1722, for any contracts related to PERMITTEE's use of the Permit Area that may require the payment of prevailing wages pursuant to State law and/or San Diego Municipal Code section 22.3019. PERMITTEE agrees to comply with all laws related to the payment of prevailing wages on public works contracts, including without limitation the requirements contained in California Labor Code sections 1720-1861. PERMITTEE shall deliver to City, upon request, evidence of compliance with the State prevailing wage laws in form and content reasonably satisfactory to CITY.

35. Grading and Barriers. PERMITTEE shall not change the surface grade or construct any permanent barriers within the Permit Area. Any violations shall be corrected by PERMITTEE at its sole expense to the satisfaction of the CITY and are grounds, at the CITY's option, for immediate termination of this Permit.

36. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY's 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 failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.

37. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Permit Area. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permitted Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations, and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition. PERMITTEE acknowledges and agrees that unless set forth in this Permit, CITY has no obligation to improve, modify, repair, replace, alter, secure, or otherwise develop the Permit Area at any time either prior to, on or after the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area. PERMITTEE accepts and assumes all risk of harm to all

persons and property from any defects in the Permit Area or any improvements thereon and shall be solely responsible therefor.

38. 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.

39. Termination. CITY may terminate this Permit for any reason upon ninety (90) days prior written notice delivered to PERMITTEE by CITY; however, in the event of a default or emergency during which the CITY in its sole discretion determines it necessary to terminate the Permit, termination may occur upon 24 hours prior written notice. PERMITTEE may terminate this Permit for any reason upon ninety (90) days prior written notice delivered to CITY by PERMITTEE.

40. PERMITTEE's Waiver. PERMITTEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives, and agents for any burden, expense or loss which PERMITTEE incurs as a result of CITY's revocation or termination of this Permit.

41. California Public Records Act. CITY shall determine, in its sole discretion, whether this Permit or information provided to CITY by PERMITTEE pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). PERMITTEE shall hold CITY, its elected officials, officers, employees, agents, and representatives harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.

41.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by PERMITTEE as a result of CITY's disclosure or non-disclosure of this Permit or PERMITTEE information requested pursuant to the CPRA. PERMITTEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH PERMITTEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF THIS PERMIT OR ANY PERMITTEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

42. 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.

43. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.

44. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them and pertaining to this Permit and the Permitted Use. Any modification,

alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.

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 CITY (referred to herein as the "CITY Contact") 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
(619) 236-6020

MEDIA ARTS CENTER SAN DIEGO
Attention: Ethan van Thillo
2039 29th Street
San Diego, CA 92104
(619) 230-1938

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

47. Permits & Approvals. PERMITTEE, at PERMITTEE's sole cost and expense, shall obtain all required permits, licenses, and approvals from the applicable local, state, and federal authorities, including without limitation from CITY.

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

48.1 PERMITTEE and Sub-permittee Requirement. The Equal Pay Ordinance applies to any sub-permittee of the Permit Area to the same extent as it would apply to PERMITTEE. PERMITTEE shall require sub-permittees to certify compliance with the Equal Pay Ordinance.

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

49. Disabled Access Compliance. PERMITTEE shall, as applicable to the Permit Area and PERMITTEE's possession, use, and occupancy of the Permit Area, comply with all

accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable state and federal laws, rules, and regulations of competent governmental authority enacted protecting the rights of people with disabilities. When a conflict exists between any federal or state accessibility requirements, PERMITTEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). PERMITTEE's compliance shall include without limitation the following:

49.1 PERMITTEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment;

49.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of PERMITTEE;

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

49.4 Where required by law, all improvements, fixtures, structures, or installations on the Permit Area will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Permit Area which deny access to individuals with disabilities. All improvements and alterations will be at PERMITTEE's sole expense. PERMITTEE shall, at PERMITTEE's sole cost and in conformance with all applicable building codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the Permit Area which deny access to disabled persons; and

49.5 PERMITTEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the provisions of this section.

49.6 PERMITTEE's failure to comply with the accessibility requirements of this section or submitting false information in response to these accessibility requirements, or both, will be a default of this Permit.

49.7 PERMITTEE and each of its sublicensees, if any, shall be individually responsible for their own ADA compliance program.

50. Equal Benefits. PERMITTEE will comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require applicable parties of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Permit, PERMITTEE

certifies that it will maintain such equal benefits throughout the Term of this Permit. PERMITTEE'S failure to maintain equal benefits will be a default of this Permit.

51. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Permit if PERMITTEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of PERMITTEE for this Permit. It is not the intent of this policy that these provisions apply to members of the City Council.

52. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area during the Term, including the land and any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE, or levied by reason of PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area, including without limitation licensing and permitting costs and fees. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE's payment for such taxes, fees, and assessments shall not reduce any payment due CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from PERMITTEE's possession, use, or occupancy of the Permit Area.

53. Performance and Payment Bonds: If PERMITTEE constructs any type of improvements or alterations on the Permit Area, CITY may require PERMITTEE to provide CITY with a performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed and a payment bond in the amount of one hundred percent (100%) of the total amount payable under the contract for construction of the improvement/alteration. The bonds shall be corporate surety bonds or other security satisfactory to CITY. The bonds shall insure that the construction be completed in accordance with this PERMIT and all applicable laws and regulations. At the option of CITY, in the event the construction is not completed in full satisfaction of the CITY and this Permit, CITY may use the performance bond to remove the uncompleted improvements/alterations and restore the Permit Area to a condition satisfactory to CITY. The bond shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.

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

55. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

56. Governing Law. This Permit shall be governed, construed, and enforced in accordance with the laws of the State of California. Any lawsuit to enforce this Permit shall be filed in the Superior Court of California, County of San Diego, Central Division.

57. 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.

58. Charter Section 225. Pursuant to City Charter Section 225, PERMITTEE and each of its assignees and subtenants shall make a full and complete disclosure of the name and identity of all natural persons who will receive more than ten percent (10%) of the contracted amount or who owns more than ten percent (10%) of the entity entering into this Permit or receiving or assuming any rights or obligations under this Permit.

59. Exhibits. All exhibits referenced in this Permit are incorporated into this Permit by this reference. In the event of a conflict between this Permit and any exhibit to this Permit, the terms, conditions, and obligations of this Permit shall control.

60. Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.

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61. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____
Penny Maus, Director
Real Estate Assets Department

MEDIA ARTS CENTER SAN DIEGO,
a California non-profit public benefit corporation

By: _____
Ethan van Thillo

Approved as to form this 28th day
of October, 2021.

MARA W. ELLIOTT, City Attorney

By: _____
Name: Julie Gough Inman
Title: Deputy City Attorney

I:\READ\FARST\MEDIA ARTS CENTER SAN DIEGO\Media Arts Center Use and Occupancy Permit 9.22.21

Exhibit A: Property

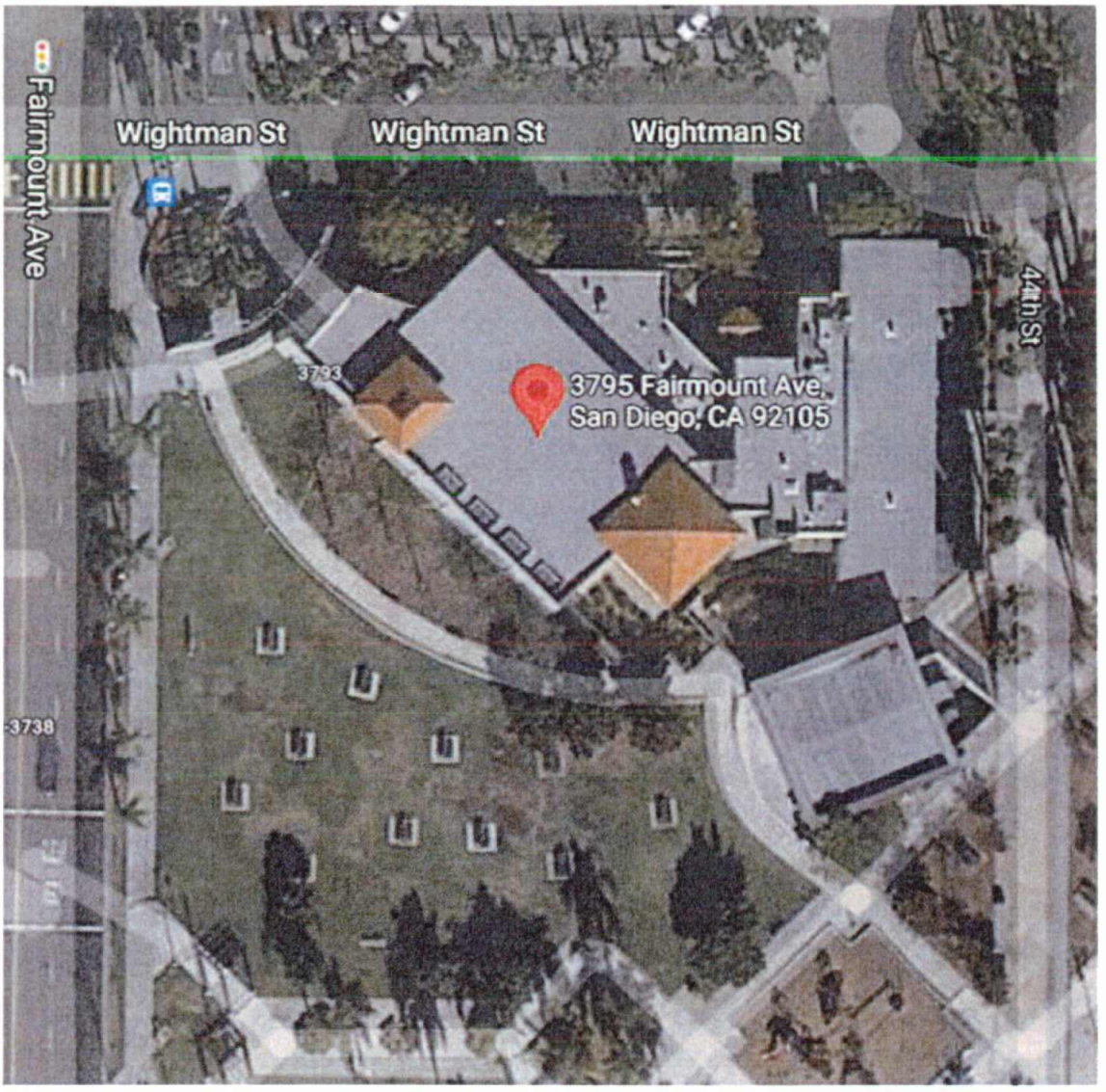


Exhibit B: Premises

