



Real Estate Assets Department

SDC003

US Navy Special Warfare Group One

R301PM-071-ADD

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



"NSW"

**CITY OF SAN DIEGO
RIGHT-OF-ENTRY PERMIT
(Naval Special Warfare)**

THIS CITY OF SAN DIEGO RIGHT-OF-ENTRY PERMIT ("Permit") is entered into by and between CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and the DEPARTMENT OF THE NAVY, NAVAL SPECIAL WARFARE GROUP ONE, ACTING BY AND THROUGH NAVAL FACILITIES ENGINEERING SYSTEMS COMMAND SOUTHWEST ("PERMITTEE"), to be effective on the date this Permit is approved by the San Diego City Attorney as shown on the signature page to this Permit ("Effective Date"). PERMITTEE and CITY are sometimes referred to in this Permit, each individually, as a "Party" or, collectively, as the "Parties."

RECITALS

- A. PERMITTEE has requested permission to conduct training at CITY-owned property specifically described in Section 1.

The training will include the San Diego Police Department and serves a public purpose by providing an opportunity for law enforcement to train under unique circumstances, which training further enhances public safety.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Permit Area. The permit area shall mean that certain CITY-owned real property located at the San Diego Police and Fire Training Facility, 4230 Spruance Road, San Diego, CA, 92101 ("Permit Area"). The San Diego Police and Fire Training Facility is primarily used for conducting Entry and Scenario based training for law enforcement.
2. Right to Enter and Use. Subject to the terms and conditions of this Permit, CITY authorizes and permits PERMITTEE, its officers, employees, agents, contractors, invitees, and guests to enter upon and use the Permit Area solely for the Permit Use (as defined in Section 5).
3. Term. The term of this Permit shall be for three (3) years, commencing on the Effective Date and expiring on the third anniversary of the Effective Date ("Term").
4. City Contact and Scheduling of Use. The "City Contact" for this Permit is San Diego Police Officer II Tristan Holmes, phone 415-572-8747 or other City Special Response Team Designee designated by CITY in a written notice to PERMITTEE. PERMITTEE must contact the City Contact to schedule specific days and hours of use of the Permit Area at least twenty business days prior to PERMITTEE's proposed use of the Permit Area. PERMITTEE understands and acknowledges that the Permit Area may not be available for use on one or more specific requested dates. PERMITTEE agrees that City is not obligated to make the Permit Area available for PERMITTEE's use and that City shall not be liable to PERMITTEE in the event that the Permit Area is not available on one or more specific dates. PERMITTEE shall not enter upon or use the Permit Area without prior written approval from the City Contact.

5. Permit Use. PERMITTEE may use the Permit Area solely for the purposes of movement training with 20-30 individuals utilizing Ultimate Training Munitions (UTM), which are non-lethal training ammunitions, live role players and practice devices ("Permit Use"). 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, which consent may be given or withheld in CITY'S sole and absolute discretion. PERMITTEE use of the Permit Area will generally be on an intermittent basis throughout the Term (estimated up to 15 days per 12 months).

6. Federal Agency Provisions

- 6.1 Federal Laws. To the extent this Permit is governed by the Contract Disputes Act of 1978 (41 U.S.C. §§ 7101-7109) ("Contract Act"), the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680) ("FTCA"), and/or the Anti-Deficiency Act (31 U.S.C §§ 1341-1344) ("Anti-Deficiency Act"), the provisions of the Contract Act, the FTCA, and/or the Anti-Deficiency Act shall supersede any contradictory provisions of this Permit. The Contract Act, FTCA, and Anti-Deficiency Act are sometimes referred to, collectively, in this Permit as the "Federal Laws" and, each, individually, as applicable, a "Federal Law."
- 6.2 No PERMITTEE Commitment of Funds. This Permit is not an obligation of funds by PERMITTEE. Nothing in this Permit is intended to imply that the United States Congress will, after the Effective Date, appropriate funds for any obligation of PERMITTEE under this Permit or that PERMITTEE is violating the Anti-Deficiency Act by making commitments or guarantees in advance of a United States Congress appropriation of the right type and amount to PERMITTEE.
- 6.3 Federal Tort Liability. Federal law prohibits PERMITTEE from indemnifying CITY to the extent that PERMITTEE's liability would be indefinite, indeterminate, or potentially unlimited (31 U.S.C. § 1341). Instead, the FTCA and the Military Claims Act (10 U.S.C. §§2731-2740) ("MCA") provide legal means for compensating claimants that have suffered personal injury, death, or property loss caused by a negligent or wrongful act or omission of an employee of the government (as defined in 28 U.S.C. §2671). PERMITTEE agrees to promptly consider and adjudicate all claims for personal injury, death, or property loss arising out of its use of the Permit Area under this Permit and caused by a negligent or wrongful act or omission of an employee of the government while acting within the scope of his office or employment as determined in accordance with the applicable provisions of the FTCA, MCA, the Federal Employees Compensation Act (5 U.S.C. §§ 8101-8152) ("FEC"), or other applicable law. PERMITTEE further agrees to promptly pay all compensation and damages for personal injury, death, or property loss arising out of its use of the Permit Area under this Permit to the extent caused by a negligent or wrongful act or omission of an employee of the government while acting within the scope of his office or employment as determined in accordance with the applicable provisions of the FTCA, MCA, FEC, or other applicable law.

7. Damage. PERMITTEE shall conduct its operations in an orderly manner and shall leave the Permit Area in as clean and good a condition as when PERMITTEE entered the Permit Area under this Permit. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of the Permit Area while in use by PERMITTEE. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris, and litter caused by the Permit Use. Subject to Section 6, if PERMITTEE damages any CITY real or personal property or PERMITTEE'S use of the Permit Area requires excessive cleanup of the Permit Area, PERMITTEE shall promptly inform the City Contact and exercise good faith efforts to reimburse CITY for the full costs CITY incurs in cleaning the Permit Area, repairing damage to the Permit Area, or replacing or repairing damaged personal property on the Permit Area, within sixty (60) calendar days after PERMITTEE receives written notice of such costs from CITY, including an itemization of the costs and supporting documentation.
8. Reserved.
9. Restore and Vacate. At the conclusion of each scheduled use of the Permit Area by PERMITTEE, PERMITTEE shall restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and vacate the Permit Area. Upon expiration or earlier termination of the Term of this Permit, PERMITTEE shall immediately cease all operations on the Permit Area and vacate the Permit Area.
10. Security and Safety of Permit Area. CITY agrees not to authorize others to enter the Permit Area during PERMITTEE'S scheduled use of the Permit Area without prior written permission from PERMITTEE. CITY consents to PERMITTEE'S placement of guards at various places on the Permit Area to prevent observation of or participation in the Permit Use by unauthorized persons. CITY may, however, enter the Permit Area at any time to provide notice of termination of this Permit. PERMITTEE shall bear sole responsibility for the security and safety of the Permit Area during any period that PERMITTEE has scheduled the use of the Permit Area. CITY has no obligation to provide oversight, staffing, or other resources for PERMITTEE'S personnel and/or Permit Use during any period that PERMITTEE has scheduled the use of the Permit Area.
11. Permit Fee. In consideration of the public benefit provided to CITY by the Permit Use, CITY agrees that the permit fee for the Permit Area will be waived during the Term.
12. 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 regarding any other discretionary action relating to PERMITTEE'S use of the Permit Area. Discretionary action includes, without limitation, re-zonings, variances, environmental clearances, and all other required governmental approvals.
13. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of CITY'S Mayor or his or her designee ("Mayor"), in the Mayor's sole and absolute discretion, unless otherwise expressly provided in this Permit or required by law.

14. Terminable License. This Permit is not a lease. It is a terminable at-will license to use CITY-owned Permit Area. Either CITY or PERMITTEE may terminate this Permit at any time, for any reason or no reason, with three (3) calendar days prior written notice to the other Party; provided, however, in the event of a default, or an emergency during which CITY, in its sole and absolute discretion, determines it necessary to terminate this Permit, CITY may terminate this Permit upon 24 hours prior written notice to PERMITTEE. CITY shall not be obligated for any loss, financial or otherwise, that may be incurred by PERMITTEE as a result of termination of this Permit. PERMITTEE expressly waives all claims for expenses, burdens, or losses PERMITTEE might incur as a result of CITY'S termination of this Permit.
15. No Holdover. If PERMITTEE continues to use the Permit Area after the expiration, such use 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 use the Permit Area after the expiration or earlier termination of this Permit, all of the terms and conditions of this Permit shall apply to such use. CITY'S acceptance of such compensation shall neither constitute a renewal nor extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area.
16. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, permits, and licenses, easements, rights-of-way, or other interests affecting or relating to the Permit Area, whether or not of record, existing on the Effective Date ("Superior Interests"). PERMITTEE shall obtain all licenses, permits, agreements, or other authorizations required from holders of Superior Interests as may be or become necessary or reasonably advisable to allow its use of the Permit Area. If PERMITTEE'S use of the Permit Area is or becomes inconsistent or incompatible with a 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.
17. Reserved.
18. Reserved.
19. Improvements/Alterations. Except as specifically authorized by this Permit, PERMITTEE shall not construct any improvements, structures, utilities, or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY, which consent may be given or withheld in CITY'S sole and absolute discretion. 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, whether necessary or desirable for the Permit Use or otherwise.
20. Reserved.
21. Insurance. PERMITTEE shall not enter the Permit Area, nor begin any use of the Permit Area under this Permit until it has done all of the following: (a) obtained, and provided to CITY, insurance certificates reflecting evidence of all insurance required in this Section 21; provided, however, CITY reserves the right to request, and PERMITTEE shall deliver to CITY, copies of each insurance policy upon reasonable request by CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that all insurance policies contain

the specific provisions required in this Section 21. Alternatively, if PERMITTEE is self-insuring against risks otherwise required to be insured against in this Section 21, PERMITTEE shall have provided a letter of self-insurance relating to such risks. 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 or self-insurance coverage required in this Permit. Maintenance of specified insurance or self-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 may be treated as a material breach of contract by PERMITTEE. PERMITTEE shall not modify any insurance policy or endorsement thereto in a manner that increases CITY's exposure to loss during the Term.

21.1 Types of Insurance. At all times during the Term, PERMITTEE shall maintain insurance coverage as follows:

21.1.1 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.

21.1.2 Commercial Automobile Liability. For all of PERMITTEE's automobiles including owned, hired and non-owned automobiles, 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).

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

21.1.4 Workers' Compensation. For all of PERMITTEE's employees who are subject to this Permit and to the extent required by the applicable state or federal law, 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 PERMITTEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives.

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

- 21.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Permit or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. 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.
- 21.4 Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Permitted Uses.
- 21.5 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Permit Area or otherwise related to the Permit Use. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 21.6 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before entering onto the Permit Area or initiating any of the Permit Use under this Permit:
- 21.6.1 Commercial General Liability Insurance Endorsements.
- a. 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 CITY of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.
 - b. 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 CITY of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by CITY of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

- c. 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.

21.6.2 Automobile Liability Insurance Endorsements.

- a. 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 PERMITTEE.
- b. 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.

21.6.3 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 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 CITY.

21.7 Self-Insurance. Notwithstanding the insurance provisions of this Section 21 to the contrary, PERMITTEE shall have the right to self-insure with respect to any of the insurance required to be carried by PERMITTEE under this Section 21, provided that (i) PERMITTEE has not assigned its interest in this Permit to any other entity; (ii) PERMITTEE governs and manages (either internally or through a third party administrator) its self-insurance program. PERMITTEE represents and warrants that it is self-insured with respect to tort liability and property damage caused or suffered by its employees and contractors in the course of official business as determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680, et seq., as amended).

22. Reserved.

23. 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.

24. Reserved.

25. Nuisance and Noise Disturbances. PERMITTEE shall not use or allow use of the Permit Area in any manner that, in the opinion of CITY creates a nuisance, disturbs the quiet enjoyment of persons in the surrounding area, or violates CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).
26. No Assignment. PERMITTEE shall not assign any rights granted by this Permit nor any interest therein without the prior written approval of CITY, which approval may be given or withheld in CITY'S sole and absolute discretion. Any assignment of this Permit by operation of law shall automatically terminate this Permit.
27. 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, which consent may be given or withheld in CITY'S sole and absolute discretion. 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 from CITY, or CITY may thereafter summarily remove the item at PERMITTEE's cost.
28. Encumbrances. PERMITTEE shall keep the Permit Area free from all encumbrances and liens of any nature arising out of or related to this Permit or the Permit Use. To the extent permitted by law and subject to Section 6, PERMITTEE will use good faith efforts to remove all encumbrances or liens arising out of or relating to this Permit, the Permit Use, or the action of PERMITTEE and assume liability where required by applicable laws.
29. 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 that may hereafter be in effect, and pertaining to the Permit Area, the Permit Use, and/or performance of this Permit.
30. Hazardous Substances. 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. PERMITTEE shall, prior to initiating any Permit Use, 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 that holds or incorporates a Hazardous Substance or hazardous waste.
- 30.1 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.
- 30.2 Hazardous Substance. For all purposes of this Permit, "Hazardous Substance" shall mean any substance listed by the federal Environmental Protection Agency or the State

of California as a hazardous substance or waste, and all types of petroleum-related substances and their chemical constituents.

- 30.3 Remediation. To the extent permitted by law and subject to Section 6, PERMITTEE shall exercise good faith efforts to reimburse CITY for all expenses incurred for remediation or removal of Hazardous Substances from the Permit Area arising from the Permit Use or negligence by PERMITTEE within sixty (60) days of receipt of a written Notice of such expenses, including itemized and supporting documentation from CITY. To the extent permitted by law and subject to Section 6, PERMITTEE shall also exercise good faith efforts to reimburse CITY for all any fines, damages and penalties imposed by any governmental agency regarding the production, storage, distribution, processing, handling, disposing, spilling, leaking, or discharging of any Hazardous Substance arising from the Permit Use or negligence by PERMITTEE within sixty (60) days of receipt of a written Notice of such amounts, including itemized and supporting documentation from CITY.
- 30.4 Removal. If PERMITTEE or PERMITTEE's agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Permit Area, PERMITTEE or PERMITTEE's agent shall remove all Hazardous Substances in any type of container, equipment or device from the Permit Area immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Permit Area and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances 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.
- 30.5 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.
- 30.6 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, subject to Section 6, PERMITTEE shall pay all costs and expenses of such remediation and/or removal as described in Section 30.3.

31. Notice of Potential Presence of Lead-Based Paint ("LBP") and Asbestos-Containing Material ("ACM"). The Permit Area contains improvements constructed before 1979 that are presumed to contain LBP and ACM. CITY discloses to PERMITTEE the potential presence of LBP and/or LBP hazards and ACM and/or ACM hazards in the Permit Area. CITY has no special knowledge of the presence of LBP and/or ACM on the Permit Area and lacks knowledge related to PERMITTEE's planned activities regarding handling instructions necessary to prevent or minimize release of, and exposure to, LBP or ACM and the potential health impacts resulting from exposure to LBP or ACM on the Permit Area. PERMITTEE is encouraged to contact other local or state public health agencies for more information about the presence of and/or risk of exposure to LBP or ACM. No express or implied warranties are given by CITY regarding the environmental condition of the Permit Area, including, without limitation, whether the Permit Area does or does not contain LBP or ACM or whether the Permit Area is or is not safe for any particular purpose. The failure of PERMITTEE to inspect the Permit Area for ACM or LBP or to be fully informed about the condition of all or any portion of the Permit Area will not constitute grounds for any claim by PERMITTEE against CITY.
32. Water Quality – Best Management Practices. CITY and PERMITTEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Permit Area in a manner which aids in the protection of CITY's precious water resources. PERMITTEE to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).
 - 32.1 Therefore, PERMITTEE will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

- 32.2 It is ultimately PERMITTEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, PERMITTEE identify and implement any additional BMPs to avoid the discharge of pollutants to the storm drain system.
33. Grading and Barriers. PERMITTEE shall not change the surface grade or construct any permanent barriers within the Permit Area. All violations of this Section 33 shall be corrected by PERMITTEE, at its sole expense, to the satisfaction of CITY.
34. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may, at any and all times, require the cure of any such breach.
35. Vehicular Traffic. All vehicular traffic shall be confined to concrete, asphalt, or decomposed aggregate surfaces unless otherwise approved in writing by the City Contact prior to the commencement of the Permit Use.
36. Reserved.
37. Reserved.
38. Acceptance of Permit Area. By signing this Permit, PERMITTEE acknowledges that it is responsible to perform an independent inspection and observation of the Permit Area 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 Permit Use. PERMITTEE accepts the Permit Area in its current condition. 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.
39. Disabled Access Compliance. PERMITTEE will, 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; 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 protecting the rights of individuals 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 will include without limitation the following:
- 39.1 PERMITTEE will not discriminate against qualified individuals 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.

- 39.2 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.
- 39.3 PERMITTEE will include language in each sublicense which indicates the sublicensee's agreement to abide by the provisions of this Section 39.
- 39.4 PERMITTEE and each of its sublicensees will be individually responsible for their own ADA employment programs.
- 39.5 PERMITTEE will post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 39.6 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.
- 39.7 PERMITTEE's failure to comply with the accessibility requirements of this Section 39 or submitting false information in response to these accessibility requirements, or both, will be a default of this Permit.
40. 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 person, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other entity or person.
41. 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.
42. Survival. Any obligation that accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
43. Reserved.
44. Severability and Venue. If any provision of this Permit is found invalid or unenforceable under judicial decree or decision, the remaining provisions of this Permit shall remain in full force and effect. This Permit shall be governed by and construed according to applicable Federal Law and, to the extent not inconsistent with any Federal Law, the substantive laws of the State of California.
45. Entire Agreement. This Permit constitutes the entire agreement between the Parties and supersedes any and all prior understandings, representations, warranties and agreements between them and pertaining to the Permit Area and/or the Permit Use. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the Parties.

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

CITY:

CITY OF SAN DIEGO

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

With a copy to Mary Carlson at MMCarlson@sandiego.gov
(619) 236-6079

PERMITTEE:

Naval Facilities Engineering Systems Command Southwest
Attn: Ralna Martinez, Real Estate
750 Pacific Highway
San Diego, CA 92132
Phone: (619) 705-4478
Email: ralna.c.martinez@navy.mil

47. Reserved.

48. Authority to Contract. Each individual signing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to sign and deliver this Permit on behalf of such person or entity in accordance with a duly adopted resolution or other authorizing action necessary and proper 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 signing 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 the State of California.

49. Counterparts. This Permit may be signed in one or more counterparts, including by facsimile, email, or electronic means (including digital signatures), each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.

50. Facsimile or Electronic Signatures. The Parties agree: (a) to deliver and accept signatures on or pursuant to this Permit by facsimile, e-mail, or electronic means (including digital signatures); and (b) that signatures delivered by facsimile, e-mail, or electronic means

(including digital signatures) shall be binding as originals upon the Party so signing and delivering.

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

**SIGNATURE PAGE
TO
RIGHT OF ENTRY PERMIT
(Naval Special Warfare)**

IN WITNESS WHEREOF, this Permit is signed and entered into by and through the signatures of the respective authorized representative(s) of the Parties set forth below to be effective on the Effective Date.

Date: 23 September 2022

Department of the Navy,
acting by and through Naval Facilities Engineering
Systems Command Southwest

SPENCER.KIMBERLY.N.139519
LY.N.1395193151
Digitally signed by
SPENCER.KIMBERLY.N.139519
3151
Date: 2022.09.23 11:30:25 -0700

BY: _____
Name: Kimberly Spencer
Title: Real Estate Contracting Officer

Date: Oct 12, 2022

CITY OF SAN DIEGO,
a California municipal corporation

BY: Penny Maus
Penny Maus (Oct 12, 2022 13:58 PDT)
Penny Maus
Director
Department of Real Estate and
Airport Management

Approved as to form on:

Oct 24, 2022

MARA W. ELLIOTT
City Attorney

By: Delmar Williams
Delmar Williams (Oct 24, 2022 10:32 PDT)
Name: Delmar Williams
Deputy City Attorney

Environmental Reviewer: T. Ash-Reynolds
Environmental Determination Section CEQA Guidelines § 15301
Date NORA Posted or Env. Det. Made: February 8, 2022
Date NORA Removed (if none, write N/A): February 23, 2022