

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 the **COUNTY OF SAN DIEGO**, to be effective when signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

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

1. **Definitions.** As used in this Permit, the following terms shall be defined as follows:

- 1.1 **"Permit Area"** shall mean that approximate 8,681 square feet of total area, within the approximate 1.56 acre CITY-owned real property, APN: 591-241-14, located adjacent to Bonita Road in the unincorporated community of Bonita, and more particularly depicted in **Exhibit A: Location Map**, attached hereto.
- 1.2 **"Permit Use"** shall mean the non-exclusive use of the Permit Area by PERMITTEE, solely as a temporary construction area for the storage of vehicles, equipment, construction materials and temporary fencing to facilitate PERMITTEE's Glen Abbey Trail project. The Permit Use shall not include trenching or tunneling within the Permit Area.
- 1.3 **"PERMITTEE"** shall mean the County of San Diego and its officers, employees, agents, contractors and volunteers.
- 1.4 **"PERMITTEE's Address for Notices"** shall be:

ATTN: David Norgard, Senior Project Manager
County of San Diego
Department of Parks and Recreation
5500 Overland Avenue, Suite 410
San Diego, CA 92123

- 1.5 **"Term"** shall mean month-to-month, commencing on the Effective Date.
- 2. **Occupancy.** Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE and its officers, employees, agents and contractors to enter upon and occupy the Permit Area solely for the Permit Use.
- 3. **Use of Permit Area.** PERMITTEE may use the Permit Area solely for the Permit Use and for no other purpose whatsoever, without CITY's prior written consent in each instance. PERMITTEE may continuously occupy and use the Permit Area throughout the Term.

4. 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.
5. CITY's Consent, Discretion. CITY's consent or approval under this Permit shall mean the written consent or approval of CITY's Mayor, or his or her designee ("Mayor"), unless otherwise expressly provided herein or required by law. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided for herein or required by law.
6. Term. The Term shall not extend beyond March 31, 2019.
7. Revocable License. This Permit is not a lease. It is a non-exclusive license to use CITY property, and may be revoked by CITY, in the event of a breach of the terms of this Permit, upon thirty (30) days prior written notice delivered to PERMITTEE. 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.
 - 7.1 PERMITTEE's Waiver. PERMITTEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which PERMITTEE incurs as a result of CITY's revocation or termination of this Permit.
8. No Holdover. There will be no extensions of this Permit beyond March 31, 2019.
9. Termination. PERMITTEE may terminate this Permit for any reason upon thirty (30) days prior written notice delivered to CITY.
10. Restoration of Permit Area. Except as otherwise provided in this Permit, prior to the expiration or as soon as practicable after termination of this Permit, PERMITTEE shall restore the Permit Area to its condition as of the Effective Date of this Permit, normal wear and tear excepted. Restoration shall include removal of all contractor fencing and repair of any damage to surrounding curbs. PERMITTEE is not required to replace any plant material removed or revegetate on the Permit Area.
11. 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.

12. Permit Fee. Permit Fee shall mean a one-time, non-refundable permit processing fee in the amount of Nine Hundred Eighty Dollars (\$980.00). PERMITTEE has paid the Permit Fee as of the Effective Date.
13. Rent. PERMITTEE shall pay monetary consideration to CITY in the amount of One Thousand Six Hundred Fifty dollars (\$1,650.00) per month for the entire Term ("Monthly Rent") for the Permit Use.

- 13.1 Time and Place of Payment. All payments to be paid by PERMITTEE under this Permit shall be made payable to "City Treasurer" and be mailed to:

The Office of the City Treasurer
City of San Diego
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.

14. 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. CITY shall not be required to make any improvements or repairs to the Permit Area. PERMITTEE and its officers, employees, agents and contractors shall not deposit any rubbish, debris, litter or other item that is not necessary for the approved Permit Use, at any time on the Permit Area. PERMITTEE shall immediately notify CITY of any rubbish, debris, litter or any other condition that affects the safety, health or sanitation of the Permit Area.
15. Inspection. CITY may at all times enter and inspect the Permit Area.
16. Improvements/Alterations. PERMITTEE shall not construct any improvements, structures or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY. PERMITTEE may install temporary construction fencing around

the perimeter of the Permit Area. PERMITTEE shall remove the temporary fencing immediately upon or prior to the expiration or earlier termination of this Permit. 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. PERMITTEE is allowed to clear the Permit Area of existing ground cover and woody species up to 3" caliper, but not remove existing trees.

17. Insurance. PERMITTEE shall not begin operating under the Permit until it has provided to CITY proof of self-insurance to the satisfaction of CITY or PERMITTEE complies with the following: (a) obtained, and provided to CITY, insurance certificates reflecting evidence of all insurance as set forth herein; however, CITY reserves the right to request, and PERMITTEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each company or companies as required in Section 17.3 of the Permit; and (c) confirmed that all policies contain the specific provisions required in Section 17.4 of the Permit. PERMITTEE's liabilities, including but not limited to PERMITTEE's indemnity obligations, under the Permit, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of the Permit and PERMITTEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of the Permit may be treated as a material breach of contract by CITY.

Further, PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of the Permit.

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

- 17.1.1 Commercial General Liability. 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.
- 17.1.2 Commercial Automobile Liability. For all of PERMITTEE'S automobiles including owned, hired and non-owned automobiles, PERMITTEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

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

17.1.4 Professional Liability. For all of PERMITTEE 's employees who are subject to the Permit, PERMITTEE shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$1 million per claim and \$2 million annual aggregate. PERMITTEE shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Permit; and (2) the policy will be maintained in force for a period of three years or termination of the Permit whichever occurs last. PERMITTEE agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase CITY's exposure to loss.

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

17.3 Acceptability of Insurers.

17.3.1 Except for the State Compensation Insurance Fund, all insurance required by the Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY.

17.3.2 CITY will accept insurance provided by non-admitted, "surplus lines" carriers only 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.

17.4 Required Endorsements

The following endorsements to the policies of insurance are required to be provided to CITY before any operations are initiated under the Permit.

17.4.1 Commercial General Liability Insurance Endorsements

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 Additional Insured CITY of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of CITY of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by CITY of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of PERMITTEE's insurance and shall not contribute to it.

17.4.2 Automobile Liability Insurance Endorsements

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 Additional Insured CITY of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of PERMITTEE.

17.4.3 Worker's Compensation and Employer's Liability Insurance Endorsements

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

- 17.5 Reservation of Rights. CITY reserves the right, from time to time, to review PERMITTEE's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to CITY.
- 17.6 Additional Insurance. PERMITTEE may obtain additional insurance not required by the Permit.
- 17.7 Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.
- 17.8 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed 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.

- 17.9 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 Permit Use of the Permit Area under this Permit or the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver a certificate of said insurance to CITY's Real Estate Assets Department.
18. Indemnification & Hold Harmless. To the fullest extent permitted by law, PERMITTEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with 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 CITY and its elected officials, officers, employees, representatives and agents. CITY may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between CITY and PERMITTEE regarding litigation issues, CITY shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, PERMITTEE shall not be required to pay or perform any settlement unless such settlement is approved by PERMITTEE.
19. Compliance with Laws. PERMITTEE shall at all times in its use, occupancy, and maintenance of the Permit Area comply with all applicable laws, rules and regulations and direction by competent governmental authorities, and all at PERMITTEE's sole cost and expense.
20. California Public Records Act. CITY shall determine, in its sole discretion, whether 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). If PERMITTEE notifies CITY that it objects to the disclosure of certain information to a third party, PERMITTEE shall deliver to CITY with such notice specific and detailed legal grounds, including any applicable case law, upon which CITY may rely 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 CITY and its elected officials, officers, employees, representatives and agents 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 attorney fees and costs. PERMITTEE shall hold CITY and its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.

21. No 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, age, marital status or disability in PERMITTEE's use of the Permit Area, including without limitation the provision of goods, services, facilities, privileges, advantages and accommodations, and the hiring and retention of employees and contractors.
22. 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.
23. Disabled Access Compliance. PERMITTEE shall comply with Title 24 of the California Code of Regulations (i.e., the "Building Code"); the Americans with Disabilities Act of 1990 ("ADA"); and any other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. PERMITTEE's compliance shall include without limitation the following:
 - a. PERMITTEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment;

- 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 shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
- d. Where required by law, PERMITTEE shall, at PERMITTEE's sole cost and in conformance with all applicable building codes, comply with applicable disabled-access requirements by making accessible any areas of the Permit Area which deny access to disabled persons; and
- e. PERMITTEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.

PERMITTEE and each of its sublicensees shall be individually responsible for their own ADA compliance program. PERMITTEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Permit.

- 24. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Permit if PERMITTEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of PERMITTEE for this Permit. It is not the intent of this policy that these provisions apply to members of the City Council.
- 25. 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.
- 26. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area. Devices and activities which will be operated, conducted or constructed pursuant to this Permit and which are subject to the provisions of the San Diego Municipal Code, will be operated, conducted or constructed without causing a violation of said Code.
- 27. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's written consent in each instance. Any assignment by operation of law shall automatically terminate this Permit.
- 28. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE

shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at PERMITTEE's cost.

29. 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 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 Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to lien or encumber the Permit Area pursuant to the California Civil Code.
30. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon PERMITTEE, including the land and any buildings, structures, machinery, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by PERMITTEE, or levied by reason of PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, including without limitation licensing and permitting costs and fees. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE's payment for such taxes, fees and assessments shall not reduce any payment due CITY.
31. 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.
 - 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 ("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.
- d. 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.
- e. 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.
- 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 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.

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

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

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

33. Waiver. The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of PERMITTEE's obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law, or in equity. The

exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.

34. 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.
35. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
36. 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.
37. 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.
38. 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. Any modification, alteration or amendment of this Permit shall be in writing and signed by all the parties hereto.
39. 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.
40. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE at PERMITTEE's Address for Notices, and to CITY as follows:

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

41. 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, 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 represents and warrants 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.

42. 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, 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, including without limitation PERMITTEE's employees, from any defects in the Permit Area, and shall be solely responsible therefor.

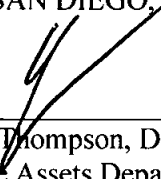
[Remainder of page intentionally left blank; signature page to follow]

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

COUNTY OF SAN DIEGO

BY: 
for Marko Medved, P.E., CEM
Director, Department of General Services

THE CITY OF SAN DIEGO, a California municipal corporation

BY: 
Cybele L. Thompson, Director
Real Estate Assets Department

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15304(e) (Minor Alterations to Land), which includes minor temporary use of land having negligible or no permanent effects on the environment.

Date: 7/7/18

BY: 
Alyssa M. Muto, Deputy Director
Planning Department

Approved as to form this 6th day of
July, 2018:

MARA W. ELLIOTT, City Attorney

BY: 
Name: Uleda P. Hernandez
Title: Deputy City Atty



EXHIBIT A: Location Map

PERMIT AREA