

**CITY OF SAN DIEGO
RIGHT-OF-ENTRY PERMIT
(Former Central Library)**

THIS CITY OF SAN DIEGO RIGHT-OF-ENTRY PERMIT ("Permit") is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation ("CITY"), and the United States of America Department of Defense ("PERMITTEE"), to be effective June 28, 2021 when executed by the parties and approved by the San Diego City Attorney (the "Effective Date").

RECITALS

- A. CITY owns that certain real property located at 820 E Street, San Diego, CA 92101.
- B. PERMITTEE has requested permission to conduct training at the property, as further described below in Section 4, Permit Use.
- C. 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 sufficiency of which is acknowledged, the parties agree as follows:

1. Permit Area. The permit area shall mean that certain CITY-owned real property located at 820 E Street, San Diego, CA 92101 ("Permit Area").
2. Occupancy. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its officers, employees, agents, contractors, invitees, and guests to enter upon and occupy the Permit Area solely for the permit use as further described below.
3. Term. The term of this Permit shall commence on **July 19, 2021** and expire on **July 28, 2021** ("Term").
4. Permit Use. PERMITTEE may use the Permit Area solely for the purposes of conducting a realistic joint training event with the San Diego Police Department, which may include military operations in urban terrain, short range training ammunition, simmunition (detergent rounds), and flash bangs ("Permit Use"). The specific training activities will be discussed and agreed to in writing by CITY and PERMITTEE as further described below. 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
5. Pre and Post Property Checkout Agreement. PERMITTEE shall prepare a pre and post Property Checkout Agreement to document any items of concern or prior damages prior to PERMITTEE'S use of the Premises as further described below, and attached as **Exhibit B: Pre and Post Property Checkout Agreement**, and incorporated hereto.

- a. Prior to the Permit Use, PERMITTEE and CITY shall conduct an inspection of the Premises to observe and document the general condition of the Premises, any required preparations, and the scope of training activities.
 - b. Within one (1) day after the training event, PERMITTEE and CITY shall conduct a second inspection to discuss and document clean up and repair issues, if any.
6. Damage. PERMITTEE agrees to return the Premises to the CITY in substantially the same condition it was in prior to the Permit Use, unless otherwise agreed upon. If any action of the PERMITTEE's employees or agents in the exercise of this Permit results in damage to the real property, the PERMITTEE will, at its option, either repair such damage or make an appropriate settlement with CITY. In no event shall such repair or settlement exceed the fair market value of the fee interest of the real property at the time immediately preceding such damage. The PERMITTEE's liability under this clause may not exceed appropriations available for such payment and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the CITY may have to make a claim under applicable laws for any other damages than provided herein. CITY agrees to notify the PERMITTEE of any damage to the Premises resulting from the PERMITTEE's use under this Permit, beyond that discussed by the parties, within five (5) days of the expiration of the period outlined in **section 4**, above.
7. Repair. PERMITTEE shall be responsible, at its sole cost and expense, for the repair or replacement of any damage to the Permit Area or the Property caused directly or indirectly by PERMITTEE's use of the Permit Area, including items that CITY staff has determined to be damaged. PERMITTEE shall comply with the direction of CITY's Real Estate Assets Department with respect to the method of any repairs or replacement arising under this Permit.
8. Restore and Vacate. Prior to the expiration of this Permit or immediately upon the early 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 cease all operations on the Permit Area and vacate the Permit Area.
9. Security and Safety of Permit Area. CITY agrees not to enter or grant permission to others to enter the Premises, during the Term of this Permit without prior permission of the PERMITTEE. CITY consents to the PERMITTEE's placement of guards at various points to prevent observation and participation in the training by persons not authorized to do so. CITY may, however, enter the training area at any time to provide notice of revocation of this license. PERMITTEE shall bear sole responsibility for the security and safety of the Permit Area during the Term. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of the Permit Area. PERMITTEE shall comply with all applicable laws, rules, regulations and directives of competent governmental authorities, at PERMITTEE's sole cost and expense, with respect to maintaining the Permit Area in a safe and secure manner during the Term. CITY has no obligation to provide oversight of the Project or staffing or resources for the maintenance of the Permit Area during the Term.
10. Permit Fee and Rent. In consideration of the public benefit provided to CITY by the Permit Use, CITY agrees that permit fee and rent for the Permit Area will be waived during the Permit

Term.

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

12. CITY'S Consent, Discretion. Whenever required under this Permit, CITY's consent or approval shall mean the written consent or approval of CITY'S Mayor, or his or her designee, ("Mayor"), unless otherwise expressly provided or required by law. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided or required by law.

13. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked at will by CITY, in its sole discretion, upon three (3) days prior written notice delivered to PERMITTEE. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense, burden or loss which PERMITTEE might incur as a result of CITY'S revocation or termination of this Permit.

14. No Holdover. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, CITY may demand and receive from PERMITTEE rent for the Permit Area calculated on a per diem basis at market rental rates as determined by qualified City staff. CITY'S acceptance of such rent shall neither constitute a renewal or extension of the license, nor give PERMITTEE any rights in or to the Permit Area.

15. Termination. Either the CITY or the PERMITTEE may terminate this Permit at any time and for any reason with three (3) days prior written notice to or by either party; however, in the event of a default or emergency during which the CITY in its sole discretion determines it necessary to terminate the Permit, the City may terminate this Permit upon 24 hours prior written notice.

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

17. Maintenance of the Permit Area. As it relates to PERMITTEE's actual use and activities, PERMITTEE shall, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, maintain

the Permit Area in good order and repair and in a safe, healthy, and sanitary condition at all times during the Term, subject to normal and ordinary wear and tear resulting from the Permit Use. CITY shall at no time during the Term be required to make any improvements or repairs to the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris, and litter caused by the Permit Use.

18. Utilities. PERMITTEE shall order, obtain, and pay for all utilities and service and installation charges in connection with its use of the Permit Area. PERMITTEE shall not install any utilities without the express written consent of CITY.

19. Improvements/Alterations. Except as specifically authorized 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.

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

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

- a. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- b. Commercial Automobile Liability. For all of the PERMITTEE's automobiles including owned, hired and non-owned automobiles, the PERMITTEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury

and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

- c. Causes of Loss-Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss-Special Form Property Insurance on all of PERMITTEE's insurable property related to the 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 the CITY's Real Estate Assets Department.
- d. Workers' Compensation. For all of the PERMITTEE's employees who are subject to this Permit and to the extent required by the applicable state or federal law, the PERMITTEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage, and the PERMITTEE shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.

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

20.1.3 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 the CITY. The CITY will accept insurance provided by non-admitted, "surplus lines" carriers on if the carrier is authorized to do business in the State of California and is included on the list of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

20.1.4 Modification. To assure protection from and against the kind and extent of risk existing with the Permitted Uses, 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.

20.1.5 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Property or otherwise related to the Permitted Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident,

the names and addresses of any witnesses, and other pertinent information.

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

Commercial General Liability Insurance Endorsements.

- i. Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by 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.
- ii. Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.
- iii. Severability of Interest. The policy or policies must be endorsed to provide that the PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Automobile Liability Insurance Endorsements.

- iv. Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased hired or borrowed by or on behalf of the PERMITTEE.
- v. Severability of Interest. The policy or policies must be endorsed to provide that PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- vi. Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation

against the CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the CITY.

20.3 Self Insurance. Notwithstanding the insurance provision of this section 20.3 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 section 20, provided that (i) PERMITTEE has not assigned its interest in this Agreement to any other entity; (ii) PERMITTEE governs and manages (either internally or through a third party administrator) its self-insurance program, and maintains sufficient reserves on its balance sheet committed to its self-insurance program liabilities, in a manner consistent with comparable programs managed by cities of comparable size and population; and (iii) applicable laws(s) do not prohibit or render unenforceable PERMITTEE'S indemnification obligations under this Agreement.

21. Indemnification & Hold Harmless. In conformity with, and to the fullest extent permitted by the Federal Anti-Deficiency Act (31 U.S.C. section 1341), Federal Tort Claims Act (28 U.S.C. section 2671-2680), and other applicable federal law, the Licensee agrees to indemnify, defend, release and hold CITY, its elected officials, officers, employees, representatives, and agents harmless from all claims asserted or liability established for damages or injuries to any person or property, including to injury of Licensee's officers and agents, which arise out of or are in any manner directly or indirectly connected with this License, except for the CITY's gross negligence or willful misconduct. Nothing in this License shall be construed to preclude or affect any investigation, prosecution, or proceeding that may occur under Title 18 of the U.S. Code or other Federal criminal or civil regulatory law, including the assessment of fines and penalties.

Pursuant to the Federal Torts Claim Act, 28 U.S.C. 136(b), 2671-2680, or the Military Claims Act (MCA), 10 U.S.C. § 2733, as appropriate, the United States is liable for personal injuries and property damages caused by the negligent or wrongful acts or omissions of its employees while acting within the scope of their employment under circumstances where the United States, if a private person, would be liable to claimant in accordance with the law of the place where the act or omission occurred. In no case will the Government's liability exceed that allowable under applicable law, including the FTCA and MCA.

22. 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.
23. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. PERMITTEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Permit

from local residents and firms as opportunities occur. PERMITTEE agrees to hire qualified local residents and firms whenever feasible.

24. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with the Permit Use and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
25. 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).
26. No Assignment. PERMITTEE shall not assign any rights granted by this Permit nor any interest therein without the prior written approval of the CITY. Approval of any such proposed assignment may be withheld at the sole and absolute discretion of the CITY. Any assignment by operation of law shall automatically terminate this Permit.
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. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at PERMITTEE's cost.
28. Encumbrances. PERMITTEE shall keep the Permit Area free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or the Permitted Use. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation reasonable attorney fees and costs, relating to or charged against the Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
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 which may hereafter be in effect, which pertain to the Permit Use.
30. Hazardous Materials. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Permit Area. PERMITTEE and PERMITTEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Permit Area without CITY's prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health,

local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- a. 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.
- b. Hazardous Substance. For all purposes of this Permit, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- c. Remediation. If PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a Hazardous Substance, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- d. 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 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.
- e. Indemnity. To the extent permitted under applicable law, PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- f. 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.

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

- 31. Notice of Potential Presence of Lead-Based Paint ("LBP") and Asbestos-Containing Material ("ACM"). The premises contain improvements constructed before 1979 that are presumed to contain LBP and ACM. City discloses the potential presence of LBP and/or LBP hazards and ACM and/or ACM hazards in the property. City has no special knowledge of the presence of LBP and/or ACM on the property and lacks knowledge related to Licensee'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 premises. Licensee 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 property, including, without limitation, whether the property does or does not contain LBP or ACM or whether the premises are

or are not safe for any particular purpose. The failure of a Licensor to inspect the property for ACM or LBP or to be fully informed as to the condition of all or any portion of the property will not constitute grounds for any claim by the Licensee against the Licensor. Licensee, to the extent permissible under applicable law, shall indemnify, defend, and hold harmless the City from any loss or claim arising or resulting from the presence of LBP and/or ACM on the property.

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. 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).
- a. 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).
 - b. 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.
33. Grading and Barriers. PERMITTEE shall not change the surface grade or construct any permanent barriers within the Permit Area or on the Property. Any violations shall be corrected by PERMITTEE at its sole expense to the satisfaction of the CITY and are grounds, at the CITY's option, for immediate termination of this Permit.
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. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Permit if PERMITTEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the selection of PERMITTEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.
36. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY

contracts. PERMITTEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Permit from local residents and firms as opportunities occur. PERMITTEE agrees to hire qualified local residents and firms whenever feasible.

37. Vehicular Traffic. All vehicular traffic shall be confined to concrete, asphalt, or decomposed aggregate surfaces unless otherwise approved in writing by CITY Contact prior to the commencement of the Permit Use.
38. Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
39. Exhibits. All exhibits referenced in this Permit are incorporated into this Permit by this reference. In the event of a conflict between this Permit and any exhibit to this Permit, the terms, conditions, and obligations of this Permit shall control.
40. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Permit Area. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the 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, secure, or otherwise develop the Permit Area at any time either prior to, on or after the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property from any defects in the Permit Area or any improvements thereon, and shall be solely responsible, therefore.
41. 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:
 - a. 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.

- b. 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.
 - c. PERMITTEE will include language in each sublicense which indicates the sublicensee's agreement to abide by the provisions of this section.
 - d. PERMITTEE and each of its sublicensees will be individually responsible for their own ADA employment programs.
 - e. PERMITTEE will post a statement addressing the requirements of the ADA in a prominent place at the work site.
 - f. 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.
 - g. PERMITTEE's failure to comply with the accessibility requirements of this section or submitting false information in response to these accessibility requirements, or both, will be a default of this Permit.
42. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area, and any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed or maintained by PERMITTEE, or levied by reason of the business of other PERMITTEE activities related to the Permit Area, including without limitation licensing and permitting costs and fees. PERMITTEE recognizes and agrees that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE's payment of such taxes, fees, and assessments shall not reduce any payment due CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from PERMITTEE's possession, use, or occupancy of the Permit Area.
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. 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.
45. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.

46. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
47. Controlling Law/Venue. Any action that may be filed to enforce or interpret the terms of this Agreement shall be filed in the United States District Court, Southern District of California located within the City of San Diego, California.
48. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them and pertaining to this Permit and the Permit Use. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
49. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or PERMITTEE, respectively, as follows:

CITY:

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

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

PERMITTEE:

United States of America
Attn: Scott Selbicky
472 Polaris Ave
Virginia Beach, VA 22452
(757) 862-2013
Scott.Selbicky.mil@socom.mil

[Remainder of page intentionally blank]

50

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

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

Date: _____

The United States of America

BY: DEMAREST.BRADY
ALAN.1093333051

Digitally signed by
DEMAREST.BRADY ALAN.109333
3051
Date: 2021.07.17 16:00:08 -0400

Brady A. Demarest
Real Estate Contracting Officer

Date: 6-28-2021

THE CITY OF SAN DIEGO,
a California municipal corporation

BY: 
Penny Maus
Director, Real Estate Assets

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

MARA W. ELLIOTT, City Attorney

BY: Melissa Ahles
Name: Melissa Ahles
Title: Deputy City Attorney

Exhibit B: Pre and Post Property Checkout Agreement

Description of training activities: _____

PRE PERMIT CONDITION

Date Inspected: _____

Description: _____

CITY:

By: _____
Print Name: _____
Date: _____

USA:

By: _____
Print Name: _____
Date: _____

POST PERMIT CONDITION

Date Inspected: _____

Description: _____

CITY:

By: _____
Print Name: _____
Date: _____

USA:

By: _____
Print Name: _____
Date: _____