

CITY OF SAN DIEGO  
SPECIAL USE PERMIT

THIS CITY OF SAN DIEGO SPECIAL USE PERMIT (Permit) is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation (CITY) and SAN DIEGO VELODROME ASSOCIATION, a California non-profit corporation (PERMITTEE), to be effective as of September 14<sup>th</sup>, 2016 (Effective Date) approved by the City of San Diego City Attorney, as follows:

WHEREAS, CITY and PERMITTEE are parties to that certain Special Use Permit approved by the City of San Diego City Attorney on October 18, 2013, and which expired on June 13, 2016; and

WHEREAS, CITY and PERMITTEE are currently negotiating a lease agreement for the operation and use of the Premises, as defined herein, ("Lease"); and

WHEREAS, CITY and PERMITTEE are entering into the Permit to allow the PERMITTEE to legally occupy and operate at the Premises (Project) during the time period that the parties continue to negotiate said Lease and to undertake the Project, as defined herein; and

WHEREAS, CITY desires to provide facilities to its citizens, guests, non-commercial local societies, clubs and organizations engaged in civic, social, educational, cultural, recreational or philanthropic work or activities; and

WHEREAS, PERMITTEE is a non-profit organization engaged in recreational, social, and philanthropic activities for residents of the CITY, whose revenues are generated from voluntary contributions, special events, membership dues and fund raising projects; and

WHEREAS, CITY believes that PERMITTEE is well qualified to, and PERMITTEE is willing to, provide recreational, philanthropic, programs and activities at the Premises.

NOW, THEREFORE, it is mutually agreed by and between the CITY and the PERMITTEE as follows:

1. Premises. This Permit provides the terms and conditions under which PERMITTEE is authorized to operate, utilize and maintain certain CITY-owned real property as designated by the Park and Recreation Department. Specifically, PERMITTEE shall be allowed to use and maintain the CITY-owned property commonly known as the Bicycle Velodrome, located at 2221 Morley Field Drive, San Diego California 92104, as more particularly described in **Exhibit A** attached to and incorporated into this Permit (Premises).

2. Term. The term of this Permit (Term) shall be for a period no to exceed six (6) months, which shall begin on the Effective Date and terminate: after six (6) months, or on the date the Lease is approved by the San Diego City Attorney, whichever is sooner. However, that this Permit may be terminated by either party upon thirty (30) days written notice. This Permit does not guarantee that specific locations at the Premises will always be available at the date and time requested by the PERMITTEE.
3. Fee. The CITY shall waive the Permit fee as the CITY and PERMITTEE intend to enter into the Lease during the Term.
4. Nonprofit Status: PERMITTEE shall provide the CITY, to CITY's satisfaction, with documentary evidence of current tax-exempt status on or before the Effective Date.
5. Use of Premises. PERMITTEE shall use permit the Premises shall only for the purposes of providing recreation programs and bicycle activities, conducting special events/fund raising activities, maintaining the Premises, and performing the Project, as defined in section 11.3.1, (Permit Use), and for no other use whatsoever without obtaining the prior written approval of the CITY's Park and Recreation Department Director or his or her designated representative (Director).
6. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself 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 Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
7. Revocable License. This Permit is not a lease. This Permit is a license to use CITY-owned 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 in case of an emergency; or (b) upon reasonable prior written notice, but not less than thirty (30) days, delivered to PERMITTEE if for CITY'S convenience. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S revocation or termination of this Permit.
8. No Holdover. If PERMITTEE continues to occupy the Premises 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 Premises. If PERMITTEE continues to occupy the Premises after the expiration or earlier termination of this Permit, PERMITTEE shall pay to CITY rent calculated on a per diem basis at the market rental rate as calculated by competent CITY staff. 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 Premises.

9. Restore and Vacate. Unless Lease is approved by the San Diego City Attorney, prior to the expiration or PERMITTEE'S earlier termination of this Permit, PERMITTEE shall restore the Premises to its condition on the Effective Date, normal wear and tear excepted, and upon such expiration or earlier termination immediately vacate the Premises. Upon CITY'S termination of this Permit, PERMITTEE shall immediately cease all operations on the Premises and as soon as practicable thereafter restore the Premises to its condition on the Effective Date, normal wear and tear excepted, and vacate the Premises.
10. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest. If PERMITTEE'S use of the Premises 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.
11. Maintenance, Installation, Improvements and Repairs of the Premises. For purposes of the following provisions, "CITY Contact" shall mean CITY's Park and Recreation Department District Manager (or designee), who currently is (619) 235-1106 (phone).
  - 11.1. Maintenance. PERMITTEE shall at PERMITTEE's sole cost and expense and to CITY's satisfaction, maintain the Premises in good order and repair and in a safe, healthy and sanitary condition at all times during the Term, subject to normal wear and tear. PERMITTEE shall keep the Premises free and clear of rubbish, debris and litter at all times. City shall at no time during the Term be required to make any improvements or repairs to the Premises.
  - 11.2. Improvements. PERMITTEE shall not make or cause any improvements, changes or alterations to be made to the Premises or to any improvements thereon, other than those already identified in this Permit, without prior written CITY approval. Any and all improvements, repairs and alteration made to the Premises by PERMITTEE shall become the sole property of CITY.
  - 11.3. Notwithstanding any other provision of this Permit, PERMITTEE shall undertake the following maintenance and improvements at PERMITTEE's sole cost and expense, and CITY approves the following maintenance and improvements at the Premises to be done by PERMITTEE:

- 11.3.1 Project. PERMITTEE shall resurface the track, track apron and bike parking area with hot mix asphalt; add a warm-up circle on the infield; and remove existing plywood fence/chain-link and replace plywood on the Premises (Project) as more particularly described in **Exhibit B: Scope of Work** attached to and incorporated into this Permit. All Project work shall be done in accordance with CITY's current specifications. Prior to the commencement of the Project, PERMITTEE shall provide an accurate schedule, updated if necessary, for all resurfacing work at the Premises during the Term. Any such schedule adjustments must be proposed by written request to the DIRECTOR, and are subject to written approval made at his/her sole discretion.
- 11.4. PERMITTEE agrees that CITY shall not be required to perform or assume the cost of any maintenance, repairs, or services to the Premises.
- 11.5. Payment Bond. Prior to the commencement of the Project, PERMITTEE shall provide CITY with a payment bond in the amount of one hundred percent (100%) of the total amount payable under the contract for construction of the Project. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the Project be completed in accordance with this Permit and all applicable laws and regulations. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY
- 11.6. Structures. Under no circumstances shall PERMITTEE or PERMITTEE's agents place, store, or allow temporary or permanent structures of any kind on the Premises, including but not limited to cargo containers, trailers, and storage sheds, without the prior written authorization of the CITY and obtaining all permits required by competent governmental entities. Any structure violating this provision shall be subject to immediate and summary removal, at PERMITTEE's sole cost and expense.
- 11.7. Required Approvals. PERMITTEE shall obtain all required permits and regulatory approvals required by competent governmental entities. PERMITTEE shall be solely responsible for the cost of all plans, permits, and construction and maintenance costs attendant to any improvements.
- 11.8. Work Schedule. PERMITTEE shall contact the CITY Contact a minimum of five (5) working days prior to the start date of any maintenance or improvements. At that time, PERMITTEE shall submit a work schedule to the Director that includes a description of the work to be performed, the specific location of such work, plan and design sheets showing construction specifications, precise locations, the dates and times of such work, and other

relevant information deemed necessary by CITY to the CITY Contact. CITY reserves the right to impose reasonable restrictions and scheduling conditions for any activities related to the improvements or installations, and no work shall commence without the prior verbal approval of the CITY Contact. PERMITTEE shall further notify CITY Contact a minimum of ten (10) working days prior to start of any work that may affect public access on or adjacent to the Premises.

- 11.9. Pre-Construction Meeting. A minimum of five (5) working days prior to commencement of any work, PERMITTEE shall invite CITY Contact to a pre-construction meeting. This meeting shall establish points of contact, define means and methods of all maintenance or improvements, and coordinate PERMITTEE's work schedule with scheduled activities and Park and Recreation Department operations in and adjacent to the Premises.
- 11.10. Security and Safety of Work Areas. PERMITTEE shall bear sole responsibility for the security and safety of work areas relating to any work performed under the direction of PERMITTEE. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of the work areas, as appropriate, during and immediately following each day's work to ensure security and safety. CITY has no obligation to provide oversight of any maintenance or improvements or staffing or resources for the maintenance of the Premises.
- 11.11. Repair. PERMITTEE shall be responsible, at its sole cost and expense, for the repair or replacement of any damage caused by PERMITTEE's maintenance or improvements. PERMITTEE shall comply with the direction of the CITY Contact or other competent CITY staff with respect to the method of any repairs or replacement.
- 11.12. Vehicular Traffic. All vehicular traffic shall be confined to concrete, asphalt or decomposed aggregate surfaces unless otherwise approved in writing by CITY Contact prior to the commencement of any maintenance or improvement work.
- 11.13. Subcontractors. PERMITTEE shall provide to CITY Contact a list of all contractors and subcontractors, including name, address, email, fax and phone number. All construction work requiring a licensed contractor pursuant to the Contractors' State Licensing Laws (California Business & Professions Code sections 7000-7191) shall be done by contractors licensed within the State of California.
- 11.14. Grading and Barriers. PERMITTEE shall not change the surface grade or construct any permanent barriers within the Premises. Any violations shall be corrected by PERMITTEE at its sole expense to the satisfaction of CITY.

- 11.15. Construction Guidelines. All new construction must comply with CITY design guidelines, regulations, California Building Code Title 24, and Americans with Disability Act standards. Any items that are not pre-approved or not to code will be rejected at the time of walk-through, and must be removed and/or corrected at PERMITTEE's expense. It is the responsibility of PERMITTEE to obtain the necessary permits prior to commencement of any work, to obtain any inspections required for the work involved and to ensure all work will adhere to all laws, rules, and regulations, including California Building Code Title 24, ADA, the latest edition of the Park and Recreation Department's *Consultant's Guide to Park Design and Development*, *San Diego Standard Drawings for Public Works Construction*, the *Standard Specifications for Public Works Construction* (Greenbook, 2009 edition), the 2012 City of San Diego "Whitebook" supplement to the Greenbook (Document No. PITS090110-1), City of San Diego regulations and other local agencies regulations.
- 11.16. Final Walkthrough. PERMITTEE shall conduct a final walkthrough with CITY Contact to review and inspect all improvements and installations, in each instance, for compliance with this Permit and with Park and Recreation Department standards. All items noted not to be in compliance with that certain *Consultant's Guide to Park Design and Development*, and any concerns identified by CITY Contact as being incomplete or unacceptable, shall be corrected to the satisfaction of CITY prior to final acceptance of the work that is performed.
12. Inspection. CITY may at all times enter and inspect the Premises without notice.
13. Prevailing Wages. For all maintenance and improvement of the Premises undertaken or caused by PERMITTEE in qualifying amounts and which constitute a "public works contract" or a "maintenance contract" for a park, building, or facility of CITY pursuant to CITY's "Compliance with State Prevailing Wage Laws" Ordinance (San Diego Municipal Code section 22.3019, which may be amended from time to time), PERMITTEE shall ensure, including by providing for such in all agreements for such activities, that the contractor for such activities shall comply with San Diego Municipal Code section 22.3019 and all applicable California Labor Code provisions regarding prevailing wages. PERMITTEE shall obtain from CITY, prior to entering into any agreements for or otherwise authorizing commencement of any such public works or maintenance contract, the most current version of CITY's standard contract provisions regarding San Diego Municipal Code section 22.3019 and applicable California Labor Code provisions, for use by PERMITTEE in ensuring that such contractors comply with these provisions.
14. Non-Exclusive Use. PERMITTEE acknowledges and agrees that nothing in this Permit grants or shall be deemed to grant any exclusive right or license to PERMITTEE to exclusively conduct any type of events or activities at the Premises. The general public shall not be wholly or permanently excluded from the Premises or

any activity or event at the Premises when permitted to PERMITTEE. However, PERMITTEE, with the prior written approval of the Director, may develop reasonable restrictions for participation in certain activities that are consistent with the rights of the general public and are designed to enable PERMITTEE to use the Premises for the purposes herein granted.

15. Fees. PERMITTEE shall have the right to charge reasonable fees to non-members of PERMITTEE's organization for the participation in activities provided by PERMITTEE. Fees shall be designed to cover maintenance and program operation and are subject to prior written approval of the Director.
16. Utilities. All utilities that may be reasonably necessary for use of the Premises shall be furnished by City.
17. Campaigning. The Premises shall not be utilized for the purpose of working or campaigning for the nomination or election to any public office, whether partisan or non-partisan, provided, however, that PERMITTEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
18. Membership. Membership in the PERMITTEE's organization shall be open to anyone meeting the requirements of PERMITTEE's rules and bylaws, subject to the requirements of the Permit and applicable laws.
19. Records and Inspection. PERMITTEE shall keep accurate and complete books of account indicating all financial transactions made in connection with the Premises or with the Permit Use. Said records shall be based upon the CITY's fiscal year and shall run from July 1<sup>st</sup> through June 30<sup>th</sup> of each year. A financial report showing all revenue by source and all expenditures in connection with the Premises and/or Permit Use shall be submitted to the Director on an annual basis by August 1<sup>st</sup> of each year. Financial reporting shall be in a format acceptable to the CITY. In the event of a termination of this Permit, the financial report shall be submitted to CITY within thirty (30) days of the date of said termination. PERMITTEE'S accounting records shall be subject to inspection by an authorized representative of the CITY at all reasonable times. PERMITTEE shall maintain all such records and accounts for a minimum period of five (5) years.
20. Use of Funds. All funds collected by PERMITTEE from the use of the Premises shall be used for the sole purpose of promoting PERMITTEE'S activities or other related services.
21. No Discrimination. PERMITTEE shall not discriminate or permit discrimination in any manner against any person or class of persons on account of race, color, religion, gender, gender expression, gender identity, medical status, national origin, age, marital status, disability or sexual orientation in PERMITTEE'S use of the Premises,

including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

22. Drug Free Environment. The Premises shall be utilized and operated in a drug-free environment. PERMITTEE shall make this fact known, both in writing and in oral communication, to participants periodically throughout the Term. PERMITTEE shall document such written or oral communication and provide copies to CITY on an annual basis.

23. Insurance. On or before the Effective Date, PERMITTEE shall: (a) provide to CITY insurance certificates reflecting evidence of all insurance required below; however, the CITY reserves the right to request, and the PERMITTEE shall submit, copies of any policy upon reasonable request by the CITY; (b) obtain CITY approval of each insurance company or companies; and (c) confirm with CITY that all policies contain the specific provisions required below. PERMITTEE'S liabilities, including but not limited to PERMITTEE'S indemnity obligations, under this Permit, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Permit and PERMITTEE'S failure to maintain or renew coverage or to provide evidence of renewal during the Term may be treated as a material breach of contract by the CITY. PERMITTEE shall not modify any policy or endorsement thereto which increases the CITY'S exposure to loss for the Term.

23.1. Types of Insurance: At all times during the term of this Permit, the PERMITTEE shall maintain insurance coverage and shall deliver to CITY current certificates of insurance for:

23.1.1. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

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

- 23.1.3. Workers' Compensation. For all of the PERMITTEE'S employees who are subject to this Permit and to the extent required by the applicable state or federal law, the PERMITTEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the PERMITTEE shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.
- 23.2. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 23.3. Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 23.4. Modification. To assure protection from and against the kind and extent of risk existing on the Premises, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to PERMITTEE'S use of the Premises.
- 23.5. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Permit Area or otherwise related to the Permit. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 23.6. Required Endorsements: The following endorsements to the policies of insurance are required to be provided to CITY before any use is initiated under this Permit.

23.7. Commercial General Liability Insurance Endorsements:

23.7.1. Additional Insured: To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

23.7.2. Primary and Non-Contributory Coverage: The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of PERMITTEE'S insurance and shall not contribute to it.

23.7.3. Severability of Interest. The policy or policies must be endorsed to provide that the PERMITTEE'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

23.8. Automobile Liability Insurance Endorsements:

23.8.1. Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the PERMITTEE.

23.8.2. Severability Of Interest. The policy or policies must be endorsed to provide that PERMITTEE'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

23.9. Worker's Compensation Insurance Endorsements:

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

24. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance or restoration of the Premises, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any established liability arising from the sole negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

25. Program and Service Accessibility Compliance. PERMITTEE shall comply with the Americans with Disabilities Act of 1990 (ADA), Title 24 of the California Code of Regulations (i.e., the "California Building Code"); and any other applicable state and federal laws and regulations existing or hereafter enacted that protect the rights of people with disabilities. In accordance with California Civil Code section 1938, CITY hereby states that the Premises has not been inspected by a Certified Access Specialist (CASp). PERMITTEE'S compliance shall include without limitation the following:

- 25.1. PERMITTEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment;
- 25.2. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of PERMITTEE;
- 25.3. PERMITTEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;

- 25.4. Where required by law, PERMITTEE shall, at PERMITTEE'S cost and in conformance with all applicable building codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the Premises which deny access to disabled persons; and
- 25.5. PERMITTEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.
26. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S occupancy, use, development, maintenance and restoration of the Premises and any damages to the improvements on, under, or in the vicinity of the Premises resulting directly or indirectly thereby.
27. No Nuisance. PERMITTEE shall not use the Premises in any manner which, in the opinion of the Director, creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in the surrounding area or that violates the CITY'S Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).
28. Assignment and Sublease. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY'S prior written consent, which may be unreasonably withheld or delayed in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.
29. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising on the Premises or any CITY-owned property without CITY'S prior written consent. If any such unauthorized item is found on the Premises, PERMITTEE shall remove the item at its expense within 24 hours after notice from CITY, or CITY may thereafter remove the item at PERMITTEE'S cost.
30. Encumbrances. PERMITTEE shall keep the Premises, any CITY-owned property of which the Premises is a part, and any improvements thereon, free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance or restoration of the Premises. 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 Premises, 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 property pursuant to the California Civil Code.

31. Compliance with Laws. PERMITTEE shall, at its sole cost and expense, comply with all rules, regulations, ordinances, laws and direction of all CITY, county, state, and federal governing authorities now in effect or which may hereafter be in effect, which pertain to PERMITTEE'S occupancy, use, development, maintenance and restoration of the Premises.
32. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Premises during the Term, including the land, 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 Premises, including any licensing or permitting costs and fees. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE'S payment of such taxes, fees, and assessments shall not reduce any payment due CITY.
33. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Premises by any of the PERMITTEE'S officers, employees, agents, contractors, invitees and guests. PERMITTEE and PERMITTEE'S officers, employees, agents, contractors, invitees and guests shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises 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.
  - 33.1 Release. 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.
  - 33.2 Hazardous Substance. "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.

- 33.3 Remediation. If PERMITTEE's occupancy, use, development, maintenance or restoration of the Premises 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 Premises, and in accordance with all applicable laws, rules and regulations of governmental authorities.
- 33.4 Removal. If PERMITTEE or PERMITTEE's officers, employees, agents, contractors, invitees, and guests has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Premises, PERMITTEE shall remove all Hazardous Substances in any type of container, equipment or device from the Premises immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Premises. 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.
- 33.5 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 33.6 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, beneath, or within the Premises, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency in compliance with California Code of Regulations Title 19 and all other applicable laws or regulations. PERMITTEE shall deliver a written notice 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 Premises.

33.7 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance, or restoration of the Premises resulted in any Hazardous Substance being released on, from or beneath the Premises, 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 occupancy, use, development, maintenance, or restoration of the Premises, 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 Premises, 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, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

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

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

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

35. Alcohol. No alcohol may be served at the Premises or within the adjacent CITY property unless PERMITTEE has first obtained a special event permit under Municipal Code Section 56.54. PERMITTEE shall follow and shall bear full responsibility for compliance with all alcohol laws and permit conditions whenever

PERMITTEE obtains permission to serve alcohol on the Premises. All state and local regulations regarding the consumption of alcohol must be followed at all times at the Premises, at PERMITTEE'S sole risk and cost.

36. Exclusive Vending Machine. PERMITTEE acknowledges that Canteen San Diego is currently the exclusive "vending machine" provider for the CITY and must be used for vending in the Premises. PERMITTEE shall not procure, use, or otherwise allow any vending services at the Premises other than CITY'S designated exclusive provider. If at any time CITY changes its exclusivity pertaining to the provision of vending machines, PERMITTEE shall be informed in writing by the CITY and shall comply with whomever has been designated the exclusive vendor as set forth by CITY.
37. Music. PERMITTEE shall only perform music for which the CITY has obtained a "non-dramatic" (as hereinafter defined) performance license from ASCAP, Broadcast Music, Inc., SESAC, or any other musical industry licensing entity (Licensing Entity). For a list of approved ASCAP, BMI or SESAC music and artists, PERMITTEE may contact the respective Licensing Entity. CITY shall notify PERMITTEE in writing of any other approved Licensing Entity and any additional PERMITTEE requirements (hereinafter, Additional Requirements) imposed upon PERMITTEE by CITY by virtue of its licensing agreement with Licensing Entity.
  - 37.1. For the purposes of this Permit, a "non-dramatic" performance includes live performances and recorded performances (CD, tapes, radio and television over loud speakers). PERMITTEE shall not perform music with any "dramatic" performances. For purposes of this Permit, "dramatic" performances shall include, but not be limited to, the following: (a) performance of a "dramatico-musical work" (as hereinafter defined) in its entirety; (b) performance of one or more musical compositions from a "dramatico-musical work" (as hereinafter defined) accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken; (c) performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action or visual presentation; and (d) performance of a concert version of a "dramatico-musical work" (as hereinafter defined). The term "dramatico-musical work" as used in this Permit, shall include, but not be limited to, a musical comedy, opera, play with music, revue, or ballet.
  - 37.2. PERMITTEE shall not perform music from a coin operated phonorecord (or CD) player commonly known as a "juke-box."
  - 37.3. It shall be PERMITTEE'S sole responsibility to ensure it only performs music for which the CITY has obtained a valid music license. Should PERMITTEE desire to perform music for which CITY does not have a license, PERMITTEE shall obtain its own license from the appropriate Licensing Entity before PERMITTEE performs the desired music.

PERMITTEE shall ensure that (1) the CITY is named in the license; (2) each CITY premises/location where PERMITTEE intends to perform the music is identified in the license; and (3) PERMITTEE has provided CITY with a fully executed copy of the license at least ten days prior to the performance of the music.

38. Waiver. The property constituting the Premises is publicly owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY'S waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY'S delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY'S acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY'S failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
39. 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.
40. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
41. Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Permit.
42. 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.
43. Entire Agreement. This Permit, including any Exhibits attached hereto, constitutes the entire agreement between the parties, and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and PERMITTEE'S occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.

44. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE as follows:

San Diego Velodrome Association  
Mark Ainslie, President  
2221 Morley Field Dr.  
San Diego, CA 92104

And to the CITY as follows:

City of San Diego  
Park and Recreation Department  
Attention: Susan Lowery- Mendoza, District Manager  
2125 Park Boulevard  
San Diego, CA 92101

45. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she 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. Upon request, each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
46. Acceptance of Premises. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Premises and its suitability for the Permit Use. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Premises 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 Premises in entering into this Permit. PERMITTEE accepts the Premises in its current condition, and acknowledges and agrees that CITY has fulfilled all obligations it may have had to improve, modify, repair, replace, alter, or otherwise develop the Premises prior to the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Premises. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation PERMITTEE'S employees, from any defects in the Premises, and shall be solely responsible therefore.

PERMITTEE:  
San Diego Velodrome Association

By: Mark Amislop

Date: 9-8-16

CITY:

By: Herman D. Parker  
Herman D. Parker, Director  
Park and Recreation Department

Date: 9/8/16

*ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:*

This activity (Special Use Permit for Velodrome Operation) is Exempt per Section 15301  
– Existing Facilities

By: Chris Zirkle  
Chris Zirkle, Deputy Director, Park and  
Recreation Department pursuant to  
MOU dated April 7, 2014

Approved as to form  
this 14<sup>th</sup> day of September, 2016.

JAN I. GOLDSMITH, City Attorney

By: David Powell  
Deputy City Attorney

Attachments: Exhibit A- Premises  
Exhibit B- Scope of Work



**AMENDMENT TO  
SPECIAL USE PERMIT**

**SAN DIEGO VELODROME ASSOCIATION**

THIS AMENDMENT TO SPECIAL USE PERMIT (Amendment) is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation (CITY), and **SAN DIEGO VELODROME ASSOCIATION**, a California non-profit corporation (PERMITTEE), to be effective as of March 16, 2017 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

**RECITALS**

- A. CITY granted PERMITTEE the non-exclusive right to conduct park and recreational programs in that certain CITY park facility identified in the SPECIAL USE PERMIT, entered into between CITY and PERMITTEE effective as of September 14, 2016 (Original Permit) based on the terms and conditions set forth in the Original Permit.
- B. Pursuant to Section 2 of the Original Permit, the Original Permit expires at the close of business on March 15, 2017.
- C. CITY and PERMITTEE now desire to amend the Original Permit to extend the Term and allow the PERMITTEE to continue conducting the park and recreational programs identified in the Original Permit.
- D. All defined terms used in this Amendment shall have the same meaning as set forth in the Original Permit, unless specifically stated otherwise.

**AMENDMENT**

CITY hereby grants this Amendment, based on the following terms and conditions:

- 1. Section 2, Term, is deleted in its entirety and replaced with the following:

Term. This Permit shall be in effect until the close of business on March 15, 2018, subject to extension by CITY as determined by CITY in its sole discretion; or on the date the Lease is approved by the San Diego City Attorney, whichever is sooner. However, this Permit may be terminated by either party upon thirty (30) days written notice. This Permit does not guarantee that specific locations at the Premises will always be available at the date and time requested by the PERMITTEE.
- 2. All other terms and conditions of the Original Permit shall remain in full force and effect. Any conflict between the terms and conditions of this Amendment and those of the Original Permit shall be resolved in favor of the terms and conditions of this Amendment.

3. Each individual executing this Amendment on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Amendment 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 Amendment is binding upon such person or entity in accordance with its terms. Upon request, each person executing this Amendment on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California

PERMITTEE:

By: Mark Amsick PRESIDENT  
Name:  
Title:

Date: 3-15-17

CITY:

By: Herman D. Parker  
Herman D. Parker  
Park and Recreation Department Director

Date: 4/17/17

**PLANNING DEPARTMENT SECTION ENVIRONMENTAL CLEARANCE:**

This First Amendment to the Special Use Permit is covered by the environmental determination made in September 2016 which was exempt from CEQA pursuant to CEQA Section 15301 (Existing Facilities) and does not require a new Notice of Right to Appeal.

By: Mejia Herrmann  
Name: Mejia Herrmann  
Title: School Planner

Approved as to form this 3<sup>rd</sup> day  
of May, 2017.

MARA W. ELLIOTT, City Attorney

By: David Powell  
Deputy City Attorney  
David Powell



## Work Schedule for Velodrome Resurfacing per SUP item 11.8

### Completed work to date

Our surveyor, Rudy Pacheco of Acculine Survey 1919 Grand Ave. Suite 1G, San Diego, Ca. 921019 858-483-6665 has completed his staking of the elevations of the track as of 2/3/17.

Rudy has done a topographical map (existing elevations shot and plotted) and inputted the design plan (based on the 1976 as built original plan) into his computer. He has combined the two to show the amount of cut or fill at the baseline (the toe of the slope or bottom of the incline where the incline meets the apron) and at the top of the slope. He has adjusted the design plan to minimize the amount of cuts and fill. Even after this adjusting, the amount of cut is up to 2 inches and the amount of fill is up to 3.5 inches. The hard points are the baseline, which must be kept level, and the measurement line which must be kept at a distance of 333.33 meters and 20 centimeters above the baseline. What the survey tells us is that the track will need to be ground down to take out the high spots (the good news is that these areas are limited in size and localized to certain areas).

### Work scheduled for 2/7/17 and 2/8/17

Hazard Construction Company, 6465 Marindustry Drive, San Diego, Ca., 858-587-3600 Mark Thunder and Larry Miller will string the track from top to bottom using the survey pins to determine what areas need to be ground down and by how much and what areas need to be filled and by how much.

### Work scheduled for 2/9/17 to 2/14/17

Hazard to move in their grinding machine and begin grinding down the high spots of the track.

### Work scheduled for 2/15/17 to 2/22/17

Hazard to bring in the paving equipment and begin paving a leveling course will need to be applied up to a depth of 2 inches as needed in the low areas, then the cap course or finish surface of 1.5 inches can be placed. The paving needs to be done in two courses because 3.5 inches of asphalt compresses more than 1 inch, so if the asphalt were to be applied in one course then compacted, it would be bumpy.

Pins and a wire will be set at the top and the bottom of the track at the exact height of the design plan. This wire will provide an exact height for the paving machine to follow.

Hazard then will move their equipment in place that includes a 20 foot wide paving machine, two rollers and three cranes. The cranes will have rubber tires and run on the apron. They will connect to the paving machine and the rollers with a solid steel bar connection from below supporting them from sliding down the track. By running these cranes on the apron the support can be continuous around the track and not be interrupted by the light poles above. The plan is to get all of this equipment in place 3 days before the start of paving to complete the rigging and do some practice laps, with the idea of finding any problems and practicing the coordination, and timing between the machine operators.

Hazard will then pave the track with a leveling course, filling in the low spots and compacting them.

Work scheduled for 2/23/17 to 3/2/17

Hazard will then pave the track with a cap course.

Hazard will then pave damaged areas including the apron as needed.

Work scheduled for 3/3/17 to 3/31/17

Legend Fence 3559 Vista Avenue, Lemon Grove, Ca. 91945, 619-843-8606 Mike Davis, is scheduled to start setting fence posts. The San Diego Velodrome Association volunteers, will begin installing fence boards along with the crew setting the posts. Also during that time period the SDVA will paint the stayer's line, measurement line, and all of the other lines on the track.

I hope to have the fence completed and the lines painted on the track by April 1 subject to the weather of course.

The location of this work is the San Diego Velodrome 2221 Morley Field Drive, San Diego.

Work hours to be 7:00 am to 5:30 pm.

Design and plan sheets to follow in separate document.

This work will not effect the public access to other park facilities.

The velodrome is closed to the public and members during this time period.

Contacts for San Diego Velodrome resurfacing project:

Mark Ainslie  
SDVA President  
2247 Via Oeste Drive  
Fallbrook, Ca. 92028  
714-335-8752  
[mark@theainsliecompany.com](mailto:mark@theainsliecompany.com)

Rudy Pacheco  
Acculine Survey  
1919 Grand Ave.  
Suite 1G  
San Diego, Ca. 92109  
858-483-6665 office  
619-843-6890 mobile  
[acculinesurvey@sbcglobal.net](mailto:acculinesurvey@sbcglobal.net)

Mark Thunder  
Hazard Construction Company  
6465 Marindustry Drive  
San Diego, Ca.  
858-587-3600 office  
858-740-6962 mobile  
[mthunder@hazardcon.com](mailto:mthunder@hazardcon.com)

Mike Davis  
Legend Fence  
3559 Vista Avenue  
Lemon Grove, Ca. 91945  
619-843-8606 mobile  
619-282-6000 office  
[mddavis31@legendfencecorp.com](mailto:mddavis31@legendfencecorp.com)

# PAYMENT BOND

Travelers Casualty and Surety Company of America  
Hartford, CT 06183

Bond No.: 106540279

Premium: \$1,402.00

**CONTRACTOR:**

*(Name, legal status and address)*

Hazard Construction Company

6465 Marindustry Drive

San Diego, CA 92121

**OWNER:**

*(Name, legal status and address)*

San Diego Velodrome

2221 Morley Field Drive

San Diego, CA 92104

**CONSTRUCTION CONTRACT**

Date: December 7, 2016

Amount: Two Hundred Thirty Three Thousand Six Hundred and 00/100ths (\$233,600.00)

Description:

*(Name and location)*

San Diego Velodrome Track Restoration

2516 Pershing Drive, San Diego

**BOND**

Date: December 28, 2016

*(Not earlier than Construction Contract Date)*

Amount: Two Hundred Thirty Three Thousand Six Hundred and 00/100ths (\$233,600.00)

Modifications to this Bond:  None  See Section 18

**CONTRACTOR AS PRINCIPAL**

Company:

Hazard Construction Company

Signature: 

Name and Title:

*(Corporate Seal)*

**SURETY**

Company:

Travelers Casualty and Surety Company of America

Signature: 

Name and Title: Kyle King, Attorney-in-Fact

*(Corporate Seal)*

*(Any additional signatures appear on the last page of this Payment Bond.)*

*(FOR INFORMATION ONLY — Name, address and telephone)*

**AGENT or BROKER:**

Kyle King

750 B Street, Suite 2400

San Diego, CA 92101

619-231-1010

**OWNER'S REPRESENTATIVE:**

*(Architect, Engineer or other party:)*

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment

The Company executing this bond vouches that this document conforms to American Institute of Architects Document A312, 2010 edition

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California

County of San Diego

On December 29, 2016 before me, Apryle M. Briede, Notary Public  
Date NAME, TITLE OF OFFICER - E.G. AJANE DOE, NOTARY PUBLIC  
personally appeared Jason A. Mordhorst  
NAME(S) OF SIGNER(S)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Apryle M. Briede  
NOTARY PUBLIC SIGNATURE



furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 12** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**§ 13** Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

**§ 14** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**§ 15** Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

**§ 16 Definitions**

**§ 16.1 Claim.** A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

**§ 16.2 Claimant.** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

**§ 16.3 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

**§ 16.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**§ 16.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

**§ 17** If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_  
*(Corporate Seal)*

**SURETY**

Company: \_\_\_\_\_  
*(Corporate Seal)*

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

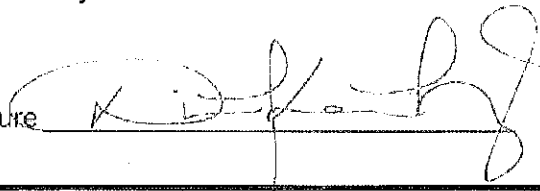
State of California  
County of San Diego )

On December 28, 2016 before me, Diana Kai Murphy, Notary Public  
(insert name and title of the officer)

personally appeared Kyle King  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



POWER OF ATTORNEY

TRAVELERS

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 231649

Certificate No. 007079606

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Dale Harshaw, Tara Bacon, Geoffrey R. Shelton, Bradley R. Orr, Kyle King, John R. Qualin, and Minna Huovila

of the City of San Diego, State of California, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 22nd day of December, 2016

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss

By: Robert L. Raney, Senior Vice President

On this the 22nd day of December, 2016 before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal
My Commission expires the 30th day of June, 2021.



Marie C. Tetreault
Marie C. Tetreault, Notary Public

# PERFORMANCE BOND, LABOR AND MATERIALMEN'S BOND

---

## FAITHFUL PERFORMANCE BOND AND LABOR AND MATERIALMEN'S BOND:

\_\_\_\_\_, a corporation, as principal, and \_\_\_\_\_, a corporation authorized to do business in the State of California, as Surety, hereby obligate themselves, their successors and assigns, jointly and severally, to The City of San Diego a municipal corporation in the sum of \_\_\_\_\_ for the faithful performance of the annexed contract, and in the sum of \_\_\_\_\_ for the benefit of laborers and materialmen designated below.

### Conditions:

If the Principal shall faithfully perform the annexed contract with the City of San Diego, California, then the obligation herein with respect to a faithful performance shall be void; otherwise it shall remain in full force.

If the Principal shall promptly pay all persons, firms and corporations furnishing materials for or performing labor in the execution of this contract, and shall pay all amounts due under the California Unemployment Insurance Act then the obligation herein with respect to laborers and materialmen shall be void; otherwise it shall remain in full force.

The obligation herein with respect to laborers and materialmen shall inure to the benefit of all persons, firms and corporations entitled to file claims under the provisions of Article 2. Claimants, (iii) public works of improvement commencing with Civil Code Section 9100 of the Civil Code of the State of California.

Changes in the terms of the annexed contract or specifications accompanying same or referred to therein shall not affect the Surety's obligation on this bond, and the Surety hereby waives notice of same

The Surety shall pay reasonable attorney's fees should suit be brought to enforce the provisions of this bond.

Dated \_\_\_\_\_

Approved as to Form

\_\_\_\_\_  
Principal

By \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Person Signing for Principal

# PERFORMANCE BOND, LABOR AND MATERIALMEN'S BOND

Jan I. Goldsmith, City Attorney

By \_\_\_\_\_  
Deputy City Attorney

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-fact

Approved:

\_\_\_\_\_  
Local Address of Surety

By \_\_\_\_\_  
Mayor or Designee

\_\_\_\_\_  
Local Address (City, State) of Surety

\_\_\_\_\_  
Local Telephone No. of Surety

Premium \$ \_\_\_\_\_

Bond No. \_\_\_\_\_