

RIGHT-OF-ENTRY PERMIT

THIS RIGHT-OF-ENTRY PERMIT ("Permit") is made this 15th day of August, 2018 by and between the CITY OF LONG BEACH, a municipal corporation ("City") and VSS INTERNATIONAL, INC., a California corporation ("Permittee").

WHEREAS, Permittee has an immediate need to occupy certain real property owned by City consisting of approximately 14,000 square feet and comprising that parcel located at the northwest corner of Pacific Coast Highway and Martin Luther King, Jr. Avenue, and more particularly depicted on Exhibit "A" attached hereto (the "Premises").

WHEREAS, City is willing to grant Permittee the temporary right to occupy the Premises in exchange for the payment of a fee and upon the terms and conditions described in this Permit.

NOW THEREFORE, City and Permittee, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, agree as follows:

1. Use and Access. City hereby authorizes Permittee to exclusively use and occupy the Premises, for the express purpose of staging and storing construction equipment and materials to be used in connection with the development of property owned by Permittee adjacent to the Premises. Permittee's use shall be limited to the storage of lumber, containers, drywall, brick veneer and other related construction materials. No dirt, soil, rock or demolition debris shall be placed on the Premises at any time. Permittee shall not use the Premises for any other purpose other than as described in this Section. Permittee shall not bring any hazardous materials upon the Premises.

2. Term. Permittee may occupy the Premises beginning on August 17, 2018, and continuing until February 16, 2019. At any time during the term hereof, either party may terminate this Permit upon thirty (30) days' advance written notice for any reason or no reason, and in such event Permittee shall thereafter completely vacate the Premises and return the Premises to City in the same condition as delivered to Permittee (including without limitation the removal of any personal property or temporary improvements).

3. Premises and Improvements. Permittee accepts the Premises "as is", and City makes no warranty or representation whatsoever with respect to the Premises, including without limitation as to suitability for Permittee's proposed use. Permittee shall, at its own cost and expense, install temporary fencing around the perimeter of the Premises in accordance with Public Works Department fencing requirements. Any other improvements necessary for Permittee's use of the Premises shall be temporary in nature, installed solely at Permittee's expense, and shall be removed upon termination of this Permit.

4. Occupancy Fee. Beginning on the first day of the term, and continuing monthly thereafter, Permittee shall pay, in advance, an occupancy fee to City in the amount of One Thousand Nine Hundred Seventy-Five Dollars (\$1,975) per month, pro-rated daily for any partial occupancy month.

5. Insurance. Permittee shall procure and maintain the following insurance at Permittee's sole expense for the duration of this Permit, including any extensions, renewals, or holding over thereof, from insurance companies that are admitted to write insurance in the State of California or from non-admitted insurers that are on California's List of Eligible Surplus Lines Insurers (LESLI) and that have ratings of or equivalent to an A:VIII by A.M. Best Company:

a. Commercial general liability insurance equivalent in coverage scope to ISO form CG 00 01 11 85 or 10 93 in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. Such coverage shall include but is not limited to broad form contractual liability, cross liability protection, sudden and accidental pollution liability, and products and completed operations liability. The City of Long Beach, and its boards, officials, employees, and agents shall be added as additional insureds by endorsement (equivalent in coverage scope to ISO form CG 20 26 11 85) and this coverage shall contain no special limitations on the scope of protection afforded to City, and its boards, officials, employees, and agents.

b. Workers' compensation insurance as required by the California Labor Code and Employer's Liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident or occupational illness. The policy shall be endorsed with a waiver of the insurer's right of subrogation against the City of Long Beach, and its boards, officials, employees, and agents.

c. Special perils ("All Risk") property insurance, including debris removal and builders risk coverage during the course of construction, in an amount sufficient to cover the full replacement value of the Permittee's improvements, materials, personal property, and equipment on or about the Premise.

With respect to damage to property, City and Permittee hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available for said damage.

Any self-insurance program, self-insured retention or deductible must be approved separately in writing by the City Risk Manager or designee and shall protect City, and its boards, officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained such self-insurance or deductible provisions.

Each insurance required hereunder shall be endorsed to provide that coverage shall not be canceled, nonrenewed, or materially changed in coverage or limits (other than by reduction of limits by payment of claims) except after thirty (30) days prior written notice to City, and that coverage shall be primary and not contributing to any other insurance or self-insurance maintained by City, or its boards, employees, or agents.

Prior to the commencement of this Permit, Permittee shall deliver to City certificates of insurance and the endorsements required hereunder for approval as to sufficiency and form, including the certificates of insurance and endorsements of any subpermittee. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. In addition, Permittee shall, at least

thirty (30) days prior to expiration of such policies, furnish City with evidence of renewals. Agency reserves the right to require complete certified copies of all said policies at any time.

Such insurance as required herein shall not be deemed to limit Permittee's liability under this Permit. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Permit.

Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the City's Risk Manager or designee.

6. Waiver. This Permit confers no rights upon Permittee other than expressly stated herein.

7. Release and Indemnity.

A. Permittee shall indemnify, protect and hold harmless City, its Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Permittee's breach or failure to comply with any of its obligations contained in this Permit, or (2) Permittee's, its officers, employees, agents, subcontractors, or anyone under Permittee's control, use of the Premises (collectively "Claims" or individually "Claim").

B. In addition to Permittee's duty to indemnify, Permittee shall have a separate and wholly independent duty to defend Indemnified Parties at Permittee's expense by legal counsel approved by City, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Permittee shall be required for the duty to defend to arise. City shall notify Permittee of any Claim, shall tender the defense of the Claim to Permittee, and shall assist Permittee, as may be reasonably requested, in the defense.

C. If a court of competent jurisdiction determines that a Claim was caused by the sole negligence or willful misconduct of Indemnified Parties, Permittee's costs of defense and indemnity shall be (1) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (2) reduced by the percentage of willful misconduct attributed by the court to the Indemnified Parties.

D. The provisions of this Section shall survive the expiration or termination of this Permit.

[signatures on subsequent page]

Please contact Mary Torres at (562) 570-6846 to arrange access to the Premises.

CITY OF LONG BEACH,

By: PLest
Name: Patrick Lest
Title: City Manager

Agreed and Accepted:

VSS INTERNATIONAL, INC.,
a California corporation

By: [Signature]
Name: Jeff Roberts, Vice President
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM
8.16, 2018
By: [Signature]
CHARLES PARKIN, City Attorney
By: [Signature]
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

EXHIBIT A

925-945 EAST PACIFIC COAST HIGHWAY

