

PERMIT AGREEMENT

No. 5400

This Permit Agreement, dated for reference purposes only as this ____ day of August, 2018, is by and between the **COUNTY OF SAN MATEO**, a political subdivision of the State of California, ("County" or "Permitter") and the **SAN MATEO COUNTY HARBOR DISTRICT** ("Permittee"), and is entered into subject to the following terms and conditions:

1. **PREMISES AND USE:** Permittee is hereby granted permission to occupy and use a portion of the real property identified as San Mateo County Assessor's Parcel Number 037-292-030; and commonly known as the Half Moon Bay Airport ("Airport"), located in Unincorporated Half Moon Bay, California. The portion of the Airport Permittee is authorized to occupy and use is shown on Exhibit A attached hereto and incorporated herein by reference ("Premises"). Permittee is authorized to occupy and use the Premises for the purpose of temporarily storing up to approximately 1,600 cubic yards of sand extracted from the area of the boat launch ramps ("Sand") at Pillar Point Harbor ("Harbor"). No other use of the Premises is allowed without prior written consent of County.

Prior to placing any Sand on the Premises, Permittee shall install and secure a protective membrane of a type satisfactory to the County ("Membrane") across the entirety of the Premises to ensure no water or contaminants that may be present in the Sand are absorbed into the ground. Prior to the placement of any Sand, the Membrane shall be secured to the Premises using a method approved by the County in writing. Further, once all of the Sand that is permitted to be placed on the Premises has been placed on the Premises, Permittee shall secure a sheeting over the Sand to ensure it does not create a nuisance or hazard to aircrafts or patrons using the Airport. The sheeting shall be of a type approved in writing by the County and shall be installed in a manner satisfactory to the County.

2. **ACCESS:** Permittee is authorized to access the Premises for the specific purpose granted herein by using only the route specified on Exhibit B attached hereto and incorporated herein by reference. As the Airport is an operating general aviation airport, for safety purposes, no other route is authorized. Access to other portions of the Airport is not granted. Permittee shall maintain the access route free of sand and debris during Sand transport activities through applicable means and to conditions acceptable to the County. As specified in Exhibit A, a hard barricade fence must be in place prior to any placement or storing of material. When the Airport Operations Area (AOA) fence is open, it shall be manned by an individual approved by the County. This individual must meet with Airport Operations prior to job commencement to confirm rules for manning gate. Prior to opening the AOA fence, the contractor must notify Airport Operations of all work at 650 454-0469. Access to the airfield/site is permitted only during the hours of 0830 to 1630 and the Permittee will ensure that its staff and agents are aware of, and comply with, these hour limitations. Work in the Premises during other times must be coordinated with prior approval from the Airport Operations Manager at 650 372-3298. All personnel working within the AOA will be required to provide a valid government issued identification and be escorted at all times by airport staff when inside the AOA but outside of the temporary hard barricades placed around the storage site.

3. **RELOCATION**: Permittee shall immediately relocate all Sand from the Premises if (i.) the Federal Aviation Administration ("FAA") determines that Sand is creating a safety hazard to aircraft and users of the Airport or (ii) any regulatory agency determines that Sand is creating an environmental hazard at the Airport or a health hazard for Airport users. If Sand must be relocated pursuant to this Section 3, County shall make reasonable efforts to identify another similarly situated location on the Airport to which Sand can be relocated; the Parties agree, however, that the County may not be able to reasonably identify such a location. Permittee shall bear all cost and expense of relocating the Sand and such relocation shall be subject to requirements imposed by the County, including, but not limited to, the obligation to install a Membrane and Sheeting, as described in Section 1, above.

4. **MAINTENANCE OF PREMISES**: Permittee shall maintain and repair the Premises at its sole cost and effort. Permittee agrees to keep the Premises in good and safe condition, free from waste and hazardous materials, and in compliance with state and federal stormwater pollution prevention plan (SWPPP) best management practices, as approved by the County. If Permittee fails to keep the Premises in good and safe condition, free from waste or hazardous materials, and in compliance with SWPPP best management practices, County may perform the necessary remediation work at the expense of Permittee, which expense Permittee agrees to pay within fifteen (15) days of receipt of notice.

Any and all damage caused to Airport roads by Permittee's transportation of Sand to the Premises and from the Premises must be repaired within thirty (30) days of receipt of written notice from County. The County shall perform a detailed pavement assessment of the roads leading from the Airport entrance on Highway 1 to the Premises prior to the commencement of this Permit, and the cost of such assessment shall be borne by the Permittee. Permittee acknowledges that the roads that provide access to the Premises have not been designed to support heavy loads or high traffic conditions and any damage incurred during the term of the Permit shall be deemed the fault of the Permittee and shall be repaired at Permittee's sole effort and cost.

5. **TERM**: This Permit shall commence on the date the County Board of Supervisors adopts a resolution authorizing the execution of this Permit ("Commencement Date") and shall terminate upon completion of Permittee's relocation of Sand from the Premises, but in no event later than July 1, 2020.

6. **NATURE OF PERMIT**: This Permit does not constitute the grant of a lease, deed, easement, or a conveyance or transfer of any property interest by County. Permittee acknowledges that County is entering into this Permit in its capacity as a property owner, and not as a regulatory agency.

7. **ASSIGNMENT**: This Permit is not transferable or assignable. Any such transfer or assignment without the prior written consent of County, which shall be granted or denied in County's sole discretion, shall be, at the election of County: (1) void from the time made, or (2) considered an event of default under this Permit.

8. **PERMIT FEE:** Subject to the rental adjustments specified below, Permittee agrees to pay to County a Monthly Base Rent ("Rent"), without prior notice or demand, in the sum of \$4,500.00 on or before the first day of the first full calendar month after the Commencement Date ("Rent Commencement Date"), and a like sum on or before the first day of each and every successive calendar month thereafter during the term.

Twelve months after the Rent Commencement Date, and each successive 12-month period thereafter for the term of this Permit, including during any holdover period (the "Adjustment Date"), the Rent as set forth herein shall be adjusted to equal one hundred three percent (103%) of the Rent for the lease year preceding such Adjustment Date.

9. **CHANGES, ADDITIONS OR ALTERATIONS:** Permittee agrees not to make any changes, additions, or alterations to the Premises, Airport, or any part thereof, without first consulting with and obtaining the prior and specific written consent of County, which consent shall be made in County's sole discretion.

10. **REMOVAL OF IMPROVEMENTS UPON EXPIRATION OR TERMINATION.** Upon the expiration or termination of this Permit for any reason, including, but not limited to bankruptcy, Permittee shall immediately (and in no event later than thirty (30) days after expiration or termination) remove Sand placed on the Premises by Permittee or any of Permittee's Agents and restore the Premises to its prior condition, to the sole satisfaction of the County. Such removal shall be performed at Permittee's sole cost and effort and in such a manner as to not interfere with the continuing use of the Premises or Airport by County or Airport users. Permittee shall, at Permittee's sole expense, repair any damage to the Premises, or any facilities or equipment on the Premises or Airport, caused by such removal.

Upon failure of Permittee to remove Sand from the Premises pursuant to this Section, County shall have the option, but not the obligation, to remove and dispose of the Sand from the Premises at Permittee's expense, upon fourteen (14) calendar days' advance written notice to Permittee.

11. **COSTS TO RECOVER PREMISES:** Permittee agrees to pay County any and all costs and expenses in any action brought by County to recover possession of the Premises or to enforce any rights of County hereunder, including reasonable attorneys' fees.

12. **RELATIONSHIP:** County shall not become or be deemed a partner or joint venturer with Permittee by reason of this Permit or any provision hereof. Nothing in this Permit shall be construed to make Permittee an agent, employee, or department of County. Permittee warrants that it will not represent, directly or indirectly, to any person or entity, that it is a department, agent, or employee of the County of San Mateo or that it is performing any official function of County.

Permittee further understands and agrees that County is entering into this Permit in its capacity as a property owner with a proprietary interest in the Premises and Airport and not

as a regulatory agency with police powers. Nothing in this Permit shall limit in any way Permittee's obligation to obtain any and all required permits and approvals from applicable governmental agencies or commissions having jurisdiction over the Premises. By entering into this Permit, County is in no way modifying or limiting Permittee's obligation to cause the Premises to be used and occupied in accordance with all applicable laws and regulations.

13. **LICENSES AND PERMITS**: Permittee shall secure any and all necessary and required licenses, permits, consultations, and approvals applicable for the use of the Premises for which this Permit is granted, including approval and certification from applicable regulatory agencies that Sand does not contain environmental contaminants. Permittee acknowledges and agrees that the Premises is being accepted in "AS IS" condition, without representation or warranty of any kind, and subject to all applicable laws, rules and ordinances governing the use, occupancy and possession thereof. Permittee acknowledges and agrees that neither County nor any of its agents have made, and County hereby disclaims, any representations or warranties, express or implied, concerning the physical or environmental condition of the Premises or the Property, the present or future suitability of the Premises for Permittee's intended use, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

14. **LICENSE, FEES, AND TAXES**: Permittee shall be liable for, and shall pay throughout the term of this Permit, any license fees and taxes, if any, covering its use of the Premises. Permittee acknowledges that to the extent this Permit creates any possessory interest, said interest may be subject to property taxation, and Permittee is solely responsible for the payment of any such taxes.

15. **RESERVATIONS**: This Permit is subsequent to and subject to all prior exceptions, reservations, grants, leases, easements, or licenses of any kind whatsoever as the same appear on record in the San Mateo County Recorder's Office, or in the other public records of County.

16. **LAW AND REGULATIONS**: Permittee shall at all times maintain, occupy, and use the Premises in compliance with all laws, rules, ordinances, resolutions, and regulations which may be applicable thereto, including but not limited to storm water runoff, environmental, San Mateo County Airports, and FFA regulations.

Permittee shall not allow any offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable or unlawful fire hazard, nor any material detrimental to the public health to accumulate or remain on the Premises.

17. **INDEMNIFICATION**: Permittee hereby indemnifies, defends, and holds County, its officers, and employees harmless from and against any and all claims, suits, or actions of every name, kind, and description resulting from this Permit, or the Permittee's activities authorized under this Permit, brought for, or on account of, any of the following: (a) any condition created by Permittee, its employees, contractors, or agents (collectively, "Permittee parties") on or about the Premises; (b) any act, omission, or negligence of Permittee parties; (c) any accident, injury, or damage whatsoever occurring in, at, or upon either or both of the Property and the Premises and caused by Permittee parties; (d) any breach by Permittee of any of its warranties and representations under this

Permit; (e) any damage or harm of any nature caused to the groundwater or aquifer on which the Premises is located; (f) any violation or alleged violation by any Permittee parties of any applicable law including, without limitation, any law or regulation pertaining to hazardous materials or that otherwise deal with, or relate to, air or water quality, air emissions, soil or ground conditions, or other environmental matters of any kind ("Environmental Law"); (g) claims for work or labor performed or materials supplies furnished to or at the request of Permittee parties; (h) claims arising from any breach or default on the part of Permittee in the performance of any covenant contained in this Permit; (i) any hazardous materials used, exposed, emitted, released, discharged, generated, transported, handled, stored, treated, reused, or disposed of, whether authorized under this Permit or not, at, near, or under all or any portion of the Premises or the Property as a result of the acts or omissions of any Permittee parties; (j) the violation of any Environmental Law or any permit, application or consent required in connection with any Environmental Law by any Permittee parties with respect to the Premises; and (k) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Permittee's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the Permittee to indemnify and save harmless, as set forth hereinabove, shall include the duty to defend as established in Section 2778 of the California Civil Code.

18. **WORKERS' COMPENSATION AND EMPLOYER LIABILITY INSURANCE:**

During the entire term of this Permit, and any extension hereof, Permittee shall have in effect Workers' Compensation and Employer Liability Insurance providing full statutory coverage for all its employees. In signing this Permit, Permittee makes the following certification:

I/We am/are aware of the provisions of Section 3700 of the California Labor Code which require every employer (1) to be insured against liability for Workers' Compensation or (2) to undertake self-insurance in accordance with the provisions of the Code. I/We will comply with such provisions.

19. **BONDS AND INSURANCE:** Permittee shall obtain at its sole expense, and furnish evidence to County prior to the effective date of this Permit of a combined general liability and property damage insurance policy in the amount of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, to be kept in full force during the term of this Permit and any extension hereof.

Permittee shall obtain at its sole expense within ten (10) days of execution of this Permit two bonds; (A) a Performance Bond in the amount necessary for the removal of Sand from the Premises and any and all restoration work to the Premises required once the Sand has been removed so as to insure the County during the use authorized herein, the removal of

Sand from the Premises, and restoration of Premises, and for the guarantee period after completion, against faulty or improper materials, damage to premises or roads, or workmanship and to assure the County of full and prompt performance of contract; and (B) a Payment Bond, in the amount necessary for the removal of Sand from the Premises and any and all restoration work to the Premises required once the Sand has been removed in order to secure payment of any and all claims for labor and materials used or consumed in performance of this Permit. These bonds shall be in the form of surety bonds issued by corporations duly and legally licensed to transact business in the State of California, satisfactory to the County and include expenses for materials and work not located on the Premises. Premiums for said bonds shall be paid by the Permittee and maintained at Permittee's expense during the period prescribed herein for the completion of the work to be done under the Contract.

Permittee shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Permittee's coverage to include the contractual liability assumed by Permittee pursuant to this Permit. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

County, its officers, agents and employees shall be named as additional insured on the liability insurance policy require hereinabove, which shall also contain a provision that the insurance afforded thereby to County shall be the primary insurance to the full limits of liability of the policy. If County has other insurance coverage against a loss covered by the coverage that Permittee is required to have, such other insurance coverage of County shall be excess insurance only.

20. **NONDISCRIMINATION**: Permittee acknowledges and agrees that no person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination under this Permit on account of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Permittee shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement.

Permittee shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Permittee that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Permittee shall provide County with a copy of its response to the Complaint when filed.

With respect to the provision of employee benefits, Permittee shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of

employee benefits between an employee with a domestic partner and an employee with a spouse.

21. **TERMINATION**: County shall have the right to terminate this Permit at any time with cause in the event of breach or default, as described in Section 22 herein, by serving written notice on the Permittee at least thirty (30) days in advance of termination. Further, County reserves the right to terminate this Permit upon one-hundred and twenty (120) day' written notice without just cause.

22. **RIGHTS ON DEFAULT**: If Permittee fails to perform any obligation under this Permit, then unless Permittee rectifies, or commences to rectify, the default within thirty calendar (30) days of receipt of notice by County thereof, Permittor may, at Permittor's sole discretion, upon written notice to Permittee, take any or all of the following action:

- a. Perform such obligation, in which event the cost thereof becomes immediately due and payable by Permittee to Permittor; and/or
- b. Terminate this Permit.

If the nature of Permittee's default is such that more than thirty (30) days are reasonably required for cure thereof, then Permittee shall not be in default if Permittee shall commence such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion.

23. **NOTICES**: Any notice to be given hereunder shall be by U.S. Certified Mail, prepaid, and addressed to the parties hereto, or personally delivered to, as follows:

County: County of San Mateo
County Manager's Office
Real Property Division
555 County Center, 4th Floor
Redwood City, CA 94063

Permittee: San Mateo County Harbor District
504 Ave. Alhambra,
El Granada, CA 94018
C/O: Steve McGrath, General Manager

24. **HAZARDOUS MATERIAL**. Permittee covenants and agrees that neither Permittee nor any of its Agents or Invitees shall cause or permit any hazardous material to be brought upon, kept, stored, staged, generated or disposed of in, on or about the Premises or Airport, or transported to or from the Premises or Airport. Permittee shall also provide documentation to the satisfaction of the County showing Sand does not contain any environmental contaminants, including, but not limited to Total Petroleum Hydrocarbons. Permittee shall give immediate written notice to County of: (a) any action, proceeding or inquiry by any governmental authority (including, without limitation, the California State

Department of Health Services, the State or any Regional Water Quality Control Board, San Mateo County Environmental Health, the Bay Area Air Quality Management district, California Coastal Commission, or any local governmental entity) against Permittee with respect to the presence or release or suspected presence or release of hazardous material on the Premises or Airport or the migration thereof from or to other property; (b) all demands or claims made or threatened by any third party against Permittee relating to any loss or injury resulting from any hazardous materials on the Premises or Airport; (c) any release of hazardous material on or about the Premises or any other part of the Airport due to the rights granted herein that may require any investigation or remediation; and (d) all matters of which Permittee is required to give notice pursuant to Section 25359.7 of the California Health and Safety Code.

Permittee shall be responsible for all costs and efforts associated with investigating and remediating any environmental contamination whatsoever caused by Permittee on the Premises or Airport. Notwithstanding anything to the contrary in this Permit, this provision shall survive termination.

25. **SUCCESSORS IN INTEREST:** All of the provisions in this Permit apply to and bind the heirs, successors, executors, administrators and assigns of both parties hereto, both of whom shall be jointly and severally liable hereunder.

26. **ENTIRE AGREEMENT:** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing executed by both parties.

27. **AUTHORIZED REPRESENTATIVE OF COUNTY OF SAN MATEO:** The County Manager shall be the authorized representative of County for purposes of giving any notices or exercising any rights, options or privileges of County in this Permit, including the right to terminate this Permit or to grant Permittee permission to make changes, additions or alterations in the Premises.

28. **COUNTERPARTS.** This Permit may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[Signatures on Following Page]

PERMITTEE:

SAN MATEO COUNTY HARBOR DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

COUNTY:

COUNTY OF SAN MATEO,
a political subdivision of the State of California

By: _____

Dave Pine
President, Board of Supervisors

Date: _____

Attest:

Clerk of the Board

Resolution No.: _____

EXHIBIT A



Exhibit B

