



Contract Number

SAP Number

Real Estate Services Department

Department Contract Representative	<u>Terry W. Thompson, Director</u>
Telephone Number	<u>(909) 387-5252</u>
Contractor	<u>The American Cancer Society, Inc.</u>
Contractor Representative	<u>Randi Stuart</u>
Telephone Number	<u>(909) 754-2901</u>
Contract Term	<u>3/6/2020 – 3/8/2020</u>
Original Contract Amount	<u>\$0.00</u>
Amendment Amount	<u> </u>
Total Contract Amount	<u>\$0.00</u>
Cost Center	<u>4431121000</u>
GRC/PROJ/JOB No.	<u>3300</u>
Internal Order No.	<u> </u>

Briefly describe the general nature of the contract:

This Use Permit is for three days for the period from March 6, 2020 through March 8, 2020 for the use of approximately 9.8 acres of County-owned land, located at the Sheriff's Regional Training Center, 18958 Institution Road in the Glen Helen area of San Bernardino by The American Cancer Society (Permittee) for certain activities related to the PERMITTEE's Construction vs Cancer Event, which 9.8 acres is a portion of real property commonly known as APN 0262-031-15. There is no revenue to the County for use of the County-owned land.

FOR COUNTY USE ONLY

Approved as to Legal Form

►
Agnes Cheng, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

► _____

Date _____

Reviewed/Approved by Department

►
Jim Miller, Real Property Manager, RESD

Date _____

USE PERMIT

1. **PARTIES:** The County of San Bernardino, hereinafter referred to as COUNTY, hereby permits The American Cancer Society, Inc. whose address is 6733 Riverside Avenue, Suite 203 Riverside, CA. 92506 hereinafter referred to as PERMITTEE, to use on a revocable, non-exclusive basis approximately 9.8 acres of County-owned land ("Use Area"), comprising a portion of real property commonly identified as APN 0262-031-15, which is located at the Sheriff's Regional Training Center (SRTC), 18958 Institution Road in the Glen Helen area of San Bernardino, CA, as the Use Area is more specifically shown on Exhibit "A" attached hereto and incorporated herein by this reference. The term of this Use Permit ("Use Permit") shall be for three (3) days, commencing on March 6, 2020 and expiring on March 8, 2020 (inclusive).

2. **USE:**

A. PERMITTEE may use the Use Area for only the following purpose for PERMITTEE's Construction versus Cancer fundraising event ("Event"): non-operational, static display of heavy construction equipment; operational demonstrations of one large crane to be performed solely by licensed operators (without participation by Event Attendees, as later defined); operational demonstrations of small excavators to be performed by licensed operators in conjunction with Event Attendees, and operational demonstrations of scissor lifts to be performed by licensed operators in conjunction with Event Attendees; a children's activity area; vendor and sponsor display areas; shuttle bus services, and parking areas ("Event Activities"). PERMITTEE shall, at its sole cost and expense, conduct the Event and all Event Activities in accordance with all applicable laws, regulations regarding the operation of heavy construction equipment, and industry established safety guidelines. Any dirt or soil removed by the excavators during the Event shall be only to the extent reasonably necessary for demonstration purposes PERMITTEE shall not use the Use Area for any other purpose.

B. PERMITTEE shall be solely responsible for all expenses and activities necessary for the promotion, production, operation, and safety of the Event and Event Activities. PERMITTEE will, at its sole cost and expense, provide and maintain for PERMITTEE, PERMITTEE's employees, Permittee's Vendors (as later defined), and the invitees, guests, and attendees of the Event (collectively, "Event Attendees") for the duration of the Event all necessary potable water, portable toilet and sanitation facilities, parking control, parking shuttle service, trash pickup and disposal, food vendors, activity vendors, demonstration safety controls, security, insurance, permits, licenses, and approvals from the applicable federal, state, and local agencies, and all other items and/or services that are reasonably required for the safe and legal operation of the Event and Event Activities.

C. In the event that any Event Attendee desires to participate in the operational demonstrations of the small excavators and the scissor lifts in conjunction with licensed operators or in any high-risk activities at the children's area, such as rock-climbing, PERMITTEE shall first obtain from each and every said Event Attendee an executed Release and Waiver of Liability ("High Risk" Activities) ("Release Form") in the same form attached hereto as Exhibit "C", which is incorporated herein by this reference and made a part hereof, that expressly waives and releases the COUNTY, and its authorized agents, officers, volunteers and employees against any and all claims or actions for property damage and/or personal injury and/or death from the Event Attendee's participation in said demonstration activities ACS shall provide a copy of all executed Release Forms to the COUNTY within three (3) days after the conclusion of the Event, which obligation shall survive the expiration or earlier termination of this Use Permit.

3. **CONSIDERATION:** There is no fee payable by PERMITTEE for the use of the Use Area for the Event; however, PERMITTEE shall, at no cost to COUNTY, provide COUNTY with a sufficient display area at the Event for a static display of Sheriff's equipment, such as a Sheriff's helicopter and a SWAT vehicle.

4. **SECURITY DEPOSIT:**

A. At least three (3) days in advance of the first day of use under this Use Permit, PERMITTEE shall provide COUNTY with a security deposit in the form of cashier's check, performance bond, or letter of credit in accordance with a procedure approved by COUNTY in writing in the amount of Five Hundred and 00/100 Dollars (\$500.00), which amount is agreed upon between the parties hereto.

B. If PERMITTEE defaults in any of the terms, provisions, covenants and conditions of this Use Permit, COUNTY may use, apply, or retain the whole or any part of this security deposit for the payment of any default or for any other sum which the COUNTY may spend or be required to spend by reason of PERMITTEE's default.

C. COUNTY shall not be required to hold said deposit in an interest bearing account; however, if said deposit is held in an interest bearing account, the Interest earned, if any, shall remain the property of the PERMITTEE as earned and shall not become part of the security deposit nor shall be credited or payable to COUNTY except to remedy any PERMITTEE's defaults under this Use Agreement.

D. Should PERMITTEE fully and faithfully comply with all the terms, provisions, covenants and conditions of this Use Permit, the security deposit or any balance of the security deposit, and all accrued interest, if any, shall be returned to PERMITTEE within thirty (30) days after the expiration of the Use Permit.

E. COUNTY may require, at any time, the security deposit be increased with good cause as determined by the COUNTY in its good faith judgment; in which case, the PERMITTEE shall make such increased deposit within two (2) days written notice from COUNTY to PERMITTEE deposit such additional funds.

F. If COUNTY uses any portion of the security deposit to cure a default pursuant to Section 4(B), above, PERMITTEE shall within two (2) days written notice from COUNTY to PERMITTEE deposit such additional funds as may be necessary to return the security deposit to a Five Hundred and 00/100 Dollar (\$500.00) balance or any higher amount required pursuant to Paragraph 4.E of this Use Permit.

5. **CONDITION OF USE AREA:** The Use Area is provided in its "AS IS" condition without any obligations, representations, or warranties by COUNTY as to its condition or suitability for PERMITTEE's intended use and PERMITTEE assumes all risk in its use of the Use Area by PERMITTEE, PERMITTEE's employees, Permittee's Vendors, and the Event Attendees.

6. **INDEMNIFICATION:** The PERMITTEE agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Use Permit, the Event, and/or the Event Activities from any cause whatsoever, including the acts, errors or omissions of any person, including without limitation, the PERMITTEE, PERMITTEE's employees, Permittee's Vendors, and the Event Attendees, and for any costs or expenses incurred by the COUNTY on account of any claim except where such

indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. PERMITTEE's indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence but does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civic Code Section 2782. The obligations in this Paragraph 6 of the Use Permit shall survive the expiration or the earlier termination of this Use Permit.

7. **INSURANCE:**

A. The COUNTY is a self-insured public entity for the purposes of general liability and Workers' Compensation.

B. The PERMITTEE agrees to provide insurance set forth in accordance with the requirements herein and shall also require its contractors, agents, volunteers, sponsors, vendors, which includes but is not limited to the licensed operators of the heavy construction equipment, (collectively, "Permittee's Vendors") to provide the same insurance in accordance with the below requirements. If the PERMITTEE and Permittee's Vendors uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements herein, the PERMITTEE agrees that it and require Permittee's Vendors to amend, supplement or endorse their existing coverage to do so. All references to PERMITTEE in this Paragraph 7 shall mean the PERMITTEE and the Permittee's Vendors. The type(s) of insurance required is determined by the scope of the Use Permit hereunder.

Without in anyway affecting the indemnity herein provided and in addition thereto, the PERMITTEE shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

1. Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the PERMITTEE and all risks to such persons under this Use Permit.

If PERMITTEE has no employees, it may certify or warrant to the COUNTY that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the COUNTY's Director of Risk Management.

If, PERMITTEE is a non-profit corporation, organized under California or Federal law, volunteers for PERMITTEE are required to be covered by Workers' Compensation insurance.

2. Commercial/General Liability Insurance – The PERMITTEE shall carry General Liability Insurance covering all operations performed by or on behalf of the PERMITTEE providing coverage for bodily injury and property damage with a combined single limit of not less than five million dollars (\$5,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse and underground hazards.

- (e) Personal injury
- (f) Contractual liability.
- (g) \$5,000,000 general aggregate limit.

3. Commercial Property Insurance providing all risk coverage for the Use Area, building, fixtures, equipment and all property constituting a part of the Use Area. Coverage shall be sufficient to insure One Hundred percent (100%) of the replacement cost.

4. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the PERMITTEE is transporting one or more non-employee passengers in the use of this Use Permit, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the PERMITTEE owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

5. Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

8. INSURANCE REQUIREMENTS:

A. Additional Insured – All policies, except for the Workers' Compensation, shall contain endorsements naming the COUNTY and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the use under this Use Permit hereunder. The additional insured endorsements shall not limit the scope of coverage for the COUNTY to vicarious liability but shall allow coverage for the COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

B. Waiver of Subrogation Rights – The PERMITTEE shall require the carriers of required coverages to waive all rights of subrogation against the COUNTY, their officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the PERMITTEE and PERMITTEE's employees or agents from waiving the right of subrogation prior to a loss or claim. The PERMITTEE hereby waives all rights of subrogation against the COUNTY.

C. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

D. Severability of Interests – The PERMITTEE agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the

PERMITTEE and the COUNTY or between the COUNTY and any other insured or additional insured under the policy.

E. Proof of Coverage – The PERMITTEE shall furnish Certificates of Insurance to the San Bernardino Real Estate Services Department (RESA) administering the Use Permit evidencing the insurance coverage, including endorsements, as required, prior to the permitted use hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RESA, and PERMITTEE shall maintain such insurance from the time PERMITTEE commences use under the Use Permit hereunder until the end of the period of the Use Permit. Within fifteen (15) days of the commencement of this Use Permit, the PERMITTEE shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

F. Acceptability of Insurance Carrier – Unless otherwise approved by the COUNTY Department of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A-VII”.

G. Deductibles and Self-Insured Retention – Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

H. Insurance Review – Insurance requirements are subject to periodic review by the COUNTY. The COUNTY’s Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever the COUNTY’s Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, the COUNTY’s Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY’s risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Use Permit. PERMITTEE agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of RESA or COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of RESA or the COUNTY.

I. Failure to Procure Insurance. All insurance required must be maintained in force at all times by PERMITTEE. Failure to maintain said insurance, due to expiration, cancellation, etc., shall be cause for the COUNTY to give notice to immediately suspend all PERMITTEE’s business activities on the Use Area. Failure to reinstate said insurance within the (10) days of notice to do so shall be cause for termination and for forfeiture of this Use Permit, and/or COUNTY, at its discretion, may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by COUNTY shall be repaid by PERMITTEE to COUNTY upon demand but only for the pro rata period of non-compliance.

J. COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as additional named insured is not intended to and shall not make a partner or joint venturer with PERMITTEE in PERMITTEE’s operations.

K. The PERMITTEE agrees to require all parties or subcontractors, or others it hires or contracts with related to the use of this Use Permit to provide insurance covering such use with the basic requirements and naming the COUNTY as additional insured. PERMITTEE agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

9. **MARKINGS:** PERMITTEE shall have no right to make any alterations or improvements to the Use Area. Notwithstanding the foregoing, PERMITTEE may make temporary marking of the Use Area to designate the boundaries of the parking or other areas for the Event Activities, provided that such markings must be under the following conditions: (a) Materials used for marking must be of a non-permanent and non-toxic (biodegradable) nature; (b) The area(s) to be marked and all materials used for marking must be submitted to the COUNTY in writing and approved by COUNTY prior to marking and use at the Use Area; and (c) PERMITTEE must remove any marking materials at the conclusion of the Event.

10. **CONDUCT OF ATTENDEES:** PERMITTEE is responsible for its conduct and the conduct of Permittee's employees, Permittee's Vendors and the Event Attendees on the Use Area. PERMITTEE shall not nor shall it permit Permittee's employees, Permittee's Vendors or the Event Attendees to engage in gambling and/or in the consumption and dispensing of alcoholic beverages and/or drugs on the Use Area. COUNTY shall have the right to expel PERMITTEE or any Permittee's employees, Permittee's Vendors or Event Attendee in violation of this paragraph.

11. **HAZARDOUS SUBSTANCES:**

A. **Definition.** For purposes of this Use Permit, the term "Hazardous Substance" means any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Sections 1300 et seq., all as amended, (the above-cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Laws") or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (c) petroleum or crude oil other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) asbestos.

B. PERMITTEE shall not permit nor authorize the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial

or disposal of any Hazardous Substances by PERMITTEE, Permittee's Vendors, or the Event Attendees on, under or about the Use Area and the entire property of which the Use Area is part.

C. PERMITTEE agrees, in addition to those obligations imposed upon it pursuant to **Paragraph 6, INDEMNIFICATION**, herein, to indemnify, defend with counsel approved by COUNTY, protect and herein hold harmless COUNTY, its directors, officers, employees, agents, assigns, and any successor or successors to COUNTY's interest in the Use Area and the entire property of which the Use Area is part as it relates to Hazardous Substances as defined in **subparagraph A.** from and against all claims, actual damages (including but not limited to special and consequential damages), punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses of any kind whatsoever paid, incurred or suffered by, or asserted against, the Use Area or any indemnified party directly or indirectly arising from or attributable to: (a) the Event or the Event Activities; (b) any breach of the PERMITTEE's obligations, warranties, or representations set forth in this Use Permit, or (c) any repair, cleanup, removal, remediation, or detoxification, and preparation and implementation of any repair, clean-up, removal, remedial, detoxification, response, closure or other plans concerning any Hazardous Substance on, under or about the Use Area and the entire property of which the Use Area is part caused by PERMITTEE, the Permittee's employees, the Permittee's Vendors, or the Event Attendee, regardless of whether undertaken due to governmental action. To the fuller extent permitted by law, the foregoing indemnification shall apply regardless of the fault, active or passive negligence, breach of warranty or contract of PERMITTEE, the Permittee's employees, the Permittee's Vendors, or the Event Attendees.

12. **TERMINATION:** In the event that either party violates any of the terms and conditions of this Use Permit, the aggrieved party may give written notice of specific violation and demand for correction. If, within one (1) day after written notice and demand, the violating party has not commenced correction of the violation or shown acceptable cause therefore, the aggrieved party has the right to immediately terminate this Use Permit.

13. **DESIGNATION:** The COUNTY's Real Estate Services Department is designated to administer and enforce this Use Permit. Further, the COUNTY's Director, Real Estate Services Department is authorized to exercise all provisions of this Use Permit on behalf of COUNTY, including but not limited to termination.

14. **PERMITS AND LICENSES:** PERMITTEE and its employees shall comply and PERMITTEE shall ensure that the Permittee's Vendors and the Event Attendees comply with all rules and regulations relating to the use herein permitted and is subject at all times to applicable rules, regulations, resolutions, laws, ordinances, and statutes of the County of San Bernardino, State of California, the federal government, and all other governmental agencies having jurisdiction over the use and the Use Area. Where permits and licenses are required for the use of the Use Area or the activities on the Use Area for the Event, the same must first be had and obtained by PERMITTEE and PERMITTEE's Vendors, respectively, from the regulating body having jurisdiction thereof, before the Event is undertaken and a copy of all permits and licenses must be provided to the COUNTY prior to the Event. Failure to comply with this provision will result in a termination of this Use Permit.

15. **NO INTEREST OR ESTATE:** PERMITTEE agrees that it does not have and will not claim at any time any interest or estate of any kind or extend whatsoever in the Use Area and the entire property of which the Use Area is part, by virtue of this Use Permit or its use hereunder.

16. **RETURN OF USE AREA:** PERMITTEE agrees that it will upon the expiration or any earlier termination of this Use Permit return the Use Area in as good condition and repair as the Use Area exists as of the date this Permit is fully executed, reasonable wear and tear excluded, as determined by COUNTY in its sole discretion. Specifically, with respect to any dirt or soil removed by the small excavators during any operational demonstrations, PERMITTEE shall, at its sole cost and expense, backfill, compact, and level at grade all dirt and soil excavated. At the conclusion of the Event, the Use Area will be inspected, and PERMITTEE will be solely responsible for returning the Premises in the required condition and for any clean-up and any repairs for damages to the Use Area and property on which the Use Area is situated that are caused by PERMITTEE, Permittee's employees, the Permittee's Vendors, or Event Attendees. If any roads at the real property on which the Use Area is situated is damaged due to the ingress and egress of any construction equipment, such damage shall be repaired by PERMITTEE at its sole cost and expense.

17. **ASSIGNMENT AND TRANSFER:** PERMITTEE shall have no right to assign this Use Permit or transfer the Use Area in whole or in part to any other person, group or organization.

18. **RELEASE OF INFORMATION:** Any information or other materials submitted by PERMITTEE in connection with this Use Permit are for the exclusive use of the COUNTY, but are subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 *et seq.* In the event a request for disclosure of any part or all of any information or other material is made to the COUNTY, the COUNTY will make good faith efforts to notify the PERMITTEE of the request and will thereafter disclose the requested information unless the PERMITTEE requests nondisclosure and agrees to indemnify, defend with counsel approved by COUNTY, and hold the COUNTY harmless in any/all actions brought to require disclosure. The PERMITTEE waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event COUNTY fails to notify PERMITTEE of any such disclosure request and/or releases any information received from the PERMITTEE.

19. **FORMER COUNTY OFFICIALS:** PERMITTEE agrees to provide or has already provided information on former COUNTY administrative officials (as defined below) who are employed by or represent PERMITTEE. The information provided includes a list of former COUNTY administrative officials who terminated COUNTY employment within the last five years and who are now officers, principals, partners, associates or members of PERMITTEE. The information also includes the employment with or representation of PERMITTEE. For purposes of this provision, "COUNTY administrative official" is defined as a member of the Board of Supervisors or such officer's staff, COUNTY Administrative Officer or member of such officer's staff, COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "B", List of Former County Officials.)

20. **MATERIAL MISREPRESENTATION:** If during the course of the administration of this Use Permit, the COUNTY determines that the PERMITTEE has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY, this Use Permit may be immediately terminated. If this Use Permit is terminated according to this provision, the COUNTY is entitled to pursue any available legal remedies.

21. **EVENT PLAN:** PERMITTEE shall submit an Event Plan ("Plan") to the County Real Estate Services Department, not less than three (3) days prior to the scheduled Event, outlining specific security, parking plan, listing of the heavy construction equipment to be used in

the static display area, markings permitted pursuant to Paragraph 9, set up and clean up, signage, advertisement, gate ingress, egress and sanitation.

22. **ATTORNEYS' FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under **Paragraph 6, INDEMNIFICATION, Paragraph 7, INSURANCE, and Paragraph 18, RELEASE OF INFORMATION.**

23. **SECURITY:** PERMITTEE understands and agrees that the COUNTY is not required to provide nor shall COUNTY provide any security for the personal property and/or the persons of PERMITTEE, the Permittee's employees, the Permittee's Vendors, or the Event Attendees. Any loss, damage and injury to any property or person of PERMITTEE, the Permittee's employees, the Permittee's Vendors or the Event Attendees shall be at the sole cost, expense, and responsibility of PERMITTEE. PERMITTEE shall provide at its sole cost sufficient security personnel to secure the Use Area during the Event.

24. **COUNTY DISCLAIMER:** COUNTY is not liable for any claims, actions, loss, damages, liabilities, or injuries to the person or property of any person whomsoever at any time arising out of this Use Permit, the Use Area, the Event, or any Event Activities from any cause whatsoever, including (without limitation) any acts, errors, or omissions of PERMITTEE, the Permittee's employees, the Permittee's Vendors, and/or the Event Attendees, or anyone claiming or holding by, through or under PERMITTEE or any other person from the use of the Use Area (whether directly or indirectly), from any state or condition of said Use Area during the term of this Use Permit, **from the Event, and/or from any Event Activities** and PERMITTEE on behalf of itself, the Permittee's employees, the Permittee's Vendors, and the Event Attendees expressly waive and release COUNTY and their authorized agents, officers, volunteers and employees from any such claims, actions, loss damages, liabilities, or injuries however arising. Notwithstanding the application of Section 1542 of the California Civil Code, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of the executed release which if known by him or her must have materially affected his or her settlement with the debtor."

PERMITTEE expressly waives and relinquishes all rights and benefits afforded them by said Section 1542, and any and all similar laws of any State or territory of the United States. This Use Permit shall act as a release of future claims that may arise from the above-mentioned damages, claims or actions, whether such claims are currently known, unknown, foreseen, or unforeseen. The PERMITTEE understands and acknowledges the significance and consequences of such specific waiver of Section 1542 and hereby assumes full responsibility for any injuries, damages, losses, or liability that they or their personnel may hereafter incur.

25. **NOTICES:** The PERMITTEE shall designate an on-site coordinator for contact purposes. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person, shall be in writing and either served personally or sent by United States first class mail, postage prepaid, certified or registered, return receipt requested. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed delivered and effective upon the earlier of (i)

actual receipt or (ii) the date of delivery or refusal of the addressee to accept delivery if notice is sent by United States mail, postage, prepaid, certified or registered, return receipt requested.

County Address: County of San Bernardino
Real Estate Services Department
385 N. Arrowhead Avenue
San Bernardino, CA. 92415-0180

Permittee Address: American Cancer Society, Inc.
6733 Riverside Avenue, Suite 203
Riverside, CA. 92506

26. **AUTHORIZED SIGNATORS:** Both parties to this Use Permit represent that the signators executing this document are fully authorized to enter into this Use Permit.

27. **LAW:** This Use Permit shall be construed and interpreted in accordance with the laws of the State of California.

28. **SEVERABILITY:** If any word, phrase, clause, sentence, paragraph, section, article, part or portion of this Use Permit is or shall be invalid for any reason, the same shall be deemed severable from the remainder hereof and shall in no way affect or impair the validity of this User Permit or any other portion thereof.

29. **SURVIVAL:** The obligations of the parties that, by their nature, continue beyond the term of this Use Permit, will survive the termination of this Use Permit.

30. **ENTIRE AGREEMENT:** This Use Permit constitutes the entire agreement between the parties and no prior agreement or understanding between the parties shall be effective for any purpose. No modifications or waiver will be binding unless made in writing and signed by both parties.

END OF PERMIT

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COUNTY OF SAN BERNARDINO

THE AMERICAN CANCER SOCIETY, INC.

By: _____
Curt Hagman, Chairman
Board of Supervisors

By: Randi Stuart _____

Name: Randi Stuart _____

Title: Community Develop Manager _____

Date: _____

Date: 11/13/19 _____

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT
HAS BEEN DELIVERED TO THE
CHAIR OF THE BOARD

By: _____
(name)

Lynna Monell, Clerk of the Board of
Supervisors

Title: _____

Date: _____

By: _____
Deputy

Date: _____

Approved as to Legal Form:

MICHELLE D. BLAKEMORE, County
Counsel
San Bernardino County, California

By:  _____
Agnes Cheng, Deputy County Counsel

Date: 10/24/19 _____

EXHIBIT "A"
Page 1
Use Area Depiction
(Use Area Red)

(The activities noted in this Exhibit are tentative and the Event Plan to be Submitted by Permittee in accordance with the Permit will govern.)



**8 Mini Excavators &
2 Small Cranes**

Food Court

**Kids Activities, Vendors
Registration & Restrooms**

**Picnic Tables, Open Seating
& Stage Area**

USE AREA SHOWN OUTLINED IN RED
(Please refer to following page for individual set-ups in each area)

EXHIBIT "A"
(Page two)
Use Area Depiction
(with individual set-ups)



EXHIBIT "B"
LIST OF FORMER COUNTY OFFICIALS

INSTRUCTIONS: List the full name of the former COUNTY Administrative Official, the title/description of the Official's last position with the COUNTY, the date the Official terminated COUNTY employment, the Official's current employment and/or representative capacity with the PERMITTEE, the date the Official entered PERMITTEE's employment and/or representation.

OFFICIAL'S NAME:

REQUIRED INFORMATION

EXHIBIT "C"
FORM OF
RELEASE AND WAIVER OF LIABILITY ("HIGH RISK" ACTIVITIES)

Release and Waiver of Liability ("High Risk" Activities)

IN CONSIDERATION OF _____ ("Participant")

being permitted to participate in activities posing a higher risk than is otherwise posed by participating in the subject event, including without limitation, "bounce houses" and similar inflatable play structures, scissor lift target drop, excavator experience and Kids Camp Activities (collectively, the "Activities") at the event taking place on 1/12/19 at Construction vs Cancer The Big Dig Inland Empire (the "Event"), sponsored by the American Cancer Society, Inc. ("ACS"), "County of San Bernardino as the site owner" which the Event is taking place at 10958 Institution Road, San Bernardino, CA which is owned by the County of San Bernardino (site owner).

Participant (or, if Participant is a minor, Participant's parent or legal guardian) hereby releases, waives, discharges and covenants not to sue ACS, the "County of San Bernardino as the site owner" or any of their respective affiliates, directors, employees, agents, contractors, or volunteers, and all other event personnel whether volunteers or paid staff, (hereinafter referred to as "Releasees") for any and all liability, claims, demands, damages, causes of action, losses, or expenses (including attorneys' fees and expenses) to Participant, on account of physical, mental, or emotional injury, or death of the person of Participant or to the property of Participant, whether such injury or death be caused by the negligence, gross negligence of the Releasees or otherwise, while Participant participates in any of the Activities. Participant also consents to the use by ACS of Participant's name and any photographic image taken of Participant at or in connection with the event, and to the provision of such first aid as is deemed necessary to be provided to Participant at the event prior to being transported to a hospital for further treatment.

Notwithstanding any other provision of this Release (this "Release"), the undersigned releases ACS and the "County of San Bernardino as the site owner", but no other Releasee, from any liability whatsoever arising from any injury, damage, or death to Participant where said injury, damage, or death is the result of, or arises from any intentional or criminal conduct upon the part of an ACS or "County of San Bernardino as the site owner" employee, agent or volunteer. The undersigned hereby assumes full responsibility for and risk of bodily injury to or death of Participant due to the negligence or gross negligence of Releasees and also releases ACS and the "County of San Bernardino as the site owner", but no other Releasee, from any and all liability for the intentional or criminal acts of its volunteers, agents, and/or employees while Participant participates in any of the Activities.

Participant further expressly agrees that this Release is intended to be as broad and inclusive as is permitted by the law of the State of California, and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect. Participant has read and voluntarily signs this Release, and further agrees that no oral representations, statement or inducement apart from the foregoing have been made, and that this Release may only be modified by a written document signed by the undersigned and a duly authorized representative of ACS and "County of San Bernardino as the site owner"

Signature: _____ Date: _____
Emergency contact: _____ Phone: _____

(Note: If Participant is a minor child, this Release must be signed above by the parent or legal guardian of such Participant.)

Name of parent/legal guardian, if applicable: _____