

**CITY OF SAN DIEGO
USE AND OCCUPANCY PERMIT**

Fenton Parkway Bridge – Geotechnical Investigation

This CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and The Board of Trustees of the California State University, the State of California acting in its higher education capacity on behalf of San Diego State University ("PERMITTEE"), to be effective when signed by CITY and PERMITTEE (collectively, "Parties"), and approved by the San Diego City Attorney ("Effective Date").

RECITALS

- A. City of San Diego voters approved a citizens' initiative measure, commonly known as Measure G, on November 6, 2018, governing the CITY's sale to PERMITTEE of certain real property referred to as the "Existing Stadium Site" in Mission Valley. The Purchase and Sale Agreement for the Existing Stadium Site provided that the Parties would cooperate and collaborate to explore the feasibility of constructing the Fenton Parkway Bridge. The Parties completed the sale of the Existing Stadium Site on August 13, 2020, and PERMITTEE is the current owner of the Existing Stadium Site.
- B. CITY and PERMITTEE entered into that certain Memorandum of Understanding Regarding Environmental Review, Design, Permitting, and Potential Construction of the Fenton Parkway Bridge dated December 6, 2022 ("MOU"), authorized by Ordinance OO-21564. Among other things, the MOU established a protocol for the design and planning activities for the potential construction of the Fenton Parkway Bridge.
- C. CITY is the owner of that certain real property in San Diego County, California, identified by San Diego County Assessor Parcel Number 433-250-27 and commonly known as the San Diego River property ("Property").
- D. PERMITTEE has requested permission from CITY to enter upon and temporarily occupy a portion of the Property to perform geotechnical investigations related to potential construction of the Fenton Parkway Bridge.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, and in consideration of the foregoing facts and circumstances, the Parties agree as follows:

- 1. **Definitions.** As used in this Permit, the following terms shall be defined as follows:
 - 1.1 **"Commencement Date"** shall mean the Effective Date of this Agreement.
 - 1.2 **"Permit Area"** shall mean the area depicted on the attached **Exhibit A: Permit Area**, attached hereto. The Permit Area is located within and adjacent to the City's Multiple Species Conservation Program ("MSCP") Multi-Habitat Planning Area ("MHPA").

- 1.3 "Permit Use" shall mean the non-exclusive use of the Property to access the Permit Area and perform two geotechnical borings to depths of approximately 150 feet deep using hollow stem auger and mud rotary drilling methods, and to conduct the Subsequent Biological Surveys. The hole will be approximately 8 inches in diameter near the ground surface, and approximately 4 inches in diameter below groundwater. The geotechnical testing could include moisture content and dry density, soil classification (gradation, Atterberg limits), shear strength (direct shear, unconfined compressive strength), corrosion (pH, sulfates, chlorides, and minimum resistivity), and compressibility (consolidation). Composite soil samples will also be collected from the drilling spoils and mud to characterize the materials for disposal.

As part of the Permit Use, an area of approximately 20 feet by 40 feet around each boring location will be used to maneuver the equipment associated with the conduct of borings (see Figure 1). Plywood, steel plates, and/or rubber mats would be laid down in this area and along proposed paths of travel to each area to avoid the need for vegetation removal. All spoils and drilling mud will be drummed up or stored in a roll-off bin and disposed of off-site. The drums would be temporarily stored in the river channel in the staging areas depicted on Exhibit A during the field work and would be hauled out at the same time the equipment is moved out. Consistent with County of San Diego Department of Environmental Health guidelines, backfill for the boreholes would include cement-bentonite grout. Up to 5 feet of native soil will be placed at the top of each borehole to resemble the existing conditions prior to drilling.

Equipment that is anticipated for the work in the river channel includes the following: track- or rubber-tired truck-mounted drill rig and associated drill tooling (e.g., augers, drill rods, drill bits, mud pan); four-wheel drive telehandler; tracked skid steer loaders to move supplies and equipment in the river channel; plywood, steel plates, cribbing, prefabricated timber walkways, and/or rubber mats to provide access to the drilling locations and support the drilling rig outriggers; 55-gallon drums and/or roll-off bins for storing soiling cuttings and drilling mud; large water totes and associated water and grout piping/hoses; and hand tools and equipment for the collection and storage of soil samples. At the end of each workday, equipment will be turned off and secured within the river channel in the staging areas. Drip pans will be placed under all equipment when not in use or during refueling. All equipment will be demobilized prior to the commencement of rain events significant enough to forecast that the river within or immediately abutting the Permit Area will rise above the low flow channel into the area of work. Consistent with the City's Water Pollution Control Plan requirements, temporary best management practices (BMPs) will include use of visqueen and fiber rolls around the work areas, as needed.

A crane will be used to lower the equipment and supplies for the work that cannot be carried by hand into the river channel. The crane will be located outside of the river channel in a construction staging area. The crane setup location will be within the southwest SDSU Mission Valley river park. The crane setup location is shown in Exhibit A. A water truck will be staged within the crane staging location to supply water to the drilling rig with hoses as needed.

- 1.4 **"PERMITTEE"** shall mean The Board of Trustees of the California State University, the State of California acting in its higher education capacity on behalf of San Diego State University, which shall include its agents, employees, contractors, and subcontractors. PERMITTEE shall be responsible for all of PERMITTEE's agents, employees, contractors, and subcontractors and ensure that they adhere to all conditions as stated in this Permit.
- 1.5 **"PERMITTEE's Address for Notices"** shall be as set forth in Section 53.
- 1.6 **"Subsequent Biological Survey"** shall mean a memorandum prepared by PERMITTEE's qualified consultant summarizing two follow up biological surveys prepared in accordance with the Biological Technical Memorandum submitted for this Permit. The project biologist or restoration specialist will perform an initial assessment 14 days after the geotechnical work is completed to document the status of the impacted vegetation (if any), followed up by another site visit within 60 days once plants have a chance to recover. The purpose of these visits is to clearly demonstrate these activities resulted in no net loss of vegetation subject to temporary impacts.
- 1.7 **"Term"** shall mean, with respect to the Work, a period commencing on the Commencement Date and expiring not later than **January 14 , 2024** (the start of the bird nesting season), and with respect to the Subsequent Biological Surveys, a period commencing on the completion of the Work and expiring not later than 90 days after completion of the Work.
- 1.8 **"Work"** shall mean the geotechnical boring activities and subsequent backfill activities described in the definition of "Permit Use" above.
2. Occupancy. Subject to the terms and conditions of this Permit, CITY grants permission to PERMITTEE and its officers, employees, agents, and contractors to enter upon and occupy the Permit Area solely for the Permit Use.
3. Use of Permit Area. PERMITTEE may use the Permit Area solely for the Permit Use and for no other purpose whatsoever, without CITY's prior written consent in each instance. No permanent structures shall be constructed in the Permit Area.
- 3.1 Nesting Season. PERMITTEE acknowledges that the nesting season for Least Bell's Vireo (LBV) is from March 15 through September 15 each year. The provisions of this Permit, including the Term, are designed to avoid adverse impacts to biological resources during this nesting season in addition to general avian nesting season which is from February 1 through September 15.
- 3.2 Proximity to MHPA. The Work shall comply with the City's MSCP MHPA Land Use Adjacency Guidelines, which can be found at <https://www.sandiego.gov/sites/default/files/legacy//planning/programs/mscp/pdf/sub>

areafullversion.pdf. Upon PERMITTEE's completion of the Work, the Permit Area will be generally restored by PERMITTEE. All restoration activities undertaken within the Permit Area shall comply with all applicable environmental regulations and documents and Section 12 of this Permit. In connection with any entry onto the Permit Area and the completion of any Work on the Permit Area, PERMITTEE agrees to comply fully with its obligations under the MOU, including Sections 8 and 9 of the MOU, and to take all steps necessary to avoid impacts to sensitive biological resources. PERMITTEE shall not conduct any nighttime Work in the Permit Area.

4. Governmental Approvals. By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to PERMITTEE or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area or relating to potential construction of the Fenton Parkway Bridge. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
5. Unauthorized Activities. PERMITTEE shall not engage in any activity on CITY-owned property other than for the Permit Use, which includes using any portion of the Permit Area as a staging or storage area for machines, personal property, equipment, or construction debris. Any work performed by PERMITTEE that was not previously approved or otherwise authorized by this Permit, shall be removed and PERMITTEE shall restore CITY-owned property to its condition on the Commencement Date at PERMITTEE's sole cost and expense, subject to CITY's satisfaction.
6. CITY's Consent and Discretion. CITY's consent or approval under this Permit shall mean the written consent or approval of CITY's Mayor, or his or her designee ("Mayor"), unless otherwise expressly provided herein or required by law. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided for herein or required by law.
7. Term. CITY may, in its sole discretion, extend the Term; however, the Term shall not exceed one (1) year and shall be subject to any applicable seasonal restrictions, such as those identified in Section 3 of this Permit.
8. Revocable License. This Permit is not a lease. It is a non-exclusive license to use CITY property, and may be revoked at will by CITY, in its sole discretion, (a) immediately upon written notice delivered to PERMITTEE if PERMITTEE breaches or defaults any of PERMITTEE's obligations under this Permit or upon 24 hours' prior written notice in case of an emergency; or (b) immediately upon an order of a court of competent jurisdiction, or any other legal order which restricts the CITY's ability to allow PERMITTEE to perform under this Permit; or (c) upon thirty (30) business days prior written notice delivered to PERMITTEE if for CITY's convenience. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit.

9. Termination by PERMITTEE. PERMITTEE may terminate this Permit for any reason upon three (3) days prior written notice delivered to CITY.
10. PERMITTEE's Waiver. PERMITTEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives, and agents for any burden, expense, or loss which PERMITTEE incurs because of CITY's revocation or the termination of this Permit in accordance with the terms hereof.
11. No Holdover. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area. If PERMITTEE continues to use or occupy the Permit Area after the expiration or earlier termination of this Permit, CITY may demand and receive from PERMITTEE rent for the Permit Area, calculated on a per diem basis, using up to two (2) times the fair market rental rate that could be charged for the use of the Permit Area, said rate to be determined, as of the date of the expiration or earlier termination of this Permit, by a qualified CITY employee, the selection of whom shall be in CITY's sole discretion. CITY's acceptance of such rent shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area.
12. Restoration of Permit Area. PERMITTEE shall be responsible for any damages arising directly from PERMITTEE's use of the Permit Area. Except as otherwise prohibited in this Permit, prior to the expiration or as soon as practicable after termination of this Permit, PERMITTEE shall restore the Permit Area to its condition as of the Commencement Date of this Permit, subject to modifications permitted herein. Nothing herein permits PERMITTEE to remove or permanently compromise native vegetation during or as a result of the Work. After completion of the Work, PERMITTEE shall submit to the City the Subsequent Biological Surveys to confirm no damage to the Permit Area occurred as a result of the Work. If Subsequent Biological Surveys indicate that damage did occur, then CITY shall require PERMITTEE to implement, at PERMITTEE's sole expense, a restoration program in accordance with the City of San Diego Biological Guidelines (2018) with appropriate maintenance and monitoring activities for a minimum of twenty-five (25) months.

12.1 PERMITTEE's management of Permit Area and Boring Activities:

12.1.1 Prior to starting the Permit Use, PERMITTEE shall document the existing condition and provide evidence of the same to City;

12.1.2 Prior to starting the Permit Use, PERMITTEE confirm the boundaries of the Permit Area (staging areas, install temporary protective fencing, and access paths) and send documentation of the same to City;

12.1.3 Prior to starting the Permit Use, PERMITTEE shall submit a Stormwater Prevention Control Plan to City;

12.1.4 Throughout boring activities, PERMITTEE shall ensure that a Kumeyaay, Archeological and Biological Monitor is present onsite;

12.1.5 After completion of the Work, PERMITTEE shall conduct the Subsequent Biological Survey and submit to City; and

12.1.7 PERMITTEE shall submit the following Activity Timeline with their post-activity survey:

Activities:	Dates / Number of Days:
Pre-construction monitoring:	
Temporary fencing of sensitive species:	
Confirmation of permit site and access path:	
Estimated project completion:	
Submit biological survey:	
25-month restoration program, if required:	

13. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, leases, and rights-of-way pertaining to the Permit Area, of record or otherwise disclosed in writing by CITY to PERMITTEE. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties, including the County of San Diego's Department of Environmental Health, as may be or become necessary or reasonably advisable to allow its use of the Permit Area, relative to any such superior interest. If PERMITTEE's use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
14. Permit Fee. The \$1,050.00 Permit Fee is being paid by the City General Fund in accordance with the MOU and because of the public benefit. PERMITTEE shall not be liable for a Permit Fee.
15. Access to Reports and Data. In exchange for CITY's permission to carry out the Permit Use on the Permit Area, PERMITTEE agrees that it will provide, upon request, copies of all data collected and all analysis of that data, including any reports generated by PERMITTEE including, relying on, or citing to data collected as part of the Permit Use to CITY at no cost to CITY.
16. Rent. \$1,180.00. Rent is based on fair market appraisal and eighty-five (85) day term of agreement. The Rent section needs to remain. Rent shall be paid from City's WBS RD32000 until funds in that account are exhausted. After that, SDSU would need to pay the rent and any holdover.

17. Maintenance of Permit Area. Solely as it relates to PERMITTEE's Permit Use and activities, PERMITTEE shall, at PERMITTEE's sole cost and expense and to CITY's satisfaction, maintain the Permit Area in good order and repair and in a safe, healthy, and sanitary condition during the Term. CITY shall not be required to make any improvements or repairs to the Permit Area. PERMITTEE and its officers, employees, agents, and contractors shall not deposit any rubbish, debris, litter, or other item that is not necessary for the approved Permit Use, at any time on the Permit Area. PERMITTEE shall immediately notify CITY of any substantial new rubbish, debris, litter, or any other condition which affects the safety, health, or sanitation of the Permit Area.
18. Entry and Inspection. CITY, upon reasonable notice to PERMITTEE, may enter upon the Permit Area to inspect and maintain the Permit Area as CITY deems necessary.
19. Utilities. PERMITTEE shall order, obtain, and pay for all utilities and service charges in connection with its use of the Permit Area.
20. Improvements and Alterations. Except as specifically authorized by this Permit, PERMITTEE shall not construct any improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY in its proprietary capacity and without obtaining all other applicable governmental approvals. PERMITTEE may install temporary construction fencing around the perimeter of the Permit Area. Installation of any temporary fencing and access to the Permit Areas are conditioned on compliance with Section 12 of this Permit. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.
21. Personal Property.
 - 21.1 Personal Property. PERMITTEE shall remove from the Permit Area all PERMITTEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than ten (10) days after the expiration or earlier termination of this Permit. Any such items which PERMITTEE fails to so remove shall be removed by CITY at PERMITTEE's sole cost and expense. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Permit Area.
 - 21.2 Late Removal. Notwithstanding any provision of this Permit to the contrary, PERMITTEE shall pay rent to CITY, utilizing the methodology set forth in Section 11 of this Permit, for any period of time after the expiration of this Permit needed to remove PERMITTEE's personal property, or restore the Permit Area, as required by this Permit, whether the removal and/or restoration work is actually performed by CITY or PERMITTEE.
22. Insurance. PERMITTEE shall maintain, to protect the City Parties against all insurable Claims arising from or relating to this Agreement, PERMITTEE'S use of the Permit Area, or

the Permit Use, at the sole cost and expense of PERMITTEE. While conducting activities in the Permit Area, PERMITTEE shall maintain all the insurance coverage required in EXHIBIT B attached to this Permit. For purposes of this Permit, "City Parties" refers collectively to City, the San Diego City Council, and all City elected officials, employees, agents, and attorneys.

23. Subcontractors' Insurance and Indemnification of CITY. Unless PERMITTEE's insurance covers work performed by all of PERMITTEE's subcontractors performing any Work or in the Permit Area, PERMITTEE shall require PERMITTEE's subcontractors to indemnify the City Parties and to maintain insurance coverage to the same extent that PERMITTEE is required to indemnify the City Parties and maintain insurance coverage pursuant to the Insurance provisions of this Permit, including all obligations to provide documentation and all of the endorsements, including naming the City of San Diego and its respective elected officials, officers, employees, agents, and representatives as an Additional Insured in each insurance policy.
24. Indemnification and Hold Harmless. PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, or biological and environmental resources, including injury to PERMITTEE's officers, employees, invitees, guests, agents, or contractors, (collectively, "PERMITTEE'S REPRESENTATIVES"), which directly arise out of PERMITTEE's negligence or willful misconduct in connection with (A) the Work or (B) to the extent arising out of the Work or PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not apply to the extent any liability arises from (i) the active negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents, or (ii) any pre-existing conditions not caused or negligently aggravated by PERMITTEE or PERMITTEE's REPRESENTATIVES or the effects of the discovery of the presence of any Hazardous Substances (as defined in Section 39 below) not caused or negligently aggravated by PERMITTEE or PERMITTEE's REPRESENTATIVES. CITY may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, PERMITTEE shall pay all the costs related thereto, including reasonable attorney's fees and costs.
25. Liability for Loss, Injury, or Damage. In addition to any other assumption of liability set forth herein, and excluding any loss or damage to the extent resulting from the CITY's negligence or willful misconduct, PERMITTEE agrees that it assumes the sole risk and responsibility for any damage, destruction, or theft of PERMITTEE's equipment, materials, or personal property placed on the Permit Area and for any injury to persons which occurs on the Permit Area as a result of the Permit Use.
26. Compliance with Laws. PERMITTEE shall at all times in its use, occupancy, and maintenance of the Permit Area, and at its sole expense, comply with all applicable laws,

rules, and regulations and direction by competent governmental authorities having jurisdiction over PERMITTEE and the Permit Area. Upon written request of CITY, PERMITTEE shall deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to PERMITTEE.

27. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided by PERMITTEE to CITY pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). Before making such determination, CITY will notify PERMITTEE that a request for information relating to this Permit has been made under the CPRA and allow PERMITTEE at least two (2) business days to provide input to CITY regarding the CPRA request. Provided PERMITTEE is given the opportunity to consult on CPRA disclosures pursuant to the preceding sentence, PERMITTEE shall hold CITY and its elected officials, officers, and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.

27.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by PERMITTEE as a result of CITY's disclosure or non-disclosure of this Permit or PERMITTEE information requested pursuant to the CPRA so long as PERMITTEE is provided the opportunity to provide input on CPRA requests pursuant to Section 27. SUBJECT TO THE FOREGOING, PERMITTEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FOR ANY BURDEN, EXPENSE, OR LOSS WHICH PERMITTEE INCURS AS A RESULT OF CITY'S DISCLOSURE OF NON-DISCLOSURES OF THIS PERMIT OR ANY PERMITTEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

28. Permits & Approvals. PERMITTEE, at PERMITTEE's sole cost and expense, shall obtain all required permits, licenses, and approvals from the applicable local, state, and federal authorities, including without limitation from CITY. PERMITTEE shall comply at all times with the requirements and conditions of any permits, licenses, and approvals issued in connection with the Work, including the requirements of any disposal facility used for the disposal of any materials involved in the Work. PERMITTEE shall backfill the geotechnical borings on the Permit Area in accordance with the County of San Diego's Department of Environmental Health requirements.
29. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Permit if PERMITTEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego CITY Council related to the selection of PERMITTEE for this Permit. It is not the intent of this policy that these provisions apply to members of the CITY Council.

30. **PERMITTEE's Risk.** PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE's use or occupancy of the Permit Area and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
31. **No Nuisance.** PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in the surrounding area or that violates CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).
32. **Assignment and Sublicense.** PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's written consent in each instance. Approval of any such proposed assignment may be withheld at the sole and absolute discretion of the CITY. Any assignment by operation of law shall automatically terminate this Permit.
33. **Signs.** PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices, or advertising without CITY's prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at PERMITTEE's cost.
34. **Encumbrances.** PERMITTEE shall keep the Permit Area free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with PERMITTEE's use or occupancy of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs relating to or charged against the Permit Area, including without limitation PERMITTEE's failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to lien or encumber the Permit Area pursuant to the California Civil Code.
35. **Taxes.** If applicable, PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE, including the land and any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE, or levied by reason of PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area, including without limitation licensing and permitting costs and fees. PERMITTEE's payment for such taxes, fees and assessments shall not reduce any payment due CITY.
36. **Security and Safety of Permit Area.** PERMITTEE shall bear sole responsibility for the security and safety of the Permit Area during the Term relating to any Work performed as authorized by this Permit or under the direction of PERMITTEE. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of the Permit Area, as appropriate, immediately following each day's work to ensure security and safety. PERMITTEE shall

comply with all applicable laws, rules, regulations, and directives of competent governmental authorities, at PERMITTEE's sole cost and expense, with respect to maintaining the Permit Area in a safe and secure manner during the Term. CITY has no obligation to provide oversight of the Work or staffing or resources for the maintenance of the Permit Area during the Term.

37. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale, or release of "Hazardous Substance", as defined below, or otherwise regulated substances in, on, under or from the Permit Area. Except as described specifically in this Permit, PERMITTEE and PERMITTEE's agents and contractors shall not install, store, utilize, generate, or sell any Hazardous Substance on the Permit Area without CITY's prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a Hazardous Substance or hazardous waste.
- 37.1 Release. For all purposes of this Permit, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of a hazardous substance.
- 37.2 Hazardous Substance. For all purposes of this Permit, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- 37.3 Remediation. If PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area ("PERMITTEE's Operations") results in a release of a Hazardous Substance, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 37.4 Removal. If PERMITTEE or PERMITTEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances to the Permit Area, PERMITTEE and/or PERMITTEE's contractor or agent shall remove all Hazardous Substances in any type of container, equipment, or device from the Permit Area immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Permit Area and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes, or other containers, equipment, or devices from the Permit Area. PERMITTEE

shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.

37.5 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from, or beneath the Permit Area, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. PERMITTEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Permit Area.

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

38. Storm Water Best Management Practices. PERMITTEE shall, at its own cost and expense, comply with Part 2 of the current City of San Diego Storm Water Standards Manual, Section 1000 and 1001 of the City Supplement to Standard Specifications for Public Works Construction (The WHITEBOOK), and any and all applicable Minimum Best Management Practice requirements, as defined in the CITY's Jurisdictional Runoff Management Plan, in performing or delivering services at CITY owned, leased, or managed property, or in performance of services and activities on behalf of CITY, regardless of location.

PERMITTEE shall prepare a Stormwater Pollution Control Plan with respect to the Permit Use.

38.1 PERMITTEE shall comply with the current CITY's Jurisdictional Runoff Management Plan encompassing city-wide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries.

38.2 PERMITTEE shall comply with each CITY facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment. PERMITTEE shall remove any dry-weather controls put in place prior to a rain event to minimize the possibility of clogging the storm drain system. After a rain event, all controls must be reinstalled, refreshed, and maintained by the PERMITTEE if necessary.

38.3 PERMITTEE shall accept ultimate responsibility to prevent pollutant discharges to the storm drain system and the San Diego River by identifying and implementing any additional BMPs that may be required to prevent the discharge of pollutants to the storm drain system and the San Diego River.

39. Prevailing Wages. PERMITTEE acknowledges that PERMITTEE is the awarding body pursuant to California Labor Code section 1722, for any contracts related to PERMITTEE's use of the Permit Area that may require the payment of prevailing wages pursuant to State law. PERMITTEE agrees to comply with all laws related to the payment of prevailing wages on public works contracts, including without limitation the requirements contained in California Labor Code sections 1720-1861. PERMITTEE shall deliver to City, upon request, evidence of compliance with the State prevailing wage laws in form and content reasonably satisfactory to CITY.

40. Vehicular Traffic. All vehicular traffic on the Permit Area shall be confined to predefined paths of travel as indicated on Exhibit C.

41. Grading and Barriers. PERMITTEE shall not change the surface grade or construct any permanent barriers within the Permit Area. Any violations shall be corrected by PERMITTEE at its sole expense to the satisfaction of CITY and are grounds, at CITY's option, for immediate termination of this Permit.

42. Repair. PERMITTEE shall be responsible, at its sole cost and expense, for the repair, restoration or replacement of any damage to the Permit Area caused directly or indirectly by PERMITTEE's use of the Permit Area. PERMITTEE shall comply with CITY's direction with respect to the method of any repairs, restoration or replacement arising under this Permit.

43. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

44. Waiver. The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of PERMITTEE's obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
45. Cumulative Remedies. CITY's rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
46. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination through the applicable statute of limitations period.
47. Joint and Several Liability; No Personal Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Permit. Notwithstanding anything to the contrary contained herein, no officer, employee, agent or contractor of PERMITTEE shall be personally responsible for any liability arising under this Permit, whether expressed or implied.
48. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
49. Charter Section 225. CITY acknowledges that PERMITTEE, as a public agency, is exempt from the disclosure requirements of San Diego Charter section 225.
50. Exhibits. All exhibits referenced in this Permit are incorporated into this Permit by this reference. In the event of a conflict between this Permit and any exhibit to this Permit, the terms, conditions, and obligations of this Permit shall control.
51. Entire Agreement. This Permit constitutes the entire agreement between the Parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Permit. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the Parties.

52. Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
53. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, or by electronic transmission, including email (which will be followed by a hard copy delivered by US mail, unless the hard copy is waived by reply email from a named recipient representing the recipient party in response to a notice email) and addressed to PERMITTEE at PERMITTEE's Address for Notices, and to CITY as follows:

THE CITY OF SAN DIEGO
Attention: Keli Balo, Public Utilities Department
9192 Topaz Way, MS-904A
San Diego, CA 92123
Email: kbalo@sandiego.gov

With a copy to:
Department of Real Estate and Airport Management
Attention: Mary Carlson
1200 Third Ave, Suite 1700
San Diego, CA 92101
Email: mmcarslson@sandiego.gov

The Board of Trustees of the California State University, the State of California acting in its higher education capacity on behalf of San Diego State University:

Paul Jackson
Program Manager - Mission Valley Development
San Diego State University
5500 Campanile Drive
San Diego, CA 92182-1620
Email: pjackson@sdsu.edu

With a copy to:
Kelly Bendell, Esq.
Office of General Counsel
California State University
401 Golden Shore
Long Beach, CA 90802
Email: kbendell@calstate.edu

54. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of

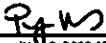
conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms.

55. Acceptance of Permit Area. PERMITTEE acknowledges that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations, and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition. PERMITTEE acknowledges and agrees that unless set forth in this Permit, CITY has no obligation to improve, modify, repair, replace, alter, secure, or otherwise develop the Permit Area at any time either prior to, on or after the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation PERMITTEE's employees, from any defects in the Permit Area, and shall be solely responsible therefor, except to the extent of harm resulting from the active negligence or willful misconduct of CITY.
56. Controlling Law and Venue. This Permit and all Permit documents shall be deemed to be made under and shall be construed in accordance with and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. The venue for any suit or proceeding concerning this Permit, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California.

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

THE CITY OF SAN DIEGO,
a California municipal corporation

The Board of Trustees of the California State
University, the State of California acting in its
higher education capacity on behalf of San Diego
State University

By: 
Penny Maus (Nov 2, 2023 07:55 PDT)
Penny Maus, Director
Department of Real Estate and
Airport Management

Date: Nov 2, 2023

By: 
Printed Name: Paul Gannoe
Title: Assistant Vice Chancellor

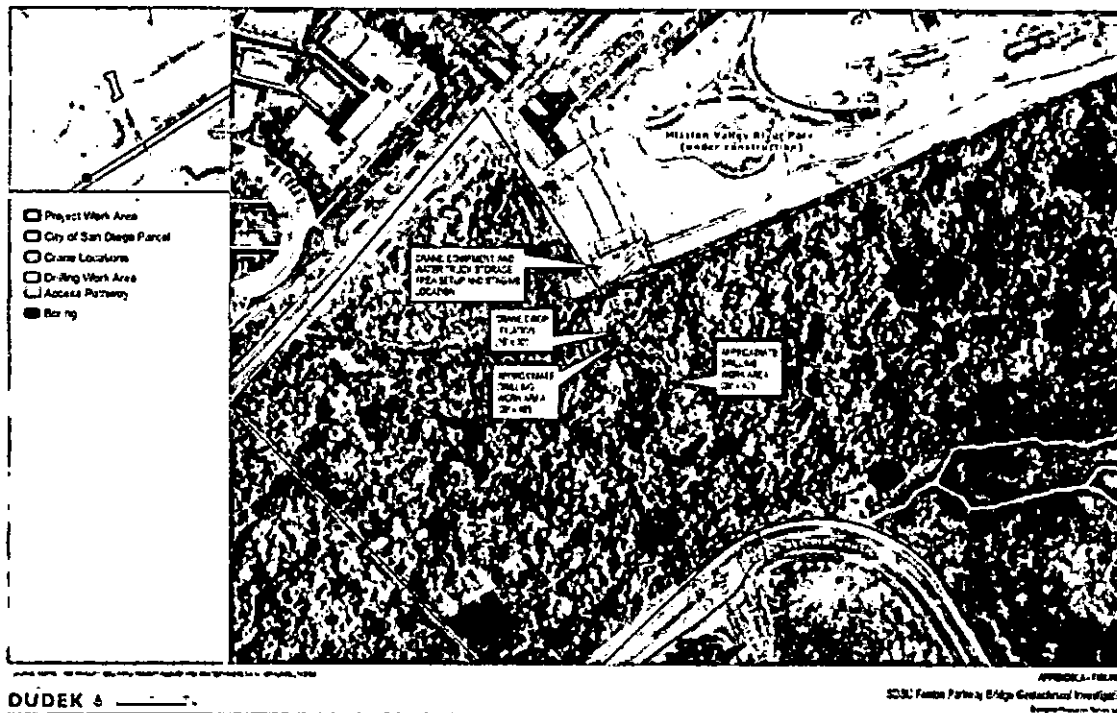
Date: Oct 30, 2023

Approved as to form this _____ day
of Nov 3, 2023, 2023.

MARA W. ELLIOTT, City Attorney

By: 
Print Name: Kevin Reisch
Title: Sr. Chief Deputy City Attorney

EXHIBIT C: ACCESS WAYS



- 3.9. *Separation of Insured.* All Liability Insurance, Contractors Pollution Liability Insurance, and Automobile Liability Insurance shall provide for separation of insured for Permittee and the City Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but shall not exclude suits between named insured Persons and additional insured Persons.
- 3.10. *Deductibles and Self-Insured Retentions.* Permittee shall pay all such deductibles or self-insured retentions regarding the City Parties. 5 It is understood and agreed that Permittee maintains various programs of self-insurance, insurance, and reinsurance providing the insurance coverages required in this Agreement and it is agreed that such programs may be acceptable means of providing the required coverage provided the coverage is at least as broad as the requirements set forth in this Exhibit B. *No Separate Insurance.* Permittee shall not carry separate or additional insurance coverage concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements unless the City Parties are made additional insured under such insurance coverage.
4. **Insurance Independent of Indemnification.** These Insurance Requirements are independent of the Parties' Indemnification and other obligations under this 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 Permittee 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 Permittee of all premiums and associated reasonable costs paid by City to obtain such insurance coverage. Each amount becoming due and payable to City under this Section 5 that is not paid within fifteen (15) days after Notice from City with an explanation of the amounts owed, will accrue Default Interest from the date incurred until paid. Election by City to purchase or not to purchase insurance coverage otherwise required by these Insurance Requirements to be carried by Permittee shall not relieve Permittee of any Default or Event of Default or Permittee's obligation to maintain all insurance coverage required by these Insurance Requirements.

- 3.2. *Primary Coverage.* All insurance coverage maintained by Permittee 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 Permittee and shall not contribute with any insurance maintained by Permittee.
- 3.3. *Contractual Liability.* Liability Insurance and Contractors Pollution Liability Insurance policies shall contain contractual liability coverage for Permittee's Indemnity obligations under this Agreement. Permittee's maintaining or failing to maintain such contractual liability coverage shall not relieve Permittee from nor satisfy any Indemnity obligation of Permittee under this Agreement.
- 3.4. *Deliveries to City.* Evidence of Permittee's maintenance of all insurance policies required by these Insurance Requirements shall be delivered to City before the Effective Date. No later than ten (10) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Permittee shall deliver to City evidence of Permittee's maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days' advance Notice of such action to City. Phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties under these Insurance Requirements.
- 3.5. *Waiver of Certain Claims.* Permittee shall cause each insurance carrier providing any Liability Insurance, Contractors Pollution Liability Insurance, Worker's Compensation Insurance, or Automobile Liability Insurance coverage under these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the City Parties, if not originally in the policy. To the extent Permittee obtains an insurance policy covering both the Permittee Parties and the City Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. "Waiver of Subrogation" means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the City Parties for any loss such insurance policy covers.
- 3.6. *No Representation.* No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.
- 3.7. *No Claims Made Coverage.* None of the insurance coverage required by these Insurance Requirements may be written on a claims-made basis.
- 3.8. *Fully Paid and Non-Assessable.* All insurance maintained by Permittee in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.

- 1.5. *Contractors Pollution Liability Insurance.* If the Permitted Use includes sampling, testing, 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 Permittee or on Permittee's behalf, Permittee's products, Permittee's work (including Permittee's completed operations performed by Permittee or on Permittee's behalf), or premises owned, leased, controlled, or used by Permittee, 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 Permittee obtains City's separate written approval of a higher deductible amount. With City's separate prior written approval, Permittee 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 Permittee requests City's approval to use its subcontractor's Contractors Pollution Liability Insurance, Permittee 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.
2. **Nature of Insurance.** The contents of this **EXHIBIT B** 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. Permittee may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Permit Area, which amount(s) shall equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements.
3. **Policy Requirements and Endorsements.** All insurance policies required by these Insurance Requirements shall contain (by endorsement or otherwise) the following provisions:
 - 3.1. *Insured.* Liability Insurance 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 Permittee regarding the Permit Area and may not contain any terms, conditions, exclusions, or limitations applicable to the City Parties that do not apply to Permittee.

EXHIBIT B
TO
LICENSE AGREEMENT

Fenton Parkway Bridge – Geotechnical Investigation

INSURANCE REQUIREMENTS

1. **Required Insurance Coverage.** Permittee 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 Permittee, 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. Such insurance may be maintained through the State Office of Risk & Insurance (ORIM).
 - 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 Permit Area or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Four Million Dollars (\$4,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to the Permit Area.
 - 1.3. *Property Insurance.* Insurance providing coverage for the Permit Area and all improvements on or to the Permit Area against loss, damage, or destruction by fire or other hazards encompassed under 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 Permit Area, an “increased cost of construction” endorsement and an endorsement covering demolition and cost of debris removal.
 - 1.4. *Workers Compensation Insurance.* Workers compensation insurance complying with the provisions of State law and an employer’s liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury, or disease, covering all employees of Permittee.

EXHIBIT A: PERMIT AREA

