

RIGHT-OF-ENTRY PERMIT

THIS RIGHT-OF-ENTRY PERMIT ("Permit") is made as of February 12, 2019 (the "Effective Date") by and between the CITY OF LONG BEACH, a municipal corporation ("City") and the CITY OF SIGNAL HILL, a municipal corporation ("Permittee").

WHEREAS, Permittee has an immediate need to occupy approximately 60,225 square feet of certain real property owned by City and located within the City of Signal Hill, California more particularly depicted on Exhibit "A" attached hereto and incorporated herein (the "Premises").

WHEREAS, City is willing to grant Permittee the temporary right to occupy the Premises 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, and its agents, employees, contractors, consultants, and representatives ("Permittee Representatives") to exclusively use and occupy the Premises, for the express purpose of maintenance and development of open space and associated temporary public amenities. Permittee shall not use the Premises for any other purpose other than as described in this Section. Neither Permittee nor any Permittee Representatives shall bring any Hazardous Materials upon the Premises.

2. Term. Permittee and Permittee Representatives may enter upon and occupy the Premises beginning upon the Effective Date of this Permit, and ending upon the date that is six (6) months after the Effective Date ("Initial Term") (i.e., August 11, 2019). Permittee and/or City shall each have an option to extend the Initial Term of this Permit for an additional six-month period, expiring on the date that is six (6) months after the expiration of the Initial Term (i.e., February 11, 2020) (the "Extended Term" and Initial Term, as applicable, are referenced herein as, the "Term"), so long as written notice of an election to extend the Initial Term is given by City or Permittee to the other party prior to the expiration of the Initial Term. At any time during the Term, (1) City may terminate this Permit upon thirty (30) days' advance written notice for any reason or no reason, or (2) Permittee may terminate this Permit upon five (5) days' advance written notice for any reason or no reason. Upon termination or expiration, Permittee shall thereafter completely vacate the Premises (unless it has entered into a Long Term Transaction (as defined below) for the Premises). During the Term, Permittee and City shall negotiate in good faith to enter into a long-term lease for the Premises and/or a purchase and sale agreement for the Premises (a "Long Term Transaction") on mutually-acceptable terms and conditions, and City agrees that it shall not negotiate with any other person or party with respect to a lease or sale of the Premises during the Term.

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 habitability, access to utilities and/or suitability for Permittee's proposed use. Any improvements necessary for Permittee's use of the Premises shall be temporary in

nature, installed solely at Permittee's expense and shall be in full compliance with the City of Signal Hill's Vacant Parcel Ordinance (Signal Hill Municipal Code Chapter 12, Section 16) ("VPO").

4. Fee. As consideration for the occupancy of the Premises, Permittee shall make improvements to the Premises to comply with the VPO and Permittee shall not be required to pay any fee or other payment to City in connection with this Permit or Permittee's access to or use of the Premises. In addition, Permittee shall waive any and all fees currently unpaid by City in connection with the VPO and agrees not to assess any further fees against City throughout the Term of this Permit, unless this Permit is terminated by City prior to the expiration of the Term, in which case, Permittee may assess any and all fees required under the VPO against City.

5. Insurance. Concurrent with the execution of this Permit and at all times during the Term, Permittee shall:

A. Procure and maintain the following types of insurance at Permittee's sole expense, including any extensions, renewals, or holding over thereof, from (i) insurance companies that are admitted to write insurance in the State of California or from authorized non-admitted insurers that have ratings of, or equivalent to, an A:VIII by A.M. Best Company, or (ii) the California Joint Powers Insurance Authority:

1. 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 One Million Dollars (\$1,000,000) in aggregate. Coverage shall include but is not limited to broad form contractual liability coverage, cross liability protection, and products and completed operations. The City of Long Beach, its 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 such endorsement shall protect the City, its officials, employees, and agents from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out activities performed by or on behalf of the Permittee or from maintenance or use of the Premises. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.
2. All Risk property insurance in an amount sufficient to cover the full replacement value of Permittee's personal property, improvements and equipment on the Premises. With respect to damage to property, City and Permittee each hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available for said damage.
3. Workers' compensation insurance as required by the State of California and, if workers' compensation is required, employer's liability insurance

in an amount not less than One Million Dollars (\$1,000,000) per accident or occupational illness. Permittee agrees to obtain and furnish evidence to City of the waiver of Permittee's workers' compensation insurance carrier of any right of subrogation against the City.

B. Any self-insurance program or self-insured retention must be approved separately by City and shall protect the City of Long Beach, its 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 retention provisions.

C. Permittee shall deliver to City certificates of insurance and the required endorsements for approval as to sufficiency and form prior to commencement of the Term. Permittee shall, at least twenty (20) days prior to expiration of such policies, furnish City with evidence of renewals. City reserves the right to require complete copies of all said policies at any time.

D. Such insurance as required herein shall not be deemed to limit Permittee's liability relating to performance 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 as set forth in Section 7.A, below.

E. 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. Indemnity.

A. General Indemnification.

1. 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 reasonable attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation (collectively, "Claims"), 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 material 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"). The foregoing indemnification shall not extend to any Claims arising from, attributable to, or caused by the negligence or willful misconduct of City or any Indemnified Parties and/or any Claims arising or attributable to occurrences prior to or after Permittee's use or occupation of the Premises.

2. 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 its City Attorney or such other legal counsel reasonably approved by City, from and against all Claims, and shall continue this defense until the applicable Claim(s) is/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 cooperate in good faith and assist Permittee, as may be reasonably requested, in the defense.
3. If a court of competent jurisdiction determines that a Claim was caused by the 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 negligence or willful misconduct attributed by the court to the Indemnified Parties.
Permit.
4. The provisions of this Section 7.A shall survive the expiration or termination of this Permit.

B. Hazardous Materials Indemnification.

1. Permittee shall, at Permittee's sole expense and with counsel reasonably acceptable to City, indemnify, defend, and hold harmless City and all Indemnified Parties with respect to all losses arising out of or resulting from the disruption and release of any Hazardous Material in or about the Premises, which are caused by the actions of Permittee or Permittee Representatives related to its or their use and occupation of the Premises during the Term, or the violation of any Environmental Law, by Permittee or Permittee Representatives. Notwithstanding anything to the contrary herein, Permittee shall not be liable for, and shall not be responsible for indemnifying or defending the City or any Indemnified Parties for, any losses, remediation, clean up costs or damages (i) stemming from any Hazardous Material in or about the Premises as a result of (i) the acts or omissions of any third party outside of the control of Permittee, or (ii) arising out of or resulting from the disruption and release of any Hazardous Material on or about the Premises which occurred prior to the commencement of the Term or following the expiration of the Term. The foregoing indemnification includes:(a)
Losses attributable to diminution in the value of the Premises;

(b) Loss or restriction of use of rentable space on the Premises;

(c) Adverse effect on the marketing on or of the Premises; and

(d) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation.

The foregoing indemnification shall survive the expiration or termination of this Permit.


2. If the presence of any Hazardous Material brought onto the Premises by Permittee or any Permittee Representatives results in contamination, Permittee shall promptly take all necessary actions, at Permittee's sole expense, to return the Premises to the condition that existed before the introduction of such Hazardous Material. Permittee shall first obtain City's approval of the proposed remedial action. This provision does not limit the indemnification obligation set forth in Section 7.A or 7.B.1.
3. Definition of "Hazardous Material." As used in this Section 7.B., the term "Hazardous Material" shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, the State of California, or any local government authority having jurisdiction over the Premises. Hazardous Material includes:
 - (a) Any "hazardous substance," as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code Sections 9601-9675);
 - (b) "Hazardous waste," as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code Sections 6901-6992k);
 - (c) Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect);
 - (d) Petroleum products;
 - (e) Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code Sections 2011-2297g 4;
 - (f) Asbestos in any form or condition; and



12. Severability. In the event that any one or more of the provisions contained in this Permit shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision herein, and the remainder of the provisions of this Permit shall continue in full force and effect without impairment.
13. Counterparts. This Permit may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF the undersigned have executed this Permit as of the date and year first set forth above.

CITY OF LONG BEACH, a municipal corporation

By:  EXECUTED PURSUANT
Name: Tom Modica TO SECTION 301 OF
Title: Assistant City Manager THE CITY CHARTER.

APPROVED AS TO FORM
11.15 2018
By: 
CHARLES PARKIN City Attorney
By: 
RICHARD ANTHONY
DEPUTY CITY ATTO

CITY OF SIGNAL HILL, a municipal corporation

By: 
Name: Charlie Honeycutt
Title: City Manager

APPROVED AS TO FORM:

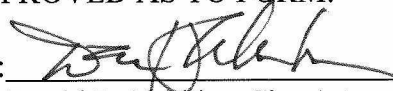
By: 
David J. Aleshire, City Attorney

Exhibit A
Premises



AIN: 7215-002-271