



Real Estate Assets Department
SDC003

SD AUTOMOTIVE MUSEUM INC/02

R402RD-091-A00

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



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 **SAN DIEGO AUTOMOTIVE MUSEUM, INC.**, a California non-profit corporation ("PERMITTEE"), to be effective when signed by the parties and approved by the San Diego City Attorney ("Effective Date").

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the City hereby grants to the PERMITTEE and its officers, employees, agents and contractors subject to the terms and conditions of this PERMIT, hereinafter set forth, the right to enter upon and occupy a portion of City-owned land more particularly described as follows:

An approximately 0.52 acre City-owned property located at 2080 Pan American Plaza, San Diego, CA 92101 as further depicted and attached hereto as **Exhibit A: Permit Area** ("Permit Area"). This Permit is granted upon the following terms and conditions:

1. **Term; Extensions.** The term of this Permit shall be one (1) year, commencing on the Effective Date ("Term"). If, prior to the end of the Term, PERMITTEE delivers notice in writing to CITY of its desire to extend the Permit, and so long as PERMITTEE is not in default or breach of any term of this Permit at the time of such notice, upon approval by the Mayor or his designee, in their sole and absolute discretion, the Permit shall be extended by one (1) year from the date of the end of the Term under all of the same terms and conditions set forth herein (the "Extended Term"). The Extended Term may be extended by one (1) additional year pursuant to the same procedure and under the same terms and conditions set forth in the immediately preceding sentence. The Permit may not have a Term of longer than three (3) years in total.
2. **Permit Use:** The above-described Permit Area shall only be used only for the purposes of minor site surface improvements to allow a temporary outdoor event venue and for no other purpose whatsoever without the prior written consent of the City in each instance.
3. **Permittee's Address for Notices:**

SAN DIEGO AUTOMOTIVE MUSEUM
Attention: Lenny Leszczynski
2080 Pan American Plaza
San Diego, CA 92101
(619) 398-0301
Lenny@sdautomuseum.org

4. **Permit Processing Fee.** The Permittee shall pay a one-time, non-refundable Permit Processing Fee in the amount of One Thousand Fifty Dollars (\$1,050.00) upon execution of

this Permit.

5. Administrative Fee. PERMITTEE shall pay to CITY an annual Permit fee ("Administrative Fee") in the amount of Four Thousand Eighty Two and 50/100 dollars (\$4,082.50) per year, paid annually in advance. PERMITTEE shall pay the Administrative Fee for the first year of the Term within thirty (30) days of the Effective Date, and thereafter the Administrative Fee will be paid on or before each anniversary of the Effective Date. The Administrative Fee shall be subject to adjustment annually as provided below.
 - a. CPI Adjustments. The Administrative Fee is subject to adjustment on each anniversary of the Effective Date. The Administrative Fee adjustment will be based on percentage increases in the Consumer Price Index (CPI) pursuant to the CPI Adjustment Computation below.
 - (i) The index used will be the CPI for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California. If the CPI is no longer published, the index for adjustment shall be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the CPI, as determined by the CITY. If a fee adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used shall first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.
 - (ii) If the Department of Labor indices are no longer published, CITY may use another index deemed by CITY to be reasonably comparable to the CPI, which shall then be the "CPI" under this Permit.
 - (iii) In no event shall any adjusted fee be less than the fee in existence immediately prior to the adjustment date. CITY's failure to deliver timely notice of or to collect any Administrative Fee adjustment shall not constitute a waiver by CITY of its rights hereunder.
 - b. CPI Adjustment Computation. The Administrative Fee for each adjustment period shall be calculated as follows:
 - (i) The "adjustment multiplier" shall be calculated by dividing the "current index" by the "base index" as defined below.
 - (ii) The "base index" denominator for the calculation is 178.5. This is a fixed number representing the three (3) month average of the CPI indices for the months of July, August and September 2001.
 - (iii) The "current index" numerator for the calculation is a variable number that shall be the three (3) month average of the CPI indices for the months of July, August and September of the calendar year preceding the adjustment date.

- (iv) The "base figure" for purposes of calculating the annual adjustment shall be a fixed amount of two thousand five hundred dollars (\$2,500).

Example Calculation
(CURRENT INDEX ÷ BASE INDEX) X BASE FIGURE = NEW
ADMINISTRATIVE FEE AMOUNT

Current Index (Third Quarter 2021) 291.47

÷

Base Index (Third Quarter 2001) 178.5=

Adjustment Multiplier 1.633

The base figure is then multiplied by the adjustment multiplier to determine the new Administrative Fee. Using the foregoing example, the adjusted Administrative Fee is calculated as follows:

\$2,500.00(Base Figure)

X 1.633(Adjustment Multiplier)

\$4,082.50(Adjusted Administrative Fee)

- c. Delinquent Payments. If PERMITTEE fails to pay the Administrative Fee when due, PERMITTEE shall pay, in addition to the unpaid Administrative Fee, five percent (5%) of the delinquent Administrative Fee. If the Administrative Fee is still unpaid after fifteen (15) days past due, PERMITTEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is mutually agreed to by the parties to be appropriate to compensate CITY for loss resulting from the delinquent Administrative Fee, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In no event shall the charge for the late payments of Administrative Fee be less than Twenty-Five Dollars (\$25). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE's default with respect to late payments nor prevent CITY from exercising any other rights and remedies available at law or in equity.
- d. Invoicing Courtesy. CITY may invoice PERMITTEE for amounts due under this Permit. However, any such invoicing shall be deemed a courtesy only; PERMITTEE shall make all payments under this Permit on or before each applicable due date, regardless of being invoiced. No grace period shall apply to any amount payable under this Permit.
6. Place of Payment. All payments to be paid by PERMITTEE arising from this Permit shall be payable to "City Treasurer" and be mailed to:

San Diego City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

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

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

7. Security Deposit. CITY has received payment of the Security Deposit under that certain Lease Agreement between parties as Filed in the Office of the City Clerk as Doc. No. RR-267366 dated December 16, 1986. PERMITTEE agrees the Security Deposit being held by CITY will serve and may be applied as the Security Deposit for this Permit. CITY shall not be liable to PERMITTEE for any interest pertaining to the Security Deposit. Any interest earned from such deposit or redeposit shall not become part of the Security Deposit but shall be and remain the property of CITY. All or any portion of the Security Deposit shall be available unconditionally to CITY to cure, in whole or in part, any breach or default of this Permit by PERMITTEE, or for expenses incurred by CITY as a result of PERMITTEE's breach or default of this Permit. PERMITTEE shall maintain, and if necessary, replenish, the Security Deposit throughout the Term. Notwithstanding any other provision of this Permit to the contrary, if PERMITTEE fails or refuses to deposit or maintain the Security Deposit as required by this Permit, CITY may summarily terminate this Permit immediately upon such breach. Upon such termination, PERMITTEE shall immediately cease its use of the Permit Area and commence and diligently pursue the removal of its property from the Permit Area.
 - 7.1 Utilization. If CITY utilizes all or any portion of the Security Deposit, then upon ten (10) days' prior written notice, PERMITTEE shall reimburse the Security Deposit to the full required amount.
 - 7.2 Increase. Upon thirty (30) days' prior written notice by CITY, PERMITTEE shall deliver to CITY such additional funds as CITY may reasonably require as additional Security Deposit to adequately secure PERMITTEE'S obligations under this Permit.
 - 7.3 Return. Provided PERMITTEE is not in breach or default of this Permit, the Security Deposit, or any balance thereof, shall immediately revert to being exclusively the Security Deposit for and subject to the terms and conditions of the Permit.
8. Compliance with Law and with City Standard Contract Provisions. The Permit Use shall comply with all applicable laws, at PERMITTEE's sole cost and expense. PERMITTEE shall comply with all notices, orders, directives, or the like issued by CITY or any other government agency under the authority of current or future laws. In addition, in entering the

Permit Area or performing the Permit Use, all under this Permit, PERMITTEE shall comply with all City standard contract provisions set forth in **Exhibit B** attached to this Permit and incorporated herein by reference.

9. 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. PERMITTEE shall be solely responsible for processing all applicable land use, development, stormwater requirements, and construction approvals required for the occupancy, use, development, rehabilitation, maintenance or restoration of the Permit Area. This Permit shall not be interpreted by any decision-maker on any CITY issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.
10. 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.
11. Revocable License. This Permit is not a lease. It is a license to use CITY property, and may be revoked at will by CITY, in its sole discretion: (a) if for PERMITTEE's breach or default of any of PERMITTEE's obligations under this Permit or in case of an emergency, immediately upon written notice delivered to PERMITTEE; and (b) if for CITY's convenience, upon thirty (30) days prior written notice delivered to PERMITTEE at PERMITTEE'S Address for Notices. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit.
12. City Work; Eminent Domain. CITY reserves the right to perform work on the Permit Area at any time. If CITY intends to perform work on the Permit Area, CITY shall give PERMITTEE at least forty-eight (48) hours' notice prior to commencing the work (except in the event of an emergency, in which case, no prior notice is required). PERMITTEE shall comply with all safety instructions issued by CITY to ensure the safety of CITY personnel or contractors performing work on the Permit Area. If all or part of the Permit Area is taken through eminent domain proceedings or under threat of the exercise of the power of eminent domain by any entity with the power of eminent domain, CITY may terminate this Permit immediately by notice to PERMITTEE. CITY may transfer its title or interest in the Permit Area in lieu of condemnation to any entity entitled to exercise the power of eminent domain over the Permit Area. CITY's exercise of any right under this Permit shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

13. Termination. Subject to Section 11, PERMITTEE or CITY may terminate this Permit for any reason upon thirty (30) days' prior written notice delivered to either party.
14. Restore and Vacate. Except as provided in Section 21, prior to the expiration or PERMITTEE's earlier termination of this Permit, PERMITTEE shall restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and upon such expiration or earlier termination immediately vacate the Permit Area. Upon CITY's termination of this Permit, PERMITTEE shall immediately cease all operations on the Permit Area and as soon as practicable thereafter restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and vacate the Permit Area.
15. Superior Interests; No Limitation on Other City Use. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Permit Area, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area, relative to any such superior interest. If PERMITTEE's use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove or reconcile such inconsistency or incompatibility to the satisfaction of the holder of the superior interest. Nothing contained in this Permit is intended to limit, restrict, or prohibit CITY from entering into future agreements with other persons and entities regarding use of the Permit Area, as long as such other use does not materially interfere with the Permit Use on the Permit Area.
16. Maintenance of the Permit Area. PERMITTEE shall, at PERMITTEE's sole cost and expense and to CITY's satisfaction, maintain the Permit Area and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy and sanitary condition at all times during the Term, subject to normal wear and tear resulting from the Permit Use. CITY shall at no time during the Term of this Permit be required to make any improvements or repairs to the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris and litter at all times. PERMITTEE shall keep the Permit Area free and clear of weeds and brush as reasonably directed by CITY and to CITY's reasonable satisfaction.
17. Inspection. City may at all times enter and inspect the Permit Area.
18. Utilities. PERMITTEE shall order, obtain, and pay for all utilities and service and installation charges in connection with its use of the Permit Area.
19. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent. If any 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 sole cost and expense.
20. Improvements/Alterations. Except as otherwise allowed by this Permit, PERMITTEE shall not construct any improvements, structures, or installations on the Permit Area, and shall not

alter the Permit Area without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.

21. Improvements and Personal Property.

21.1 Improvements. Upon expiration or termination of this Permit, PERMITTEE shall remove any and all improvements, fixtures, structures, and installations or additions to the Permit Area that were constructed or installed on the Permit Area by PERMITTEE ("PERMITTEE Improvements"). PERMITTEE shall, at PERMITTEE's sole cost and expense, remove PERMITTEE Improvements as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Permit. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such PERMITTEE Improvements as required by this Permit. If PERMITTEE fails to remove PERMITTEE Improvements as required, CITY may, at its option, remove them and restore the Permit Area, as necessary, at PERMITTEE's sole cost and expense. Notwithstanding the foregoing, CITY may, upon notice to PERMITTEE at termination or at any time prior to the expiration of the Term, elect to assume ownership of all or any PERMITTEE Improvements as of the expiration or earlier termination of this Permit, at no cost to CITY. If CITY elects to assume ownership of all or any PERMITTEE Improvements, PERMITTEE shall honor such assumption and execute and deliver all necessary and appropriate documents, materials and other items reasonably needed to affect such transfer of ownership to CITY.

21.2 Personal Property. PERMITTEE shall remove from the Permit Area all PERMITTEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Permit. Any such items which PERMITTEE fails to remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at PERMITTEE's sole cost and expense. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Permit Area.

21.3 Late Removal. Notwithstanding any provision of this Permit to the contrary, PERMITTEE shall pay the Administrative Fee to CITY for any period of time after the expiration or termination of this Permit needed to remove PERMITTEE Improvements or personal property as required by this Permit, whether by CITY or PERMITTEE. Such Administrative Fee shall be calculated on a per diem basis using the fee rate in effect just prior to the expiration or termination of this Permit.

21.4 CITY's Right to Acquire Personal Property. If PERMITTEE wishes to dispose of any of its personal property used in its operations on the Permit Area upon expiration or termination of this Permit, CITY shall have the first right to acquire such personal

property.

22. Insurance. PERMITTEE shall obtain and maintain throughout the term of this Permit, at its sole cost and expense, all insurance required in **Exhibit C** attached to this Permit and incorporated herein by reference. PERMITTEE's liabilities under this Permit, including without limitation PERMITTEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. PERMITTEE's maintenance of the required insurance coverage is a material consideration for this Permit. Notwithstanding any provision of this Permit to the contrary, if PERMITTEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, PERMITTEE shall be in default of this Permit. PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. PERMITTEE shall obtain and deliver to CITY's Department of Real Estate and Airport Management a current certificate of insurance and relevant endorsements for (and subject to CITY's written approval of same):
23. Indemnification & Hold Harmless. PERMITTEE shall protect, defend, indemnify and hold CITY and its elected and appointed officials, officers, employees, representatives and agents (together, the "CITY Parties") harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any established liability arising from the sole negligence or intentional misconduct of any of the CITY Parties. 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 attorneys' fees and costs. PERMITTEE's obligations to Indemnify the City Parties under this Agreement shall survive the expiration or earlier termination of the PERMIT, until all actual or prospective claims are fully, finally, absolutely, and completely barred by applicable statutes of limitations.
24. Independence of Insurance and Indemnity Obligations. PERMITTEE's obligations to indemnify the City Parties under this Permit shall be independent of and shall not be construed or interpreted as in any way to restrict, limit, or modify PERMITTEE's insurance or other obligations under this Permit and vice versa.
25. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substance or otherwise regulated substances in, on, under or from the 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.

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

- 25.6 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.
- 25.7 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's Operations resulted in any Hazardous Substance being released on, from or beneath the Permit Area, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by PERMITTEE'S Operations on, in, from or under the Permit Area, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Permit Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit Area and compliance with environmental laws and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.
26. 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. It is PERMITTEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

- 26.1 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).
- 26.2 It is ultimately PERMITTEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, PERMITTEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.
27. Permits & Approvals. PERMITTEE, at PERMITTEE's sole cost and expense, shall obtain all required permits and approvals from the applicable local, state and federal authorities, including without limitation from CITY.
28. 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 Parties harmless for CITY's disclosure of any such information in response to a request for information under the CPRA. Upon CITY's request, PERMITTEE shall provide CITY with specific and detailed legal grounds, including any applicable case law, upon which CITY may rely, in CITY's sole discretion, for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by PERMITTEE, PERMITTEE shall protect, defend, indemnify and hold all CITY Parties harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at PERMITTEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorneys' fees and costs.
- 28.1 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 AND APPOINTED 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.
29. CITY Employee Participation Policy; Warranty Against Payment of Consideration for Permit. 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. In addition, PERMITTEE represents and warrants to CITY that, as of the Effective Date: (a) PERMITTEE has not employed or retained any Person to solicit or secure this Permit upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of PERMITTEE; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by PERMITTEE or any of PERMITTEE's agents, employees, or representatives to any elected or appointed official or employee of CITY in an attempt to secure this Permit or favorable terms or conditions for this Permit. Breach of the representations or warranties in this Section 29 shall entitle CITY to terminate this Permit immediately. Upon any termination of this Permit under this Section 29, PERMITTEE shall immediately repay to CITY all payments made to or on behalf of PERMITTEE by CITY (if any) under this Permit prior to the termination date.

30. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Permit and to the extent legally possible, PERMITTEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. PERMITTEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
31. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE's use or occupancy of the Permit Area and any damages to the improvements on, under or in the vicinity of the Permit Area resulting directly or indirectly thereby.
32. 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).
33. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's prior written consent in each instance. Approval of any such proposed assignment or sublicense may be withheld at the sole and absolute discretion of the CITY. Any assignment by operation of law shall automatically terminate this Permit. PERMITTEE acknowledges and agrees that, under the circumstances that this Permit is entered into by CITY and PERMITTEE and the public nature of the Permit Area, the restrictions in this Permit on transfers are reasonable.
34. Encumbrances. PERMITTEE shall keep the Permit Area and the property of which it is a part (the "Property") free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with PERMITTEE'S use or occupancy of the Permit Area. PERMITTEE shall protect, defend, indemnify and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim,

liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Property in connection with such encumbrances and/or liens, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to lien or encumber the Property pursuant to the California Civil Code.

35. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area during the Term, including the land, any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE, or levied by reason of PERMITTEE'S occupancy, use, development, maintenance or restoration of the Permit Area, including without limitation licensing and permitting costs and fees. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation and that PERMITTEE may be subject to the payment of property taxes levied on such interest. PERMITTEE's payment for such taxes, fees and assessments shall not reduce any fee payment due to CITY under this Permit.
36. 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).
37. Waiver. The Property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of PERMITTEE's obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any fees shall not be a waiver of any default preceding the fee payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
38. 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.
39. Cumulative Remedies. CITY's rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
40. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.

41. Severability. The unenforceability, invalidity, or illegality of any provision of this Permit shall not render any other provision of this Permit unenforceable, invalid, or illegal.
42. 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.
43. 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.
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 pertaining to this Permit and PERMITTEE's occupancy, use, development, maintenance and restoration of the Permit Area. Any modification, alteration or amendment of this Permit shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Permit is binding upon such party in accordance with its terms.
45. Maintenance of Records. PERMITTEE shall maintain complete and accurate records in a manner satisfactory to CITY from which CITY can determine the amounts of all income subject to percentage fee payment.
46. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE at PERMITTEE's Address for Notices, and to CITY as follows:

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

47. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement. Each party which is not a natural person represents and warrants that it is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that it is qualified to do business in California.
48. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Permit Area and its

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

49. PERMITTEE Contact. The following is the contact designated by PERMITTEE as PERMITTEE's contact for all purposes of this Permit:

SAN DIEGO AUTOMOTIVE MUSEUM
Attention: Lenny Leszczynski
2080 Pan American Plaza
San Diego, CA 92101
(619) 398-0301
Lenny@sdautomuseum.org

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

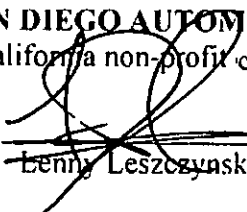
**SIGNATURE PAGE
TO
USE AND OCCUPANCY PERMIT**

(SAN DIEGO AUTOMOTIVE MUSEUM, INC.- Balboa Park)

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

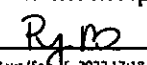
Date: 9/23/22

SAN DIEGO AUTOMOTIVE MUSEUM, INC.,
a California non-profit corporation

BY: 
~~Penny Leszczynski~~, Chief Executive Officer

THE CITY OF SAN DIEGO,
a California municipal corporation

Date: Sep 25, 2022

BY: 
Penny Maus (Sep 25, 2022 17:18 PDT)
Penny Maus, Director
Department of Real Estate and Airport
Management

Approved as to form this 26th day
of September, 2022.

MARA W. ELLIOTT, City Attorney

Brian Byun

BY: Brian Byun (Sep 26, 2022 12:06 PDT)

Name: Brian Byun

Deputy City Attorney

Exhibit A: Permit Area

.52 Acres

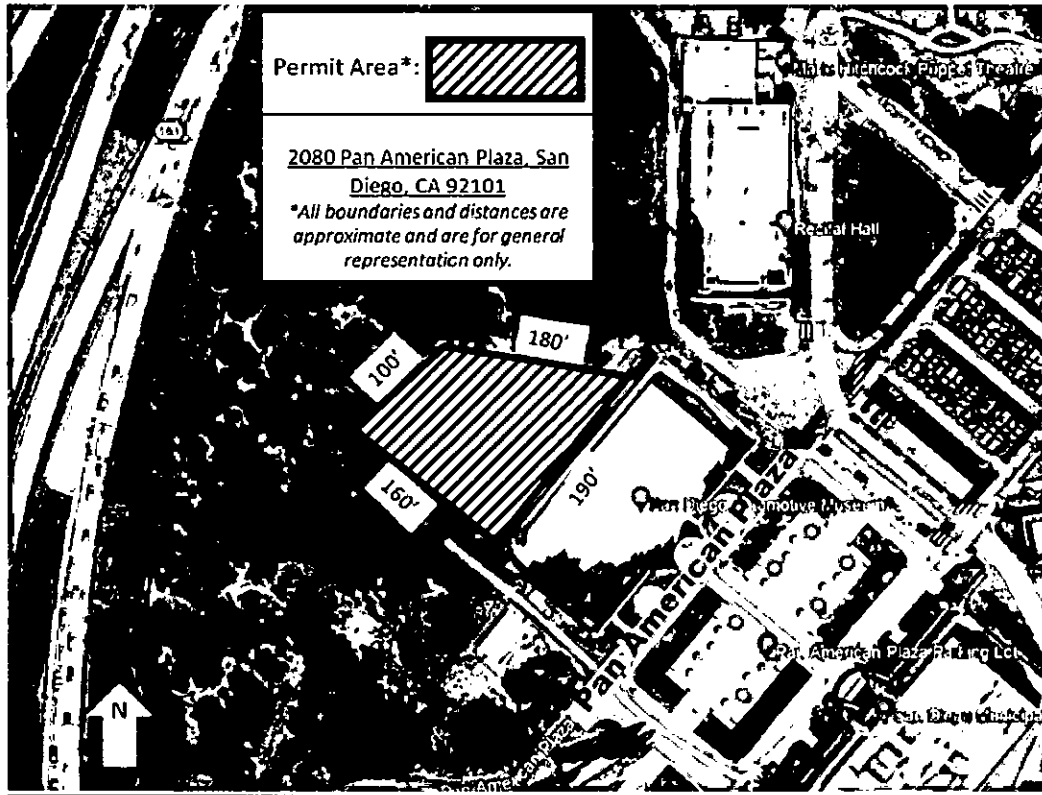


Exhibit B: City Standard Contract Provisions

1. PERMITTEE Certifications of Compliance. By signing this Agreement, PERMITTEE agrees and certifies that PERMITTEE is aware of, and will comply with, all the following requirements in performance of this Permit:

1.1. **Non-Discrimination.** PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, ethnicity, age, marital status or disability in connection with PERMITTEE's use of the Permit Area, including without limitation the provision of goods, services, facilities, privileges, advantages and accommodations, and the hiring and retention of employees and contractors.

1.2. **PERMITTEE Certification for Americans with Disabilities Act ("ADA") and State Access Laws and Regulations.** PERMITTEE shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, PERMITTEE shall comply with the most restrictive requirement (i.e., that which provides the most access). PERMITTEE also shall comply with the City's ADA Compliance/City Contractors requirements set forth in Council Policy 100-04, which is incorporated into this Permit by reference. PERMITTEE warrants and certifies compliance with all Federal and State access laws and regulations and further certifies that all subcontracts relating to this Permit, or the Permit Area will contain the subcontractor's agreement to abide by the provisions of Council Policy 100-04 and all applicable Federal and State access laws and regulations.

1.3. **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. In addition, PERMITTEE shall comply with all requirements of CITY's Equal Opportunity in Contracting Program ("EOCP"). PERMITTEE shall not discriminate against any employee or applicant for employment on any basis prohibited by law. PERMITTEE shall provide equal opportunity in all employment practices. PERMITTEE shall ensure that its subcontractors comply with the EOCP. Nothing in this Section 1.3 shall be interpreted to hold PERMITTEE liable for any discriminatory practice of its subcontractors. Prior to commencing the Permit Use on the Permit Area, PERMITTEE shall contact the EOCP staff to determine compliance with all applicable rules and regulations.

1.4. Equal Benefits Ordinance Certification. Unless an exception applies, PERMITTEE shall comply with the "Equal Benefits Ordinance" codified in San Diego Municipal Code ("SDMC") section 22.4301 to .4308, which requires applicable parties to offer the same employment benefits to employees with spouses and employees with domestic partners. PERMITTEE shall certify that it will maintain such equal benefits throughout the term of this Permit. PERMITTEE's failure to maintain equal benefits shall be a material breach of this Permit.

1.5. Equal Pay Ordinance. Unless an exception applies, PERMITTEE shall comply with the "Equal Pay Ordinance" codified in SDMC sections 22.4801 through 22.4809. PERMITTEE shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of PERMITTEE to the same extent as it would apply to PERMITTEE. PERMITTEE shall require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts. PERMITTEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

1.6. Product Endorsement. Licensee shall comply with Council Policy 000-41 concerning product endorsement requiring that any advertisement referring to CITY as a user of a good or service must have the prior written approval of the Mayor.

1.7. Business Tax Certificate. Unless CITY's City Treasurer determines in writing that Licensee is exempt from the payment of business tax, PERMITTEE is required to obtain a CITY business tax certificate and provide a copy of such certificate to CITY before commencing the Permit Use.

Exhibit C: Insurance Requirements

1. Required Insurance Coverage.

- 1.1. *Automobile Liability Insurance.* Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Licensee, with minimum limits for bodily injury and property damage of Two Million Dollars (\$2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by CITY, which pre-approval shall not be unreasonably withheld.
- 1.2. *Liability Insurance.* Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the License Area or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Four Million Dollars (\$4,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to the Permit Area.
- 1.3. *Property Insurance.* Insurance providing coverage for the Permit Area and all improvements on or to the Permit Area against loss, damage, or destruction by fire or other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the Permit Area, an "increased cost of construction" endorsement and an endorsement covering demolition and cost of debris removal.
- 1.4. *Workers Compensation Insurance.* Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury, or disease, covering all employees of Licensee.

2. **Nature of Insurance.** The contents of this **Exhibit C** are sometimes referred to as the "**Insurance Requirements.**" All Liability Insurance, Automobile Liability Insurance, Property Insurance, and Workers Compensation Insurance policies required by these Insurance Requirements shall be issued by carriers that: (a) are listed in the then

current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. PERMITTEE may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Permit Area, which amount(s) shall equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements.

3. **Policy Requirements and Endorsements.** All insurance policies required by these Insurance Requirements shall contain (by endorsement or otherwise) the following provisions:
 - 3.1. *Insured.* Liability Insurance policies shall name the CITY Parties as "additional insured." The coverage afforded to the CITY Parties shall be at least as broad as that afforded to Licensee regarding the Permit Area and may not contain any terms, conditions, exclusions, or limitations applicable to the CITY Parties that do not apply to PERMITTEE.
 - 3.2. *Primary Coverage.* Any insurance or self-insurance maintained by the CITY Parties shall be excess of all insurance required to be maintained by PERMITTEE under these Insurance Requirements and shall not contribute with any insurance required to be maintained by PERMITTEE under these Insurance Requirements.
 - 3.3. *Contractual Liability.* Liability Insurance policies shall contain contractual liability coverage for PERMITTEE's Indemnity obligations under this Permit. PERMITTEE's obtaining or failing to obtain such contractual liability coverage shall not relieve PERMITTEE from nor satisfy any indemnity obligation of PERMITTEE under this Permit.
 - 3.4. *Deliveries to City.* Evidence of PERMITTEE's maintenance of all insurance policies required by these Insurance Requirements shall be delivered to CITY before the Effective Date. No later than ten (10) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, PERMITTEE shall deliver to CITY evidence of PERMITTEE's maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days' advance Notice of such action to CITY. Phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the CITY Parties under these Insurance Requirements.

- 3.5. *Waiver of Certain Claims.* PERMITTEE shall cause each insurance carrier providing any Liability Insurance, Worker's Compensation Insurance, or Automobile Liability Insurance coverage under these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the CITY Parties, if not originally in the policy. To the extent PERMITTEE obtains an insurance policy covering both the PERMITTEE Parties and the CITY Parties and containing a Waiver of Subrogation, the Parties release each other from any claims for damage to any person or property to the extent such claims are paid by the insurance carrier under such insurance policy. "**Waiver of Subrogation**" means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the CITY Parties for any loss such insurance policy covers.
- 3.6. *No Representation.* No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.
- 3.7. *No Claims Made Coverage.* None of the insurance coverage required by these Insurance Requirements may be written on a claims-made basis.
- 3.8. *Fully Paid and Non-Assessable.* All insurance obtained and maintained by PERMITTEE in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.
- 3.9. *Separation of Insured.* All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for PERMITTEE and the CITY Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured persons but shall not exclude suits between named insured persons and additional insured persons.
- 3.10. *Deductibles and Self-Insured Retentions.* All deductibles or self-insured retentions under insurance policies required by these Insurance Requirements shall be declared to and approved by CITY. PERMITTEE shall pay all such deductibles or self-insured retentions regarding the CITY Parties. Each insurance policy issued in satisfaction of these Insurance Requirements shall provide that, to the extent PERMITTEE fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, CITY may pay the unpaid portion of such self-insured retention, in CITY's sole and absolute discretion. All amounts paid by CITY toward self-insured retentions regarding insurance policies covering the CITY Parties under these Insurance Requirements shall be reimbursed to CITY by PERMITTEE in the same manner that insurance costs are reimbursable to CITY from PERMITTEE under Section 5 of these Insurance Requirements.
- 3.11. *No Separate Insurance.* PERMITTEE shall not carry separate or additional insurance coverage concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements unless the CITY Parties are made additional insured under such insurance coverage.

4. **Insurance Independent of Indemnification.** These Insurance Requirements, are independent of the Parties' indemnification and other obligations under this Permit and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' indemnification or other obligations or to limit the Parties' liability under this Permit, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor shall the provision of such insurance preclude CITY from taking such other actions as are available to CITY under any other provision of this Permit or otherwise at law or in equity.
5. **City Option to Obtain Coverage.** During the continuance of an event of default arising from the failure of PERMITTEE to carry any insurance coverage required by these Insurance Requirements, CITY may, in CITY's sole and absolute discretion, purchase such required insurance coverage. CITY shall be entitled to immediate payment from PERMITTEE of all premiums and associated reasonable costs paid by CITY to obtain such insurance coverage. Each amount becoming due and payable to CITY under this Section 5 that is not paid within fifteen (15) days after Notice from CITY with an explanation of the amounts owed, will accrue default interest at the rate of the lesser of eight percent (8%) annually or the maximum rate allowed by law, from the date incurred until paid. Election by CITY to purchase or not to purchase insurance coverage otherwise required by these Insurance Requirements to be carried by PERMITTEE shall not relieve PERMITTEE of any default or event of default or PERMITTEE's obligation to obtain and maintain any insurance coverage required by these Insurance Requirements.