

**SPECIAL MEETING OF THE FINANCE/AUDIT COMMITTEE
WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA
4040 PARAMOUNT BLVD., LAKEWOOD, CA. 90712
10:30 AM, WEDNESDAY, APRIL 3, 2019**

AGENDA

Each item on the agenda, no matter how described, shall be deemed to include any appropriate motion, whether to adopt a minute motion, resolution, payment of any bill, approval of any matter or action, or any other action. Items listed as "For information" or "For discussion" may also be the subject of an "action" taken by the Board or a Committee at the same meeting.

1. DETERMINATION OF A QUORUM

2. PUBLIC COMMENT

Pursuant to Government Code Section 54954.3

3. CONSIDERATION OF A COMMERCIAL USE PERMIT FOR TIMMONS OF LONG BEACH ON DISTRICT PROPERTY AT 3919 PARAMOUNT BLVD., LAKEWOOD, CA.

Staff Recommendation: The Finance/Audit Committee recommends the Board of Directors enter into a Commercial Use Permit with Timmons of Long Beach on District Property at 3919 Paramount Blvd. Lakewood, CA, subject to approval of form by District Counsel.

4. DIRECTORS' EXPENSES

Staff Recommendation: The Finance/Audit Committee recommends that the Board of Directors approve Directors' Expenses.

5. DEPARTMENT REPORT

6. DIRECTORS' REPORTS, INQUIRIES AND FOLLOW-UP OF DIRECTIONS TO STAFF

7. ADJOURNMENT

The Committee will adjourn to its next regular meeting currently scheduled on April 15, 2019 at 10:30 a.m.

In compliance with the Americans with Disabilities Act (ADA), if special assistance is needed to participate in the meeting, please contact Brandon Mims, Deputy Secretary at (562) 921-5521 for assistance to enable the District to make reasonable accommodations.

All public records relating to an agenda item on this agenda are available for public inspection at the time the record is distributed to all, or a majority of all, members of the Board. Such records shall be available at the District office located at 4040 Paramount Boulevard, Lakewood, California 90712.

Agendas are available at the District's website, www.wrd.org.

EXHAUSTION OF ADMINISTRATIVE REMEDIES – If you challenge a District action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Deputy Secretary at, or prior to, the public hearing. Any written correspondence delivered to the District office before the District's final action on a matter will become a part of the administrative record.

**MEMORANDUM****ITEM NO. 3**

DATE: APRIL 3, 2019

TO: FINANCE/AUDIT COMMITTEE

FROM: ROBB WHITAKER, GENERAL MANAGER

**SUBJECT: CONSIDERATION OF A COMMERCIAL USE PERMIT FOR
TIMMONS OF LONG BEACH ON DISTRICT PROPERTY AT 3919
PARAMOUNT BLVD., LAKEWOOD, CA.**

SUMMARY

Timmons of Long Beach automobile dealership (Timmons) has requested consideration of a Commercial Use Permit that would allow the storage of automobiles on the District's property at 3919 Paramount Blvd., Lakewood for up to one year. Due to an imminent construction project at their existing facility beginning on April 8, 2019, Timmons desires the Commercial Use Permit to begin on April 7, 2019, and would intend to store approximately 200 vehicles.

Staff has reviewed the intended project for the 3919 Paramount Blvd. property renovation (also referred to as the Annex Building Renovation) and determined there to be no significant impact to the construction timeline for the District's project.

To determine the rental value of the property, staff in conjunction with District Counsel surveyed local leases and found a comparable lease of 1 acre of public owned land leased by the City of Long Beach and Airport Authority for identical purposes. The lease rate was \$7,500 per month and serves as the comparable for the monthly rental value in the attached Commercial Use Permit.

FISCAL IMPACT

This item would result in a revenue to the district of \$7,500/month.

STAFF RECOMMENDATION

The Finance/Audit Committee recommends the Board of Directors enter into a Commercial Use Permit with Timmons of Long Beach on District Property at 3919 Paramount Blvd. Lakewood, CA, subject to approval of form by District Counsel.

COMMERCIAL USE PERMIT
Water Replenishment District of Southern California
4040 Paramount Boulevard
Lakewood, California 90712

A Permit is hereby granted to:

NAME: Timmons of Long Beach ("Timmons" or "Permittee")
STREET ADDRESS: 3940 Cherry Avenue
WRD/STATE/ZIP: Long Beach, CA 90807

1. **Term:** The term of this Permit shall be for one hundred eighty (180) days commencing April 7, 2019. This Permit may continue in effect from month-to-month subject to thirty (30) days written notice of cancellation by either party.

2. **Use of Permitted Area:** Use shall be subject to the following terms and conditions:

Rental of approximately 41,577 square feet located at 3919 Paramount Blvd, Lakewood CA 90712 an improved parking lot identified in the attached layout map attached hereto as Exhibit "A" and incorporated herein by this reference the "Permitted Area."

Permittee understands that Water Replenishment District of Southern California ("WRD") staff must maintain access to the building shown on Exhibit "A" and agrees at all times to maintain the access and 10-foot setbacks around the building for WRD access and emergency access.

No other uses shall be made of the Permitted Area beyond the parking of Timmons vehicles and use by Timmons employees, no customers or invitees of Timmons shall be allowed in or on the Permitted Area unless consented to in writing by the WRD. Use of the Permitted Area shall comply with all federal, state, and local laws and with all applicable ordinances or resolutions of the WRD, City of Lakewood, the City of Long Beach or the Long Beach Airport Authority.

3. **Charges and Fees:** Permittee shall pay a fee of \$7,500 monthly to WRD under the terms of this Permit. Fee shall be due on the first (1st) day of each month and shall be deemed to be delinquent if not paid by the fifteenth (15th) day of the month. Upon execution of this Permit, Timmons shall remit payment for the first monthly fee in the amount of \$7,500.00, said fee shall not be pro-rated and shall apply to any partial month of use under this Permit

4. **Site Conditions/Utilities/Security:** Permittee acknowledges that WRD at all times shall have access to the facility located at the same address. Permittee shall at all times keep driveways clear and all portions of the property not identified in the Permit free for WRD usage. Permittee acknowledges that there is no security or utilities on site and that Permittees usage of the site is at Permittees sole risk. Permittee further agrees at all times to keep the access gates to the property locked and secured.

5. **Termination:** Should be Permittee fail or refuse to comply with the terms or conditions of this Permit, the WRD may terminate this Permit at any time.

6. **Condition of Permitted Area:** Permittee is responsible for maintenance of the Permitted Area. Upon termination of this Permit, Permittee agrees to return permitted property to the WRD cleared of all vehicles and other personal property which shall be done at Permittee's sole expense.

7. **Construction, Alteration and Changes:** Permittee shall not construct, install, modify, paint or otherwise change any structures, facilities or exterior signs on the Permitted Area without prior written approval of the WRD.

8. **Maintenance and Repairs:** During the term of this Permit, Permittee shall, at its sole cost and expense, keep and maintain the designated property in good order and repair, ordinary wear and tear excepted.

9. **Signs and Advertisements:** Permittee shall not construct, install or modify, nor allow upon the Permitted Area any signs, billboards, banners or like displays which may be placed in or upon any building or structure in such a manner as to be visible from the outside thereof, except those receiving the prior written approval of the WRD.

10. **WRD Hold Harmless:** Except for the willful misconduct of WRD, Permittee shall Indemnify, defend, and save harmless the WRD, its officials, agents and employees, from and against any and all claims, demands, loss or liability of any kind or nature which the WRD, its elected and appointed officials, agents and employees, or any of them, may sustain or incur or which may be imposed upon them or any of them, for injury to or death of persons or damage to property, or levy of fines, arising out of or in any manner connected with or attributable to the actions or omissions of Permittee, its officials, agents or employees, in the use of the Permitted Area described in this Permit.

11. **Insurance:**

A. **PROPERTY AND CASUALTY COVERAGES.** Concurrent with and as a condition of obtaining occupancy of the Permitted Area, Permittee shall procure and maintain at Permittee's expense for the duration of this Permit including any extensions, renewals, or holding over thereof, from insurance companies that are admitted to write insurance in the State of California or that have ratings of or equivalent to an A:VII by A.M. Best and Company the following insurance:

- a) Commercial general liability insurance equivalent in coverage scope to ISO CG 00 01 11 85, including contractual coverage, naming The WRD, its boards, their officials, officers, employees, and agents as additional insureds from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out activities performed by or on behalf of the Permittee in an amount not less than two million dollars (\$2,000,000) per occurrence. Said insurance shall be primary insurance with respect to WRD and shall include cross liability protection.
- b) Commercial Automobile Liability equivalent in coverage scope to ISO form CA 00 01 06 92 covering Auto Symbol 1 ("Any Auto") in an amount not less than Once Million Dollars (\$1,000,000) combined single limit.
- c) Special perils property insurance coverage, including, as necessary but not limited to, false pretense or "deception" coverage, spot delivery coverage, impending damage coverage, and economic loss collision coverage, spot delivery coverage, impending damage coverage, and Permittee's personal property, vehicles and equipment on or about the Permitted Area.
- d) Workers Compensation as required by the State of California and Employer's Liability in an amount not less than One Million Dollars (\$1,000,000) per accident or occupational illness. Permittee agrees to obtain and furnish evidence to WRD of the waiver of Tenant's workers' compensation insurance carrier of any right of subrogation against the WRD.

B. **CANCELLATION.** Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, changed, or canceled by either party except after thirty (30) days prior written notice (ten (10) days for nonpayment only) to WRD, and shall be primary and not contributing to any other insurance or self-insurance maintained by WRD.

- C. **PROPERTY INSURANCE WAIVER OF SUBROGATION.** With respect to damage to property, WRD and Permittee hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available for said damage.
- D. **DOCUMENTATION.** Permittee shall deliver to WRD certificates of insurance and original endorsements for approval as to sufficiency and form prior to occupancy. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. "Claims-made" policies are not acceptable unless WRD's Risk Manager determines that "Occurrence" policies are not available in the market for the risk being insured. If a "Claims-made" policy is accepted, it must provide for an extended reporting period of not less than one hundred eighty (180) days.
- E. **PERIOD CHANGES IN REQUIREMENTS.** Not more frequently than every three (3) years, if in the opinion of WRD or of WRD's Risk Manager or designee, the amount of the foregoing insurance coverage is not adequate, Permittee shall increase the insurance coverage as reasonably required by WRD.
- F. **NO LIMITATIONS ON LIABILITY.** Such insurance as required herein shall not be deemed to limit Permittee's liability relating to performance under this Permit. WRD reserves the right to require complete certified copies of all said policies at any time. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Permit. Permittee understands and agrees that, notwithstanding any insurance, Permittee's obligation to defend, indemnify, and hold WRD, its officials, agents, and employees harmless hereunder is for the full and total amount of any damage, injuries, loss, expense, costs, or liabilities caused by the condition of the Permitted Area or in any manner connected with or attributed to the acts or omissions of Permittee, its officers, agents, contractors, employees, subtenants, licensees, patrons, or invited visitors, or the operations conducted by Permittee, or the Permittee's use, misuse, or neglect of the Permitted Area.
- G. **WAIVERS AND MODIFICATIONS.** Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the WRD's Risk Manager or designee.

12. **Environmental Release and Indemnification:** Permittee hereby agrees to hold harmless, defend and indemnify the WRD and its employees, members and officials from and against all liability, loss, damage, costs, penalties, fines and/or expenses (including reasonable attorney's fees and court costs) arising out of or in any way connected with the activities, acts or omissions of Permittee its employees contractors or agents on or affecting the Permitted Area including but not limited to the release of any hazardous materials into the air, soil, groundwater or surface water on, in, under or from the Permitted Area whether such condition, liability, loss, damage, cost, penalty, fine and/or expense shall accrue or be discovered before or after termination of this Permit. This indemnification supplements and in no way limits the scope of the indemnification set forth in Section 11 above.

In addition, Permittee waives, releases, acquits and forever discharges WRD, its employees, members and officials or any other person acting on behalf of WRD, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses, or compensation (collectively "claims") whatsoever (including, but not limited to, all claims at common law and/or under any federal, state or local environmental, health and/or safety-related law, rule, regulation or order, currently existing and as amended or enacted in the future ("Environmental Law"), whether direct or indirect, known or unknown, foreseen or unforeseen, which Permittee now has or may have or which may arise in the future on account of or in any way growing out of or in connection with any hazardous materials on, under, from, or affecting the Permitted Area, or any law or regulation applicable thereto. Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code which reads. "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially

affected his settlement with debtor.”; and hereby releases the WRD from any unknown claims and waives all rights it may have under Section 1542 of the Civil Code or under any other statute or common law principle of similar effect.

As used in this section, “Hazardous material” means any substance:

- A. The presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or
- B. Which is or becomes defined as a “hazardous waste”, hazardous substance”, pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 u.s.c. Section 21 9601, et seq.); and/or the Resource Conservation and Recovery Act (42 22 u.s.c. Section 6901, et seq.); or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof; or the presence of which on the Permitted Area causes or threatens to cause a nuisance upon the Permitted Area or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Permitted Area; or
- C. The presence of which on adjacent properties could constitute a trespass by Permittee; or
- D. Without limitation which contains polychlorinated bipheynols (PCBs), asbestos or urea formaldehyde foam insulation.

13. **Charge for Late Payment:** If money payable to WRD as a condition of this Permit is not paid when due (in accordance with Paragraph 3), a late penalty fee of \$250.00 shall be added to the unpaid amount due and the total sum shall become immediately due and payable to the WRD. Implementation of this provision shall not preclude the WRD from terminating this Permit for default in the payment of fees or from enforcing any other provisions contained herein.

14. **Assignment – Subletting:** Permittee shall not assign this Permit nor permit any transfer of this Permit by operation of law. Permittee shall not bullet all or any part of the Permitted Area without the prior written approval of WRD. Any assignment, transfer or subletting of this Permit, or of any interests therein, contrary to the foregoing provision, whether voluntary or involuntary, shall be void and shall confer no right of occupancy upon said assignee, transferee or subpermittee.

15. **Nondiscrimination:** As a part of the consideration hereof, Permittee for itself, its heirs, personal representatives, successors in interest, and assigns, does hereby covenant and agree as follows:

- (a) Subject to the application of relevant laws, rules and regulations, no person shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the construction or use of any improvements or facilities on, over or under the Permitted Area or any services furnished thereon, on the basis of race, color, religion, national origin, sex, sexual orientation, AIDS, AIDS related condition, age, disability or handicap, disabled or Vietnam Era veteran status.
- (b) That the grantee, licensee, Permittee, shall use the Permitted Area in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

- (c) Permittee shall have and be allocated the sole responsibility to comply with the Americans with Disabilities Act (“ADA”) with respect to the Permitted Area described in this Permit and Permittee shall defend, indemnify and hold WRD harmless from and against any and all claims of failure to comply or violation of the ADA.

16. **Federal Aviation Administration Cities of Long Beach and Lakewood:** This Permit may be subject to certain provisions mandated by the Federal Aviation Administration, the Airport Authority or the Cities of Long Beach or Lakewood. Any applicable regulations are not known by the parties to this Permit at the time of execution. If the use contemplated in this Permit requires approvals from the listed entities (or other applicable agencies) or compliance with regulations/requirements of the same, Permittee agrees to comply with and bear all costs for such compliance or terminate its use pursuant to any notice requiring the same.

17. **NO RELOCATION OR GOODWILL VALUE:** Permittee agrees that nothing contained in this Permit creates any right in Permittee for any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16 of the California Government Code from Landlord on the termination or expiration of this Permit.

18. **Payments and Notices:** Permittee shall submit all reports and notices, and pay all fees and charges required by this Permit to the following address:

Attn: Accounts Receivable
 Water Replenishment District of Southern California
 4040 Paramount Blvd
 Lakewood, CA 90712

WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA

 John D.S. Allen, President

ATTEST:

 Secretary of the Board

APPROVED AS TO FORM
 LEAL ■ TREJO APC

 General Counsel for the Water Replenishment
 District of Southern California

TIMMONS OF LONG BEACH

By: _____

Print Name: _____

DATED: _____

EXHIBIT "A"

