

CITY OF SAN DIEGO
PARKS AND RECREATION DEPARTMENT

SPECIAL USE PERMIT AGREEMENT

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CITY OF SAN DIEGO
SPECIAL USE PERMIT

(San Diego Parks Foundation at City of San Diego Parks and Recreation Facilities)

THIS CITY OF SAN DIEGO SPECIAL USE PERMIT (Permit) is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation (CITY) and San Diego Parks Foundation, a California Non-Profit Public Benefit Corporation (PERMITTEE), to be effective as of the effective date.

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

WHEREAS, PERMITTEE is such an organization and, in the promotion and sponsorship of such activities, revenues are generated from voluntary contributions, special events, membership dues and fund raising projects;

WHEREAS, PERMITTEE has been established since 2019 to support and expand the city's provision of and ability to provide recreational programs, park improvements, special events, and park amenities to support the Parks and Recreation Department (Department).

WHEREAS, PERMITTEE supports the Department's programmatic and maintenance needs by assisting with special events, fund raising activities, maintaining and conducting overall improvement projects, and by providing recreation programs and activities for the public. Any use of CITY premises will be done in conjunction with CITY staff rather than independently.

NOW, THEREFORE, based upon the forgoing recitals which are incorporated by this reference, it is mutually agreed by and between the CITY and PERMITTEE as follows:

1. Definitions. As used in this Permit, the following terms are defined as follows:
 - 1.1. **"CITY Contact"** means the CITY's Parks and Recreation Department Director, Deputy Director, or his or her designee. For purposes of this Permit, the CITY Contact is currently Deputy Director Sarah Erazo, who can be contacted at (619) 740-1627. For Community Parks II, the contact is Deputy Director Gina Dulay at 619-525-8221 and for Community Parks I the contact is Deputy Director, Steve Palle at 619-235-1155 and any other Director designee.
 - 1.2. **"Director"** means CITY's Parks and Recreation Department Director or designee.
 - 1.3. **"Effective Date,"** as referenced on signature page and in opening paragraph above, means this SUP will start to be in effect once it is signed by all parties and approved as to form by the City of San Diego City Attorney.

- 1.4. **“Premises” or “Permit Area”** means CITY-owned real property located within and as part of a CITY golf course, open space area, a CITY recreation center, pool, community park, neighborhood, or mini-park as generally depicted in **Exhibit A: Premises**, attached hereto, excluding all leaseholds and regional parks. For the purposes of this SUP, the “Premises” or “Permit Area” that is referred to shall be the “Premises” or “Permit Area” where the PERMITTEE is assisting the CITY pursuant to this Permit.
 - 1.5. **PERMITTEE**” means San Diego Parks Foundation, a California non-profit public benefit corporation, which includes PERMITTEE’s agents, board members, employees, and volunteers. PERMITTEE must be responsible for all of PERMITTEE’s agents, board members, employees, and volunteers and must ensure that they adhere to all terms stated in this Permit.
 - 1.6. **“PERMITTEE’s Address for Notices”** is: 1180 Rosecrans Street #517
San Diego, CA 92106
 - 1.7. **“Hazardous Substance”** means any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
 - 1.8. **“Release”** includes without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of a Hazardous Substance.
 - 1.9. **“Sublicense Agreement”** means an agreement between CITY, PERMITTEE and Sublicensee for the use of the Premises.
 - 1.10. **“Sublicensee”** means any person, organization, commercial enterprise, or entity operating a business (including a commercial kitchen, café, snack bar or gift shop), or providing services consistent with the Permit Use on the Premises under an agreement between CITY, PERMITTEE and Sublicensee.
 - 1.11. **“Volunteer”** means an instructor, person, or entity providing free Permit Use related activities on the Premises who has completed the criminal offender record information review. Regular Volunteer means a volunteer with the youth service organization who is 18 years of age or older and who has direct contact with, or supervision of, children for more than 16 hours per month or 32 hours per year.
2. Use of Premises. Premises shall be used only for the purposes of supporting the Department with programmatic and maintenance needs of pools, recreation centers, golf courses, open space areas, community, neighborhood, and mini parks through special events, fund raising activities, maintenance, and overall improvement projects (Permit Use) as outlined in

Exhibit B and for no other purpose without obtaining the prior written approval of the Department Director or designee.

3. Term. The term will be for a period of three years, beginning on the Effective Date (“Term”). City may, in its sole discretion, extend the Term for two additional one-year periods, but at no time will an extension exceed a period of five years from the Effective Date.
4. CITY’s Consent, Discretion. CITY’s consent or approval under this Permit means the written consent or approval of the City of San Diego Mayor or designee (Mayor), unless otherwise required by law or expressly provided herein, and will be made in the Mayor’s discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.
5. Unauthorized Activities. PERMITTEE must not engage in any activity on CITY-owned property other than pre-approved aspects of the Permit Use. Any activity performed by PERMITTEE that was not previously approved or otherwise authorized by this Permit must cease, and the CITY-owned property must be returned to its condition on the Effective Date at PERMITTEE’s sole cost and expense subject to the satisfaction of CITY Contact.
6. Processing Fee. The processing fee for this Permit is hereby waived because the Permit Use provides a public benefit by providing volunteer services to support the CITY’s mission and goals and its ongoing responsibility to engage in civic, social, educational, cultural, recreational or philanthropic work or activities.
7. Nonprofit Status. PERMITTEE shall provide the Director with documentary evidence, to CITY’s satisfaction, of PERMITTEE’s current Federal tax-exempt status prior to the signing this Permit and by May 1st of each year during the Term. PERMITTEE shall inform CITY immediately if this status changes or is cancelled.
 - 7.1 PERMITTEE will be an active California non-profit corporation with the California Secretary of State and will be a current registrant of the Registry of Charitable Trusts with the California Office of the Attorney General for the entire Term of this Permit.
8. Director’s Approval. In all instances where the Director’s prior written approval is required in this Permit, PERMITTEE will submit a written request to the Director prior to engaging in the activity. The Director may, in the Director’s sole discretion, approve or deny PERMITTEE’s request. If the request is approved by the Director, PERMITTEE will keep a copy of the approval during the Term and have the copy of the approval available for inspection at the Premises during the Permit Use.

9. Annual Meeting. During the Term, PERMITTEE must hold an annual meeting with the Director to review budget, inventory, facility maintenance, services offered, and to discuss the receipt and resolution of any complaints received.
10. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
11. Revocable Permit. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked at will by CITY, in its sole discretion: (a) immediately upon written notice delivered to PERMITTEE if PERMITTEE breaches or defaults any of PERMITTEE'S obligations under this Permit, or in case of an emergency; or (b) upon reasonable prior written notice, but not less than 30 days, delivered to PERMITTEE if for CITY'S convenience. CITY will not be obligated for any loss or burden, financial or otherwise, which may be incurred by PERMITTEE because of a revocation or termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur because of CITY'S revocation or termination of this Permit.
12. No Holdover. If PERMITTEE continues to use the Premises after the expiration or revocation of this Permit, such use will neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Premises. If PERMITTEE continues to use the Premises after the expiration or revocation of this Permit, PERMITTEE will pay to CITY use fees established by CITY. CITY'S acceptance of such use fees will neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Premises.
13. Restore and Vacate. Prior to the expiration or revocation of this Permit, PERMITTEE will restore the Premises to its condition on the Effective Date, excepting all normal wear and tear and all authorized improvements. Upon such expiration or revocation, the PERMITTEE will immediately vacate the Premises.
14. Keys. PERMITTEE will not alter any locks or bolts or install any new or additional lock or bolt on any door, window, gate, building or structure on the Premises without prior written approval from the Director and, in any event, PERMITTEE will provide CITY with a key for any altered, new, or additional lock or bolt on the Premises. Upon the expiration or termination of this Permit, PERMITTEE will relinquish to CITY all keys to any locks or bolts on the Premises.
15. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether of record. PERMITTEE will obtain all

licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest. If PERMITTEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE will take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

16. Maintenance, Installation, Improvements and Repairs of the Premises. PERMITTEE must, at PERMITTEE's sole cost and expense and to CITY's satisfaction, maintain the Premises in good order and repair and in a safe, healthy, and sanitary condition at all times during the Term, subject to normal wear and tear. PERMITTEE must keep the Premises free and clear of rubbish, debris, and litter at all times during the Term.
 - 16.1. Maintenance. PERMITTEE must, at PERMITTEE's sole cost and expense and to CITY's satisfaction, maintain the Premises in good order and repair and in a safe, healthy, and sanitary condition at all times during the Term, subject to normal wear and tear. PERMITTEE must keep the Premises free and clear of rubbish, debris, and litter at all times during the Term.
 - 16.2. Improvements and Installations. PERMITTEE must not make or cause any improvements, installations, repairs, changes, or alterations to the Premises or to any improvements or installations thereon, other than those identified in this Permit, without prior written approval of CITY. Any improvements, installations, repairs, changes, and alteration made to the Premises by PERMITTEE will become the sole property of CITY.
 - 16.3. Repairs. PERMITTEE is responsible, at PERMITTEE's sole cost and expense, for the repair or replacement of any damage caused by PERMITTEE or PERMITTEE's use, maintenance, installations, or improvements of the Premises, including items that CITY staff determined to be damaged. PERMITTEE must comply with the direction of CITY Contact or other competent CITY staff with respect to the method of any repairs or replacement arising under this Permit.
 - 16.4. Inspection Schedule and Records. PERMITTEE must inspect the Premises daily for hazards and debris and correct or remove any hazard or debris immediately. PERMITTEE must keep records of the inspection for one year.
17. Security and Safety of Premises. Majority of Permit Use will be hosted in conjunction and with the approval of the Department. This section will only apply if the San Diego Parks Foundation is offering a program/special event independent of the Parks and Recreation Department. PERMITTEE must bear sole responsibility for the security and safety of the Premises affected by or relating to the Permit Use during the Term. PERMITTEE will be responsible for the maintenance, cleanup, and securing of the Premises daily, as appropriate to ensure security and safety. PERMITTEE must comply

with all applicable laws, rules, regulations, and directives of competent governmental authorities, at PERMITTEE's sole cost and expense. CITY has no obligation to provide oversight of the Permit Use or staffing or resources for the Permit Use on the Premises during the Term.

18. Structures. Under no circumstances will PERMITTEE place, store, or allow temporary or permanent structures of any kind on the Premises, including but not limited to cargo containers, trailers, and storage sheds, without the prior written approval of CITY and obtaining all permits required by competent governmental entities. Any structure violating this provision will be subject to immediate and summary removal, at PERMITTEE's sole cost and expense.
19. Permits and Approvals. PERMITTEE, at PERMITTEE's sole cost and expense, must obtain all required permits and approvals related to the Permit Use from the applicable local, state, and federal authorities, including without limitation from CITY.
20. Vehicular Traffic. All vehicular traffic must be confined to concrete, asphalt or decomposed aggregate surfaces unless otherwise approved in writing by CITY Contact.
21. Water Quality – Best Management Practices. CITY and PERMITTEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of CITY's precious water resources. It is PERMITTEE's responsibility, at its sole cost and expense, to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (Chapter 4, Article 3, Division 3 of the San Diego Municipal Code, as amended from time to time).
 - 21.1. Therefore, PERMITTEE will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).
 - 21.2. It is ultimately PERMITTEE's responsibility to prevent pollutant discharge to the storm drain system. Therefore, PERMITTEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.
22. Non-Exclusive Use. PERMITTEE must not wholly or permanently exclude the general public from the Premises or any activity or event thereon, other than those exclusions identified in this Permit, without prior written approval from the Director. PERMITTEE, with prior written approval of the Director, may develop reasonable and non-discriminatory restrictions for the use of facilities and participation in certain activities, provided that the restrictions are consistent with the rights of the general public and are designed to enable PERMITTEE to use the Premises for the purposes herein granted.

23. Utilities. CITY will provide the following utilities and services at the Premises: gas, electric, water, sewage, and trash services. Any other utilities or services not mentioned necessary for the Permit Use will be the sole responsibility of PERMITTEE.
24. Campaigning. The Premises must not be utilized for the purpose of working or campaigning for the nomination or election to any public office, whether partisan or non-partisan, or for the adoption or defeat of any public ballot measure.
25. Membership. Membership in PERMITTEE's organization must be open to anyone meeting the requirements of PERMITTEE's rules and bylaws, subject to the requirements of this Permit and applicable laws. PERMITTEE will not discriminate against anyone on the basis of race, color, gender, religion, creed, marital status, sexual orientation, ancestry, national origin, age, mental or physical disability, medical condition (including HIV, AIDS, and AIDS related Complex). Permit Use cannot be made a requirement for membership in the PERMITTEE's organization or for use of the Premises by the general public.
26. Budget, Records, and Inspection. PERMITTEE must keep accurate and complete books of account indicating all financial transactions made in connection with the Premises. On February 28th of each year of the Term, PERMITTEE must prepare and submit to the Director a proposed budget for the following fiscal year detailing estimated revenues and expenditures to include details regarding salaried positions (if any), salaries and wages, miscellaneous personnel expenses (if any), non-personnel expense, and capital outlay. A financial report showing all revenue by source and all expenditures in connection with the Premises must be submitted to the Director on an annual basis by May 1st of each year. In the event of termination of this Permit, the financial report must be submitted within 30 days of the date of said termination. All budgets and financial reporting must be in a format acceptable to CITY. PERMITTEE's accounting records will be subject to inspection by an authorized representative of CITY at all reasonable times. PERMITTEE must maintain all such records and accounts for a minimum period of five years.
27. Use of Funds. All funds collected by PERMITTEE from the use of the Premises must be used for the sole purpose of maintaining the facilities and promoting the Permit Use on the Premises.
28. Criminal Background Requirements and Mandated Training. PERMITTEE may utilize employees, regular volunteers, and Sublicensees to offer programs and activities in accordance with the Permit Use on the Premises.
 - 28.1. PERMITTEE must complete the criminal offender record information review, including fingerprinting and background, of all employees, regular volunteers, and Sublicensees engaging in activities on the Premises as required by federal and state laws, or in accordance with this SUP.

- 28.2. PERMITTEE must not employ nor utilize anyone, including employees, counters, regular volunteers, or Sublicensees, with criminal convictions that would bar their work with or supervision of minors or people with disabilities under federal or state laws.
 - 28.3. PERMITTEE must ensure that anyone employed or utilized by PERMITTEE, including all employees, regular volunteers, Sublicensees and those engaged in any activities authorized under this SUP, have received all trainings, and will comply with all laws required to ensure the safety, security, and well-being of members of the public, including minors and people with disabilities.
 - 28.4. Upon request by CITY, PERMITTEE must provide CITY with access to PERMITTEE's records showing that these requirements have been met.
 - 28.5. Failure of PERMITTEE to comply with these requirements is grounds for immediate revocation of this SUP.
29. Volunteer Recruitment. PERMITTEE will perform all aspects of Volunteer recruitment, screening, onboarding, training, and selection process. CITY will provide any CITY required waivers, CITY required forms, and training. PERMITTEE will review applications and conduct reference checks on all applications. PERMITTEE will publicize the various Volunteer programs. PERMITTEE must send any Volunteer documentation to CITY Contact upon request.
- 29.1. PERMITTEE will be responsible for the direct supervision and management of all Volunteers, including but not limited to scheduling, assignment, inspection of work, and ongoing training.
 - 29.2. Prior to scheduling any Volunteer to work or assist on the Premises, PERMITTEE will confirm with CITY's Parks and Recreation Volunteer Office that they have cleared the Background/Fingerprint check conducted by CITY's Personnel Department. CITY will pay the cost and will provide results of Background/Fingerprint check.
30. Nondiscrimination. PERMITTEE will not discriminate in any manner against any person or groups of persons on account of race, color, religion, gender, gender identity, gender expression, sexual orientation, medical status, national origin, age, familial status, source of income, marital status or disability in PERMITTEE's use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

31. Drug-Free Environment. The Premises will be utilized and operated as a drug-free environment. PERMITTEE must make this fact known, both in writing and in oral communication, to participants periodically throughout the Term. PERMITTEE must document such written and oral communication and provide copies of such documentation to CITY on an annual basis.
32. Insurance. Prior to the Effective Date, PERMITTEE must (a) provide to CITY insurance certificates reflecting evidence of all insurance required below; however, CITY reserves the right to request, and PERMITTEE must submit, copies of any policy upon reasonable request by CITY; (b) obtain CITY approval of each insurance company or companies; and (c) confirm with CITY that all policies contain the specific provisions required below. PERMITTEE's liabilities, including but not limited to PERMITTEE's indemnity obligations, under this Permit, must not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Permit and PERMITTEE's failure to maintain or renew coverage or to provide evidence of renewal during the Term may be treated as a material breach of contract by CITY. PERMITTEE must not modify any policy or endorsement thereto which increases CITY's exposure to loss for the Term.
- 32.1. Types of Insurance. At all times during the Term, PERMITTEE must maintain insurance coverage as follows:
- a. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which must cover liability arising from all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There must be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs must be outside the limits of the policy.
 - b. Commercial Automobile Liability. For all PERMITTEE's automobiles including owned, hired, and non-owned automobiles, PERMITTEE must keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate must reflect coverage for any automobile (any auto).
 - c. Workers' Compensation. For all PERMITTEE's employees who are subject to this Permit and to the extent required by the applicable state or federal law, PERMITTEE must keep in full force and effect, a Workers' Compensation policy. That policy must provide a minimum of \$1 million of employers' liability coverage, and PERMITTEE must provide an endorsement that the insurer waives

the right of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives.

- d. Causes of Loss - Special Form Property. PERMITTEE must obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE's insurable property related to the Permit Use of the Premises under this Permit or the Premises in an amount to cover 100% of the replacement cost.
- 32.2. Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any work is initiated under this Permit.
- a. Commercial General Liability Insurance Endorsements.
 - i. Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf, (b) PERMITTEE's products, (c) PERMITTEE's work, including but not limited to PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf, or (d) premises owned, leased, controlled or used by PERMITTEE.
 - ii. Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents, and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives must be in excess of PERMITTEE's insurance and must not contribute to it.
 - iii. Severability of Interest. The policy or policies must be endorsed to provide that PERMITTEE's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and must provide cross-liability coverage.
 - b. Automobile Liability Insurance Endorsements.
 - i. Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego

and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of automobile owned, leased, hired, or borrowed by or on behalf of the PERMITTEE.

- ii. Severability of Interest. The policy or policies must be endorsed to provide that PERMITTEE's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and must provide cross-liability coverage.
 - c. Worker's Compensation Insurance Endorsements.
 - i. Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for CITY.
- 32.3. Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Permit must only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all the requirements for policies of insurance provided by admitted carriers described herein.
- 32.4. Deductibles. All deductibles on any policy must be the responsibility of PERMITTEE and must be disclosed to CITY at the time the evidence of insurance is provided.
- 32.5. Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving PERMITTEE 30 days prior written notice. PERMITTEE must also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to Permit Use.
- 32.6. Accident Reports. PERMITTEE must immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Permit Use. Such report must contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

33. Indemnification and Hold Harmless. PERMITTEE will protect, defend, indemnify, and hold CITY and its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE's officers, employees, agents, contractors, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Permit, entering into this Permit, the Permit Use, or PERMITTEE's occupancy, use, development, maintenance, improvement, or restoration of the Premises, including damages arising out of release of hazardous materials, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold CITY harmless will not include any established liability arising from the sole negligence or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its own discretion, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE will pay CITY for all costs related thereto, including, without limitation, reasonable attorneys' fees, and costs.
34. Sublicensees' Insurance and Indemnification of CITY. Unless PERMITTEE's insurance covers activities performed by all of PERMITTEE's sublicensees partaking in the Permit Use or utilizing the Premises, PERMITTEE must require PERMITTEE's sublicensees to indemnify CITY and to maintain insurance coverage pursuant to section 29 and 30 of this Permit, including section 29's subsections, and all of the endorsements set forth in section 29's subsections, including naming the City of San Diego and its respective elected officials, officers, employees, agents, and representatives as an Additional Insured in each insurance policy.
35. Liability for Loss, Injury or Damage. In addition to any other assumption of liability set forth herein and excluding any loss or damage to the extent resulting from CITY's negligence or willful misconduct, PERMITTEE agrees that it assumes the sole risk and responsibility for any damage, destruction or theft of PERMITTEE's equipment, material or personal property placed on the Premises and for any injury to persons which occurs on the Premises as a result of the Permit Use.
36. Accessibility Compliance. PERMITTEE must, as applicable to the Premises and PERMITTEE's possession, use and occupancy of the Premises, comply with all accessibility requirements under California Government Code sections 11135 through

11139.5; Title 24 of the California Code of Regulations; section 504 of the Federal Rehabilitation Act of 1973; the Americans with Disabilities Act (ADA); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, PERMITTEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). PERMITTEE's compliance will include without limitation the following:

- 36.1. PERMITTEE will not discriminate against qualified individuals with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- 36.2. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of PERMITTEE.
- 36.3. PERMITTEE will post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 36.4. Where required by law, all improvements, fixtures, structures, or installations on the Premises will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Premises which deny access to individuals with disabilities. All improvements and alterations will be at PERMITTEE's sole expense.
- 36.5. PERMITTEE must include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the provisions of this section.

PERMITTEE and each of its sublicensees will be individually responsible for their own ADA employment programs. PERMITTEE's failure to comply with the accessibility requirements of section 29, and its subsections, or submitting false information in response to these accessibility requirements, or both, will be a default of this Permit.

37. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises has not been inspected by a Certified Access Specialist (CAsp).

- 37.1. Further, pursuant to California Civil Code section 1938(e), CITY is required to state: “A Certified Access Specialist (CAsp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CAsp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CAsp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties must mutually agree on the arrangements for the time and manner of the CAsp inspection, the payment of the fee for the CAsp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”
38. PERMITTEE’S Risk. PERMITTEE will bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE’s occupancy, use, development, maintenance, repair, or restoration of the Premises and any damages to the improvements on, under, or in the vicinity of the Premises resulting directly or indirectly thereby.
39. No Nuisance. PERMITTEE must not use the Premises in any manner which, in the opinion of CITY creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area or that violates CITY’s Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).
40. No Assignment and Sublicense. PERMITTEE must not assign or sublicense any rights granted by this Permit nor any interest therein without the prior written consent of CITY. Approval of any such proposed assignment or sublicense may be withheld at the sole and absolute discretion of CITY. Any assignment by operation of law will automatically terminate this Permit.
41. Sublicensees. PERMITTEE must provide a list of all sublicensees to CITY Contact, including name, address, email, fax, and phone number.
42. Signs. PERMITTEE must not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising on the Premises without CITY’s prior written consent. If any such unauthorized item is found on the Premises, PERMITTEE must remove the item at its sole cost and expense within 24 hours after notice from CITY, or CITY may thereafter summarily remove the item at PERMITTEE’s sole cost and expense.

43. California Public Records Act. CITY will determine, in its sole discretion, whether this Permit or information provided to CITY by PERMITTEE pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act (CPRA). PERMITTEE will hold CITY, and its elected officials, officers, employees, representatives, and agents harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
- 43.1. CITY will not be liable or obligated for any burden or loss (financial or otherwise) incurred by PERMITTEE as a result of CITY's disclosure or non-disclosure of this Permit or PERMITTEE information required pursuant to the CPRA. PERMITTEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FOR ANY BURDEN, EXPENSE, OR LOSS WHICH PERMITTEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF THIS PERMIT, OR ANY OF PERMITTEE'S INFORMATION REQUEST PURSUANT TO THE CPRA.
- 43.2. If PERMITTEE submits information clearly marked confidential or proprietary, CITY may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of PERMITTEE to provide to CITY the specific legal grounds on which CITY can rely in withholding information requested under the CPRA should CITY choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, PERMITTEE must provide a specific and detailed legal basis, including applicable case law, that clearly establishes the requested information is exempt from disclosure under the CPRA. If PERMITTEE does not provide a specific and detailed legal basis for requesting CITY to withhold PERMITTEE's confidential or proprietary information, CITY will release the information as required by the CPRA and PERMITTEE will hold CITY, its elected officials, officers, and employees harmless for release of this information. It will be PERMITTEE's obligation to defend, at PERMITTEE's expense, any legal actions or challenges seeking to obtain from CITY any information requested under the CPRA withheld by CITY at PERMITTEE's request. Furthermore, PERMITTEE must indemnify and hold harmless CITY, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against CITY, resulting from CITY's refusal to release information requested under the CPRA which was withheld at PERMITTEE's request. Nothing in this SUP creates any obligation on the part of CITY to notify PERMITTEE or obtain PERMITTEE's approval or consent before releasing information subject to disclosure under the CPRA.
44. Encumbrances. PERMITTEE must keep the Premises, any CITY-owned property of which the Premises is a part, and all improvements thereon, free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE's occupancy, use, development, maintenance, repair, or

restoration of the Premises. PERMITTEE will protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Premises, including without limitation PERMITTEE's failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to lien or encumber property pursuant to the California Civil Code.

45. Compliance with Law. PERMITTEE must at all times in its use, occupancy, and maintenance of the Premises comply with all applicable laws, rules, regulations, and directives of competent governmental authorities, and at PERMITTEE's sole cost and expense. If the Term exceeds one year, at least annually, PERMITTEE must deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to PERMITTEE (e.g., validation of periodic inspections, if applicable).
46. Taxes. PERMITTEE must pay, before delinquency, all taxes, assessments and fees assessed or levied upon PERMITTEE or the Premises, including the land and any buildings, structures, machinery, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by PERMITTEE, or levied by reason of PERMITTEE's occupancy, use, development, maintenance, repair or restoration of the Premises, including without limitation any licensing or permitting costs and fees. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE will be solely responsible for all and will pay all such possessory interest taxes. PERMITTEE's payment of such taxes, fees, and assessments will not reduce any payment due to CITY.
47. Hazardous Substances. PERMITTEE must not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Premises by any of PERMITTEE's officers, employees, agents, contractors, invitees, and guests. PERMITTEE and PERMITTEE's officers, employees, agents, contractors, invitees, and guests must not install, store, utilize, generate, or sell any Hazardous Substance on the Premises without CITY's prior written consent. PERMITTEE must, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.
 - 47.1. Remediation. If PERMITTEE's occupancy, use, development, maintenance, or restoration of the Premises results in a release of a Hazardous Substance, PERMITTEE must pay all costs of remediation and removal to CITY's

satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.

- 47.2. Removal. If PERMITTEE or PERMITTEE's officers, employees, agents, contractors, invitees, and guests has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances to the Premises, PERMITTEE must remove all Hazardous Substances in any type of container, equipment, or device from the Premises immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Premises. PERMITTEE must be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this subsection.
- 47.3. Hazardous Substances Indemnity. In addition to any other indemnification set forth herein, PERMITTEE must protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE's occupancy, use, development, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 47.4. Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Premises, PERMITTEE must immediately notify CITY and any appropriate regulatory or reporting agency pursuant to title 19 of the California Code of Regulations and any other applicable laws or regulations. PERMITTEE must deliver a written report thereof to CITY within three days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, PERMITTEE must take all actions necessary to alleviate the danger. PERMITTEE must immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- 47.5. Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance, or restoration of the Premises resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental

consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment must be obtained at PERMITTEE's sole cost and expense, and must establish what, if any, Hazardous Substances have more likely than not been caused by PERMITTEE's occupancy, use, development, maintenance, or restoration of the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by CITY, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Premises, then the environmental assessment must include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes and estimates of the cost of such remediation or removal. PERMITTEE must cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental laws and regulations are achieved, and PERMITTEE must pay all costs and expenses therefor.

48. Alcohol. No alcohol may be served at the Premises absent written permission obtained in advance from the Director, which permission may be reasonably withheld or delayed in the Director's sole discretion, and PERMITTEE has obtained a special event permit under Municipal Code section 56.54, as amended from time to time. PERMITTEE must follow and will bear full responsibility for compliance with all alcohol laws and permit conditions whenever PERMITTEE obtains permission to serve alcohol pursuant to this section. All state and local regulations regarding the consumption of alcohol must be followed at all times at the Premises, at PERMITTEE's sole risk and cost.
49. Exclusive Vending Machine. PERMITTEE acknowledges and understands that Compass Group USA, Inc., a Delaware corporation doing business as Canteen San Diego, is the exclusive "vending machine" provider for CITY and must be used for all machine vending at the Premises. PERMITTEE will not procure, use, or otherwise allow any vending services at the Premises other than CITY's designated exclusive provider. If at any time CITY changes its exclusivity pertaining to the provision of vending machines, PERMITTEE will adhere with whomever has been designated the exclusive vendor as set forth by CITY.
50. Music. PERMITTEE must only perform music for which CITY has obtained a "non-dramatic" (as hereinafter defined) performance license from ASCAP, Broadcast Music, Inc., SESAC, or any other musical industry licensing entity (Licensing Entity). For a list of approved music and artists, PERMITTEE may contact the respective Licensing Entity. CITY will notify PERMITTEE in writing of any other approved Licensing Entity and any additional PERMITTEE requirements (hereinafter "Additional Requirements") imposed upon PERMITTEE by CITY by virtue of its licensing agreement with any Licensing Entity.

- 50.1. For the purposes of this Permit, a "non-dramatic" performance includes live performances and recorded performances (CD, tapes, radio and television over

loudspeakers). PERMITTEE must not perform music with any “dramatic” performances. For purposes of this Permit, “dramatic” performances will include, but not be limited to, the following: (a) performance of a “dramatico-musical work” (as hereinafter defined) in its entirety; (b) performance of one or more musical compositions from a “dramatico-musical work” (as hereinafter defined) accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken; (c) performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action or visual presentation; and (d) performance of a concert version of a “dramatico-musical work” (as hereinafter defined). The term “dramatico-musical work” as used in this Permit, includes, but is not limited to, a musical, comedy, opera, play with music, revue or ballet.

- 50.2. PERMITTEE must not perform music from a coin-operated phonorecord (or CD) player commonly known as a “jukebox” or a computer on-line service or electronic bulletin board on the Premises.
- 50.3. It will be PERMITTEE’s sole responsibility to ensure it only performs music for which CITY has obtained a valid music license. Should PERMITTEE desire to perform music for which CITY does not have a license, PERMITTEE must obtain its own license from the appropriate Licensing Entity before PERMITTEE performs the desired music. PERMITTEE must ensure that (1) CITY is named in the license; (2) each CITY premises/location where PERMITTEE intends to perform the music is identified in the license; and (3) PERMITTEE has provided CITY with a fully executed copy of the license at least ten days prior to the performance of the music.
51. Waiver. The property constituting the Premises is publicly owned and held in trust for the benefit of CITY’s citizens. CITY’s failure to insist upon the strict performance of any of PERMITTEE’s obligations under this Permit, in one or more instance, will not be construed as a waiver of any such obligation, and the same will remain in full force and effect. CITY’s waiver of a default will not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY’s delay or failure to exercise a right or seek a remedy will not be deemed a waiver of that or any other right or remedy under this Permit, at law or in equity. The exercise of any particular right or the use of any particular remedy for any default will not waive the use of any other right or remedy for the same default or for another or later default. CITY’s acceptance of any fees will not be a waiver of any default preceding the fee payment. CITY’s failure to discover a default or take prompt action to require the cure of any default will not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
52. Cumulative Remedies. CITY’s rights and remedies under this Permit are cumulative and will not limit or otherwise waive or deny any of CITY’s rights or remedies at law or in equity.

53. Survival. Any obligation which accrues under this Permit prior to the expiration or termination of this Permit will survive such expiration or termination.
54. Exhibits. All exhibits referenced in this Permit are incorporated into this Permit by this reference. In the event of a conflict between this Permit and any exhibit to this Permit, the terms, conditions, and obligations of this Permit will control.
55. Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons, and entities, and each of them, will be jointly and severally liable for each and every obligation of PERMITTEE under this Permit.
56. No Affiliation. Nothing contained in this Permit will be deemed or construed to create a partnership, joint venture or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
57. PERMITTEE Contact. The following are designated by PERMITTEE as PERMITTEE's contacts for all purposes of this Permit:

Primary Contact

Name: Leona Sublett

Phone: 619-316-5167

Email: leona@sandiegoparksfoundation.org

Alternate Contact

Name: Kim Mathis

Phone 619-980-4867

Email: kim@sandiegoparksfoundation.org

58. Entire Agreement. This Permit, including the Exhibits attached hereto, constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit. Any modification, alteration, or amendment of this Permit must be in writing and signed by all the parties hereto.
59. Notices. Any notice required or permitted to be given under this Permit will be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE as follows:

ATTN: Leona Sublett, President and CEO
 San Diego Parks Foundation
 1180 Rosecrans Street #517
 San Diego, CA 92106

And to the City as follows:

ATTN: Sarah Erazo, Deputy Director
 THE CITY OF SAN DIEGO
 2125 Park Boulevard
 San Diego, California 92101

39. Charter Section 225. Pursuant to the San Diego City Charter section 225, PERMITTEE shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved or financially interested in this Permit, and the precise nature of all financial interests of all such persons. Every person or entity proposed to have an interest in this Permit must be reviewed and approved by CITY, in its sole discretion.
40. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
41. Acceptance of Premises. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Premises and its suitability for the permitted uses. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Premises or its suitability for the permitted uses, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations, and observations of the Premises in entering into this Permit. PERMITTEE accepts the Premises as being suitable for the permitted uses in its current condition and acknowledges and agrees that CITY has fulfilled all obligations it may have had to improve, modify, repair, replace, alter, or otherwise develop the Premises for the permitted uses prior to the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Premises. PERMITTEE accepts and assumes all risk of harm to all of PERMITTEE's employees, agents, volunteers, and invitees, and property, from any defects in the Premises related to the permitted uses and activities under this Permit and shall be solely responsible thereof.

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IN WITNESS WHEREOF, this Permit is executed by CITY, acting by and through its Deputy Chief Operating Officer whose authority is delegated by the Mayor of the City of San Diego pursuant to San Diego City Charter sections 260 and 28, authorizing such execution, and by PERMITTEE.

PERMITTEE:

SAN DIEGO PARKS FOUNDATION, a California Non-Profit Public Benefit Corporation:

By:  Date 3/11/25
Leona Sublett, President and CEO

CITY:

THE CITY OF SAN DIEGO, a California Municipal Corporation

By:  Date 13 MAR 25
Kristina Peralta, Deputy Chief Operating Officer
Neighborhood Services

Approved as to form this 14th March 2025 day of ~~November 2023~~.
Heather Ferbert
MARA W. ELLIOTT, City Attorney

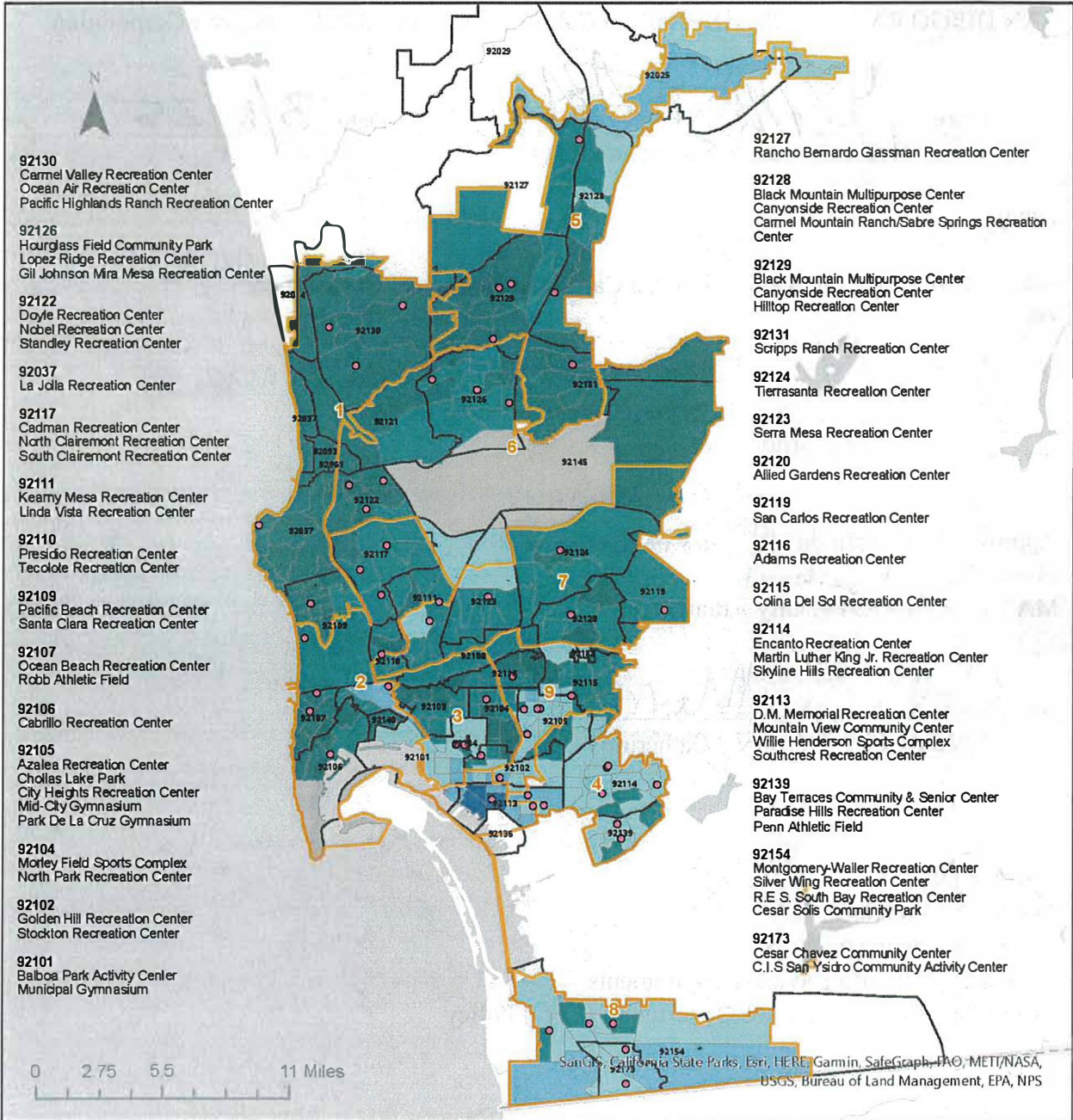
By: 
Deputy City Attorney – Catherine Morrison

Attachments:

- Exhibit A - Premises
- Exhibit B – Scope of Work
- Exhibit C - Prevailing Wage Requirements
- Exhibit D – Equal Employee Opportunity (EEO) Policy

SPECIAL USE PERMIT
Exhibit A – Premises

Description: CITY-owned real property located within and as part of a CITY golf course, open space area, a CITY recreation center, pool, community park, neighborhood, or mini-park.



SPECIAL USE PERMIT

Exhibit B – Use of Premises and Scope of Work

Premises shall be used only for the purposes of supporting the City of San Diego Parks and Recreation Department with programmatic and maintenance needs of pool, recreation center, golf, open space areas, community, neighborhood and mini parks via special events, fund raising activities, maintenance and overall improvement projects and providing recreation programs and activities. Current list of approved programs or activities include:

Programming – The San Diego Parks Foundation and the City of San Diego will collaborate on all programs, special events, activities, and miscellaneous events for the purpose of enhancing and supporting all City programs that benefits the residence of the City of San Diego. Current list of, but not limited to, programming and special event support:

- Come Play Outside:
 - Level up, Nature Camps, Deep Sea Fishing Trips, Enhanced Aquatic Programs, Parks After Dark, Movies in the Park, Staff Appreciation Luncheons.
- Park Ambassadors
- Summer Lunch Program
- Enhanced Citywide Sports Programs
- Enhanced Seasonal Events – Spring, Winter, Summer, Fall and Martin Luther King Jr. Event
- Adaptive Golf Tournament
- I Love My Park Day
- Backpack Giveaway events

Beautification, Maintenance and Repair Projects - Projects within the park system (interior or exterior) as identified and approved by the City of San Diego and in agreement of the San Diego Park Foundation.

- Garden and Tree Planting – This would include the planning, design, and installation as agreed upon by both the San Diego Park Foundation and the City of San Diego. The foundation will not provide long term or ongoing maintenance or stewardship of any gardens or trees.
- Trail Maintenance/Repair – This would include the planning, design, and trail maintenance as agreed upon by both the San Diego Park Foundation and the City of San Diego throughout the parks, Open Space, Canyonlands, and coastal regions. Under Section 16 of this SUP, any future trail maintenance and/or repair projects would occur on existing trails and under the supervision of City Parks and Recreation Department staff. Additionally, all methods of trail maintenance and/or repair shall comply with all applicable City regulations, plans, and guidelines including, but not limited to, the City's ESL Regulations, Multiple Species Conservation Program (MSCP) Subarea Plan, and

Multi-Habitat Planning Area (MHPA) Land Use Adjacency Guidelines and shall be approved by City staff prior to the start of trail maintenance and/or repair activities.

- Facility and Field Support – This would include City approved facility assets that require replacement or repair due to wear and tear. Capital Improvement Projects or major repairs would not be covered under this SUP.

EXHIBIT C

PREVAILING WAGE REQUIREMENTS

By signing this Permit, PERMITTEE certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing any work.

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair, and maintenance work performed under this Permit is subject to State prevailing wage laws. For construction work performed under this Permit cumulatively exceeding \$25,000 and for alteration, demolition, repair, and maintenance work performed under this Permit cumulatively exceeding \$15,000, PERMITTEE, its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, PERMITTEE, its contractors, and subcontractors shall ensure that all workers who perform work under this Permit are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. PERMITTEE, its contractors, and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Permit. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Permit in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Permit, each successive predetermined wage rate shall apply to this Permit on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Permit, such wage rate shall apply to the balance of the Permit.

2. Penalties for Violations. PERMITTEE, its contractors, and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing

wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

3. **Payroll Records.** PERMITTEE, its contractors, and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. PERMITTEE shall require its contractors and subcontractors to also comply with section 1776. PERMITTEE, its contractors, and subcontractors shall submit weekly certified payroll records online via the CITY’s web-based Labor Compliance Program. PERMITTEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the CITY. PERMITTEE, its contractors, and subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

4. **Apprentices.** PERMITTEE, its contractors, and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. PERMITTEE shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. **Working Hours.** PERMITTEE, its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

6. **Required Provisions for Contracts and Subcontracts.** PERMITTEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861. PERMITTEE shall ensure its contractors shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. **Labor Code Section 1861 Certification.** PERMITTEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Permit, PERMITTEE certifies that “I am 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 I will comply with such provisions before commencing the performance of the work of this Permit.”

8. Labor Compliance Program. The CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. PERMITTEE shall withhold contract payments pursuant to the contract between PERMITTEE and PERMITTEE's contractors or subcontractors when payroll records are delinquent or deemed inadequate by the CITY or other governmental entity, or it has been established after an investigation by the CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

9. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1.(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

9.1. A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

9.2. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.

9.3. By signing this Permit, PERMITTEE certifies that he or she has verified that all contractors and subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and PERMITTEE shall provide proof of registration for themselves and all listed contractors and subcontractors to the CITY at the time of execution of this Permit or upon request.

10. Stop Order. For PERMITTEE or its contractor(s) or subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor(s) or unregistered subcontractor(s) on ALL

public works until the unregistered contractor(s) or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

11. List of all Subcontractors. The CITY may ask PERMITTEE for the most current list of contractors or subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Permit at any time during performance of this Permit, and PERMITTEE shall provide the list within ten (10) working days of the CITY's request. PERMITTEE shall notify CITY of any contractors or subcontractors, including their DIR registration numbers, which have not previously performed work on this Permit prior to said contractors or subcontractors performing work on this Permit. Additionally, PERMITTEE shall provide the CITY with a complete list of all contractors or subcontractors utilized on this Permit (regardless of tier), within ten (10) working days of the completion of the work authorized by this Permit, along with their DIR registration numbers. PERMITTEE shall withhold final payment to contractor(s) until at least 30 days after this information is provided to the CITY.

12. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. PERMITTEE shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

12.1. Registration. PERMITTEE and its contractors will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

12.2. Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the CITY, but will not be required to be submitted online with the DIR directly. PERMITTEE will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

12.3. List of all Subcontractors. PERMITTEE and its contractors shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).

SPECIAL USE PERMIT
Exhibit D– Equal Employment Opportunity (EEO) Policy



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: September 11, 2023

TO: All City Employees, Applicants, Elected Officials, Interns, Volunteers, and Contract Workers

FROM: Todd Gloria, Mayor
Mara W. Elliott, City Attorney
Eric Dargan, Chief Operating Officer
Julie Rasco, Human Resources Director
Douglas Edwards, Personnel Director
Diana Fuentes, City Clerk

SUBJECT: Equal Employment Opportunity (EEO) Policy – Annual Statement

The opportunity to seek, obtain, and hold employment without discrimination is a civil right. Through this Policy, we reaffirm our commitment to the principles of Equal Employment Opportunity (EEO). The City is committed to providing all City employees, applicants, elected officials, interns, volunteers, and contract workers with fair and equal treatment in the workplace, equal opportunities to succeed, and a work environment free of discrimination, harassment, and retaliation. The City has a Zero Tolerance Policy regarding discrimination, harassment, and retaliation; the City will not tolerate discriminatory, harassing, or retaliatory conduct regardless of whether the behavior meets legal thresholds under state and federal law, such as needing to be severe or pervasive. Allegations of conduct contrary to the principles of EEO, or the standards of conduct stated in this Policy, will be taken seriously and investigated in a prompt, thorough, and objective manner. If misconduct is found, the City will take all appropriate remedial measures. Violations of this Policy will result in disciplinary action, up to and including termination, even if it is the first time such conduct has occurred.

We are committed to ensuring that the principles of fair and equal treatment are understood, respected, and practiced throughout the workplace. Federal and state laws make it unlawful to discriminate on the basis of any protected classification, including age, ancestry, color, creed, physical or mental disability, gender, gender identity, gender expression, genetic information, marital status, medical condition, veteran or military status, national origin, pregnancy (including childbirth, breastfeeding, or related medical conditions), race, traits historically associated with race (including hair texture and protective hairstyles such as braids, locks, and twists), religion, religious belief, observance, or practice, religious creed, reproductive health decision-making, sex, sex stereotype, sexual orientation, transgender status or transitioning, use of medical or family care leave, or any other classification

protected by federal, state, or local law (including being perceived, or regarded as, or associated with, any protected classification). This Policy reflects the City's commitment to preventing discrimination, harassment, and retaliation from occurring, promptly correcting any improper conduct through appropriate remedial measures, and providing a workplace that promotes the highest level of performance, professionalism, and civility. Conduct may violate the City's EEO Policy, but not rise to the level of unlawful conduct. All City employees, applicants, elected officials, interns, volunteers, and contract workers are expected to support and adhere to the principles of EEO and the standards of conduct stated in this Policy.

Manager and Supervisor Responsibilities. Managers and supervisors must understand the importance of EEO principles and standards, support, adhere to, and enforce them, and work diligently to provide every City employee, applicant, elected official, intern, volunteer, and contract worker with fair and equal treatment in the workplace, equal opportunities to succeed, and a work environment free of discrimination, harassment, and retaliation. Managers and supervisors will be held accountable to ensure that EEO practices and standards are adhered to in their work units. Managers and supervisors must be mindful of their comments or actions that may have the effect of discouraging employees from coming forward with complaints. Comments or actions calculated to have a chilling effect on employee complaints are prohibited and will not be tolerated.

1. FAIR AND EQUAL TREATMENT

All City employees, applicants, elected officials, interns, volunteers, and contract workers are entitled to equal opportunities and fair and equal treatment in all employment actions (e.g., pre-employment inquiries, hiring and firing, promotions, discipline, transfers, job rotations, work assignments, training, overtime, merit increases, and rewards) and other terms, conditions, and privileges of employment, without regard to age, ancestry, color, creed, physical or mental disability, gender, gender identity, gender expression, genetic information, marital status, medical condition, veteran or military status, national origin, pregnancy (including childbirth, breastfeeding, or related medical conditions), race, traits historically associated with race (including hair texture and protective hairstyles such as braids, locks, and twists), religion, religious belief, observance, or practice, religious creed, reproductive health decision-making, sex, sex stereotype, sexual orientation, trans-gender status or transitioning, use of medical or family care leave, or any other classification protected by federal, state, or local law (including being perceived or regarded as or associated with any protected classification). These classifications are the "protected classifications" covered under this Policy. The City also supports the reasonable accommodation of employees with disabilities or sincerely held religious beliefs, observances, or practices, or who are pregnant or lactating.

2. WORK ENVIRONMENT FREE OF DISCRIMINATION, HARASSMENT, AND RETALIATION

All City employees, applicants, elected officials, interns, volunteers, and contract workers are entitled to a work environment free of discrimination, harassment, and retaliation. Therefore, discrimination, harassment, and retaliation in any form will not be tolerated.

All City employees, applicants, elected officials, interns, volunteers, and contract workers are strictly prohibited from engaging in discrimination or harassment in the workplace based on

a protected classification. In addition, all City employees, applicants, elected officials, interns, volunteers, and contract workers are prohibited from engaging in retaliation against any City employee, applicant, elected official, intern, volunteer, or contract worker who requests accommodation or reports, opposes, complains of, provides a statement or testimony, or otherwise participates in an investigation or other proceeding regarding an alleged act of discrimination, harassment, or retaliation in violation of this Policy.

Discrimination is when a person's protected classification is a substantial motivating reason for an adverse employment action. Some examples of adverse employment actions include termination of employment, discipline, a negative performance evaluation, denial of promotion, demotion, or reduction in pay.

Harassment includes any unwelcome, unsolicited, or unwanted conduct because of a person's protected classification that offends, demeans, humiliates, embarrasses, intimidates, or otherwise causes the person distress. Harassment creates a negative work atmosphere, which reduces work productivity and morale, undermines the integrity of the workplace, and destroys professionalism. Harassment also creates a hostile, offensive, oppressive, or intimidating work environment, and deprives a person of their right to work in a place free of discrimination, when the harassing conduct sufficiently offends, humiliates, distresses, or intrudes upon the person so as to disrupt the person's emotional tranquility in the workplace, affect the person's ability to perform the job as usual, or otherwise interfere with and undermine the person's personal sense of well-being. Some examples of harassment include derogatory comments, slurs, demeaning jokes, threats, unwanted touching, offensive pictures, cartoons, or posters, or sexual advances.

Retaliation includes threatening, intimidating, or harassing conduct or an adverse employment action because a person opposed or reported discrimination, harassment, or retaliation in violation of this Policy; filed or assisted another with a complaint under this Policy; provided a statement or testimony or otherwise participated or assisted in an investigation or other proceeding arising from an alleged violation of this Policy; or requested accommodation for a disability, religious belief, observance, or practice, pregnancy, childbirth, or a related medical condition, or lactation. Subtle retaliation (e.g., an unwarranted change in work assignment or location, an unreasonable denial of a leave request, or uncooperativeness) is also prohibited and will not be tolerated. Managers and supervisors are reminded that employees have a right to report any conduct or employment action that an employee reasonably believes violates this Policy.

Good faith employment actions do not constitute unlawful discrimination, harassment, or retaliation. Good faith employment actions taken by a manager or supervisor, such as offering constructive feedback or criticism, holding an employee accountable, or providing discipline, where appropriate, do not constitute, and should not be mistaken for, discrimination, harassment, or retaliation. These employment actions are aimed at enhancing workplace productivity, or addressing work performance or conduct, and are within the responsibilities and obligations of City managers and supervisors.

The City has a 100% Response Policy regarding claims of discrimination, harassment, and retaliation. This means the City will respond to all reports and complaints of discrimination, harassment, or retaliation in the workplace, conduct fair, timely, and thorough investigations, as needed, and take all appropriate action. The City's action may range from training and informal counseling to more severe disciplinary action, up to and including

termination, even if it is the first time such conduct has occurred. Prior incidents may be considered when assessing the facts and circumstances and determining the appropriate corrective action. Every City employee, applicant, elected official, intern, volunteer, and contract worker is expected to support, adhere to, and enforce the EEO Policy.

Manager and Supervisor Responsibilities. Managers or supervisors who receive a report or complaint, observe, or otherwise become aware of possible discrimination, harassment, or retaliation against an employee, applicant, elected official, intern, volunteer, or contract worker, including by a third-party (e.g., a member of the public), must report the alleged conduct to their department management and the department's Human Resources Department liaison, and take prompt corrective action, as appropriate. Managers or supervisors who fail to properly report possible misconduct or fail to respond and take prompt corrective action, when appropriate, may be disciplined even if the harassment did not take place in their work units.

3. **SEXUAL HARASSMENT**

All City employees, applicants, elected officials, interns, volunteers, and contract workers are prohibited from engaging in sexual harassment in the workplace. Sexual harassment is harassing conduct that creates an intimidating, hostile, or offensive working environment on the basis of sex or gender, including gender identity, gender expression, or sexual orientation. Sexual harassment is a form of discrimination based on sex, gender, gender identity, gender expression, or sexual orientation. Sexual harassment is unprofessional and detrimental to the work environment. As with other forms of harassment based on a protected classification, the City has a 100% Response Policy and a Zero Tolerance Policy regarding sexual harassment.

Sexual harassment can be unlawful and includes verbal, physical, and visual harassment, as well as unwanted sexual advances. Sexually harassing conduct need not be motivated by sexual desire. A person alleging sexual harassment is not required to sustain a loss of tangible job benefits or productivity in order to establish harassment. It suffices that a reasonable person subjected to the conduct would find, as the harassed person did, that the harassment so altered their working conditions as to make it more difficult to do their job.

Sexually harassing conduct may be either "quid pro quo" or "hostile work environment" sexual harassment:

- "Quid pro quo" (Latin for "this for that") sexual harassment is when a person explicitly or implicitly conditions a job, promotion, or other work benefit on submission to sexual advances or other conduct based on sex.
- "Hostile work environment" sexual harassment occurs when unwelcome comments or conduct based on sex, gender, gender identity, gender expression, or sexual orientation unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment.

To be unlawful, the harassment must be severe or pervasive. That means that it alters the conditions of employment and creates a hostile or abusive work environment. A single incident of harassing conduct may be sufficiently severe so as to create an unlawful hostile work environment, if the harassing conduct unreasonably interfered with the person's work

performance or created an intimidating, hostile or offensive working environment. To be unlawful, the harassment must also be both subjectively and objectively offensive. Sexually harassing conduct can violate the City's EEO Policy, however, even if it does not rise to the level of unlawful conduct.

The existence of a hostile work environment depends upon the totality of the circumstances. In determining whether harassing conduct was severe or pervasive, the totality of the circumstances is considered, including any or all of the following:

- The nature of the conduct;
- How often, and over what period of time, the conduct occurred;
- The circumstances under which the conduct occurred;
- Whether the conduct was physically threatening or humiliating;
- The extent to which the conduct unreasonably interfered with an employee's work performance.

Sexually harassing conduct can be verbal, physical, visual, or written, and can occur between people of the same or opposite sex. Individuals of any gender can be the target of sexual harassment. Sexual harassment may involve harassment of a person of the same gender as the harasser, regardless of either person's sexual orientation or gender identity. Sexual harassment can occur in any working relationship, such as between peers, supervisor to subordinate, subordinate to supervisor, by a member of the public toward an employee, elected official to employee, contract worker to employee, within or across departments, as well as in other situations.

Verbal harassment may include sexual comments, obscene language, or sexually degrading words; insults, slurs, threats, or derogatory or demeaning comments; sexual jokes; graphic comments about a person's appearance or physique; conversations or comments with sexual undertones; recounting one's sexual exploits or inquiring about a person's sex life; starting or spreading rumors about the sex life of another person; or remarks or jokes about a person's ability to do a job because of the person's gender, gender identity, or sexual orientation.

Physical harassment may include unwelcome touching, hugging, kissing, groping, or massaging; sexually suggestive leering or vulgar gestures; physically blocking, cornering, or impeding movement; or revealing parts of the body, when such exposure violates common decency.

Visual or written forms of harassment may include displaying derogatory, sexually suggestive, offensive, or explicit objects or pictures, including cartoons, posters, drawings, or computer graphics; sending letters, notes, e-mails, text or electronic messages, or social media invitations; or posting on social media, in some circumstances, when it may be perceived as sexually suggestive, demeaning, offensive, or obscene.

Sexually harassing conduct may also include:

- Unwanted sexual advances;
- Job actions taken to pressure a person into accepting sexual advances; or
- In some circumstances, repeatedly asking a person for a date after being turned down.

Sexually harassing conduct by managers or supervisors can include offering employment benefits in exchange for sexual favors; sexual advances that condition an employment benefit upon an exchange of sexual favors; or a statement or insinuation that a refusal to provide sexual favors, or a rejection of sexual favors or advances, will cause reprisal, lack of support for appointments, promotions, or transfers, failure of probation, change of assignment, poor performance rating, or some other adverse employment action.

In addition, sexual favoritism can create a hostile work environment under certain circumstances. “Sexual favoritism” means that an employee has received preferential treatment in regard to promotion, work hours, assignments, or other significant employment benefit or opportunity because of a sexual relationship with a manager or supervisor who was in a position to grant or influence the granting of those preferences.

Whether alleged harassing conduct constitutes sexual harassment is determined on a case-by-case basis by assessing the entire situation and the totality of the circumstances. Factors such as the nature of the conduct and the context in which the alleged conduct occurred will be considered in assessing the allegations and in determining the resolution.

It is the impact of the conduct that is determinative, not whether the conduct was intended to cause harm. For example, a person who teases in a sexual manner or tells sexual jokes may create an offensive work environment for another person even though the comments or actions were intended to be merely “in good fun.” This applies to all types of job classifications and work environments. If a person’s conduct is harassing to an individual or group of individuals, it does not matter that the person failed to recognize their conduct as unwelcome, offensive, or harassing.

This Policy does not prohibit mutually consensual social relationships between employees.¹ However, persons involved in consensual relationships must exercise caution to prevent the development of harassing conduct or the use of authority inappropriately. For example, if a consensual relationship changes and is no longer mutual, conduct once welcome by both individuals may become offensive and harassing to one. Sexually harassing conduct can occur in relationships that began as reciprocal relationships, but later cease to be reciprocal.

It is unlawful and prohibited under this Policy to retaliate or threaten retaliation against a person for rejecting sexual advances or complaining about harassment.

All City employees, including elected officials, are required to complete the City’s Sexual Harassment Prevention Training within the first six months of hire or assuming their positions, and then again once every two years. Interns and volunteers are also required to complete sexual harassment prevention training. The California Civil Rights Department (CRD) (formerly known as the California Department of Fair Employment and Housing) has created sexual harassment prevention training courses which are available online at no cost: <https://calcivilrights.ca.gov/shpt/>.

¹ Administrative Regulation 95.60, Conflict of Interest and Employee Conduct, prohibits employees from supervising or influencing employment decisions associated with immediate family members or other persons with whom they have a close personal relationship.

4. PERSONS WITH DISABILITIES

The Americans with Disabilities Act (ADA) and California Fair Employment and Housing Act (FEHA) are the federal and state laws that protect employees with disabilities. Under these laws, the City will provide reasonable accommodations to employees and qualified applicants with a disability, unless doing so would cause undue hardship.

The City determines reasonable accommodations for employees with disabilities through timely, good faith interactive processes involving the Human Resources Department's Reasonable Accommodations Manager, an appropriate manager, supervisor, or designee, and the employee with a disability.² Additionally, the City will engage in timely, good faith interactive processes with qualified job applicants who request accommodation.

5. RELIGIOUS ACCOMMODATION

Title VII of the Civil Rights Act of 1964 (Title VII) and the FEHA are the federal and state laws that protect employees from discrimination based on religion. In accordance with these laws, the City will provide reasonable accommodations to employees, interns, and qualified applicants with a sincerely held religious belief, observance, or practice that conflicts with a job requirement or policy, unless doing so would cause undue hardship.

The City determines reasonable accommodations for employees and interns with religious conflicts through timely, good faith interactive processes involving the Human Resources Department, an appropriate manager, supervisor, or designee, and the employee or intern requesting accommodation. Additionally, the City will engage in timely, good faith interactive processes with qualified applicants who request accommodation.

6. PREGNANCY AND LACTATION ACCOMMODATION

Title VII, in particular the Pregnant Workers Fairness Act (recently added to Title VII), and the FEHA are the federal and state laws that protect employees affected by pregnancy, childbirth, and related medical conditions. In accordance with these laws, the City will provide reasonable accommodations to employees and qualified applicants affected by pregnancy, childbirth, or a related medical condition, unless doing so would cause undue hardship. The City will engage in timely, good faith interactive processes with employees and qualified applicants who request accommodation. It is unlawful and a violation of this Policy to deny, interfere with, or restrain an employee's rights to reasonable accommodation or to retaliate against an employee because they requested accommodation.

The federal Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act) and the California Labor Code likewise entitle nursing employees to reasonable break time and a private location to express breast milk while at work. In accordance with these laws and the City's [Lactation Accommodation Policy](#), the City will provide a reasonable amount of break time and an appropriate lactation location to employees desiring to express breast milk at work each time the employee has need to express milk.

² Administrative Regulation 96.21, City Policy for People with Disabilities: Employment, describes the disability reasonable accommodation process and consultation provided by the Human Resources Department, Reasonable Accommodations Office, which may be reached at (619) 236-5521.

7. MEDICAL AND FAMILY CARE LEAVE

The federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) allow eligible employees who have been employed with the City for at least a total of 12 months, and have actually worked at least half-time during the previous 12-month period, to request up to 12 workweeks of unpaid, job-protected leave in a 12-month period to care for themselves or a family member (child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person) because of a serious health condition, or to care for the employee's child after birth or placement for adoption or foster care. California law also allows an employee disabled by pregnancy, childbirth, or a related medical condition to request up to four months (the working days in 17 and 1/3 weeks) of additional unpaid, job-protected pregnancy disability leave per pregnancy. An employee's medical leave of absence may be extended as a reasonable accommodation under the ADA and FEHA, depending on the circumstances.

In addition, the FMLA and CFRA provide leave rights related to military service. Eligible employees are entitled to up to 12 workweeks of unpaid, job-protected leave during a 12-month period because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's covered family member in the Armed Forces. The FMLA further provides for up to 26 workweeks of unpaid, job-protected leave in a single 12-month period for an eligible employee to care for a covered family member recovering from a serious illness or injury sustained in the line of duty.

It is unlawful and a violation of this Policy to interfere with, restrain, or deny an employee's exercise or attempt to exercise any right provided under these leave laws. An employee who exercises their rights under any of these laws shall not be subject to discrimination, harassment, or retaliation.

8. CITY EMPLOYEE RECRUITMENTS

The Mayor, through the Human Resources Department, and the heads of all independent City departments will ensure that the recruitment methods and strategies for unclassified City recruitments and appointments follow this Policy. The Civil Service Commission, through the Personnel Director, will likewise ensure that the recruitment methods and strategies for all classified City recruitments follow this Policy.

9. INTERVIEWS AND SELECTIONS BY APPOINTING AUTHORITY

All interviews and selections by an appointing authority must be conducted in a non-discriminatory manner (Personnel Manual, Index Code F-1). Interview questions and selection materials must be based on job-relevant criteria and carefully designed to not discriminate or have an adverse impact on applicants based on age, ancestry, color, creed, physical or mental disability, gender, gender identity, gender expression, genetic information, marital status, medical condition, veteran or military status, national origin, pregnancy (including childbirth, breastfeeding, or related medical conditions), race, traits historically associated with race (including hair texture and protective hairstyles such as braids, locks, and twists), religion, religious belief, observance, or practice, religious creed, reproductive health decision-making, sex, sex stereotype, sexual orientation, trans-gender status or transitioning, or any other classification protected by federal, state, or local law (including being perceived or regarded as or associated with any protected classification).

10. **PERFORMANCE EVALUATIONS OF MANAGERS AND SUPERVISORS**

Job performance evaluations of managers and supervisors should include a review of their support of, and adherence to, this Policy.

11. **ENFORCEMENT OF THE EEO POLICY**

The City's procedures for consideration, investigation, and resolution of reports and complaints of potential violations of this Policy are described in Administrative Regulation 96.50 (Equal Employment Opportunity Policy and Complaint Resolution Procedures), Civil Service Rule XVI (Discrimination Complaints), and the Personnel Manual, Index Code K-2 (Non-Discrimination Policy and Complaint Procedures), and apply to all City employees, applicants, elected officials, interns, volunteers, and contract workers. To constitute a potential violation of this Policy, the alleged conduct or employment action must be based on a protected classification (e.g., race, gender, age, disability, etc.) or protected conduct under this Policy (e.g., filing an EEO complaint or requesting accommodation).

12. **REPORTING A VIOLATION**

Any City employee, applicant, elected official, intern, volunteer, or contract worker who believes that a violation of this Policy has occurred or is occurring should immediately bring the matter to the attention of any of the individuals or offices listed below:

- Any supervisor (it is not necessary to follow the chain of command).
- Any Department Director, Assistant Director, Deputy Director, or other department appointing authority.
- Any Human Resources staff within a department.
- Any Human Resources Department Liaison: [Human Resources Department Liaison Contact List](#).
- The City's Equal Employment Investigations Office (EEIO) in the Personnel Department, (619) 236-7133 or EEIO@sanidiego.gov.

City employees, applicants, elected officials, interns, volunteers, and contract workers may also file a complaint with the following external agencies:

- California CRD, (800) 884-1684 or <https://calcivilrights.ca.gov/>.
- U.S. Equal Employment Opportunity Commission, (800) 669-4000 or www.eeoc.gov.

Complaints to the CRD must be filed within three years of the alleged harassment, discrimination, or retaliation. If the CRD finds sufficient evidence, and efforts to resolve the dispute fail, the CRD may file a civil complaint in state or federal court on behalf of the complaining party. Complainants can also pursue a private lawsuit in civil court after the CRD issues a Right-to-Sue Notice. Civil remedies can include damages for emotional distress, backpay, reinstatement, promotion, changes in policy or practice, and attorney's fees and costs.

Manager and Supervisor Responsibilities. Managers or supervisors who receive a report or complaint of a violation of this Policy, or observe or otherwise become aware of possible discrimination, harassment, or retaliation against an employee, applicant, elected official, intern, volunteer, or contract worker, including by a third-party (e.g., a member of the

public), must immediately report the alleged conduct to their department management and the department's Human Resources Department Liaison.

Retaliation Prohibited. It is unlawful and prohibited under this Policy to retaliate against a person for reporting or filing a complaint of discrimination, harassment, or retaliation, or participating in any investigation or other proceeding under this Policy.

Confidentiality. The City will strive to protect the privacy interests of all individuals involved when responding to a report or complaint of a potential violation of this Policy. However, anonymity and complete confidentiality cannot be guaranteed once inappropriate conduct is reported or a complaint is made. While an individual's expressed desire for confidentiality will be taken into consideration, those interests must be weighed against the responsibility of the City to investigate alleged violations of this Policy and take appropriate corrective and preventive action. Information pertaining to EEO complaints will be maintained in confidence to the fullest extent permitted by law.

Administrative Regulation 96.50 EEO Violation Report Form. Individuals may report any potential violation of this Policy to a City supervisor or manager. When a report is received, the supervisor or manager receiving the report should notify their department management and the department's Human Resources Department Liaison and initiate the A.R. 96.50 EEO Violation Report Form process by completing the first section of the form and obtaining a reference tracking number from the EEIO at (619) 236-7133. The A.R. 96.50 EEO Violation Report Form may be found on the Personnel Department's CityNet website as well as attached to Administrative Regulation 96.50. Departments may also obtain the form through their department management, Human Resources staff, or Payroll Specialist. The department appointing authority, in consultation with the City's EEIO, which tracks and guides the process, will determine appropriate next steps.

EEIO Internal Discrimination Complaint Form. Individuals may report any potential violation of this Policy to the EEIO and may complete and submit the EEIO Internal Discrimination Complaint Form. Upon receiving a report or complaint of a potential violation, the EEIO will follow the processes set forth in the Personnel Manual, Index Code K-2. The EEIO Internal Discrimination Complaint Form may be found on the Personnel Department's CityNet website or by contacting the EEIO at (619) 236-7133 or EEIO@sandiego.gov.


Employee Assistance Program (EAP). City employees have access to confidential emotional support, assistance, and resources to address employees' personal work-life concerns and emotional well-being, at no cost, through the City's EAP. EAP professionals are available 24/7 to discuss employee and household member concerns. For more information about the resources and services available through the EAP, go to citynet.sandiego.gov/hr/eap. The EAP can be reached at (877) 622-4327 or by visiting myCigna.com and entering Employer ID: cosd (for initial registration to log in). For emergencies, please call 911.

Through this Policy, the City seeks to ensure that all City employees, applicants, elected officials, interns, volunteers, and contract workers know of their rights and responsibilities. Every City employee, applicant, elected official, intern, volunteer, and contract worker is expected to support and adhere to the principles of EEO and the standards of conduct stated

in this Policy in order to create and maintain a high-performance, professional work environment at the City, free of any and all discrimination, harassment, and retaliation.



Todd Gloria
Mayor




Mara W. Elliott
City Attorney



Douglas Edwards
Personnel Director



Eric Dargan
Chief Operating Officer



Julie Rasco
Human Resources Director



Diana Fuentes
City Clerk