CITY OF SAN DIEGO

LICENSE AGREEMENT

(8525 Gibbs Dr., Underground Garage Storage Area)

This LICENSE AGREEMENT (this "**Agreement**") is entered into by and between the UNITED CEREBRAL PALSY ASSOCIATION OF SAN DIEGO COUNTY, a California non-profit public benefit corporation ("**Licensee**"), and THE CITY OF SAN DIEGO, a California municipal corporation ("**City**"), as of the date this Agreement is approved as to form by the San Diego City Attorney as shown on the signature page to this Agreement ("**Effective Date**").

IN CONSIDERATION OF THE RESPECTIVE PROMISES OF LICENSEE AND CITY SET FORTH IN THIS AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, LICENSEE AND CITY AGREE AS FOLLOWS:

1. **PURPOSE AND BACKGROUND**. City owns certain real property located at 8525 Gibbs Drive in the City of San Diego and specifically defined in Section 2.40 as the "Property."

1.2 The Property is part of a larger approximately 3.2-acre parcel of land commonly known as "Lot 6," which, in 1978, City leased to Montgomery Field One, LP ("Master Lessee") under that certain Flat Rate Lease on file with the San Diego City Clerk as Document No. RR-763376 ("Master Lease"). In 1979, pursuant to the Master Lease, Master Lessee constructed an approximately 68,032-square foot (sf) office building (the "Building") on the Property and subleased space in the Building to several tenants, including Licensee.

1.2 From January 2019 through April 2019, Master Lessee failed to pay rent and defaulted on the Master Lease. Thereafter, the City commenced an action against Master Lessee in San Diego Superior Court (Case No. 37-2019-00034312-CL-UD-CTL), which concluded upon execution of a Stipulation and Judgment, and which, among other things, terminated the Master Lease on or about August 7, 2019.

1.2 Immediately after, City and Licensee, as tenant, entered into a month-to-month lease to provide for continued occupancy of Suite 209 within the Building (the "8525 Rental Space"). Thereafter, as of June 18, 2024, City and Licensee, as tenant, entered into a three (3)-year lease (the "8525 Gibbs Lease") for the Rental Space, which included use of a storage area in the underground parking garage beneath the Building (the "8525 Gibbs Garage").

1.2 Licensee intends to vacate the Rental Space, terminate the 8525 Gibbs Lease, and consolidate its operations in the suite it rents from the City in the building located at 8665 Gibbs Drive (the "8665 Gibbs Rental Space"). The 8665 Gibbs Rental Space is subject to that certain lease entered into by the City and Licensee, as tenant, dated as of June 18, 2024 (the "8665 Gibbs Lease"). However, it desires to retain its ability to use the storage area in the 8525 Gibbs Garage. Licensee and City desire to enter into this Agreement to provide Licensee certain limited rights to undertake the Permitted Use (defined in Section 2.35 of this Agreement) on the License Area (defined in Section 2.23 of this Agreement).

2. **DEFINITIONS**. In addition to words, terms, or phrases defined elsewhere in this Agreement, the following words, terms, or phrases indicated to be defined terms in this Agreement by initial capitalization are used in this Agreement with the following meanings:

1.2 8525 Gibbs Garage. Defined in Section 1.3.

1.2 8525 Gibbs Lease. Defined in Section 1.3.

1.2 8525 Gibbs Rental Space. Defined in Section 1.3.

1.2 8665 Gibbs Lease. Defined in Section 1.4.

1.2 8665 Gibbs Rental Space. Defined in Section 1.4.

1.2 Approval. Excluding this Agreement, all licenses, permits (including building, grading, demolition, alteration, use and special permits), approvals, consents, certificates, rulings, variances, authorizations, conditional use permits, or amendments to any of the foregoing, necessary or appropriate under any Law to commence, perform, or complete the Permitted Use on the License Area.

1.2 Business Day. Any weekday on which City is open to conduct regular City functions with City personnel.

1.2 City. Defined in the first paragraph of this Agreement.

1.2 City Parties. Collectively, City, the City Council, and all City elected officials, employees, agents, and attorneys.

1.2 City Party. Individually, City, the City Council, and each City elected official, employee, agent, or attorney.

1.2 Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity, or otherwise, or foreseeable or unforeseeable), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses, investigation costs of whatever kind or nature, and Legal Costs) and any judgment.

1.2 County. The County of San Diego, California.

1.2 Default. Any Monetary Default or Non-Monetary Default.

1.2 Default Interest. The lesser of eight percent (8%) annually or the maximum rate allowed by Law.

1.2 Effective Date. Defined in the first paragraph of this Agreement.

1.2 Environmental Condition. Any of the following events relating to the Property and arising from the Permitted Use, any action by a Licensee Party, or any failure to act by a Licensee Party that had a duty to act: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

1.2 Environmental Law. All Federal, State, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government, now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning: (a) any Hazardous Substance; (b) occupational health or industrial hygiene (only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under or about the Property or relating to the Permitted Use); (c) occupational or environmental conditions on, under or about the Property or relating to the Permitted Use; (d) or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

1.2 Equity Interest. Any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in a Person.

1.2 Event of Default. The occurrence of any one or more of the following:

2..2 *Monetary Default*. A Monetary Default continuing for seven (7) days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid, including the nature and calculation of each such amount, or the evidence of insurance not delivered;

2..3 *Sign Removal*. Licensee's failure to remove an unauthorized Sign in accordance with Section 1.2;

2..4 *Licensee Transfer*. The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of Section 2050017532.1.2 in the main body of this Agreement;

2..5 *Primary Use Interference*. Licensee's failure to eliminate the interference with the Primary Use within forty-eight (48) hours after Notice from City that the Permitted Use interferes with the Primary Use, all in accordance with Section 2050017532.1.2 of the main body of this Agreement;

2..6 *Non-Monetary Default*. Any Non-Monetary Default, other than those specifically addressed in Sections 2.15.1 or 2.15.2, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the date of Notice of the Non-Monetary Default to the Party in Default, the Party in Default shall not be in Default if it does all the following: (a) within thirty (30) days after the date of Notice of such Non-Monetary Default, Notify the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) within thirty (30) days after the date of Notice of such Non-Monetary Default, commence curing the Non-Monetary Default; and (c) complete the cure of the Non-Monetary Default within a reasonable time.

1.2 Federal. Relating to or under the authority of the federal government of the United States of America.

1.2 Government. Every governmental agency, authority, bureau, department, quasi-governmental body, utility, utility service provider, or other entity or instrumentality having or claiming jurisdiction over the Property or the Permitted Use, including the Federal, State, County,

City (in City's governmental capacity) governments and their subdivisions and municipalities, including City, any planning commission, board of standards and appeals, building department, zoning board of appeals, design review board or committee, the California Coastal Commission, and all other applicable governmental agencies, authorities, and subdivisions having or claiming jurisdiction over the Property or any activities on or at the Property.

1.2 Gross Revenue. The sum of all the following: (a) the gross amount of cash paid, or to be paid; (b) the fair market value of all other estates, interests, or rights transferred or to be transferred; (c) the outstanding amount of Licensee liabilities assumed or to be assumed; (d) the value of any liability forgiveness provided or to be provided to Licensee; or (e) in the case of a Transfer without any of the previously described forms of consideration, the fair market value of the estate, interest, or right in the property transferred. Any fair market value determination shall be as of the date of the subject Transfer.

1.2 Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to the State to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any "hazardous" or "toxic" material, substance, or waste defined by those or similar terms or regulated as such under any Law, any matter, waste, or substance subject to any Law regulating, relating to, or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property, or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor, or any form of energy, from whatever source.

1.2 Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the Property, or during transportation of any Hazardous Substance to or from the Property, or arising at any time from activities conducted at, on, under, or from the Property, whether or not caused by a Party.

1.2 Indemnify. Indemnify, defend, and hold harmless the specified Person(s) from and against the Claim (alleged or otherwise), including Legal Costs and other costs incurred in enforcing the Party's indemnity obligation(s) relating to the Claim.

1.2 Law. Every law, ordinance, requirement, order, proclamation, directive, rule, or regulation of any Government applicable to a Party, the Property, or the Permitted Use, or otherwise relating to a Party, this Agreement, the Permitted Use, or any Party's rights, obligations, or remedies under this Agreement, whether in force on the Effective Date or passed, enacted, modified, amended, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

1.2 Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses, and reasonable consultant and expert witness fees and expenses.

1.2 License Area. That part of the Property designated as "Tenant Storage Area," as depicted in Error! Reference source not found. attached to this Agreement.

1.2 Licensee. Defined in the first paragraph of this Agreement.

1.2 License Fee. Defined in Section 5.

1.2 Licensee Parties. Collectively, Licensee, its directors, officers, members, partners, employees, agents, contractors, attorneys, and all other Persons whom Licensee authorizes or allows to enter the License Area.

1.2 Licensee Party. Individually, Licensee, its directors, officers, members, partners, employees, agents, attorneys, or other Person whom Licensee authorizes or allows to enter the License Area.

1.2 Mayor. The Mayor of City or his or her designee or successor in function.

1.2 Monetary Default. Any failure by a Party to pay, deposit, or provide, when and as this Agreement requires, any amount of money or evidence of insurance coverage, whether to or with a Party or a Third Person.

1.2 Non-Monetary Default. The occurrence of any of the following events, except to the extent constituting a Monetary Default: (a) the failure of a Party to perform one of its obligations under this Agreement; (b) the failure of a Party to comply with a material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement.

1.2 Notice. Any consent, demand, designation, election, notice, or request relating to this Agreement. All Notices must be in writing.

1.2 Notify. To give a Notice.

1.2 Parties. Collectively, City and Licensee.

1.2 Party. Individually, either City or Licensee, as applicable.

1.2 Permitted Use. Storage of Licensee's personal property.

1.2 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

1.2 Prevailing Wage Law. Defined in **EXHIBIT C**, Section 1.

1.2 Prevailing Wage Determination. Any of the following: (a) any determination by the State or Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State or Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any Prevailing Wage Law, including the obligation to maintain certified payroll records under California Labor Code section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts or impose penalties or sanctions, at law or in equity, including under California Labor Code section 1781 or 1782.

1.2 Primary Use. Defined in Section 2050017532.1.2.

1.2 Property. That certain real property owned by City commonly known as 8525 Gibbs Drive in the City of San Diego.

1.2 SDMC. Defined in Section 2050017532.1.2.

1.2 Sign. Defined in Section 2050017532.1.2.

1.2 State. The State of California.

1.2 Term. Defined in Section 4.

1.2 Termination Date. Defined in Section 4.

1.2 Third Person. Any Person that is not a City Party, a Licensee Party, or an affiliate of a Party.

1.2 Transfer. Any of the following events, whether occurring by operation of law, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, license, or other transfer, whether direct or indirect, of all or any part of Licensee's legal, beneficial, or equitable interest in this Agreement; (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in Licensee by the owner(s) of such Equity Interest(s); (c) any transaction described in clause "(b)" affecting any Equity Interest(s) or any owner of Equity Interests (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the transactions described in clauses "(a)" through "(c)" of this Section 2.48. A transaction affecting Equity Interests, as referred to in clauses "(b)" through "(d)" of this Section 2.48 shall be deemed a Transfer by Licensee even though Licensee is not technically the transferor. A "Transfer" shall not, however, include any transaction (provided that the other Party receives Notice of such transaction at least fifteen (15) days before the transaction is final) relating to any Equity Interest: (a) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; or (b) to any Person that, as of the Effective Date, holds an Equity Interest in, or is under common control with, the Person whose Equity Interest is being transferred.

1.2 Unavoidable Delay. A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strike, labor trouble or other union activity, casualty, war, act of terrorism, riot, litigation, Government action, regional natural disaster, pandemic, or inability to obtain materials. Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.

1.2 Year. Each of: (a) the twelve (12) calendar month period beginning on the Effective Date and continuing through the day before the immediately following anniversary of the Effective Date; and (b) every subsequent period of twelve (12) calendar months beginning on each anniversary of the Effective Date and ending on the day before the immediately following anniversary of the Effective Date. Each Year is referred to in this Agreement in consecutive chronological order, starting with "Year 1" and continuing with "Year 2," "Year 3," etc.

3. **LICENSE**.

1.2 License Area. Subject to the terms, conditions, and agreements of this Agreement, as of the Effective Date, City licenses, permits, and authorizes Licensee to use the License Area on a non-exclusive basis solely for the Permitted Use.

1.2 Personal Rights; Restriction on Transfers. The licenses, permits and authorizations provided by this Agreement are personal to Licensee. Licensee shall not have any right to make or allow any Transfer without the prior written consent of City, which may be given or withheld in the City's sole and absolute discretion. Licensee acknowledges and agrees that, under the circumstances that this Agreement is entered into by City and Licensee and the public nature of the Property, the restrictions in this Agreement on Transfers are reasonable.

1.2 Property's Primary Use. The primary use of the Property is government administrative use ("**Primary Use**"). The Primary Use is superior to any rights provided under this Agreement. The Permitted Use may not unduly interfere with the Primary Use. Throughout the Term, subject to the terms and conditions of this Agreement, the License Area shall have the secondary purpose of accommodating the Permitted Use to the extent the Permitted Use does not unacceptably interfere with the Primary Use, including any disruption of safe access to City facilities or adverse impact on the cost of maintaining City facilities. If City determines that the Permitted Use unacceptably interferes with the Primary Use, City shall Notify Licensee and Licensee shall have forty-eight (48) hours to eliminate the interference with the Primary Use.

1.2 No Limitation on Other City Use. Nothing contained in this Agreement is intended to limit, restrict, or prohibit City from entering into future agreements with other Persons regarding use of the Property, as long as such other uses do not materially interfere with the Permitted Use on the License Area.

1.2 No Property Estate or Interest Conveyed. Notwithstanding any provision of this Agreement to the contrary, City and Licensee do not intend to convey any estate, easement, or irrevocable interest in real or personal property between them under this Agreement. Nothing in this Agreement shall be construed or interpreted as a conveyance of any estate, easement, or irrevocable interest in any real or personal property. If this Agreement or any provision of this Agreement is finally (after all appeals) construed or interpreted by a court of competent jurisdiction as conveying an estate, easement, or irrevocable interest in real or personal property between City and Licensee, then the provision(s) of this Agreement interpreted as conveying any estate, easement, or irrevocable interest in real or personal property between City and Licensee shall automatically be null and void, without further action by or Notice to City or Licensee.

1.2 Noise. Licensee shall not use or permit the use of the License Area in any manner that creates or maintains any noise or sound violating San Diego Municipal Code ("**SDMC**") Chapter 5, Article 9.5.

1.2 Nuisance. Licensee shall not create or allow a nuisance, as defined in State Civil Code section 3479, or a violation of Law on the License Area.

1.2 **ACCEPTANCE OF PROPERTY IN AS-IS CONDITION**. LICENSEE ACCEPTS ALL PHYSICAL CONDITIONS OF THE PROPERTY, AS OF THE EFFECTIVE DATE, AND RELEASES CITY FROM ALL LIABILITY WHATSOEVER FOR ALL KNOWN OR UNKNOWN CONDITIONS OF THE PROPERTY. LICENSEE SHALL ENTER THE

PROPERTY FOR THE PERMITTED USE UNDER THIS AGREEMENT, IN THE PROPERTY'S "AS IS," "WHERE IS" AND "SUBJECT TO ALL FAULTS" CONDITION, AS OF THE EFFECTIVE DATE. LICENSEE ACKNOWLEDGES AND AGREES THAT IT IS RELYING SOLELY UPON ITS OWN KNOWLEDGE OR INVESTIGATION OF THE PROPERTY, AS IT DEEMS APPROPRIATE. LICENSEE IS NOT RELYING ON ANY STATEMENT OR REPRESENTATION BY ANY CITY PARTY RELATING TO THE CONDITION OF THE PROPERTY. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 2050017532.1.2, CITY MAKES NO REPRESENTATION OR WARRANTY AS TO THE PHYSICAL CONDITION OF THE PROPERTY OR WHETHER THE PROPERTY PRESENTLY COMPLIES WITH ANY LAW. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 2050017532.1.2, LICENSEE, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, WAIVES AND RELEASES CITY AND ITS SUCCESSORS AND ASSIGNS FROM ALL COSTS OR EXPENSES WHATSOEVER (INCLUDING LEGAL COSTS), WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATING TO THE PHYSICAL CONDITION OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY LAW APPLICABLE TO THE PROPERTY. LICENSEE EXPRESSLY WAIVES ALL RIGHTS OR BENEFITS AVAILABLE TO IT WITH RESPECT TO THE RELEASES CONTAINED IN THIS SECTION 2050017532.1.2 UNDER ANY PROVISION OF APPLICABLE LAW PROVIDING THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY, INCLUDING STATE CIVIL CODE SECTION 1542. THE PROVISIONS OF THIS SECTION 2050017532.1.2 SHALL SURVIVE THE TERMINATION DATE.

4. **TERM**. The "**Term**" of this Agreement starts on the Effective Date and ends at 11:59 p.m. on the date of the earliest to occur of the following events ("**Termination Date**"):

1.2 *Licensee Notice*. The thirtieth (30th) day after the date Licensee both gives City Notice of termination of this Agreement for any reason or no reason and performs all of Licensee's obligations under Section 15;

1.2 *City Notice*. The thirtieth (30th) day after the date City gives Licensee Notice of termination of this Agreement for any reason or no reason;

1.2 *Expiration*. The end of the term of the 8665 Gibbs Lease;

1.2 *Eminent Domain*. Termination of this Agreement under Section 23;

1.2 *Event of Default*. Following the occurrence of an Event of Default, City giving Licensee Notice of termination of this Agreement;

1.2 *Casualty*. Termination of this Agreement under Section 10; or

1.2 *Breach of Warranty*. City termination of this Agreement under Section 31.

5. **LICENSE FEE**. Licensee shall pay Two Hundred Eight Dollars and Twenty-Two Cents ($208.22) per month ("License Fee"), payable on the first business day of each and every month

of the Term. The first License Fee payment shall include a prorated amount of the Licensee Fee from the Effective Date until the last day of the month containing the Effective Date, to the extent unpaid by Licensee under the 8525 Gibbs Lease. Beginning on July 1, 2025 and every anniversary of that date during the Term thereafter, the License Fee shall be increased by three percent (3%).

6. **PERMITTED USE**.

1.2 Approvals. Licensee shall not undertake the Permitted Use on the License Area without first obtaining all necessary Approvals for the Permitted Use. In obtaining each necessary Approval for the Permitted Use on the License Area, Licensee shall inform the applicable Government in writing that the Property is City-owned. Licensee shall promptly deliver to City documentary evidence of all Approvals obtained by Licensee regarding the Permitted Use.

1.2 Protection Against Claims or Liens. IF A CLAIM OR LIEN IS RECORDED OR ASSERTED AGAINST THE PROPERTY OR THE CITY FOR MATERIAL OR EQUIPMENT SUPPLIED TO OR LABOR OR SERVICES PERFORMED, DIRECTLY OR INDIRECTLY, FOR LICENSEE OR A CONTRACTOR OF LICENSEE RELATING TO WORK ON THE PROPERTY, LICENSEE SHALL SATISFY AND DISCHARGE SUCH CLAIM OR LIEN, AT THE SOLE COST AND EXPENSE OF LICENSEE, WITHIN TEN (10) DAYS FOLLOWING NOTICE OF THE EXISTENCE OR ASSERTION OF SUCH CLAIM OR LIEN. CITY SHALL NOT BE LIABLE FOR ANY SERVICES, LABOR, MATERIAL, OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO LICENSEE OR LICENSEE'S CONTRACTOR(S) UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY SERVICES, LABOR, MATERIAL, OR EQUIPMENT SHALL ATTACH TO OR AFFECT THE PROPERTY. NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE CITY'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, PROFESSIONAL, LABORER, EQUIPMENT, OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICE OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR THE BENEFIT OF CITY OR THE PROPERTY, NOR AS GIVING LICENSEE ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT THAT WOULD GIVE RISE TO THE FILING OF ANY CLAIM OR LIEN AGAINST CITY OR THE PROPERTY.

1.2 No Liens Against Public Property. LICENSEE ACKNOWLEDGES AND AGREES THAT ON THE EFFECTIVE DATE THE PROPERTY IS OWNED BY CITY, WHICH IS A PUBLIC ENTITY, AND THE PROPERTY IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE PROPERTY. LICENSEE FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE PROPERTY HIRED BY OR FOR THE BENEFIT OF ONE OR MORE LICENSEE PARTIES OF SUCH FACT AND THAT CITY AND THE PROPERTY ARE NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT.

1.2 Signs. Licensee shall not place any banner, pennant, flag, poster, sign, decoration, marquee, awning, or similar device or advertising (each, a "**Sign**") on the License Area without City's prior written consent, in each instance, which consent may be given or withheld in City's

sole and absolute discretion. All Signs on the License Area will be maintained by Licensee in good, clean, and operating condition during the Term. Licensee will remove all Signs placed by Licensee from the License Area on or before the Termination Date and repair all damage caused by placement, installation, or removal of Signs, all at Licensee's sole cost and expense. Licensee shall comply with all Laws requiring the posting of Signs on the License Area. If any unauthorized Sign is found on the License Area, Licensee shall remove the Sign at Licensee's sole cost and expense within twenty-four (24) hours after Notice from City requesting the removal. If Licensee does not remove an unauthorized Sign within twenty-four (24) hours after Notice from City requesting the removal, City may enter the License Area and remove the Sign at Licensee's sole cost and expense. If City performs work required of Licensee under this Section 2050017532.1.2, Licensee shall reimburse City for all costs and expenses reasonably incurred by City in performing such work (including the costs of City's staff time, administrative overhead, and Legal Costs), within thirty (30) days after Notice to Licensee of such costs. All amounts reimbursable to City by Licensee under this Section 2050017532.1.2 that are not paid within thirty (30) days after Notice to Licensee of the amount shall accrue Default Interest until paid.

1.2 Deliveries to City. If requested by City, Licensee shall provide City with a copy of all reports, analyses, findings, and conclusions resulting from the Permitted Use, which may be reasonably redacted for confidentiality purposes.

1.2 Costs. Licensee shall pay all costs and expenses related to the Permitted Use.

1.2 Security and Safety. Licensee shall be solely responsible for the security and safety of the License Area. Licensee shall be responsible for the cleanup and securing of the License Area disturbed by Licensee, as appropriate, immediately following each day's work to ensure the daily security and safety of the License Area. In conducting the Permitted Use, Licensee shall comply with all Laws, at Licensee's sole cost and expense, with respect to maintaining the License Area in a safe and secure manner during the Term.

1.2 City Work. City reserves the right to perform work on the License Area at any time. If City intends to perform work on the License Area, City shall give Licensee 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). Licensee shall comply with all safety instructions issued by City to ensure the safety of City personnel or contractors performing work on the License Area.

1.2 Inspection. City may, at any time, for any reason or no reason, without any obligation to do so, enter the License Area for the purposes of inspecting the License Area and the Permitted Use conducted on the License Area for compliance with this Agreement. Licensee shall make a Licensee representative available to be present at any City inspection under this Section 2050017532.1.2 on, at least, 48 hours' advance Notice from City; provided, however, the presence of a Licensee representative is not required for City to exercise its inspection rights under this Section 2050017532.1.2.

1.2 Utilities. Licensee shall order, obtain, install, and pay for all utilities, including installation and service charges, required or desired for the Permitted Use. Utilities shall be temporary and constructed and located in accordance with plans approved by City, in City's sole and absolute discretion, before any utility construction or installation commences.

1.2 Superior Interests. This Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, licenses, permits, easements, or rights-of-

way pertaining to the Property existing as of the Effective Date, whether or not of record. Licensee shall obtain all licenses, permits, or agreements required from Third Persons holding a superior interest to allow the Permitted Use on the License Area in compliance with all such superior interests. If the Permitted Use is or becomes inconsistent or incompatible with a preexisting, superior interest, Licensee shall take all action and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

1.2 Vehicular Traffic. All vehicular traffic shall be confined to concrete, asphalt or decomposed aggregate surfaces unless otherwise approved in writing by City, in City's sole and absolute discretion, prior to the commencement of the Permitted Use.

1.2 Limitation on Construction. Licensee shall not perform any construction on or related to the License Area that is not restoration, repair, or maintenance required to be performed by Licensee under this Agreement.

1.2 Contractors. Licensee shall provide City with a list of all contractors and subcontractors that will perform any part of the Permitted Use, including name, address, email, fax, and phone number. All work requiring a licensed contractor under the State Contractors' State License Law (State Business & Professions Code sections 7000-7191) shall be done by contractors licensed by the State.

1.2 Unauthorized Use Charge. Licensee shall pay City one hundred (100%) of the Gross Revenue, without any deduction, credit, or set-off, from any use of the License Area that is not a Permitted Use within thirty (30) days after Licensee receives such revenue. Nothing in this Section 2050017532.1.2 or City's acceptance of any payment under this Section 2050017532.1.2 is intended to authorize any use of the License Area that is not a Permitted Use, waive Licensee's Default for conducting or allowing such use, or waive any City right or remedy under this Agreement.

7. **MAINTENANCE**.

1.2 Obligation to Maintain. Licensee shall keep and maintain the License Area in good order, condition, and repair, in accordance with the Maintenance Standard, subject to reasonable wear and tear and any other condition this Agreement expressly does not require Licensee to repair or restore. Licensee's obligation to maintain the License Area includes an obligation to make all repairs that the License Area may require under applicable Law. City has no obligation to maintain or repair the License Area.

1.2 Maintenance Standard. Licensee's obligation to maintain the License Area under Section 2050017532.1.2 includes maintenance, repair, reconstruction, and replacement of all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the License Area, now existing or made in the future, as necessary to maintain the appearance, character and level of quality of the License Area. Licensee's obligation to maintain the License Area described in the immediately preceding sentence shall include: (a) maintaining the surfaces of the License Area in an evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability; (b) removing all papers, mud, sand, debris, filth, and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep such areas in a clean and orderly condition; (c) removing or covering graffiti in accordance with Section

2050017532.1.2; (d) placing, keeping in repair and replacing all necessary and appropriate directional signs, markers, and lines; (e) operating, keeping in repair, and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (f) providing security services and taking all reasonably appropriate measures to ensure the safety of Persons using the License Area; and (g) maintaining, mowing, weeding, trimming, and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance, character and level of quality of the landscaping, all at the sole cost and expense of Licensee. Licensee's obligation to maintain the License Area described in the two immediately preceding sentences is, collectively, referred to in this Agreement as the "**Maintenance Standard**."

1.2 Maintenance Default. If an adverse condition occurs on the License Area in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then City may Notify Licensee of the Maintenance Deficiency. If Licensee fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days following Licensee's receipt of Notice of the Maintenance Deficiency, City shall have the right (but no obligation) to enter the License Area following five (5) days advance Notice and perform all acts necessary to cure the Maintenance Deficiency or to take any other action at law or in equity that may then be available to City to accomplish the abatement of the Maintenance Deficiency. Any amount of money expended by City for the cure or abatement of a Maintenance Deficiency under this Section 2050017532.1.2 shall be reimbursed to City by Licensee within thirty (30) days after Notice to Licensee of the amount. Any amount of money expended by City for the cure or abatement of a Maintenance Deficiency under this Section 2050017532.1.2 that is not reimbursed to City by Licensee within thirty (30) days after Notice to Licensee of such amount shall accrue Default Interest until paid in full.

1.2 Graffiti. Graffiti, as defined in Government Code section 38772, applied to any exterior surface on the License Area and visible from outside the License Area shall be removed by Licensee by either painting over the evidence of such vandalism with a paint color-matched to the surface on which the paint is applied or removed with solvents, detergents, or water, as appropriate. Notwithstanding Section 2050017532.1.2, if any such graffiti is not removed within seventy-two (72) hours after the time Licensee discovers or receives Notice of the graffiti or, in the case of graffiti that cannot reasonably be removed within seventy-two (72) hours after the time Licensee discovers or receives Notice of the graffiti, whichever is earlier, if Licensee does not duly commence and diligently complete such cure within a reasonable time under the circumstances, then after Notice to Licensee, City shall have the right (but no obligation) to enter the License Area and remove the graffiti. Any amount of money expended by City for removal of graffiti from the License Area under this Section 2050017532.1.2 shall be reimbursed to City by Licensee, within thirty (30) days after Notice to Licensee of such amount. Any amount of money expended by City for removal of graffiti under this Section 2050017532.1.2 not reimbursed to City by Licensee within thirty (30) days after Notice to Licensee of such amount shall accrue Default Interest until paid in full.

8. **PREVAILING WAGE LAWS**. On the Effective Date, no public funds are provided by City or any other Person to Licensee relating to Licensee's use of the License Area. If Licensee obtains any public funds after the Effective Date from City or another Person relating to Licensee's

use of the License Area, Licensee shall comply with Prevailing Wage Laws in performing all restoration, repair, or maintenance required to be performed by Licensee under this Agreement.

9. **LICENSEE INSURANCE**. Licensee shall maintain, to protect the City Parties against all insurable Claims arising from or relating to this Agreement, the License Area, or the Permitted Use, at the sole cost and expense of Licensee, all the insurance coverage required in **EXHIBIT B** attached to this Agreement.

10. **WASTE OR DAMAGE**. Licensee shall immediately Notify City of any waste, casualty, or damage to the License Area or other areas of the Property of which Licensee becomes aware. Licensee shall not commit, or allow to be committed, any waste, casualty, or damage to property or injury to person on or around the License Area or other parts of the Property. If waste, casualty, or damage to the Property arises from the Permitted Use, action by a Licensee Party, or failure to act by a Licensee Party that had a duty to act, at City's election, in City's sole and absolute discretion, Licensee shall make, or cause to be made, full repair of the waste, casualty, or damage and restore the Property to its condition existing immediately prior to the waste, casualty, or damage. Licensee shall commence preliminary steps toward restoration of the Property as soon as practicable, but no later than thirty (30) days after the date the waste, casualty, or damage occurs. Licensee shall complete all required repairs or restoration within ninety (90) days after the date the waste, casualty, or damage occurs. Licensee must obtain all Approvals required for repair or restoration of all waste, casualty, or damage to the Property. Following the occurrence of any casualty that materially restricts use of the License Area or access to the License Area for the Permitted Use for more than one hundred eighty (180) days, City or Licensee may terminate this Agreement by seven (7) days' Notice to the other Party. This Section 10 shall survive the Termination Date.

11. **ENVIRONMENTAL CONDITIONS**. Licensee shall not cause or permit any Environmental Condition. If Licensee discovers or becomes aware of an Environmental Condition, Licensee shall Notify City of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following the Licensee becoming aware of such Environmental Condition.

1.2 Remediation. If an Environmental Condition occurs, Licensee shall remediate the Environmental Condition in accordance with Law to allow all uses of the Property permitted by Law immediately before the Environmental Condition is discovered, at Licensee's sole cost and expense. If Licensee knows or has reasonable cause to believe that an Environmental Condition is an imminent danger to public health and safety, Licensee shall take all actions necessary to alleviate the imminent danger, at Licensee's sole cost and expense.

1.2 Removal. If a Licensee Party stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Property in accordance with Law, Licensee shall remove all such Hazardous Substances from the Property prior to the Termination Date and provide City with documentation demonstrating the legal removal and disposal of the Hazardous Substances. Licensee shall be responsible for all costs incurred by City to remove or dispose of any Hazardous Substances not removed from the Property by Licensee in accordance with this Section 11.2.

1.2 Reports. Licensee shall deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to City within three (3) days after Notifying City of the Environmental Condition. Licensee shall also submit all required reports relating to the Environmental Condition to other Governments as required by Law.

1.2 Environmental Assessment. Upon reasonable cause to believe that an Environmental Condition has occurred, City may cause an environmental assessment of the Property to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be performed at Licensee's sole cost and expense. Licensee shall reimburse City for all costs and expenses reasonably incurred by City in performing the environmental assessment within fifteen (15) days after Notice to Licensee of the amount of such costs and expenses. Any amount reimbursable to City by Licensee under this Section 2050017532.1.2 that is not paid within fifteen (15) days after Notice to Licensee of such amount, shall accrue Default Interest until paid.

12. **COMPLIANCE WITH LAW**.

1.2 General. The Permitted Use shall comply with all Laws, at Licensee's sole cost and expense. Licensee shall comply with all notices, orders, directives, or the like issued by City or any other Government under the authority of current or future Law.

1.2 Compliance with City Standard Contract Provisions. In entering the License Area or performing the Permitted Use under this Agreement, Licensee shall comply with all City standard contract provisions set forth in **EXHIBIT C** attached to this Agreement.

13. **INDEMNIFICATION**.

1.2 Licensee Indemnity Obligations. In addition to Licensee's obligations to Indemnify the City Parties under other provisions of this Agreement, Licensee shall Indemnify the City Parties against all Claims arising from: (a) Licensee's use of the License Area; (b) this Agreement; (c) personal injury (including death) or property damage (to property of Licensee or any other Person) occurring on the License Area or adjoining real property; (d) personal injury (including death) or property damage resulting from Licensee's use of the License Area; (e) a wrongful intentional act or negligence of one or more of the Licensee Parties; (f) strict liability relating to Licensee's use of the License Area; (g) all applications for Approvals made by or on behalf of one or more Licensee Parties; (h) all agreements that one or more Licensee Parties makes with a Third Person regarding this Agreement or the License Area; (i) services, labor, material, or equipment supplied to, for, on behalf of, or at the request of one or more Licensee Parties; (i) a workers' compensation claim by one or more employees or contractors of one or more Licensee Parties; (j) all Prevailing Wage Determinations, except to the extent prohibited by Law. including State Labor Code sections 1773.3 or 1781; or (j) an Environmental Condition occurring on or after the Effective Date. Notwithstanding anything to the contrary in this Agreement, Licensee's obligations to Indemnify the City Parties excludes Claims arising solely from the established active negligence or willful misconduct of a City Party.

1.2 Independence of Insurance and Indemnity Obligations. Licensee's obligations to Indemnify the City Parties under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Licensee's insurance or other obligations under this Agreement. Licensee's obligations to Indemnify the City Parties under this Agreement are independent of Licensee's insurance and other obligations under this Agreement. Licensee's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify Licensee's obligations to Indemnify the City Parties under this Agreement and are independent of Licensee's obligations to Indemnify the City Parties and other obligations under this Agreement.

1.2 Survival of Indemnification Obligations. Licensee's obligations to Indemnify the City Parties under this Agreement shall survive the Termination Date, until all actual or prospective Claims subject to Licensee's obligations to Indemnify the City Parties under this Agreement are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

1.2 Indemnification Procedures. Wherever this Agreement requires Licensee to Indemnify the City Parties:

13..2 *Notice*. The affected City Parties shall Notify Licensee of the Claim within a reasonable time.

13..3 *Selection of Counsel*. Licensee shall select counsel reasonably acceptable to City's City Council. Even though Licensee shall defend the Claim, the affected City Parties may, at their respective options, engage separate legal counsel, at Licensee's expense, to advise them regarding the Claim and their defense. The affected City Parties' separate legal counsel(s) may attend all proceedings and meetings. Licensee's legal counsel shall actively consult with the City Parties' separate legal counsel, subject to applicable conflict of interest and privileged communication limitations.

13..4 *Cooperation*. The affected City Parties shall reasonably cooperate with Licensee's defense of the City Parties.

13..5 *Settlement*. Licensee may only settle a Claim with the prior written consent of the affected City Parties, in their respective sole and absolute discretion.

1.2 Immediate Duty to Defend. The duty to defend that is within Licensee's obligations to Indemnify the City Parties under this Agreement includes Claims for which the City Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Licensee or the City Parties have been determined. The duty to defend applies immediately, regardless of whether the City Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Parties that the City Parties be entitled to obtain summary adjudication or summary judgment regarding Licensee's duty to defend the City Parties at any stage of a Claim within the scope of Licensee's obligations to Indemnify the City Parties under this Agreement.

1.2 Savings Provision. Notwithstanding anything in this Agreement to the contrary, if the extent of Licensee's obligation to Indemnify the City Parties under this Agreement exceeds the indemnity obligation allowed by applicable Law, Licensee's obligation to Indemnify the City Parties shall be reduced to the extent required to comply with applicable Law.

14. **TAXES; POSSESSORY INTEREST TAX**. Licensee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Licensee, this Agreement, the Permitted Use, or the License Area. Licensee acknowledges and agrees that this Agreement may create a possessory interest in the Property subject to property taxation and that Licensee may be subject to payment of property taxes levied on such interest. Any such possessory interest tax imposed shall be solely a tax liability of Licensee and shall be paid before delinquency by Licensee. In addition, Licensee shall pay before delinquency all personal property taxes becoming due for equipment, fixtures, inventory, or other personal property of Licensee or any other Licensee Party

installed, maintained, or present at or on the License Area. Licensee acknowledges and agrees that it shall bear all responsibility, liability, costs, and expenses connected in any way with any tax consequences experienced by Licensee related to this Agreement or the Permitted Use.

15. **END OF TERM**. Before the Termination Date, Licensee shall remove or cause the removal of all the personal property of the Licensee Parties from the License Area and place the License Area in a condition as close as possible to the condition of the License Area on the day before the Effective Date, reasonable wear and tear excepted. Without limiting the obligation of Licensee to remove all the personal property of the Licensee Parties from the License Area before the Termination Date, Licensee agrees that City may dispose of all personal property on the License Area after the Termination Date, at Licensee's sole cost and expense.

16. **HOLDOVER**. Any continued use of the License Area by Licensee or receipt or acceptance of License Fee payment(s) by City after the Termination Date shall not renew or extend the Term or this Agreement and all terms and conditions of this Agreement shall apply to such use except: (1) City may terminate this Agreement for any reason or no reason on seven (7) days' Notice to Licensee; and (2) the License Fee shall be the fair market value of such use of the License Area, as determined by City.

17. **CITY CURE RIGHT**. If Licensee fails to take any action this Agreement requires of Licensee, without waiving or releasing Licensee from any obligation, Default, or Event of Default and without waiving City's right to take such action as this Agreement may permit as a result of a Default or Event of Default, City may (but need not) take such action. Licensee shall reimburse City for all reasonable costs and expenses (including the costs of City staff time, administrative overhead, and Legal Costs) incurred by City in exercising its cure rights under this Section 17 within thirty (30) days after Notice to Licensee of such costs. All amounts reimbursable to City by Licensee under this Section 17 that are not paid within thirty (30) days after Notice to Licensee of the amount shall accrue Default Interest until paid. Nothing in this Section 17 is intended to modify or restrict any other right or remedy available to City under this Agreement or Law.

18. **REMEDIES**. After the occurrence of an Event of Default by the other Party, the non-defaulting Party shall be entitled to take any or all action authorized by this Agreement after the occurrence of an Event of Default by the other Party, including legal proceedings to enforce any or all contractual rights or remedies, or pursue any or all other remedies or damages relating to such Event of Default available to the non-defaulting Party at law or in equity.

19. **LEGAL ACTIONS**. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages.

20. **CUMULATIVE RIGHTS AND REMEDIES**. The rights and remedies of the Parties under this Agreement are cumulative with all other rights or remedies of the Parties under this Agreement, at law, or in equity. The exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or a different time, of any other right or remedy for the same Default or Event of Default by the other Party or the same right or remedy for any other Default or Event of Default by the other Party.

21. **LEGAL CHALLENGE OR CHANGE IN LAW**. If a lawsuit is filed against City or Licensee to prevent or prohibit the Permitted Use on the License Area, or a subsequent change in Law prohibits the Permitted Use on the License Area, either Party shall have the right to terminate

this Agreement, in its respective sole and absolute discretion, on thirty (30) days' Notice to the other Party.

22. **CITY'S RESERVATION OF RIGHTS**.

1.2 Government Action. By entering into this Agreement, neither City nor the City Council is obligating itself or any other Government regarding any discretionary action relating to the development, occupancy, use, or maintenance of the License Area, including re-zonings, variances, environmental clearances, or any Approval required to conduct the Permitted Use.

1.2 Resources. City reserves all right, title, and interest in all natural resources relating to the Property, including subsurface natural gas, oil, minerals, and water, on or within the Property.

23. **EMINENT DOMAIN**. If all or part of the License Area or any other part of the Property is taken through eminent domain proceedings or under threat of the exercise of the power of eminent domain by any Government with the power of eminent domain, the interests of City and Licensee shall be as follows:

1.2 Full Taking. If all or substantially all the Property is taken, this Agreement shall terminate on the date of the transfer of title or possession of the Property to the condemning Government, whichever first occurs.

1.2 Partial Taking - Remainder Unusable. If a partial taking of the Property occurs that affects the License Area and, in City's sole and absolute discretion, the remaining part of the License Area is unsuitable for the Permitted Use, this Agreement shall terminate on the date of the transfer of title or possession of the part of the Property taken to the condemning Government, whichever first occurs.

1.2 Partial Taking - Remainder Usable. If a partial taking of the Property occurs that affects the License Area and, in City's sole and absolute discretion, the unaffected part of the License Area is suitable for the Permitted Use, this Agreement shall terminate regarding the part of the Property taken on the date of the transfer of title or possession the part of the Property taken to the condemning Government, whichever first occurs, but shall continue for the part of the Property not taken that is subject to this Agreement.

1.2 Award. Notwithstanding anything to the contrary in this Agreement, in all eminent domain proceedings, settlements, agreements, or other means by which a Government taking of the Property by exercise or threat of exercise of the power of eminent domain is pursued or resolved, all money paid or awarded in such process shall be the sole property of City.

1.2 City Transfer. City may transfer its title or interest in the Property in lieu of eminent domain proceedings to any Government entitled to exercise the power of eminent domain over the Property.

1.2 No Inverse Condemnation. City's exercise of any right or power under this Agreement shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation.

24. **NO DISCRIMINATION OR SEGREGATION**. Licensee covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all Persons

claiming under or through it, him or her, that neither Licensee nor any Person claiming under or through Licensee shall establish or allow any discrimination against or segregation of any Person or group of Persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the use of the License Area.

25. **NOTICES**. All Notices submitted by a Party to the other Party under or as required by this Agreement shall be sent by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.), or registered or certified first-class mail, postage prepaid, return receipt requested through the United States Postal Service, to the address of the recipient Party designated below in this Section 23. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 23. Notice shall be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day the Notice is sent by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or three (3) days after the Notice is deposited with the United States Postal Service in accordance with this Section 23. Any attorney representing a Party may give any Notice on behalf of such Party. The Notice addresses for the Parties, as of the Effective Date, are as follows:

To City: The City of San Diego
Attention: Deputy Director (Airports), Economic Development Dept.
Montgomery-Gibbs Executive Airport
3750 John J. Montgomery Drive, MS 14
San Diego, CA 92123
(858) 573-1440

To Licensee: United Cerebral Palsy Association of San Diego County
Attention: David S. Carucci, Executive Director
8665 Gibbs Drive, Suite 100
San Diego, CA 92123
(619) 571-7803
dcarucci@ucpsd.org

26. **TIME PERIOD CALCULATION**. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months, and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

27. **INTERPRETATION PRINCIPLES**. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Agreement. The Parties participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term, or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed

by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this Agreement, refers to such document, as modified from time to time (excepting any modification violating this Agreement), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" in this Agreement includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar Government requirement refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

28. **GOVERNING LAW**. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. Where there is a conflict between State law and the laws of the United States of America, including the rules and regulations of the Federal Aviation Administration (FAA) attached hereto as **EXHIBIT E**, the FAA rules shall prevail. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the County. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

29. **PRIOR AGREEMENT TERMINATION**. As of the Effective Date, all leases, right-of-entry permits, use and occupancy permits, or other agreements between City and Licensee concerning the Permitted Use on the Property, other than this Agreement, are terminated, except as to any rents, fees, rights, or remedies accrued to either Party under those agreements prior to the Effective Date.

30. **RELATIONSHIP OF PARTIES**. The Parties each intend and agree that City and Licensee are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

31. **WARRANTY AGAINST PAYMENT OF CONSIDERATION FOR AGREEMENT**. Licensee represents and warrants to City that: (a) Licensee has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Licensee; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Licensee or any of Licensee's agents, employees, or representatives to any elected or appointed official or employee of City in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties in this Section 31 shall entitle City to terminate this Agreement immediately. Upon any termination of this Agreement under this Section 31, Licensee shall immediately repay to City all payments made to or on behalf of Licensee by City (if any) under this Agreement prior to the Termination Date.

32. **UNAVOIDABLE DELAY; EXTENSION OF TIME FOR PERFORMANCE**. Performance by either Party under this Agreement shall not be considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of the Unavoidable Delay; and (b) within twenty (20) days after the Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time. Notwithstanding anything to the contrary in this Agreement, no obligation of Licensee for payment of money under this Agreement may be delayed

by the occurrence of an Unavoidable Delay, unless the delay in payment of money is due to an Unavoidable Delay that prevents or materially limits the ability to transfer funds by or between Federal or State chartered financial institutions.

33. **NO OTHER REPRESENTATIONS OR WARRANTIES**. Except as expressly set forth in this Agreement, no Party makes any representation or warranty material to this Agreement to the other Party.

34. **NO THIRD-PARTY BENEFICIARIES**. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns (if any), nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

35. **TIME OF THE ESSENCE**. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence of this Agreement.

36. **WAIVERS AND AMENDMENTS**. Each waiver of a term, provision, covenant, condition, restriction, or agreement contained in this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. Failure to insist on strict compliance with a term, provision, covenant, condition, restriction, or agreement contained in this Agreement at any time or times shall not constitute a waiver of such term, provision, covenant, condition, restriction, or agreement at any other time, nor shall any waiver or relinquishment of any right or power under this Agreement at any time or times constitute a waiver or relinquishment of such right or power at any other time. Each amendment to this Agreement must be in writing and signed by the authorized representative(s) of both City and Licensee.

37. **ACCESSIBILITY ASSESSMENT**. City discloses to Licensee that the Property has not been inspected by a Certified Access Specialist (CASp). City further states:

> A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

38. **SURVIVAL OF AGREEMENT**. All the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or after the Termination Date, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment, or expiration of all applicable statutory limitations periods, and all terms and conditions of this Agreement relating to dispute resolution and remedies shall survive the Termination Date.

39. **INTEGRATION**. This Agreement includes twenty-two (22) pages and four (4) exhibits (the exhibits are incorporated into this Agreement by reference) constituting the entire understanding and agreement of the Parties regarding the subject matter of this Agreement and supersedes all previous negotiations or agreements between the Parties relating to the subject matter of this Agreement.

40. **TITLES AND HEADINGS FOR REFERENCE ONLY**. The titles and headings of the articles, paragraphs, or sections of this Agreement are for convenience of reference only, are not to be considered a part of this Agreement, and shall not in any way interpret, modify, or restrict the meaning of any term, provision, covenant, condition, restriction, reservation, or agreement in this Agreement.

41. **SEVERABILITY**. If a term, provision, covenant, condition, restriction, or agreement contained in this Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such a term, provision, covenant, condition, restriction, or agreement to Persons or circumstances other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity. All remaining terms, provisions, covenants, conditions, restrictions, or agreements contained in this Agreement shall be valid and enforced to the fullest extent Law allows.

42. **COUNTERPARTS**. This Agreement may be signed in multiple counterpart originals, each of which shall be considered an original, and all of which shall constitute one and the same agreement.

43. **ELECTRONIC SIGNATURES**. The Parties agree: (a) to deliver and accept signatures on or under this Agreement by e-mail or electronic means (including digital signatures); and (b) that signatures delivered by e-mail or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

44. **EXHIBITS**. All the exhibits attached to this Agreement are incorporated into this Agreement by reference and are described as follows:

EXHIBIT A	License Area Depiction
EXHIBIT B	Insurance Requirements
EXHIBIT C	City Standard Contract Provisions
EXHIBIT D	Prevailing Wage Requirements
EXHIBIT E	FAA Regulations

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

SIGNATURE PAGE
TO
LICENSE AGREEMENT
(8525 Gibbs Dr., Underground Garage Storage Area)

Licensee and City sign and enter into this Agreement by and through the signatures of their respective authorized representatives, as follow:

CITY:

The City of San Diego,
a California municipal corporation

By: Jorge Rubio (Dec 13, 2024 08:30 PST)
Jorge Rubio, Deputy Director, Airports
Economic Development Department

LICENSEE:

United Cerebral Palsy Association of San Diego County, a California non-profit public benefit corporation

By: David S. Carucci (Dec 12, 2024 16:24 PST)
Name: _____
Title: _____

Approved as to form on
12/13/2024:

HEATHER FERBERT
City Attorney

By: Brian Byun (Dec 13, 2024 16:15 PST)
Brian W. Byun
Deputy City Attorney

EXHIBIT A
TO
LICENSE AGREEMENT
(8525 Gibbs Dr., Underground Garage Storage Area)

LICENSE AREA DEPICTION

[*BEHIND THIS COVER PAGE*]

PARKING GARAGE DESCRIPTION

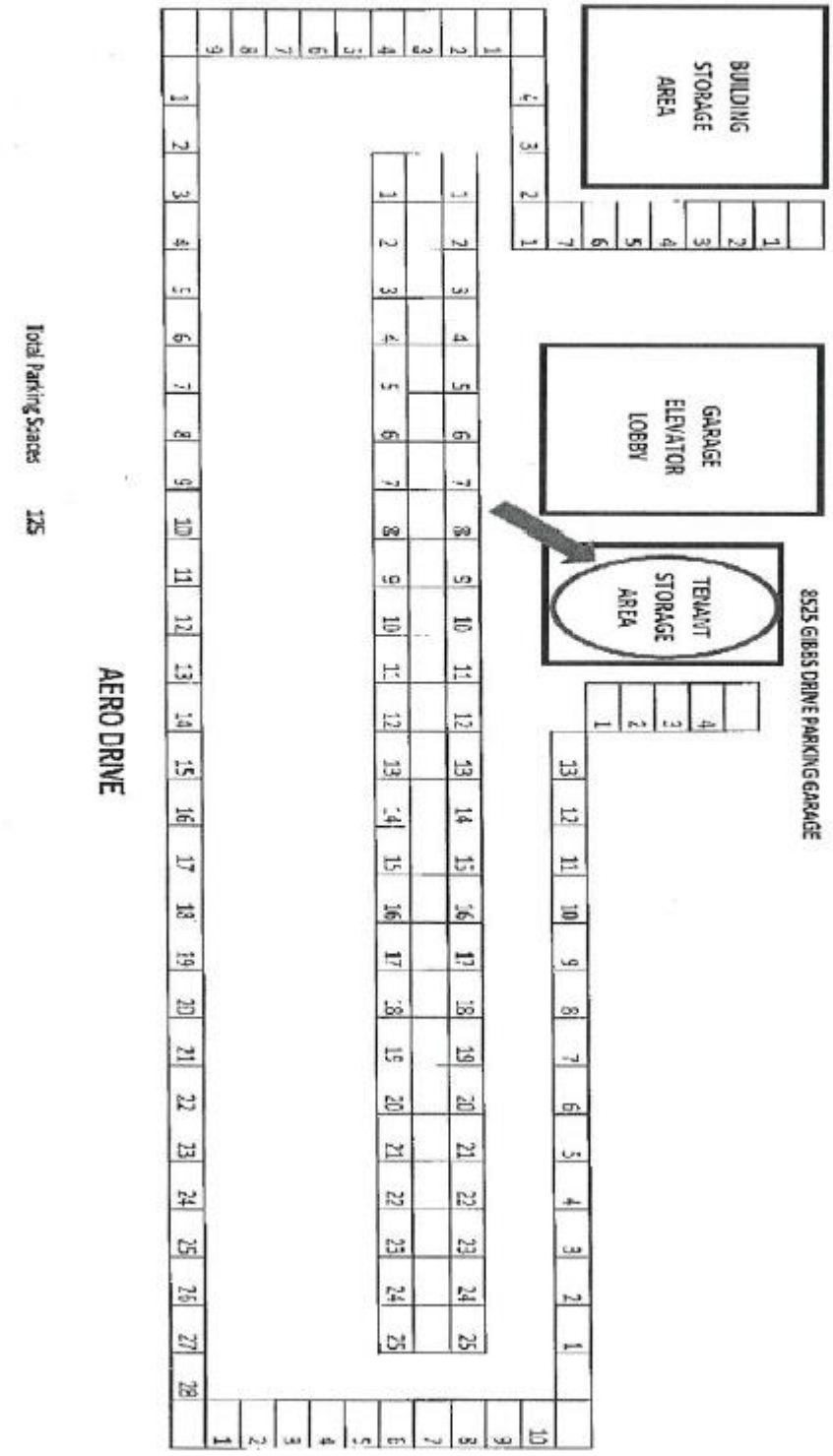


EXHIBIT A - 2
Property & License Area Description and Depiction

EXHIBIT B
TO
LICENSE AGREEMENT
(8525 Gibbs Dr., Underground Garage Storage Area)

INSURANCE REQUIREMENTS

1. **Required Insurance Coverage**. Licensee shall maintain all the following insurance policies:

   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 License Area.

   1.3. *Property Insurance*. Insurance providing coverage for the License Area and all improvements on or to the License Area against loss, damage, or destruction by fire or other hazards encompassed under Cause of Loss – Special 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 License 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, with a minimum liability limit of One Million Dollars ($1,000,000) per accident for bodily injury, or disease, covering all employees of Licensee.

   1.5. *Contractors Pollution Liability Insurance*. If the Permitted Use includes sampling, testing, geotechnical boring, construction, or installation activities below the surface of the Property (collectively, "Subsurface Work"), Contractors Pollution Liability

insurance against claims arising from pollution conditions or site environmental conditions, including ongoing operations performed by Licensee or on Licensee's behalf, Licensee's products, Licensee's work (including Licensee's completed operations performed by Licensee or on Licensee's behalf), or premises owned, leased, controlled, or used by Licensee, with minimum liability limits of Two Million Dollars ($2,000,000) for any one claim or occurrence and Four Million Dollars ($4,000,000) aggregate per policy period of one year. All costs of defense covered by the Contractors Pollution Liability Insurance shall be outside the policy's liability limits. The deductible for Contractors Pollution Liability Insurance may not exceed Twenty-Five Thousand Dollars ($25,000) per claim unless and until Licensee obtains City's separate written approval of a higher deductible amount. With City's separate prior written approval, Licensee may satisfy its obligation to maintain Contractors Pollution Liability Insurance through its subcontractor that will perform the Subsurface Work maintaining Contractors Pollution Liability Insurance as required under these Insurance Requirements (defined below). When Licensee requests City's approval to use its subcontractor's Contractors Pollution Liability Insurance, Licensee shall certify to City that all Subsurface Work requiring Contractors Pollution Liability Insurance under these Insurance Requirements will be performed exclusively by the subcontractor that will maintain the Contractors Pollution Liability Insurance and provide City with a copy of its subcontractor's Contractors Pollution Liability Insurance policy. Policies issued on a claims made basis must be issued before any work commences, be maintained for the duration of all work, and include a 12-month extended claims discovery period applicable to all work or the policy or policies must be maintained for at least 12 months after completion of all the work without advancing the retroactive date.

2. **Nature of Insurance**. The contents of this Error! Reference source not found. are sometimes referred to as the "**Insurance Requirements**." All Liability Insurance, Automobile Liability Insurance, Property Insurance, Workers Compensation Insurance, and Contractors Pollution Liability Insurance (if required) 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. Licensee 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 License 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 and Contractors Pollution 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 License

Area and may not contain any terms, conditions, exclusions, or limitations applicable to the City Parties that do not apply to Licensee.

3.2. *Primary Coverage*. All insurance coverage maintained by Licensee shall be primary to all insurance or self-insurance maintained by the City Parties and all insurance or self-insurance maintained by the City Parties shall be excess of all insurance maintained by Licensee and shall not contribute with any insurance maintained by Licensee.

3.3. *Contractual Liability*. Liability Insurance and Contractors Pollution Liability Insurance policies shall contain contractual liability coverage for Licensee's Indemnity obligations under this Agreement. Licensee's maintaining or failing to maintain such contractual liability coverage shall not relieve Licensee from nor satisfy any Indemnity obligation of Licensee under this Agreement.

3.4. *Deliveries to City*. Evidence of Licensee'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, Licensee shall deliver to City evidence of Licensee'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*. Licensee 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 Licensee obtains an insurance policy covering both the Licensee 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, except Contractors Pollution Liability Insurance, may be written on a claims-made basis.

3.8. *Fully Paid and Non-Assessable*. All insurance maintained by Licensee in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.

3.9. *Separation of Insured*. All Liability Insurance, Contractors Pollution Liability Insurance, and Automobile Liability Insurance shall provide for separation of insured for Licensee 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 issued in satisfaction of these Insurance Requirements shall be declared to and approved by City. Licensee 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 Licensee 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 Licensee in the same manner that insurance costs are reimbursable to City from Licensee under Section 4 of these Insurance Requirements.

3.11. *No Separate Insurance*. Licensee 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 Agreement 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 Agreement, 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 Agreement 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 Licensee to maintain 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 Licensee 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 4 that is not paid within fifteen (15) days after Notice from City with an explanation of the amounts owed, will accrue Default Interest 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 Licensee shall not relieve Licensee of any Default or Event of Default or Licensee's obligation to maintain all insurance coverage required by these Insurance Requirements.

EXHIBIT C
TO
LICENSE AGREEMENT
(8525 Gibbs Dr., Underground Garage Storage Area)

CITY STANDARD CONTRACT PROVISIONS

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

1.1. Council Policy 100-04 Americans with Disabilities Act ("**ADA**") Requirements. Licensee will comply with the City's ADA requirements under Council Policy 100-04, which is incorporated into this Agreement by this reference. Licensee agrees that all subcontracts relating to this Agreement or the License Area will contain the subcontractor's agreement to abide by the provisions of Council Policy 100-04.

1.2. Equal Benefits Ordinance. Unless an exception applies, Licensee shall comply with the "Equal Benefits Ordinance" codified in San Diego Municipal Code ("**SDMC**") section 22.4308.

1.3. Equal Pay Ordinance. Unless an exception applies, Licensee shall comply with the "Equal Pay Ordinance" codified in SDMC sections 22.4801 through 22.4809. Licensee 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 Licensee to the same extent as it would apply to Licensee. Licensee shall require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts.

1.4. 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.

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

1.6. Employment of City Staff. Under City Council Policy 300-11, if Licensee employs an individual, who, within 12 months immediately preceding such employment, did, in the individual's capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the Council in connection with the entry into this Agreement, City, in its sole and absolute discretion, shall have the right to unilaterally and immediately terminate this Agreement by notice to Licensee.

EXHIBIT D
TO
LICENSE AGREEMENT
(8525 Gibbs Dr., Underground Garage Storage Area)

PREVAILING WAGE REQUIREMENTS

1. **PREVAILING WAGES**. Under San Diego Municipal Code section 22.3019, construction work performed or funded under this Agreement cumulatively exceeding $25,000 and alteration, demolition, repair and maintenance work performed, or funded under this Agreement cumulatively exceeding $15,000 is subject to the State prevailing wage law set forth in State Labor Code sections 1720 through 1862, and in undertaking any and all such work, Licensee and Licensee's contractors and subcontractors shall comply with State Labor Code sections 1720 through 1862 and the requirements set forth in this **EXHIBIT C** (collectively, "**Prevailing Wage Law**"). This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay "living wage" under San Diego Municipal Code sections 22.4201 through 22.4245 ("**LWO**"). If both Prevailing Wage Law and the LWO are applicable to particular work, Licensee and Licensee's contractors and subcontractors must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

1.1 Compliance with Prevailing Wage Requirements. Under Prevailing Wage Law, Licensee and Licensee's contractors and subcontractors shall all ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations ("**DIR**"), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.

1.1.1 Copies of the prevailing rate of per diem wages are on file with City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Licensee and Licensee's contractors and subcontractors shall all post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to all interested Persons upon request. Licensee and Licensee's contractors and subcontractors shall all deliver evidence of the required job site posting to City, within five (5) days after such posting.

1.1.2 The wage rates determined by DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the Term. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with DIR, such predetermined wage rate shall become effective on the date following the expiration date of the previous wage rate and shall apply to this Agreement in the same manner as if it had been published. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term, each successive predetermined wage rate shall apply to

this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expire during the Term, such wage rate shall apply to the balance of the Term.

1.2 Penalties for Violations. Licensee and Licensee's contractors and subcontractors shall all comply with State Labor Code section 1775, in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with State Labor Code section 1775 shall be in addition to all other applicable penalties allowed under State Labor Code sections 1720-1861.

1.3 Payroll Records. Licensee and Licensee's contractors and subcontractors shall all comply with State Labor Code section 1776, which generally requires keeping accurate payroll records, verifying, and certifying payroll records, and making them available for inspection. Licensee and Licensee's contractors and subcontractors shall all comply with State Labor Code section 1776, including having provisions requiring such compliance in all contracts with subcontractors. Any requirement to submit certified payroll records to DIR shall include submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR. Further, Licensee and Licensee's contractors and subcontractors shall all furnish the records specified in State Labor Code section 1776 directly to the State Labor Commissioner in the manner required in State Labor Code section 1771.4. Licensee is responsible for ensuring that Licensee's contractors and subcontractors submit certified payroll records to City, the State Labor Commissioner, and DIR.

1.4 Apprentices. Licensee and Licensee's contractors and subcontractors shall all comply with State Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Licensee shall be held responsible for its compliance and the compliance of Licensee's contractors and subcontractors with State Labor Code sections 1777.5, 1777.6, and 1777.7.

1.5 Working Hours. Licensee and Licensee's contractors and subcontractors shall all comply with State Labor Code sections 1810 through 1815, including: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals, contractors, and subcontractors of $25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of State Labor Code sections 1810 through 1815.

1.6 Required Provisions for Subcontracts. Licensee shall include, at a minimum, a copy of the following provisions in any contract it enters into with a contractor or subcontractor: State Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

1.7 Labor Code Section 1861 Certification. In accordance with State Labor Code section 3700, Licensee and Licensee's contractors and subcontractors are all required to secure the payment of compensation of their respective employees and by signing this Agreement or any contract or subcontract, respectively, Licensee and Licensee's contractors and subcontractors all certify that "I am aware of the provisions of section 3700 of the State Labor Code which require

every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Licensee shall include this certification in all contracts with each contractor or subcontractor.

1.8 Registration Requirements. All work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of State Public Contract Code section 4104 or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work under State Labor Code section 1725.5. In accordance with State Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the State Business and Professions Code or by section 10164 or 2103.5 of the State Public Contract Code, provided the contractor is registered to perform public work under section 1725.5 at the time the contract is awarded."

1.8.1 A contractor's inadvertent error in listing a subcontractor who is not registered under State Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in State Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor under State Public Contract Code section 4107.

1.8.2 A contract entered into with any contractor or subcontractor in violation of State Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of State Labor Code section 1725.5.

1.8.3 By entering into this Agreement, Licensee is certifying that it has verified or will verify that all contractors and subcontractors used on work subject to Prevailing Wage Law are registered with DIR in compliance with State Labor Code sections 1771.1 and 1725.5 and shall provide proof of such registration to City.

1.9 Filing of Form PWC-100. Licensee shall timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed form to City.

1.10 Filing of Notice of Completion. Licensee shall record a notice of completion in accordance with State Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of such recorded notice of completion to City.

EXHIBIT E
TO
LICENSE AGREEMENT
(8525 Gibbs Dr., Underground Garage Storage Area)

FAA REGULATIONS

[ATTACHED BEHIND THIS COVER SHEET]

Federal Aviation Administration Lease and Use Agreement Provisions

Tenant shall adhere to the following terms and conditions during the entirety of the time period covered by this Exhibit. If any term and or condition contained in this Exhibit conflicts with any provision contained in the main body of the Lease, the terms and conditions contained in the main body of the Lease shall prevail.

Definitions: (For information purposes only)

Aeronautical Activities: Any activity that involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. Activities within this definition, commonly conducted at DREAM, include but are not limited to air taxi and charter operations, scheduled and nonscheduled air carrier services, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, aircraft sales and services, aircraft storage, sale of aviation petroleum products, repair and maintenance of aircraft, sale of aircraft parts, parachute, glider, balloon or ultralight activities and any other activities which, because of their direct relationship to the operation of aircraft, can appropriately be regarded as aeronautical activities.

Nonaeronautical activities: These include but are not limited to ground transportation (taxis, car rentals, limousines), restaurants, barber shops, auto parking lots, non-aviation businesses, recreational facilities and any other commodities, services, or accommodations made available to the general public that are of a nonaeronautical nature.

Assurance: A provision contained in a federal grant agreement with which the recipient of federal airport development assistance has voluntarily agreed to comply in consideration of the assistance provided.

Exclusive Right: A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or light. An exclusive right can be conferred by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.

Federal Obligation: Used in the context of a federal grant program, federal airport development assistance, land transfers, or other federal aid. It refers to an airport sponsor's legal duty and responsibility to comply with the terms of conveyance instruments and grant agreements.

Minimum Standards: The qualifications or criteria which may be established by an airport owner as the minimum requirements that must be met by businesses engaged in on-airport aeronautical activities for the right to conduct those activities.

Revenue Diversion: The use of airport revenue for purposes other than the capital or operating cost of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

Self-Sustaining: The requirement to maintain a schedule of charges for use of the airport, which will make the airport as self-sustaining as possible under the circumstances existing at the airport.

a) For aeronautical users, reasonable rates and charges that reflect the sponsor's cost of providing aeronautical services and facilities are satisfactory.

b) For nonaeronautical users, rates and charges must be based on the fair market value of the services and facilities provided.

PROVISIONS:

I. The Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Tenant transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the Tenant for the period during which the prope1ty is owned, used or possessed by the Tenant and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

A. The Tenant for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

I. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the

grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to lease, in the event of breach of any of the above Nondiscrimination covenants, the City of San Diego will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the City of San Diego will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the City of San Diego and its assigns.

D. The Tenant for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (I) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

E. With respect to the lease, in the event of breach of any of the above nondiscrimination covenants, the City of San Diego will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

F. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, the City of San Diego will there upon revert to and vest in and become the absolute property of the City of San Diego and its assigns.

(Additional information regarding civil rights and disadvantaged business enterprise obligations can be obtained from the FAA Civil Rights Office or https://www.faa.gov/OREAM/aip/procurement/federal_contract_pro'l'isigus/.)

3. The airport owner/sponsor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or views of the Tenant and without interference or hindrance.

4. The airport owner/supervisor reserves the right, but shall not be obligated to the Tenant, to maintain and keep in repair the landing area of the airport and all publicly owned facilities

of the airport, together with the right to direct and control all activities of the Tenant in this regard.

5. This lease shall be subordinate to the provisions and requirements of any existing or future agreement between the airport owner/sponsor and the United States, relative to the development, operation, or maintenance of the airport. Failure of the Tenant or any occupant to comply with the requirements of any existing or future agreement between the lessor and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Tenant's rights hereunder.

6. There is reserved to the airport owner/sponsor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the leased premises. This public right of flight shall include the right to cause in said airspace any noise inherent ·in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operating on the airport premises.

7. The Tenant agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased premises or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises. This requires the submission of FAA Form 7460-1, *Notice of Construction or Alteration* to the FAA.

8. The Tenant by accepting this lease agreement expressly agrees for itself, its successors and assigns that it will not erect nor pe1mit the erection of any structure or building nor permit object of natural growth or other obstruction on the land leased hereunder above a height as dete1mined by the application of the requirements of Title 14 CPR Part 77.

9. In the event the aforesaid covenants are breached, the owner reserves the tight to enter upon the land hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of the Tenant.

10. The Tenant by accepting this lease agrees for itself, its successors and assigns that it will not make use of the leased premises in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Tenant.

11. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of U.S. Code 40103 (e) and 47107(a)(4).

12. This lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or nonexclusive use of the airport by the United States during the time of war or national emergency.

13. The Tenant will furnish services on a reasonable and not unjustly discriminatory basis to all users, and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

14. The Tenant will conform to airport and Federal Aviation Administration safety and security rules and regulations regarding use of the airport operations area including runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered or required by the airport; and will be subject to penalties as prescribed by the airport for violations of the airport safety and security requirements.

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Revised: September 2021, AWP 620