


THE ATTACHED AGREEMENT HAS BEEN REVIEWED  
AND APPROVED AS TO FORM BY THE CITY  
ATTORNEY'S OFFICE AND WILL BE  
FORMALLY SIGNED UPON APPROVAL BY  
THE CITY COUNCIL

  
\_\_\_\_\_  
Glen R. Googins  
City Attorney

Dated: 9/17/15

PROPERTY LICENSE AGREEMENT  
BY AND BETWEEN  
THE CITY OF CHULA VISTA AND  
AAG-CALIFORNIA, LLC  
FOR THE USE OF CITY OWNED REAL PROPERTY  
LOCATED AT  
610 BAY BOULEVARD

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**BY AND BETWEEN**

**OF THE CITY OF CHULA VISTA**

**AND**

**AAAG-CALIFORNIA, LLC**

**FOR THE USE OF CITY OWNED REAL PROPERTY**

**LOCATED AT**

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THIS LICENSE AGREEMENT, hereinafter called "Agreement", dated as of \_\_\_\_\_, solely for identification purposes, is executed between the **City of Chula Vista**, a public body corporate and politic, hereinafter called "City", and **AAAG-California, LLC**, a California Limited Liability Corporation, hereinafter called "Licensee", to establish terms and conditions of Licensee's use of certain real property owned by City and to provide terms and conditions of Licensee's occupancy and use of City's property. The effective date of this Agreement shall be the date this Agreement is approved by the City ("Effective Date").

## RECITALS

WHEREAS, City is the legal and equitable owner of that certain real property located at 610 Bay Boulevard, Chula Vista, currently identified as San Diego County Assessor's Parcel No. 571-330-21, more fully described herein below;

WHEREAS, Licensee is an Auto Auction Company seeking a location for a San Diego facility; and,

WHEREAS, City is willing to License the above described property (the Premises) as more particularly described herein to Licensee under the terms, covenants, conditions and provisions contained herein.

## AGREEMENT

**NOW THEREFORE**, for good and valuable consideration, the sufficiency of which the parties hereby acknowledge, the City and Consultant do hereby mutually agree as follows:

### SECTION 1: USES

**1.01 Premises.** City hereby Licenses to, in accordance with the terms, covenants, conditions and provisions hereof, that certain City owned real property located at 610 Bay Boulevard, Chula Vista, currently identified as San Diego County Assessor's Parcel No. 571-330-21 (the "Premises"). Licensee hereby agrees to act in accordance with and abide by the terms, covenants, conditions and provisions of this Agreement.

**1.02 Uses.** It is expressly agreed that the Premises shall be used by Licensee solely and exclusively for the purpose of operating an on-site wholesale Auto Auction, administrative support, and for such other related or incidental purposes as may be required to support said operations. Other, unrelated activities may also be allowed at the Premises with prior written approval in writing by the City's Real Property Manager ("Manager").

Maintenance, repair and washing of vehicles on site is specifically prohibited and will not be permitted.

Licensee covenants and agrees to use the Premises only for the above specified purposes and to diligently pursue said purposes throughout the term hereof. Licensee shall not use or permit any use of the Premises in any manner which disturbs the use and quiet enjoyment by City or any surrounding tenants or the general public. In the event that Licensee fails to continuously use the Premises for said purpose, or uses the Premises for purposes not expressly authorized herein, the Licensee shall be deemed in default under this Agreement.

**1.03 Reservation of Rights.** City shall not unreasonably or substantially interfere with Licensee use of the Premises while Licensee is in possession of the Premises. However, the City specifically retains the following rights:

- a. Subsurface Rights.** City hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the Premises.
- b. Easements.** City reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. Right to Enter.** City has the right to enter the Premises for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services.

## **SECTION 2: COMPENSATION**

**2.01 Rent for Use of Premises.** Licensee shall pay City the sum of \$10,000.00 in advance, per month for the use of the premises. Said payment shall be made in lawful money of the United States unconditionally, without demand, deduction qualification or set-off, at City's address as set forth herein or at such other address as City may designate in writing. Payments made after the fifth day of the month shall include a penalty of \$200.00 for late payment.

**2.02 Security Deposit.** Licensee shall, upon commencement of this License provide City with a Security Deposit in the amount of \$10,000. Said deposit, less any amount needed to restore the Premises to its condition at the start of the License shall be returned to Licensee upon termination of this License.

**2.03 Utilities.** All Utility Services on site are to be transferred into Licensees name and shall be the sole responsibility of Licensee. Licensee shall indemnify City from any unpaid Utility cost or fees incurred by Licensee.

### SECTION 3: TERM

- 3.01 Term.** The term of this Agreement shall commence on **October 1, 2015** and have a term of two years. The term of this License may be extended for up to two additional one year terms upon mutual agreement of the parties. In each additional one year term, rent shall be adjusted upward three percent from the previous year.
- 3.02 Termination.** Within the first year this License may be terminated only upon the mutual consent of the parties hereto, except as otherwise provided for herein. In year two and all subsequent years, if applicable, this Agreement may be terminated by either party upon ninety-day notice to the other party.
- 3.03 Surrender of Premises.** At the expiration or earlier termination of this Agreement, Licensee shall surrender the Premises to City free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of the execution of this Agreement by City. The Premises, when surrendered by Licensee, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at the commencement of this Agreement, absent normal wear and tear.

### SECTION 4: INSURANCE RISKS/SECURITY

#### 4.01 Indemnity.

- a. Defend, Indemnify and Hold Harmless.** Licensee hereby agrees to defend, indemnify, and hold the City, its directors, officers, employees, and agents, harmless from and against any and all claims, demands, causes of action, costs, expenses (including reasonable attorney's fees and actual costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Licensee, or any employee, agent, invitee, contractor of Licensee, or other person acting by or on behalf of Licensee on or about the Premises, arising out of, related to or in connection with the use of the Premises or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the sole negligence or sole willful misconduct of the City, its officers, employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Licensee, its employees, agents or officers, or any third party.
- b. Costs of Defense and Award.** Included in the obligations in Sections 1 and 2, above, is the Licensee's obligation to defend, at Licensee's own cost, expense and risk, any and all aforesaid suits, actions or other legal proceedings of every kind that may be

brought or instituted against the City, its directors, officials, officers, employees, agents and/or volunteers. Licensee shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expense and cost incurred by each of them in connection therewith.

- c. **Insurance Proceeds.** Licensee's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, and/or volunteers.
- d. **Declarations.** Licensee's obligations under Section 4 shall not be limited by any prior or subsequent declaration by the Licensee.
- e. **Enforcement Costs.** Licensee agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in Section 4.
- f. **Survival.** Licensee's obligations under Section 4 shall survive the termination of this Agreement.

**4.02 Insurance.** Licensee shall take out and maintain at all times during the term of this Agreement the following insurance at its sole expense:

a. Licensee shall maintain the following minimum limits:

General Liability Insurance

Commercial General Liability Insurance covering liability of the Licensee with respect to all operations to be performed and all obligations assumed by the Licensee under the terms of this Agreement. Coverage for commercial general liability shall be at least as broad as Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001). Limits shall be no less than **one million dollars (\$1,000,000)** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply to the Premises (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to City) or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability Insurance

Automotive Liability Insurance covering the liability of Licensee arising out of the use of all owned, non-owned, and hired vehicles which bear, or are required to bear, license plates according to the laws of California and which are not covered under the Licensee Commercial General Liability insurance. Coverage under this policy shall have limits



of liability of not less than **one million dollars (\$1,000,000)** per occurrence, combined single limit, for bodily injury and property damage (including loss of use) liability. Coverage shall be at least as broad as Insurance Services Office Automobile Liability Coverage (Form CA 0001), covering Symbol 1 (any auto).

#### Workers' Compensation and Employer's Liability Insurance

Workers' Compensation and Employer's Liability Insurance complying will the requirements of all applicable laws relating to workers' compensation insurance, covering or insuring all of the Licensee employees working on or about the Premises. Limits shall be no less than **statutory limits** per accident for bodily injury and disease. By his/her signature hereunder, Licensee certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such provisions in connection with any work performed on or about the Premises. Any persons providing services with or on behalf of Licensee shall be covered by workers' compensation (or qualified self-insurance)

- b.** All insurance companies affording coverage to the Licensee shall be required to add the City of Chula Vista, its officials, officers, employees, and agents as "additional insured(s)" under the insurance policy(s) required in accordance with this Agreement. Licensee shall furnish (or cause to be furnished) a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form of the insurance carrier setting forth the general provisions of the insurance coverage. This countersigned certificate (and endorsement) shall name the City and the City, their officers, agents, employees, and authorized volunteers as additional insured under the policy. Coverage provided hereunder to the City and City as additional insured by Licensee shall be primary insurance and other insurance maintained by the City, its officials, officers, agents and/or employees, shall be excess only and not contributing with insurance provided pursuant this Section 4.02, and shall contain such provision in the policy(ies), certificate(s) and/or endorsement(s). The insurance policy or the certificate of insurance shall contain a waiver of subrogation for the benefit of the City, its officials, officers, employees, and agents.
- c.** All insurance companies affording coverage to the Licensee shall be insurance organizations acceptable to the City, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California. Insurance is to be placed with insurers having a current A.M. Best rating of no less than A-, VII or equivalent or as otherwise approved by City.
- d.** All insurance companies affording coverage shall provide **thirty (30) days** written notice to the City should the policy be cancelled before the expiration date. For the

purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

- e. Licensee shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the General Counsel (City Attorney), concurrently with the submittal of this Agreement.
- f. Licensee shall provide a substitute certificate of insurance no later than **thirty (30) days** prior to the policy expiration date. Failure by the Licensee to provide such a substitution and extend the policy expiration date shall be considered a default by Licensee and may subject the Licensee to a termination of this Agreement.
- g. Maintenance of insurance by the Licensee as specified in this Agreement shall in no way be interpreted as relieving the Licensee of any responsibility whatever and the Licensee may carry, at its own expense, such additional insurance as it deems necessary.
- h. If Licensee fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Licensee shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within **thirty (30) days** of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by Licensee on the **first (1st) day** of the month following the notice of payment by City.
- i. City, at its discretion, may require the revision of amounts and coverage at anytime during the term of this Agreement by giving Licensee **sixty (60) days** prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. Licensee also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Agreement.
- j. Notwithstanding the preceding provisions of this Section 4.02, any failure or refusal by Licensee to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement and in such event, City may terminate this Agreement upon **three (3) days** written notice to Licensee. For the purposes of this Agreement, the condition to provide the insurance coverage required under this Section 4.02 shall be in addition to rent.

**4.03 Accident Reports.** Licensee shall promptly report to City any accident causing any property damage or any serious injury to persons on or about the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

## SECTION 5: TERMS AND CONDITIONS OF OCCUPANCY

- 5.01 Form of Agreement.** This Agreement is a limited License for the use of the Premises for those particular purposes identified in Section 1.2. Nothing in this Agreement shall be interpreted to grant any interest in the Premises other than that specified in this Agreement. At no time shall the Licensee's limited interest in the Premises ripen into a Leasehold or fee interest with a claim or right to exclusive possession thereof.
- 5.02 Right to Occupy.** Licensee right to occupy the Premises may be terminated by City at any time if Licensee fails to satisfactorily perform the improvement, maintenance, and upkeep duties or responsibilities of Licensee set forth hereunder. City reserves the right to terminate this Agreement as may be provided for elsewhere herein.
- 5.03 Taxes.** Licensee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Licensee for use of the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Licensee or levied by reason of the business or other Licensee activities related to the Premises, including any licenses or permits.

Licensee recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that Licensee may be subject to the payment of taxes levied on such interest, and that Licensee shall pay all such possessory interest taxes prior to their delinquency.

## SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises.** The Premises is being offered to Licensee in an As-Is and Where-Is condition without any warranty, expressed or implied. Licensee represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises and all improvement appurtenant thereto. Licensee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Agreement. Licensee further acknowledges that the Premises are in the condition called for by this Agreement, and that Licensee does not hold City responsible for any defects in the Premises.
- 6.02 Waste, Damage, or Destruction.** Licensee shall give notice to City of any fire or other damage that occurs on the Premises within **forty-eight (48) hours** of such fire or damage. Licensee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises, adjoining sidewalks, and other public areas, clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a

manner satisfactory to City. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, Licensee agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Licensee agrees to clear and remove from the Premises all debris resulting from said damage and repair the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the improvements which existed prior to such damage. Licensee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Premises.

Licensee shall not cause or permit any hazardous material to be used, stored, transported, generated, or disposed in or about the Premises by Licensee, Licensee's agents, employees, contractors, Licensees, or invitees. "Hazardous Material" means any hazardous, toxic, or infectious substance, material, or waste, which is or becomes regulated by any local governmental entity, the State of California, or the United States government under any law, regulation or ordinance.

**6.03 Maintenance.** Licensee agrees to assume full responsibility and cost for the operation and maintenance of the Premises throughout the term of this Agreement. Licensee will make customary and usual maintenance necessary to maintain and preserve the Premises, all improvements, including fencing, adjoining sidewalks, and other public areas, in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws. Licensee shall remove and lawfully and properly dispose of all garbage, litter, trash, debris, and rubbish from or about the Premises, adjoining sidewalks, and other public areas, on a daily basis. All components of the fencing, including but not limited to posts and rails, shall be mended/replaced on an as-needed, when-needed basis, using material of similar type and style. Licensee shall maintain surface on the Premises in a good, neat and orderly manner. Weeds, tree or shrub branches, leaves, twigs, and other similar debris shall be removed from the Premises as needed to maintain a neat appearance at all times. Licensee shall provide access control to the Premises to prevent access and parking of unauthorized vehicles. All maintenance and other Licensee duties set forth herein shall, during the term hereof, be done at Licensee sole cost and expense and City shall not be called upon for any outlay or expense related thereto.

If at any time during the term of this Agreement, City reasonably determines that the Premises are not in a decent, safe, healthy, and sanitary condition, City may, at its sole discretion and option, terminate this Agreement upon written notice to Licensee and regain possession of the Premises from Licensee. In the event of such termination, or if City elects not to terminate, City may, upon written notice to Licensee, have any necessary maintenance work done in order to place the Premises back to a decent, safe, healthy, and sanitary condition at the expense of Licensee. In such event, City shall provide Licensee written notice and itemized billing showing the work performed and Licensee shall make payment to City no later than **thirty (30) days** after receipt of said notice and billing. The rights reserved in this Section 6.03 shall not create any obligations on City or increase

obligations elsewhere in this Agreement imposed on City. The provisions of this Section 6.03 shall survive the expiration or earlier termination of this Agreement.

- 6.04 Improvements/Alterations.** No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by Licensee without prior written approval by the City. This provision shall not relieve Licensee of any obligation under this Agreement to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. City shall not called upon to or be obligated by this Agreement to make or assume any expense for any existing improvements or alterations.
- 6.05 Liens.** Licensee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to all or any portion of the Premises without the prior written consent of the City's Property Manager. Licensee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Premises for which Licensee does not have the prior written consent of the City's Property Manager.
- 6.06 Signs.** Licensee may erect up to two exterior signs on the building or on the premises so long as said signs are properly permitted by the City. Licensee shall not erect or display any banners, pennants, flags, posters, decorations, marquees, or similar devices or advertising on or about the Premises without the prior written consent of City. If any such unauthorized item is found on the Premises, Licensee shall remove the item at its expense within **twenty-four (24) hours** of written notice thereof by City, or City may thereupon remove the item at Licensee's cost.
- 6.07 Ownership of Improvements.** Any and all improvements, structures, and installations or additions to the Premises now existing or constructed on the Premises by Licensee shall at Agreement expiration or termination be deemed to be part of the Premises and shall become, at City's option, City's property, free of all liens and claims except as otherwise provided in this Agreement. If the City chooses not to accept improvements made by Licensee, during the term of this License, and prefers to have such improvements removed, Licensee shall do so at its sole cost and expense.
- 6.08 Breach by Licensee.** Licensee's refusal or failure to meet its obligations under this Section 6 shall be deemed a breach of this Agreement, and in such event, City may terminate this Agreement pursuant to the provision of Section 7.10 or elsewhere herein.

## **SECTION 7: DEFAULT AND TERMINATION**

- 7.01 Default.** The failure, through any cause, of Licensee to fulfill in a timely and proper manner any of Licensee's obligations under this Agreement or the violation by Licensee of

any of the material covenants, agreements or stipulations of this Agreement shall be deemed a Default.

**7.02 Notice of Default.** City shall provide Licensee a written notice of the Default describing the failure or violation, requesting that Licensee cure the default, and specifying a date, fifteen (15) calendar days from the date of the Notice, by which the default must be cured.

a. **Extension of Time for Cure.** In the event that Licensee, reasonably believes that the cure cannot be accomplished within the 15 days, Licensee shall immediately notify the City in a writing explaining the reason why the cure cannot be accomplished within the 15 days, detailing the proposed cure, and specifying a date by which the cure shall be completed. If the City determines, in its sole discretion, that the need for additional time and the amount of time requested are reasonable, it shall grant the extension.

**7.03 Remedies.** In the event that Licensee fails to complete the cure within the time identified in the Notice of Default or any extension thereof or fails to initiate the cure and diligently pursue the cure to completion, the City, in addition to pursuing any other remedies it may have in law or equity, may, but shall not be obligated to, do either or both of the following:

a. **Cure.** City may choose to cure the Default and charge any costs or expenses it occurs in completing the cure to Licensee.

1. *Invoice.* City shall submit a written invoice to Licensee requesting payment in the amount of the City Expenses. Payment shall be due “net 30.” Late payments shall be subject to the same interest and late penalties as License Payments.

b. **Terminate the Contract.** The City may terminate this Agreement through written notice to Licensee.

**7.04 Other Causes for Termination.** City may also terminate this Agreement upon written notice to Licensee in the event that:

a. Licensee has previously been notified by City of Licensee’s default under this Agreement and Licensee, after beginning to cure the default, fails to diligently pursue the cure of the default to completion; or

b. Licensee shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or

c. Licensee shall be adjudicated a bankruptcy; or

d. Licensee shall make a general assignment for the benefit of creditors.

**7.05 Retaking Possession.** Upon termination, City may immediately enter and retake possession of the Premises.

## **SECTION 8: GENERAL PROVISIONS**

**8.01 Notices.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed, postage prepaid, to the respective party as follows:

**To City:**

Rick Ryals  
Real Property Manager  
City of Chula Vista  
Department of Public Works  
276 Fourth Avenue  
Chula Vista, CA 91910

**To Licensee:**

AAAG-California, LLC.  
889 Mitchell Road  
Thousand Oaks, CA 91320

**With copy to:**

Xlerate Group  
10333 N. Meridian Street  
Suite 200  
Indianapolis, IN 46290

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of: (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) three working days following the deposit in the United States Mail of certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above, or (iii) actual receipt if made by recognized reliable carrier service who maintains a receipt of delivery.

**8.02 Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.

**8.03 Gender and Number.** Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders and (ii) the singular number includes the plural number.

**8.04 Reference to Paragraphs.** Each reference in this Agreement to a section refers, unless otherwise stated, to a section of this Agreement.

**8.05 Incorporation of Recitals.** All recitals herein are incorporated into this Agreement and are made a part hereof.

- 8.06 Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of the City, shall be deemed to be both covenants and conditions.
- 8.07 Integration.** This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 8.08 Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.
- 8.09 Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision that is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.
- 8.10 Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.
- 8.11 Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.
- 8.12 Good Faith Performance.** The Parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
- 8.13 Further Assurances.** City and Lessee each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.



- 8.14 Exhibits.** Each of the following Exhibits is attached hereto and incorporated herein by this reference:
- 8.15 Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance under it, shall be the City of Chula Vista.
- 8.16 Attorney Fees.** Should a dispute arising out of this Agreement result in litigation, it is agreed that the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court costs incurred. The "prevailing party" shall be deemed to be the party who is awarded substantially the relief sought.
- 8.17 Third Party Relationships.** Nothing in this Agreement shall create a contractual relationship between City and any third party.
- 8.18 Successors in Interest.** This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created, by this Agreement shall be vested and binding on any Party's successor in interest.
- 8.19 No Waiver.** No failure of either the City to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
- 8.20 Administrative Claims Requirements.** No suit or arbitration shall be brought arising out of this Agreement, against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by the City in the implementation of same.
- 8.21 Nondiscrimination.** Licensee agrees not to discriminate in any manner against or segregation of any person or persons, on account of race, color, religion, sex, familiar status, national origin, ancestry, age, disability or sexual orientation in the use, occupancy, tenure or enjoyment of the Premises, nor shall Licensee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Premises.

**8.22 Equal Opportunity.** Licensee shall assure applicants are employed and that employees are treated during employment without regard to race, familial status, color, religion, sex or national origin. Licensee hereby certify to City that Licensee is in compliance and throughout the term of this Agreement will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

- a. Compliance and performance by Licensee of the equal employment opportunity and affirmative action program provision of this Agreement is an express condition hereof and any failure by Licensee to so comply and perform shall be a default of this Agreement and City may exercise any right as provided herein and as otherwise provided by law.

**8.23 Assignment and Subletting-No Encumbrance.** This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Licensee's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Agreement without the express written consent of City shall be void and of no force or effect. A consent by City to one assignment, transfer, subLicense, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, subLicense, or delegation.

**8.24 Other Regulations.** All use of the Premises by Licensee under this Agreement shall be in accordance with the laws of the United States of America, the State of California, the County of San Diego, and in accordance with all applicative rules and regulations and ordinances of the City of Chula Vista now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by Local, State or Federal law.

**8.25 Non-liability of Officials.** No member, official or employee of the City shall be personally liable to Licensee, its assigns or successors in interest, in the event of any default or breach by the City, for any amount which may become due to Licensee is assigns or successors, or in any obligations under the terms of this Agreement.

**8.26 Relationship between City and Licensee.** It is hereby acknowledged that the relationship between City and Licensee is that of landowner and tenant at will and not that of a partnership or joint venture and that City and Licensee shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein, the City shall have no duties or obligations with respect to the improvement, maintenance or upkeep of the Premises.

**8.27 Capacity of Parties.** Each signatory and party to this Agreement warrants and represents to the other party that it has legal authority and capacity and direction from its principal to

enter into this Agreement, and that all necessary resolutions or other actions have been taken so as to enable it to enter into this Agreement.

***REMAINDER OF PAGE LEFT BLANK INTENTIONALLY***  
**[Signatures on Following Page]**

Signature Page  
To  
Agreement between City of Chula Vista and  
Sierra Pacific West, Inc.  
Use of Real Property

IN WITNESS WHEREOF, City and Licensee have executed this Agreement, indicating that they have read and understood same, and indicate their full and complete consent to its terms:

Date: \_\_\_\_\_

**CITY:**  
City of Chula Vista

By: \_\_\_\_\_

Date: \_\_\_\_\_

**LICENSEE:**  
AAAG-CALIFORNIA, LLC

By: \_\_\_\_\_