



CITY OF SAN DIEGO
PARKS AND RECREATION DEPARTMENT

SPECIAL USE PERMIT AGREEMENT

TABLE OF CONTENT

1. Definitions	Page 4
2. Occupancy	Page 5
3. Term	Page 6
4. CITY's Consent, Discretion	Page 6
5. Processing Fee	Page 6
6. Nonprofit Status	Page 6
7. Use of Premises	Page 6
8. Subpermittees	Page 7
9. Fees Charged by PERMITTEE	Page 9
10. Use of Funds	Page 9
11. Membership	Page 10
12. Non-Exclusive Use	Page 10
13. Competent Management	Page 10
14. Annual Meeting	Page 10
15. Governmental Approvals	Page 10
16. Default and Termination of SUP	Page 11
17. Revocable License	Page 11
18. No Holdover	Page 11
19. Restore and Vacate	Page 12
20. Keys	Page 12
21. Superior Interests	Page 12
22. Maintenance, Installation, Improvements and Repairs of the Premises	Page 17
23. Inspection	Page 17
24. Prevailing Wages	Page 18
25. Payment Bond	Page 18
26. Storm Water Program Quality Assurances	Page 18
27. Utilities	Page 18
28. Campaigning	Page 18
29. Budget, Records, and Inspection	Page 19
30. Nondiscrimination	Page 19
31. Smoke/Vape/Drug Free Environment	Page 19
32. Insurance	Page 20
33. Accessibility Requirements	Page 23
34. Accessibility Assessment	Page 24
35. PERMITTEE's Risk	Page 24
36. No Nuisance	Page 24
37. Assignment and Sublease	Page 24
38. Signs	Page 24
39. Encumbrances	Page 24
40. Compliance with Laws	Page 25
41. Taxes	Page 25

42. Hazardous Substances	Page 25
43. Alcohol	Page 27
44. Waiver	Page 27
45. Cumulative Remedies	Page 27
46. Survival	Page 27
47. Joint and Several Liability	Page 28
48. No Affiliation	Page 28
49. Entire Agreement	Page 28
50. Notices	Page 28
51. Authority to Contract	Page 28
52. Acceptance of Premises	Page 28
53. Abandonment by Permittee	Page 29
 Exhibit A - Premises	 Page 31
Exhibit B – Subpermittee List	Page 32
Exhibit C - Community Garden plot and Allotment Charges fee schedule	Page 33
Exhibit D - Community Garden Maintenance Activity Schedule	Page 34
Exhibit E - Community Garden Guidelines and Agreement	Page 39
Exhibit F - Prevailing Wage Requirements	Page 44
Exhibit G - Equal Employment Opportunity Policy	Page 48

CITY OF SAN DIEGO
SPECIAL USE PERMIT

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 the Bayside Community Center, a California 501(c)(3) Non-Profit Corporation (PERMITTEE), to be effective as of 7/25/24 (Effective Date), when signed by the parties and approved by the City of San Diego City Attorney as follows:

WHEREAS, CITY desires to provide facilities to its citizens, guests, non-commercial local societies, 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, generates revenues from development of a community garden in the Linda Vista area of CITY and is funded through voluntary contributions, special events, membership dues and fund-raising projects (Permit Use).

NOW, THEREFORE, it is hereby mutually agreed by and between CITY and the PERMITTEE as follows;

1. **Definitions.** As used in this Permit, the following terms are defined as follows:
 - 1.1 **"Effective Date"** as referenced on signature page and in opening paragraph above means the start of this agreement will begin once it is signed by all parties and approved by the City of San Diego City Attorney.
 - 1.2 **"City Contact"** means CITY's Parks and Recreation Department Director or Deputy Director or his or her designee. For the purpose of this SUP, the City Contact is currently District Manager, Jerome Abbott and be contacted at 619-235-1130 or JAbbott@sandiego.gov
 - 1.3 **"Party"** shall mean each signatory to this SUP individually, or **"Parties"** shall mean the collective signatories to this SUP.
 - 1.4 **"Premises"** or **"Permit Area"** means that certain CITY-owned real property commonly known as the Linda Vista Community Garden in the Linda Vista Community Park located at 7064 Levant Street, San Diego, CA 92111, as more particularly described in **Exhibit A** attached hereto (**Premises**).
 - 1.5 **"PERMITTEE"** means Bayside Community Center, a California 501(c)(3) Non-Profit Corporation, which includes PERMITTEE's directors, officers, members, partners, employees, agents, subpermittees, sublicensees, attorneys, and all other persons whom PERMITTEE authorizes or allows to use or occupy the Premises. PERMITTEE must be responsible for all of PERMITTEE's agents, board members, employees, and volunteers and ensure that they adhere to all conditions as stated in this Permit.

- 1.6 **“PERMITTEE’s Address for Notices”** is: 2202 Comstock Street,
San Diego, CA 92111
- 1.7 **“Project or Projects”** means a repair, major improvement, or a minor improvement that is consistent with the definition of “Public Work” as discussed in California Labor Code sections 1720 – 1743.
- 1.8 **“Permit Use”** means development of a community garden in the Linda Vista area of CITY and is funded through voluntary contributions, special events, membership dues and fund-raising projects.
- 1.9 **“Volunteer”** means an instructor, person or entity working with minors or people with disabilities on the Premises and has completed the criminal offender record information review.

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 the CITY Contact upon request.

PERMITTEE will be responsible for the direct supervision and management of volunteers, including but not limited to scheduling, assignment, inspection of work, and ongoing training.

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 the CITY's Personnel Department. CITY will pay the cost and will provide results of Background/Fingerprint check.

- 1.10 **“Subpermittees”** means an instructor, person or entity providing community garden related activities on the Premises under contract agreement with the PERMITTEE. Subpermittees must follow the terms and conditions per section 8 of this permit.
- 1.11 **“Release”** - For all purposes of this Permit, a “release” shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of a Hazardous Substance.
- 1.12 **“Hazardous Substance”** For all purposes of this Permit, “Hazardous Substance” shall mean 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.

2. Occupancy. CITY does hereby grant to PERMITTEE a non-exclusive Permit for the use and occupancy of the Premises, specifically for the purposes enumerated in this Permit, and no other purposes. This Permit does not guarantee that the Premises requested or assigned will always be available at the date and time requested by the PERMITTEE.
3. Term. The term (**Term**) shall be for the period of three years, beginning on the Effective Date. At the CITY'S option and discretion, this SUP may be extended for up to two (2) additional one (1) year periods, subject to a Processing Fee for each additional year term and subject to the same terms and conditions in this SUP. Permittee shall have no further option to extend the Term. A new SUP will need to be issued to continue operations for another Term. However, this SUP may be terminated by either Party for convenience upon thirty (30) days prior written notice to the non-terminating Party.
4. CITY's Consent, Discretion. CITY's consent or approval under this Permit means the advanced written consent or approval of the Mayor of the City of San Diego, or the Mayor's designee ("Mayor"), unless otherwise required by law or expressly provided and will be made in the Mayor's discretion, subject to all applicable laws, rules, regulations, and directives of competent governmental authorities.
5. Processing Fee. The PERMITTEE shall pay the CITY a one-time Permit processing fee of Four Hundred and Forty-Eight dollars (\$448.00) prior to the Effective Date. Upon written request and approval of the Parks and Recreation Department Director or his or her designee (**Director**), a payment plan with the CITY may be entered into.
6. Nonprofit Status. PERMITTEE shall provide the Director with documentary evidence, to CITY's satisfaction, of PERMITTEE's current Federal tax-exempt status by prior to the signing this SUP and May 1st of each year during the Term. PERMITTEE shall inform CITY immediately if this status changes or is cancelled.
 - 6.1 PERMITTEE will be an Active California Nonprofit 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 SUP.
7. Use of Premises. The Premises shall be used for the purposes of a Community Garden Activities for crop cultivation and growing food collectively or by individuals (Permit Use), and for no other use whatsoever without obtaining the prior written approval of the Director. In all cases where the Director's prior written approval is required, PERMITTEE shall submit a written request to the Director prior to engaging in such activity. The Director may, in his or her sole discretion, approve or deny PERMITTEE's request. If the request is approved by the Director, PERMITTEE shall maintain the approval in PERMITTEE'S files at all times. The following shall apply to the Permit Use:
 - 7.1 Community Gardens are for recreational, leisure, public benefit purposes and not for the purposes of raising revenue or to be operated as commercial venture.

- 7.2 PERMITTEE may offer programs and activities to the public at market rate and in compliance with all applicable laws and CITY policies.
- 7.3 Permittee may plant only annual crops of vegetables, fruit, herbs, or flower. Premises are allowed to have perennial flowers, perennial fruits, woody vegetation, shrubs, or trees to be planted, but must be maintained at all times.
- 7.3.1 Recommended all plant material to be sourced from California Department of Food and Agriculture certified nursery.
<https://www.cdfa.ca.gov/plant/pe/nsc/nursery/>
- 7.3.2 Must not plant any material on the California invasive species list.
<http://www.iscc.ca.gov/species.html>
- 7.4 Growth of any controlled substances on City property is strictly prohibited including cannabis per SDMC §42.1304.
- 7.5 The hours of operation for the Community Garden shall generally be from 7am until sunset and shall be locked during non-operating hours.
- 7.6 Permittee shall provide proper maintenance of the CG in accordance with all federal, state, and local laws and ordinances.
- 7.7 PERMITTEE may provide members with an individual garden plot within the limits of the Garden for a fee in accordance with this Permit. Allotment Charges may be charged to cover the yearly watering, maintenance, and site improvement costs. Fees shall not exceed the amount necessary to cover the normal annual operating costs of the Community Garden. The garden plot and Allotment Charges fee schedule is attached as **Exhibit B**.
- 7.8 Permittee shall rotate garden plots to allow community members on the waiting list to have access to a garden plot within a reasonable period of time.
- 7.9 Shed structures are permitted on premises for storage use related to the Permit Use only. Director or designee must approve the type of structure and identify appropriate location or placement. All structures must be maintained in good condition and not pose a safety issue at all times.
- 7.10 All commercial activities, including the sale of any fruits and vegetables or flowers grown in the community garden, are prohibited on the Premises unless PERMITTEE obtains the prior written approval of the Director. PERMITTEE shall not place, or allow the placement of, written communication that is not related to GHCGC official rules and regulations on the Premises without the prior written approval of the Director.

- 8 Subpermittees. If PERMITTEE allows Subpermittees for activities related to the Permit Use on the Premises, PERMITTEE must issue and retain a written agreement with each Subpermittee onsite. Upon request, the Director can review all Agreements. A List of approved Subpermittees as of the date of signing this SUP is attached as **Exhibit C**, as maybe amended throughout the Term of this SUP.
- 8.1 CITY acknowledges that PERMITTEE intends to subpermit areas within the Premises for community garden related activities.
- 8.2 Subpermittees must comply with all provisions of this SUP and comply with all local, state, and federal laws including compliance with CITY's business license and insurance requirements as stated in this SUP.
- 8.3 PERMITTEE shall collect the following from each Subpermittee: contact information, licenses, permits, additional forms required by CITY, and insurance as required in Section 32 before operating on the Premises.
- 8.3.1 The certificate of insurance must name PERMITTEE and the "City of San Diego, its elected officials, officers, representative, agents, and employees," as additional insured for the entire term of the Agreement.
- 8.4 PERMITTEE will have oversight of all programs and/or activity fees charged by Subpermittees for activities related to the Permit Use to ensure fees are charged at market rate to the participant.
- 8.4.1 PERMITTEE may charge Subpermittees an administrative or maintenance fee of gross activity revenue collected.
- 8.5 PERMITTEE agrees that CITY will not be required to perform or assume the cost of any additional maintenance, repairs, or services to the Premises as a result of having Subpermittee.
- 8.6 All funds and net proceeds collected by PERMITTEE from Subpermittees must be used for the sole purpose of maintaining the Premises and promoting PERMITTEE's community garden activities and related services on the Premises.
- 8.7 PERMITTEE must not use any net asset proceeds generated from the Permit Use, for any of PERMITTEE's other activities, services, expenses, salaries, unrelated to this SUP or the Premises. However, PERMITTEE can use donations received from Permit Use for any Permit Use activity, including scholarships for persons who cannot pay the fee for an activity. If any net proceeds are used to provide

scholarships for any activity related to the Permit Use, those net proceeds shall be deposited in a separate account to use for that purpose only.

8.8 Budget, Records, and Inspection. PERMITTEE and Subpermittee must keep accurate and complete books of accounts and records indicating all financial transactions made in connection with the Premises. All records and accounts must be available for review and inspection by an authorized representative of CITY upon request. Records must be maintained for a minimum period of five years from the end of the Term.

8.9 Criminal Background Requirements and Mandated Training. PERMITTEE must complete the criminal offender record information review, including Fingerprinting and Backgrounding as required by federal and state laws of all employees, volunteers, and Subpermittees engaging in activities on the Premises or in accordance with this Permit Use. PERMITTEE must not employ nor utilize anyone, including employees or volunteers with criminal convictions that would bar their work with or supervision of minors or people with disabilities under federal or state laws. PERMITTEE must ensure that anyone employed or utilized by PERMITTEE (all employees, volunteers, 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. Upon request by the CITY, PERMITTEE must provide CITY with access to PERMITTEE's records showing that these requirements have been met. Failure to comply with these requirements is grounds for immediate revocation of this SUP.

8.10 PERMITTEE and any of its Subpermittees who are retained or hired by PERMITTEE are independent of CITY and are not agents of CITY. Nothing contained in this SUP 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, including any Sublicensee, Facility Rentee or third-party permittee, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE, any Sublicensee, third-party permittee, or any other party or entity.

9. Fees Charged by PERMITTEE. PERMITTEE shall have the right to charge reasonable fees for the use of the facilities or services provided on the Premises by the PERMITTEE as stated in Section 7 above. All fees shall be limited to recovery of PERMITTEE's reasonable costs for the normal annual operating cost of the premises, in compliance with all applicable laws and CITY policies. No fees prescribed by PERMITTEE for premises use may exceed the total cost incurred by PERMITTEE for providing that program or

activity. All fees prescribed by PERMITTEE are subject to review and approval by the Director, in his or her sole discretion.

10. Use of Funds. All funds collected by PERMITTEE from the use of the PREMISES pursuant to this Permit shall be used in a fiscally responsible manner and to further PERMITTEE's activities or other services related to the Permit Use and the operation, maintenance, and improvement of the PREMISES. Records of Allotment Charges to gardeners and expenses will be kept by the Community Garden Group for a period of three years.
11. Membership. Membership in the PERMITTEE's organization shall be open to anyone meeting the requirements of PERMITTEE's rules and bylaws, subject to the requirements of this Permit and applicable laws. All restrictions, rules, bylaws, and fees, if any, and changes thereto proposed by the PERMITTEE shall, before being put into effect, be submitted to the Director for review. PERMITTEE shall provide a current copy of its adopted bylaws to CITY. While classes and related training may be offered on the Premises, participating in such classes and activities cannot be made a requirement for membership in the PERMITTEE's organization or for use of the Premises by the public.
12. Non-Exclusive Use. This SUP does not guarantee that the Premises requested or assigned will always be available at the date and time requested by the PERMITTEE. However, the public shall not be wholly or permanently excluded from the Premises or any activity or event thereon. PERMITTEE, with the prior written approval of the Director, may develop reasonable and non-discriminatory restrictions for the use of facilities located on the Premises and participation in certain activities held by PERMITTEE on the Premises that are consistent with the rights of the general public, designed to enable the use of the Premises for the purposes granted herein, and are in compliance with all applicable laws.
 - 12.1 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) as stated in Section 34.
13. Competent Management. PERMITTEE shall provide competent management of the Use of Premises to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable for the management and operation of community gardens substantially similar to the Use of Premises and in compliance with all applicable laws, ordinances, requirements, orders, proclamations, directives, rules, or regulations of any governmental authority (together, "Applicable Law"), and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.
14. Annual Meeting. During the Term, PERMITTEE shall hold an annual meeting with the Director or designee to review PERMITTEE'S budget, Permit Use, maintenance of the

Premises, services offered, and to discuss the receipt and resolution of any issues related to Permit

15. Governmental Approvals. By entering into this SUP, neither CITY nor San Diego City Council (City Council) is obligating itself to PERMITTEE or 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.
16. Default and Termination of SUP
 - a. Failure to comply with federal, state, and local laws and ordinances may result in closure of the CG or revocation of the SUP or issuance to another party if not remedied within thirty days' notice of the regulating agency or Department.
 - b. Failure to comply with any material term, condition, or obligation of this SUP will be considered a default of this SUP. CITY may provide PERMITTEE at their discretion with time to cure the default before termination of this SUP as a result of the default.
 - c. This SUP will immediately terminate if PERMITTEE starts a voluntary case or other proceeding seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or similar law, or shall make a general assignment for the benefit of creditors or shall have an involuntary case or other proceeding instituted against it seeking similar relief.
 - d. This SUP will immediately terminate if PERMITTEE commits a criminal or illegal act, which brings CITY's name into disrepute, or otherwise substantially affects the reputation of CITY.
 - e. This SUP will immediately terminate if PERMITTEE fails to Comply with Laws, as stated in section 41.
17. Revocable License. This SUP is not a lease. This SUP is a non-exclusive 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 thirty (30) days, delivered to PERMITTEE if for CITY's convenience. CITY shall not be obligated for any loss or burden, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or termination of this SUP. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY's revocation or termination of this SUP.
18. No Holdover. If PERMITTEE continues to occupy the Premises after the expiration or earlier termination or Extension of this Permit, such occupancy shall neither constitute a

renewal of this SUP, nor give PERMITTEE any rights in or to the Premises. If PERMITTEE continues to occupy the Premises after the expiration, earlier termination or Extensions of this SUP, PERMITTEE shall pay to CITY rent calculated on a per diem basis at the market rental rate as calculated by competent CITY staff. CITY's acceptance of such payment shall neither constitute a renewal or additional Extension of this Permit, nor give the PERMITTEE any rights in or to the Premises. If, however, the parties are negotiating a renewal of this SUP in good faith and notice to terminate has not been timely delivered by the CITY, then continued occupancy of the Premises by PERMITTEE following expiration of Term, including Extensions, shall result in month-to-month continued occupancy for up to a maximum of twelve (12) months or until a renewal Permit is established. In such event a Temporary Park Use Permit (TPUP) shall be issued by CITY during this interim period. The TPUP shall not be considered a renewal or extension of the Permit. The TPUP allows for use of the Premises on a month-to-month basis. All other terms and conditions of the expired Permit shall be in full force and effect as long as the PERMITTEE's non-profit status is active and complies with the provisions of the SUP.

19. Restore and Vacate. Prior to the expiration or PERMITTEE's earlier termination of this SUP, PERMITTEE shall restore the Premises to its condition on the Effective Date, excepting therefrom normal wear and tear, and upon such expiration or earlier termination immediately vacate the Premises.
20. Keys. CITY does not provide keys to the PERMITTEE under this SUP, which PERMITTEE acknowledges. If approved shed or storage container is owned, used, or shared by the Department, City staff must be provided keys.
21. Superior Interests. This SUP is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. PERMITTEE shall 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 shall 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.
22. Maintenance, Installation, Improvements and Repairs of the Premises. For purposes of this Section 22, "CITY Contact" shall mean CITY's Parks and Recreation Department Area Manager, who currently is Ira Patron and can be reached at 858-573-1392 or IPatron@sandiego.gov
 - a. Maintenance. PERMITTEE shall 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 shall keep the Premises as identified in **Exhibit A** free and clear of rubbish, debris, and litter at all times. City shall at no time during the Term be required to make any improvements or repairs to the Premises.

- i. PERMITTEE shall, at PERMITTEE'S sole cost and expense, comply with all applicable laws and regulations concerning the maintenance of the Premises, including City's Landscape Regulations. Maintenance of the Premises shall follow at a minimum the best management practice standards as outlined in the Community Garden Maintenance Activity Schedule attached as **Exhibit D**. CITY shall at no time during the Term be required to make any improvements or repairs to the Premises, except those to trees, sewer, water, electrical, and other utilities, and infrastructure.
- b. Water Regulation. All cleaning required under this Permit and all activities on the Premises shall comply, at all times, with the current level of Emergency Water Regulations (San Diego Municipal Code section 67.3801 – 67.3811) with respect to water usage and all applicable water restrictions relating to water quality assurance and storm water management, as amended from time to time.
- c. Organic Waste Recycling Program. PERMITTEE shall follow all the Recycling Ordinance including State Mandated California Senate Bill 1383 which requires the reducing of organic waste disposed at local landfills as outlined on the City's website: <https://www.sandiego.gov/environmental-services/recycling/sb1383>
- d. Waste, Damage, or Destruction. PERMITTEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises. PERMITTEE shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash, rubbish, and oil/chemical contaminated soil in a manner satisfactory to CITY and in compliance with all applicable laws. If the Premises are put into a condition which is not decent, safe, healthy, and sanitary, PERMITTEE shall commence to restore the Premises to a decent, safe, healthy and sanitary condition within a reasonable time (but no later than thirty (30) days after the date of waste) and shall restore the Premises to CITY's reasonable satisfaction within ninety (90) days of commencement. PERMITTEE must obtain all approvals required for restoration of all waste or damages to the Premises.
- e. Noxious Weeds, Pests, Erosion. PERMITTEE must take commercially reasonable corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds, pests, and erosion throughout the entire Premises, in compliance with all applicable laws. The use of any Inorganic Pesticides/Herbicides by Permittee and/or members is strictly forbidden. A list of Inorganic Pesticides/Herbicides can be provided by CITY Contact. Any such use is cause for immediate termination and/or loss of plot.

- f. Pest Management. Permittee shall regularly inspect all buildings and landscaped areas in the Premises for the presence of disease, and/or insect or rodent infestation. If any disease, insect, or rodent infestation is discovered, the Permittee shall immediately notify the City Contact of discovery in order to remedy the issue in a timely manner. Permittee is responsible for pest management within the Premises, and shall comply, at all times, with the current shall conduct all disease and pest control operations in accordance with current standard practices accepted by the State of California Department of Food and Agriculture. PERMITTEE shall implement the approved control measures until the disease, insect infestation or rodent infestation is controlled to the satisfaction of the Department Administrator. Permittee shall utilize all safeguards necessary during disease, insect or rodent control operations to ensure the safety of the public, volunteers, and employees. Permittee agrees that CITY shall not be required to perform or assume the cost of any Pest Management services.
- g. Notwithstanding any other provision of this Permit to the contrary, PERMITTEE shall undertake the following maintenance and improvements at PERMITTEE's sole cost and expense, and CITY approves the following maintenance and improvements at the Premises to be done by PERMITTEE:
- i. General maintenance and upkeep of the Premises to CITY's satisfaction such as ongoing normal garden duties include soil preparation, planting, fertilization, irrigation, weeding, vegetation removal, path maintenance, planter box construction or repair.
 - ii. Clean all walkways on the Premises on a daily basis. All cleaning required under this SUP and all activities on the Premises shall comply, at all times, with the current level of Emergency Water Regulations (on the Effective Date located at San Diego Municipal Code section 67.38) with respect to water usage and all applicable water restrictions relating to water quality assurance and storm water management, all of which may be amended from time to time.
 - iii. Inspect the Premises daily for hazards and debris and correct or remove any hazard or debris immediately. Daily inspection records shall be kept for one (1) year.
 - iv. Composting facilities, if provided, shall be specifically designed for that purpose. Composting piles will not be allowed. Composting facilities shall be located away from adjacent residences, businesses and park uses. Screen all composting facilities.
 - v. Refuse storage areas shall be provided and screened to enclose all refuse generated from the community garden. Refuse areas shall be located as close as practicable to the rear and center of the community garden area and shall not be located near adjacent residences, businesses or other park

uses. Refuse shall be removed from the community garden at least once a week by the gardening group. Trash cans shall be provided as necessary for gardener use. Park and Recreation Department trash facilities shall not be used by community garden members.

- h. Improvements. PERMITTEE shall not make or cause any improvements, changes, or alterations to be made to the Premises or to any improvements thereon, other than those already identified in this Permit, without prior written approval of CITY. Any and all improvements, repairs and alteration made to the Premises by PERMITTEE shall at expiration or termination of this Permit be deemed to be part of the Premises and shall become, at CITY's option, CITY's property free of all liens and claims, except as otherwise provided in this Permit. If CITY elects not to assume ownership of all or any improvements, plants, material, in-ground irrigation, structures, or installations, CITY shall so notify PERMITTEE thirty (30) days prior to expiration of the Permit or thirty (30) days prior to early termination of the Permit if possible, however, if the Permit is terminated early with less than thirty (30) days' notice, CITY shall have up to thirty (30) days after the early termination of the Permit to provide notice that CITY elects not to assume ownership of said items. If CITY elects to not assume ownership, PERMITTEE shall remove all such improvements, structures and installations that had been installed by PERMITTEE, as directed by CITY at PERMITTEE's sole cost on or before Permit expiration or early termination, or if CITY provided notice after the early termination of the Permit, within thirty (30) days of being provided written notice that CITY elected not to assume ownership. If PERMITTEE fails to remove any improvements, structures, and installations installed by PERMITTEE as directed by CITY, PERMITTEE shall pay CITY the full cost of any removal. If any removal of such personal property by PERMITTEE results in damage to the Premises or any improvements thereon, PERMITTEE shall repair all such damages.
- i. Permittee shall not erect, install, or add permanent or temporary lighting of any kind on the Premises without prior written authorization of the CITY.
- ii. A Right of Entry Permit (ROE) will be required for all major and some minor improvements on which a private entity (such as a volunteer organization or a private contractor) will be performing work on park property that is not covered by the PERMITTEE's insurance. The ROE defines the scope of work to be performed, insurance requirements, and roles and responsibilities of the PERMITTEE and City. The Director or designee will determine what projects are considered major improvements and will require a ROE.
- i. PERMITTEE agrees that CITY shall not be required to perform or assume the cost of any maintenance, repairs, or services to the Premises.

- j. Contingency. Prior to undertaking any improvements, repairs or alterations, PERMITTEE must validate, to the satisfaction of CITY, that it has all the necessary funds plus a 5% contingency readily available to complete subject improvements and installation before beginning any such work.
- k. Structures. Except for the use permitted in Section 7b, PERMITTEE or PERMITTEE's agents shall not 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, recreational vehicles, etc., without the prior written authorization of the CITY and obtaining all permits required by competent governmental entities. Any structure violating this provision shall be subject to immediate and summary removal, at PERMITTEE's sole cost and expense.
- l. Required Approvals. PERMITTEE shall obtain all required permits and regulatory approvals required by competent governmental entities relating to PERMITTEE's occupancy, use, development, maintenance, repair, or restoration of the Premises. PERMITTEE shall be solely responsible for the cost of all plans, permits, and construction and maintenance costs attendant to any improvements.
- m. Work Schedule. PERMITTEE shall contact the CITY Contact a minimum of five (5) working days prior to the start date of any maintenance or improvements outside of normal garden duties as listed in Section 22. At that time, PERMITTEE shall submit a work schedule to the Director that includes a description of the work to be performed, the specific location of such work, plan and design sheets showing construction specifications, precise locations, the dates, and times of such work, and other relevant information deemed necessary by CITY to the CITY Contact. CITY reserves the right to impose reasonable restrictions and scheduling conditions for any activities related to the improvements or installations, and no work shall commence without the prior verbal approval of the CITY Contact. PERMITTEE shall further notify CITY Contact a minimum of ten (10) working days prior to start of any work that may affect public access on or adjacent to the Premises.
- n. Pre-Construction Meeting. A minimum of five (5) working days prior to commencement of any work, PERMITTEE shall invite CITY Contact to a pre-construction meeting. This meeting shall establish points of contact, define means and methods of all maintenance or improvements, and coordinate PERMITTEE's work schedule with scheduled activities and Parks and Recreation Department operations in and adjacent to the Premises.
- o. Security and Safety of Work Areas. PERMITTEE shall bear sole responsibility for the security and safety of work areas relating to any work performed under the direction of PERMITTEE. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of the work areas, as appropriate, during and immediately following each day's work to ensure security and safety. CITY has no obligation

to provide oversight of any maintenance or improvements, staffing or resources for the maintenance of the Premises.

- p. Repair. PERMITTEE shall be responsible, at its sole cost and expense, for the repair or replacement of any damage caused by PERMITTEE's maintenance or improvements. PERMITTEE shall comply with the direction of the CITY Contact or other competent CITY staff with respect to the method of any repairs or replacement.
- q. Vehicular Traffic. All vehicular traffic shall be confined to concrete, asphalt or decomposed aggregate surfaces unless otherwise approved in writing by CITY Contact prior to the commencement of any maintenance or improvement work.
- r. Subcontractors. PERMITTEE shall provide to CITY Contact a list of all contractors and subcontractors, including name, address, email, fax and phone number. All construction work requiring a licensed contractor pursuant to the Contractors' State Licensing Laws (California Business & Professions Code sections 7000-7191) shall be done by contractors licensed within the State of California.
- s. Grading and Barriers. PERMITTEE shall not change the surface grade or construct any permanent barriers within the Premises. Any violations shall be corrected by PERMITTEE at its sole expense to the satisfaction of CITY.
- t. Construction Guidelines. All new construction must comply with CITY design guidelines, regulations, California Building Code Title 24, and Americans with Disability Act standards. Any items that are not pre-approved or not to code will be rejected at the time of walk-through and must be removed and/or corrected at PERMITTEE's expense. It is the responsibility of PERMITTEE to obtain the necessary permits prior to commencement of any work, to obtain any inspections required for the work involved and to ensure all work will adhere to all laws, rules, and regulations, including California Building Code Title 24, ADA, the latest edition of the Parks and Recreation Department's *Consultant's Guide to Park Design and Development*, *San Diego Standard Drawings for Public Works Construction*, the *Standard Specifications for Public Works Construction* (Greenbook, 2021 edition), the 2012 City of San Diego "Whitebook" supplement to the Greenbook (Document No. PITS090110-1), City of San Diego regulations and other local agencies regulations.
- u. Final Walkthrough. Within five (5) working days of the completion of any approved work, PERMITTEE shall conduct a final walkthrough with CITY Contact to review and inspect all improvements and installations, in each instance, for compliance with this Permit and with Parks and Recreation Department standards. All items noted not to be in compliance with that certain *Consultant's Guide to Park Design and Development*, and any concerns identified

by CITY Contact as being incomplete or unacceptable, shall be corrected to the satisfaction of CITY prior to final acceptance of the work that is performed.

23. Inspection. CITY may at all times enter and inspect the Premises, without prior notice to PERMITTEE. A Facility inspection will be conducted by CITY at least once (1) a year or as needed to verify Parks and Recreation Department and CITY maintenance standards are being met in accordance with Facility Inspection Form as listed in **Exhibit D**.
24. Prevailing Wages. Prevailing wage rates may apply to one or more Projects under this SUP. PERMITTEE shall comply with State prevailing wage laws, including, but not limited to, those requirements pursuant to **Exhibit F**, attached.
25. Payment Bond. Prior to the commencement of any Project or Projects on the Premises, PERMITTEE shall deliver to CITY a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract for construction to satisfy claims of material suppliers and of mechanics and laborers employed on the work. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. PERMITTEE shall maintain the bond in full force and effect until all improvements for the work are accepted by CITY and until all claims for materials and labor are paid and must otherwise comply with the Government Code. Should the bond become insufficient, PERMITTEE shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from CITY.
26. Storm Water Program Quality Assurances: 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 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 (San Diego Municipal Code sections 43.0301 to 43.0312).

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).

It is ultimately PERMITTEE's responsibility to prevent pollutant discharges 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.

27. Utilities. All utilities that may be necessary for the use and occupancy of the Premises shall be provided at PERMITTEE's sole cost and expense. If separate metering is not

available at the Premises, payment will be proportional based on estimates of PERMITTEE use, as calculated by CITY in its sole discretion.

28. Campaigning. The Premises shall 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; provided however, that PERMITTEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a “candidates forum” and similar events.
29. Budget, Records, and Inspection. PERMITTEE shall keep accurate and complete books of account indicating all financial transactions made in connection with the Premises. By August 1 of each year of the Term, PERMITTEE shall 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 shall be submitted to the Director on an annual basis by August 1 of each year for the preceding 12 month of the Term. If the Permit was in effect for less than a 12-month period, the submittal shall be for the period of execution of the Permit and July 1, of the current year). In the event of a termination of this Permit, the financial report must be submitted within thirty (30) days of the date of said termination. All budgets and financial reporting shall be in a format acceptable to CITY. PERMITTEE’s accounting records shall be subject to inspection by an authorized representative of CITY at all reasonable times. PERMITTEE shall maintain all such records including allotment charges to gardeners and expenses along with accounts for a minimum period of five (5) years after expiration or termination of the Permit.
30. Non-Discrimination. This SUP is made and accepted upon and subject to the covenant and condition, which will run with the land, that PERMITTEE or any person claiming under or through PERMITTEE will not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use or occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants, or vendees in the Premises, including without limitation the provision of goods, services, facilities, privileges, advantages and accommodations, and the hiring and retention of employees and contractors. Unless an exception applies, PERMITTEE shall also comply with the Equal Benefits Ordinance codified in the San Diego Municipal Code. PERMITTEE is expected to support and adhere to the principles of the City of San

Diego's Equal Employment Opportunity (EEO) policy and the standards of conduct stated in this EEO policy as attached in **Exhibit G**.

31. Smoke/Vape/Drug Free Environment. The Premises provided under this SUP shall be utilized and operated in a smoke, vape, and drug-free environment. PERMITTEE shall make this fact known, both in writing and in oral communication, to participants periodically throughout the Term. PERMITTEE shall document such written or oral communication and provide copies of such to CITY on an annual basis.
32. Insurance. Prior to the execution of this Permit, PERMITTEE shall: (a) provide to CITY insurance certificates reflecting evidence of all insurance required below; however, the CITY reserves the right to request, and the PERMITTEE shall submit, copies of any policy upon reasonable request by the 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, shall 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 the CITY. The PERMITTEE shall not modify any policy or endorsement thereto which increases the CITY's exposure to loss.
 - a. Types of Insurance. At all times during the term of this Permit, PERMITTEE shall maintain insurance coverage as follows and shall deliver to CITY current certificates of insurance for:
 - (1) Commercial General Liability Insurance (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall 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 shall be outside the limits of the policy.
 - (2) Automobile Liability Insurance. For all of the PERMITTEE's automobiles including owned, hired and non-owned automobiles, the PERMITTEE shall 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 shall reflect coverage for any automobile (any auto).

- (3) Worker's Compensation Insurance. For all of the PERMITTEE's employees who are subject to this Permit and to the extent required by the applicable state or federal law, the PERMITTEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the PERMITTEE shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents, and representatives.
- (4) Causes of Loss - Special Form Property Insurance. PERMITTEE shall 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 percent (100%) of the replacement cost.
- b. 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.
- (1) 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 you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.
 - 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 shall be in excess of PERMITTEE's insurance and shall not contribute to it.
 - iii. Severability of Interest. The policy or policies must be endorsed to provide that the PERMITTEE's insurance shall 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 shall provide cross-liability coverage.

(2) 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.
- c. Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Permit shall 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 the 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 of the requirements for policies of insurance provided by admitted carriers described herein.
- d. Deductibles. All deductibles on any insurance policy shall be the responsibility of PERMITTEE and shall be disclosed to the CITY at the time evidence of insurance is provided.
- e. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- f. Modification. To assure protection from and against the kind of extent of risk existing on the Premises, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable reevaluation of risk levels related to PERMITTEE'S use of the Premises.
- g. Accident Reports. PERMITTEE shall immediately report to CITY any accident-causing property damage or injury to persons on the Premises. Such report shall 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.
- h. Indemnification and Hold Harmless. PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees,

representatives, and agents 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, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE's occupancy, use, development, maintenance or restoration of the Premises, and all expenses of investigating and defending against same; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any claims asserted or established liability arising from the sole negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election 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 shall pay all of the related costs.

33. Accessibility Requirements. PERMITTEE will, 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 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (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:
- a. PERMITTEE shall 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.
 - b. 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.
 - c. PERMITTEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
 - d. Where required by law, all improvements, fixtures, structures, or installations on the Premises shall 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; and

- e. PERMITTEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the provisions.
 - f. PERMITTEE and each of its sublicensees shall be individually responsible for their own ADA employment programs. PERMITTEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this SUP.
34. 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).
- 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 shall 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."
35. PERMITTEE'S Risk. PERMITTEE shall 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.
36. No Nuisance. PERMITTEE shall 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).
37. Assignment and Sublease. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's prior written consent, in each instance, which may be withheld or delayed in CITY's sole and absolute discretion. Any assignment by operation of law shall automatically terminate this SUP.
38. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising on the Premises or any CITY-owned property without CITY's prior written consent. If any such unauthorized item is found on the Premises or any CITY-owned property, PERMITTEE shall 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. At

the City's request, PERMITTEE shall, at all times during the Permit Term, maintain a CITY -approved sign identifying the property as CITY -owned and available for public use consistent with the terms of this Permit. The sign shall be provided by CITY and installed by Permittee at a location agreeable to CITY.

39. Encumbrances. PERMITTEE shall keep the Premises and any CITY-owned property of which the Premises is a part 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, or restoration of the Premises. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/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 record a lien or encumber the Premises or City-owned property pursuant to of the California Civil Code or other applicable sections thereof.
40. Compliance with Laws. PERMITTEE shall, at its sole cost and expense, comply with all the all rules, regulations, ordinances, laws and direction of all CITY, county, state, and federal governing authorities now in effect or which may hereafter be in effect, which pertain to PERMITTEE's occupancy, use, development, maintenance, and restoration of the Premises. Violation of this provision shall be cause for immediate revocation of this SUP.
41. Taxes. PERMITTEE shall 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 shall be solely responsible for all and shall pay all such possessory interest taxes. PERMITTEE's payment of such taxes, fees, and assessments shall not reduce any payment due to CITY.
42. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Premises by any of the PERMITTEE's officers, employees, agents, contractors, invitees, and guests. PERMITTEE and PERMITTEE's officers, employees, agents, contractors, invitees, and guests shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises without CITY's prior written consent. PERMITTEE shall, 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.

- a. Remediation. If PERMITTEE's occupancy, use, development, maintenance, repair, or restoration of the Premises results in a release of a Hazardous Substance, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules and regulations of governmental authorities.
- b. 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 shall 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 shall 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 provision.
- c. Indemnity. PERMITTEE shall 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, repair 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.
- d. 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 shall immediately notify CITY and any appropriate regulatory or reporting agency in compliance with California Code of Regulations Title 19 and all other applicable laws or regulations. PERMITTEE shall deliver a written report thereof to CITY within three (3) 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 shall take all actions necessary to alleviate the danger. PERMITTEE shall 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.

- e. 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 shall be obtained at PERMITTEE's sole cost and expense, and shall 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 shall 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 shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, 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 law and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

43. Alcohol. No alcohol may be served or consumed at the Premises at any time.
44. 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, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall 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 shall 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 shall 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 rents shall not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.

45. Cumulative Remedies. CITY's rights and remedies under this SUP are cumulative and shall not limit or otherwise waive or deny any of the CITY's rights or remedies at law or in equity.
46. Survival. Any obligation which accrues under this SUP prior to the expiration or termination of this Permit shall survive such expiration or termination.
47. Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for each and every obligation of PERMITTEE under this SUP.
48. No Affiliation. Nothing contained in this SUP shall 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.
49. Entire Agreement. This SUP, 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 SUP and PERMITTEE's occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration, or amendment of this SUP shall be in writing and signed by all the parties hereto.
50. Notices. Any notice required or permitted to be given under this SUP shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE as follows:

Bayside Community Center
Kim Heinle, Executive Director
2202 Comstock Street,
San Diego, CA 92111

And to the CITY as follows:
THE CITY OF SAN DIEGO
ATTENTION: Steve Palle, Deputy Director, Community Parks I Division
City of San Diego Parks and Recreation Department
2125 Park Blvd, 4th Floor
San Diego, CA 92101

51. Authority to Contract. Each individual executing this SUP 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. Upon request, each person executing this Permit on behalf of PERMITTEE shall provide CITY with evidence, satisfactory to CITY, that such authority is valid, and that PERMITTEE 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.

52. Acceptance of Premises. By signing this SUP, 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 Permit Use. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Premises in entering into this Permit. PERMITTEE accepts the Premises in its current condition and acknowledges and agrees that CITY has fulfilled all obligations, if any, to improve, modify, repair, replace, alter, or otherwise develop the Premises prior to the Effective Date. PERMITTEE accepts and assumes all risk of harm to all persons and property, Premises, and shall be solely responsible thereof.
53. Abandonment by PERMITTEE. If PERMITTEE abandons the Premises, this Permit shall continue in effect as long as CITY does not terminate this Permit, and CITY may enforce all of its rights and remedies under this Permit and Civil Code Section 1951.4, including without limitation the right to recover any financial damages occurred as result of abandonment.

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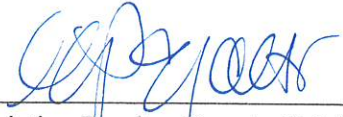
IN WITNESS WHEREOF, this Permit is executed by the CITY OF SAN DIEGO, acting by and through its Parks and Recreation Director pursuant to San Diego Municipal Code Section 22.1502, authorizing such execution, and by PERMITTEE.

PERMITTEE: Bayside Community Center, a California 501(c)(3) Non-Profit Corporation

By: 
Kim Heinle, Executive Director

Date: July 22, 2024


CITY: THE CITY OF SAN DIEGO, a California Municipal Corporation

By: 
Kristina Peralta, Deputy Chief Operating Officer

Date 24 JUL 2024

Approved as to form this 25th day of July, 2024 AS TO FORM:

MARA W. ELLIOTT, City Attorney

By: 

~~MARA W. ELLIOTT~~
Deputy City Attorney

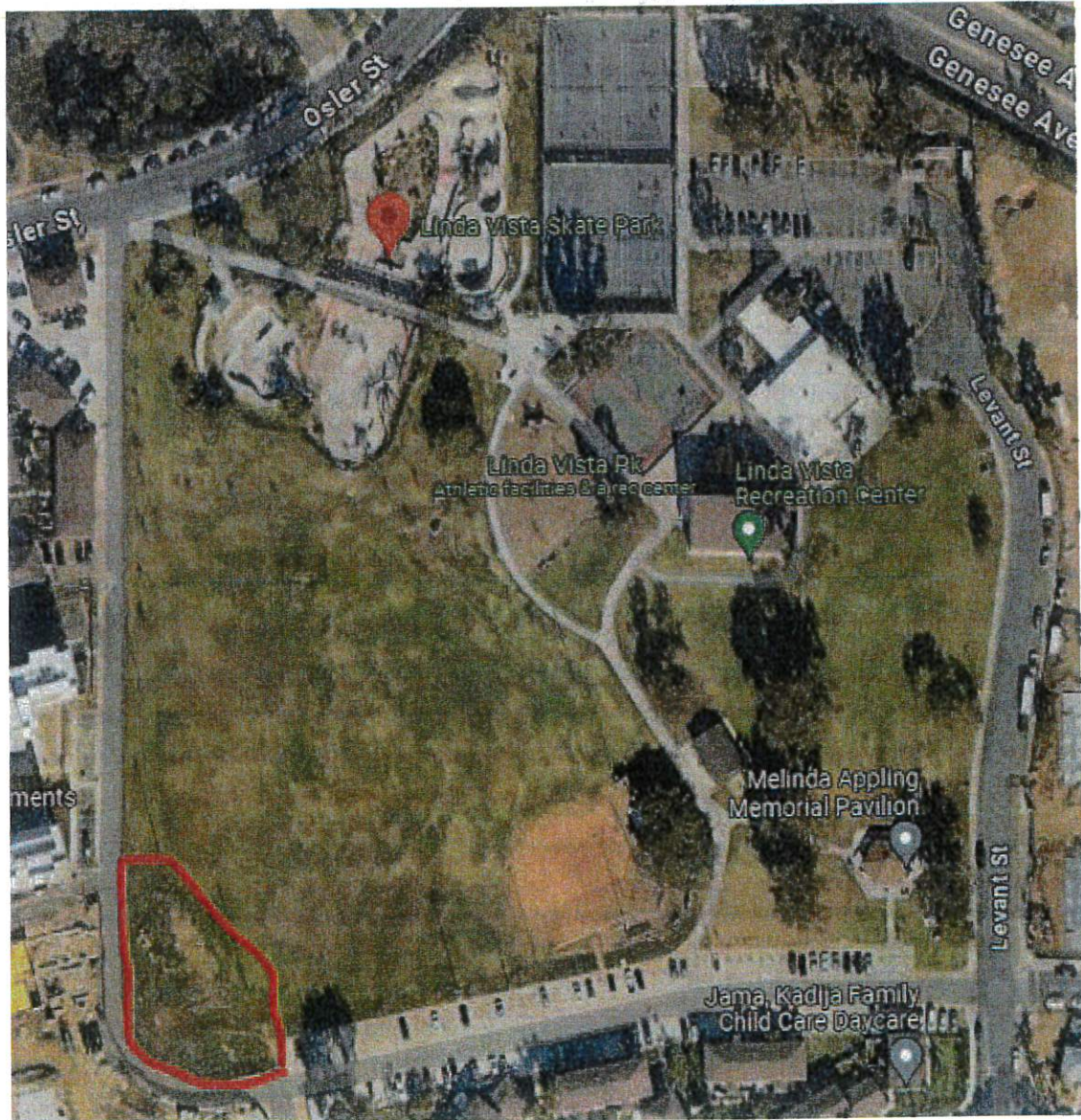
Catherine Morrison

Attachments: Exhibit A - Premises
Exhibit B - List of Subpermittees
Exhibit C - Community Garden plot and Allotment Charges fee schedule
Exhibit D - Community Garden Maintenance Activity Schedule
Exhibit E - Community Garden Guidelines and Agreement
Exhibit F - Prevailing Wage Requirements
Exhibit G - Equal Employment Opportunity (EEO) policy

SPECIAL USE PERMIT

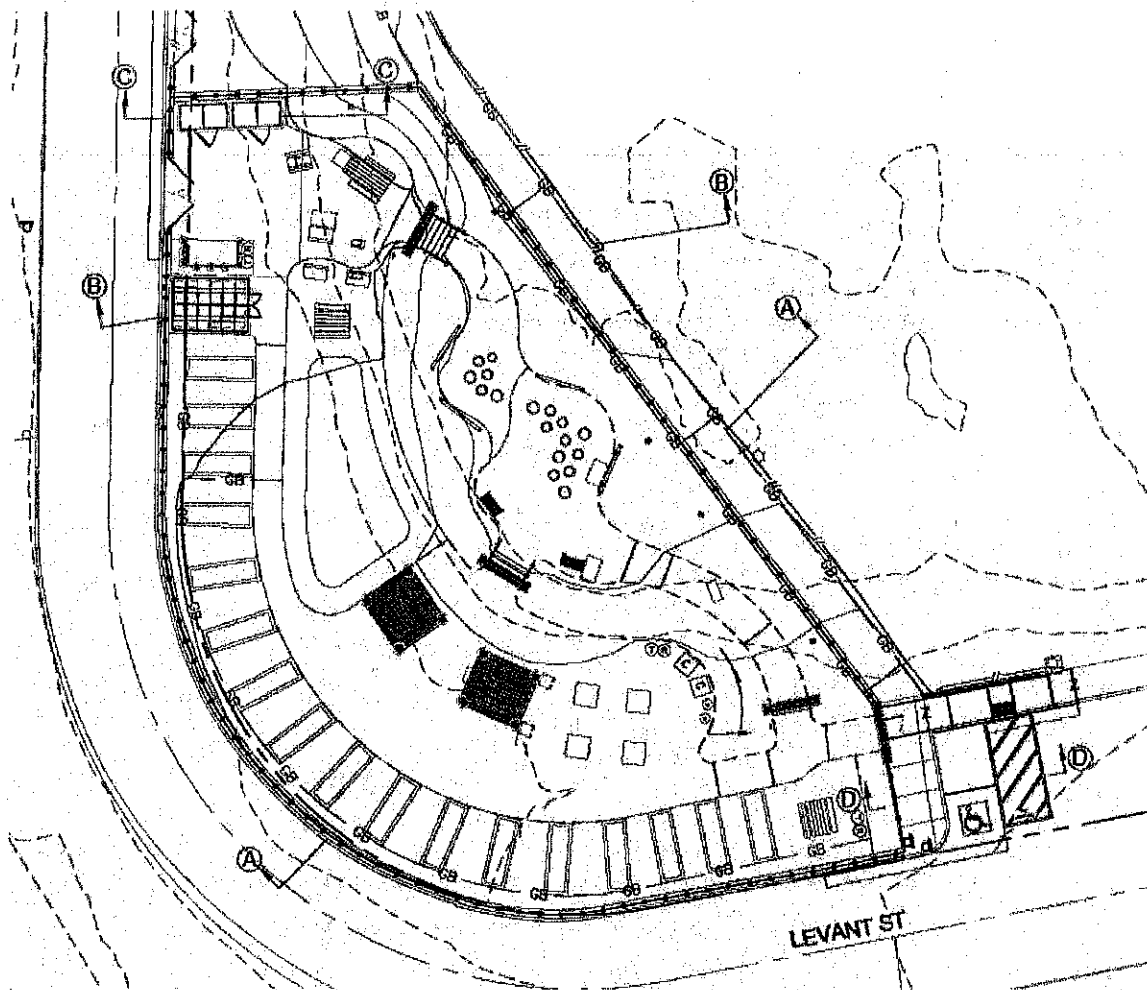
EXHIBIT A: Premises

Description: The premises includes the entire fenced in area of the community garden including fence, landscaping, seventeen (17) 12 x 4 ft planter boxes, four (4) wheel chair accessible raised garden beds, two (2) storage closets, picnic tables, potting benches, trellis', greenhouse dome, tree stumps, sitting benches, and four (4) black board chalk walls. There are various trees, landscaped areas, and DG pathways as well. See attached map.



Map of Linda Vista Community Park – Community Garden identified with red line

SPECIAL USE PERMIT
EXHIBIT A: Premises (continued)



Layout Map for the Linda Vista Community Garden

SPECIAL USE PERMIT
Exhibit B: Subpermittee List

Board Members	First and Last Name	Best Contact information:
Chairperson	Juan Aguilar	
Vice Chairperson	Van Pham	
Executive Director	Kim Heinle	kheinle@baysidecc.org

* If there are no subpermittees, please write none on first line.

SUBPERMITEES				
First Name:	Last Name:	Business Name:	Service Provided and Program Rates:	Agreement Date:
None				

SPECIAL USE PERMIT
Exhibit C - Community Garden Plot and Allotment Charges Fee Schedule

Plot Rental Fee	Fee	Per	Unit
Annual rate (12'x4') Plot	\$ 144.00	per	Year
	\$ -	per	Month
	\$ -	per	

*Rental fee waived for four (4) table top planters for wheel chair accessible.

Allotment Fees	Fee	Per	Unit
Additional allotment fees for utilities or maintenance:			
None	\$ -	per	month

*If allotment fees are included in Plot rental fee, please write "None" in first box

SPECIAL USE PERMIT

EXHIBIT D: Community Garden Maintenance Activity Schedule

COMMUNITY GARDEN MAINTENANCE ACTIVITY SCHEDULE (Sample)

Version 2

Park and Recreation Department

The following list of garden maintenance tasks and schedule is provided as a guideline to assist organizations and individuals in managing a community garden. Not all community gardeners will require the completion of all the tasks set out in the sample schedule. Gardens may vary in design, layout and garden elements and therefore the best maintenance practices associated with the garden will vary in a corresponding manner. Organizations are encouraged to develop their own maintenance activity schedule.

ACTIVITY	BY WHOM	FREQUENCY	MONTH ACTIVITY PERFORMED	COMMENT
	PR OC G OC	D W M Y AR	J F M A M J J A S O N D	
ORGANIZATIONAL ISSUES				
Annual plot assignment	X			X
Rules & task assignment	X			X
Update gardener contract info	X			X
GENERAL CLEAN-UP				
Common area	X	X	X X X X X X X X X X X X	
Individual plots	X	X	X X X X X X X X X X X X	
Graffiti removal	X		X X X X X X X X X X X X	
Leaf removal	X			X X X
Trash removal	X	X	X X X X X X X X X X X X	
SIDEWALKS				
Trash & weed removal	X	X	X X X X X X X X X X X X	
SOIL				
Garden-wide renewal	X		X X	X X
Test-lead	X		X X	X X
Test-pH	X		X X	X X
WATER SYSTEM				
Inspect functioning	X X X	X		X
Annual System Check		X	X	
Leak check & repair	X X	X	X X X X X X X X	
Meter operational	X X	X		X X
PU Inspections		X		X X
FENCES/GATES, WALLS & MOW BANDS				
General repairs	X	X	X X	X X
Carpentry repairs	X	X	X X	X X
Masonry repairs	X	X	X X	X X
Metalwork repairs	X	X	X X	X X
Paint	X	X	X X	X
Inspect gates & locks	X X	X	X X X X X X X X X X X X	

EXHIBIT D: Community Garden Maintenance Activity Schedule (continued)

ACTIVITY	BY WHOM				FREQUENCY				MONTH ACTIVITY PERFORMED												COMMENT
	PR	GC	G	OC	D	W	M	Y	AR	J	F	M	A	M	J	J	A	S	O	N	D
Lubricate gates & locks		X	X					X		X	X	X	X	X	X	X	X	X	X	X	
Maintain universal lock		X					X			X	X	X	X	X	X	X	X	X	X	X	
RAISED BEDS																					
Wall, edge inspection		X		X				X											X	X	
Repairs		X						X											X	X	
DELIVERY AREA																					
General clean-up			X				X				X	X	X	X	X	X	X	X	X	X	
Weed			X				X				X	X	X	X	X	X	X	X	X	X	
Surface renewal			X					X			X	X	X	X	X	X	X	X	X	X	
COMPOST FACILITY																					
General clean-up			X			X					X	X	X	X	X	X	X	X			
PATHS																					
Surface inspection		X		X				X			X	X						X	X	X	
Surface renewal			X				X					X	X	X	X	X	X	X	X	X	
Edge			X	X				X				X	X	X	X	X	X				
Litter & debris pickup			X			X				X	X	X	X	X	X	X	X	X	X	X	
Rake			X					X			X	X					X	X			
PLOT DIVIDERS																					
General inspection		X						X			X	X	X					X	X		
Repair				X				X			X	X	X					X	X		
TREES																					
General inspection		X	X	X				X				X					X				
Fertilize		X	X	X				X			X	X		X							
Prune		X	X	X				X			X	X	X				X	X	X		
Water			X					X			X	X	X	X	X	X					
Mulch maintenance			X					X			X	X	X								
Plant replacement		X	X	X				X			X	X	X				X	X	X		
SHRUBS																					
General inspection		X	X	X				X				X					X				
Fertilize		X	X	X				X			X	X	X								
Prune		X	X	X				X			X	X	X				X	X			
Water			X			X					X	X	X	X	X	X					
Mulch maintenance			X					X				X	X				X	X			
Plant replacement		X	X	X				X			X	X	X				X	X			

EXHIBIT D: Community Garden Maintenance Activity Schedule (continued)

ACTIVITY	BY WHOM				FREQUENCY				MONTH ACTIVITY PERFORMED												COMMENT	
	PR	GC	G	OC	D	W	M	Y	AR	J	F	M	A	M	J	J	A	S	O	N		D
GROUND COVER																						
General inspection		X	X	X				X					X									
Weed			X			X																
Water			X					X			X	X	X	X	X	X	X					
Mulch maintenance			X					X				X	X			X	X					
Plant replacement		X	X	X				X			X	X	X			X	X					
PERENNIALS																						
General inspection		X	X	X				X					X	X		X	X					
Weed			X			X						X	X	X	X	X	X					
Divide plants		X	X	X				X				X				X	X					
Water			X			X					X	X	X	X	X	X	X					
Mulch maintenance			X					X				X	X									
Plant replacement		X	X	X				X				X	X			X	X					
ANNUALS																						
Plant			X					X				X	X			X	X					
General inspection		X	X	X				X				X	X	X	X	X	X					
Weed			X					X				X	X	X	X	X	X					
Remove dead plants			X			X						X	X	X	X	X	X					
Water			X			X						X	X	X	X	X	X					
Mulch maintenance		X	X					X				X	X									
GRASS																						
General inspection		X	X			X						X	X									
Mow			X			X						X	X	X	X	X	X					
Edge			X					X				X	X	X	X	X	X					
Water			X					X				X	X	X	X	X	X					
Weed			X				X				X	X	X	X	X	X	X	X	X			
Fertilize/lime			X	X				X				X	X			X	X					
Aerate			X	X				X				X	X	X	X	X	X					
Seed or sod				X				X				X	X			X	X					
PEST CONTROLS																						
Garden plots			X		X					X		X	X	X	X	X	X					
Common plantings		X	X	X			X					X	X			X	X					
STRUCTURES																						
General inspection		X	X	X				X				X	X	X	X	X	X					
Metalwork repairs				X				X				X	X	X	X	X	X					
Carpentry repairs				X				X				X	X	X	X	X	X					
Paint			X	X				X				X	X	X	X	X						

EXHIBIT D: Community Garden Maintenance Activity Schedule (continued)

ACTIVITY	BY WHOM				FREQUENCY					MONTH ACTIVITY PERFORMED												COMMENT
	PR	GC	G	OC	D	W	M	Y	AR	J	F	M	A	M	J	J	A	S	O	N	D	
SITE FURNISHINGS																						
General inspection		X	X									X	X	X	X	X	X	X	X			
Carpentry repairs				X								X	X	X	X	X	X	X	X			
Metalwork repairs				X								X	X	X	X	X	X	X	X			
Paint			X	X								X	X	X	X	X	X	X				
MAJOR EQUIPMENT																						
General inspection		X	X	X				X			X	X	X	X					X	X	X	
Preventative maintenance		X	X	X				X			X	X	X	X	X	X	X	X	X	X	X	
Repairs		X	X	X				X			X	X	X	X	X	X	X	X	X	X	X	
SIGNS																						
General inspection		X	X					X			X	X	X	X	X	X	X	X	X	X	X	
Repairs		X	X					X			X	X	X	X	X	X	X	X	X	X	X	
OTHER																						

AR= As Required
 PR= Park and Recreation
 OC= Outside Contractor
 GC= Garden Coordinator
 G= Gardeners

SPECIAL USE PERMIT
EXHIBIT E: Community Garden Guidelines and Agreement



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SINCE 1932

**Linda Vista Community Garden Guidelines and Agreement
(Sample for (LVCG) application)**

All gardeners are required to read these site guidelines and/or have the garden guidelines read to them in their native language (if needed) and sign to signify their agreement to the terms and conditions of receiving a garden bed and utilizing the Linda Vista Community Garden (LVCG). A signed agreement is required before Bayside Community Center (BCC) will provide a member with a garden bed and access to the LVCG site. Bayside will provide this document in the client's native language, if requested.

General Rules, Terms, and Conditions for Participation

- The garden is located in southwest corner of The Linda Vista Community Park, owned by the City of San Diego. Bayside Community Center is operating the Linda Vista Community Garden under a permit with the City of San Diego.
- The garden is open to for use from dawn till dusk, or during the hours defined by the City of San Diego Parks and Recreation.
- The annual fee for plot # __ is \$144 for 365 commencing on the date of this agreement. You may pay this amount by cash, check made out to Bayside Community Center, or online at www.baysideccc.org/donate (mention garden rental fee in the comment).
- Gardeners will commit to attending two introductory educational workshops on garden planning and efficient water conservation and irrigation practices before getting access to their garden bed.
- Once the gardener has been assigned a garden bed, the gardener will cultivate and plant the raised bed within 2 weeks (pending construction), and then will garden year-round. The raised bed cannot be left fallow or unused for any period of 3 weeks or longer during any 1-year period. If this occurs, the gardener's plot will be put on a 30-day probation, after which it will be reassigned to another interested party should no improvements be made. No refunds will be made for payments already made. the rental of the plot through the first year.
- Water conservation is a top priority. Not only is water a costly commodity, but it is also a precious resource that we need to conserve. The gardener's yearly rental fee will be determined by the water use of the garden from the previous year starting after the garden is in operation for 1 year. Bayside will install drip irrigation in the garden boxes, that will be controlled with an irrigation timer. Drip irrigation slows down the water and gives your

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Phone: (858) 278-0771 | www.baysideccc.org | Tax ID: 95-1652902

SPECIAL USE PERMIT

EXHIBIT E: Community Garden Guidelines and Agreement (continued)



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plants a better chance of absorbing more water while conserving the amount used. This method will increase the gardener's harvest and the health of their plants. It is strictly prohibited to use any other form of irrigation (i.e., hose) in the garden plot between the hours of 10:00 am and 6:00 pm per the City of San Diego Public Utilities Department Water and Wastewater. If the gardener must water with a hose, it must be done before 10:00am or after 6:00pm. If Bayside CC is cited in violation of this rule, the gardener at fault will be held responsible for any fines incurred and that gardener will lose their garden privileges immediately.

- LVCG is an organic, pesticide-free garden. The use of pesticides is strictly prohibited and is cause for immediate removal of garden privileges.
- It takes a village to care for all areas of the garden. In exchange for membership and garden bed rental, gardeners must complete at least 2 Volunteer Hours per month in one or more areas listed below. Failure to adhere to this policy will result in loss of garden privileges.

- 1) Volunteer on a committee to help with maintenance of the garden.
- 2) Support group Volunteer Events
- 3) Regularly contribute to completing the list of jobs posted in the garden.

**If the gardener works on their own, they will mark their hours of volunteer time on the appropriate sheet and will indicate what tasks by signing initials and date completed. Questions on how to complete tasks should be directed to Garden Coordinators.*

- Tools that are provided by the LVCG should be used at one's own risk. All tools must be cleaned and returned to the garden shed after each use. Use of any small engine machinery is NOT allowed.
- Gardeners will only plant within their 12 x 4 ft garden box.
- Adding trellising for climbing vegetables is permitted, but only after neighboring garden bed owners are made aware. Trellising cannot block sunlight from their neighbor's garden planter or it will be removed. Height limit of the trellis cannot exceed 6ft.
- Gardeners will not make any duplicate garden shed keys of any locks at the garden or give the key or combination code to any other person. If the gardener loses their garden shed key, they must contact Bayside Garden Coordinators. A new key will be provided at a fee of \$10 per key.

SPECIAL USE PERMIT
EXHIBIT E: Community Garden Guidelines and Agreement (continued)



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SINCE 1932

-
- Gardeners or guests will not take food (produce) or plants from other gardeners' plots or common areas and they may not take anything from the garden that is not rightfully theirs. Picking, sampling, and gleaning from other plots is strictly prohibited.
 - Opportunities to share produce grown in orchard area will be available to those who complete their regular monthly volunteer commitment.
 - Seed Share. Gardeners may share any leftover or harvested seeds by placing them in an envelope with planting instructions and placing them in the appropriate place in the garden shed. Only organic seeds may be planted in the garden.
 - Bayside Seed Library is available for gardeners to take up to 3 packages per month per gardener.
 - There are two garden sheds on the premises, please use the shed designated for gardeners only.
 - Smoking of any substance, drinking of alcoholic beverages, use of illegal drugs, gambling, bringing weapons into the premise, and cultivating any illegal plants is **NOT** permitted at anytime. This includes cigarettes and vaping.
 - We love pets – only service Dogs will be allowed in the garden and must be leashed and under owner control when in the LVCG garden.
 - If any disagreements occur among gardeners and cannot be resolved. The matter should be brought to Bayside Community Center Management to help mediate and resolve.
 - Gardeners will make sure to lock all gates while gardening inside the without a Bayside staff present.

Individual Commitment

- I will abide by the following rules, terms, and conditions:
- I am a resident of the Linda Vista Community
- Before obtaining access to plant my garden bed, I will attend two educational workshops to learn;

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SPECIAL USE PERMIT

EXHIBIT E: Community Garden Guidelines and Agreement (continued)



EMPOWERING OUR COMMUNITY
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-
- 1) When to plant seasonally appropriate crops, and how to create a garden plan.
Date completed _____
 - 2) Efficient water techniques, including use of drip irrigation.
Date completed _____
 - I will keep my plants within the limits of my garden bed and not allow any plants to grow more than 6ft high.
 - I will NOT plant any fruit trees, grape vines, or passion fruit vines or invasive plants in my garden bed.
 - I will keep my plot, paths, and surrounding areas clean and neat. Dead plants, leaves, and other green plant parts including cardboard should be placed in the designated compost bin area. All these materials must be chopped up in 4-inch pieces before placing in the compost bin.
 - I will not sell or transfer my plot to another. I will not sell produce I grow for profit.
 - I will respect other gardeners. I will not use abusive or profane language or discriminate against others.
 - I will make sure all gates are locked and secured if I'm in the garden alone and when I leave
 - I forfeit my right to sue Bayside Community Center and The Linda Vista Community Garden and their representatives.
 - I have signed the provided Liability Waiver.
 - I have read and understand the application and accept these rules, terms, and conditions stated above for the participation in the Linda Vista Community Garden.
 - Payment received date _____
 - Renewal date _____

THE INFORMATION BELOW MUST BE FILLED IN COMPLETELY!!
NO REFUNDS will be made for garden payments made under any circumstances.

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SPECIAL USE PERMIT
EXHIBIT E: Community Garden Guidelines and Agreement (continued)



EMPOWERING OUR COMMUNITY
SINCE 1932

Name _____

Address _____

City _____ State _____ Zip _____

Phone Number _____ Email _____

Signature _____

Date _____

PLEASE RETURN THIS SIGNED CONTRACT TO BAYSIDE COMMUNITY CENTER OR
a BAYSIDE EMPLOYEE _____

If you have question regarding this contract, please contact Amy Zink at 858-278-0771
azink@baysidecc.org or Kim Hanson at khanson@baysidecc.org 858-278-0771

Thank you and happy gardening!

SPECIAL USE PERMIT
Exhibit F – Prevailing Wage Requirements

By signing this SUP, 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 SUP is subject to State prevailing wage laws. For construction work performed under this SUP cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this SUP 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 SUP 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 SUP. 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 SUP 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 SUP, each successive predetermined wage rate shall apply to this SUP 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 SUP, such wage rate shall apply to the balance of the SUP.

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 SUP, 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 SUP.”

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.** Projects are 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), “it 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 SUP, PERMITTEE certifies that he or she has verified that all contractors and subcontractors used on Projects 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 SUP 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 SUP at any time during performance of this SUP, 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 SUP prior to said contractors or subcontractors performing work on this SUP. Additionally, PERMITTEE shall provide the CITY with a complete list of all contractors or subcontractors utilized on this SUP (regardless of tier), within ten (10) working days of the completion of the work authorized by this SUP, 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 G – Equal Employment Opportunity 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@sandiego.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.

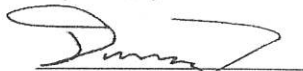
Employee Assistance Program (EAP). City employees have access to confidential emotional support, assistance, and resources to address employees' personal work-life concerns and emotional well-being, at no cost, through the City's EAP. EAP professionals are available 24/7 to discuss employee and household 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

7/12/2024

Attachment A

Environmental Determination	
Environmental Planner	Tara Ash-Reynolds (tashreynolds@sandiego.gov)
Project Name	Special Use Permit – Bayside Community Center Linda Vista Community Garden
Environmental Determination	<p>This activity, a Special Use Permit (SUP) between the City of San Diego and Bayside Community Center, a California 501(c)(3) Non-profit Corporation (Permittee), is not a project pursuant to CEQA Guidelines Section 15378(b)(5), as the activity consists of organizational or administrative activities of governments, which do not have the potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, such as Permittee operating the existing Community Garden at Linda Vista Community Park for the sole purpose of maintaining a community garden for public benefit in the community. The Permittee shall ensure that operators of the garden shall follow posted rules relating to water usage, types of species planted (no fruit or potentially invasive species), no use of small engine machinery, no use of pesticides, and operational hours. This activity will not, on its own accord, result in a direct or reasonably foreseeable indirect physical change in the environment. Thus, this activity is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3).</p>
Date Environmental Determination made	7/12/2024

Internal Revenue Service

Department of the Treasury

P. O. Box 2508
Cincinnati, OH 45201

Date: May 7, 2002

Person to Contact:
Kathy Masters ID# 31-04015
Customer Service Representative
Toll Free Telephone Number: 1-877-829-5500
8:00 a.m. to 6:30 p.m. EST
877-829-5500
Fax Number:
513-263-3756
Federal Identification Number:
95-1652802

Bayside Community Center
P.O. Box 712525
San Diego, CA 92171-2525

Dear Sir or Madam:

This letter is in response to the amendment to your organization's Article of Incorporation filed with the state on March 1, 2001. We have updated our records to reflect the name change as indicated above.

Our records indicate that a determination letter issued in September 1977 granted your organization exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. That letter is still in effect.

Based on information subsequently submitted, we classified your organization as one that is not a private foundation within the meaning of section 509(a) of the Code because it is an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

This classification was based on the assumption that your organization's operations would continue as stated in the application. If your organization's sources of support, or its character, method of operations, or purposes have changed, please let us know so we can consider the effect of the change on the exempt status and foundation status of your organization.

Your organization is required to file Form 990, Return of Organization Exempt from Income Tax, only if its gross receipts each year are normally more than \$25,000. If a return is required, it must be filed by the 15th day of the fifth month after the end of the organization's annual accounting period. The law imposes a penalty of \$20 a day, up to a maximum of \$10,000, when a return is filed late, unless there is reasonable cause for the delay.

All exempt organizations (unless specifically excluded) are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more paid to each employee during a calendar year. Your organization is not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Organizations that are not private foundations are not subject to the excise taxes under Chapter 42 of the Code. However, these organizations are not automatically exempt from other federal excise taxes.

Donors may deduct contributions to your organization as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to your organization or for its use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Bayside Community Center
95-1652902

Your organization is not required to file federal income tax returns unless it is subject to the tax on unrelated business income under section 511 of the Code. If your organization is subject to this tax, it must file an income tax return on the Form 990-T, Exempt Organization Business Income Tax Return. In this letter, we are not determining whether any of your organization's present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

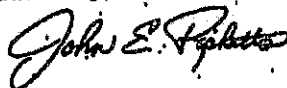
The law requires you to make your organization's annual return available for public inspection without charge for three years after the due date of the return. If your organization had a copy of its application for recognition of exemption on July 15, 1987, it is also required to make available for public inspection a copy of the exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing. You can charge only a reasonable fee for reproduction and actual postage costs for the copied materials. The law does not require you to provide copies of public inspection documents that are widely available, such as by posting them on the Internet (World Wide Web). You may be liable for a penalty of \$20 a day for each day you do not make these documents available for public inspection (up to a maximum of \$10,000 in the case of an annual return).

Because this letter could help resolve any questions about your organization's exempt status and foundation status, you should keep it with the organization's permanent records.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

This letter affirms your organization's exempt status.

Sincerely,



John E. Ricketts, Director, TE/GE
Customer Account Services



BAYSCOM-01

AORSIN

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/8/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Fusco & Orsini Insurance Services, Inc. 5095 Murphy Canyon Road, Suite 200 San Diego, CA 92123	CONTACT NAME:	
	PHONE (A/C, No, Ext): (858) 384-1506 FAX (A/C, No): (800) 209-9298 E-MAIL ADDRESS: service@foagency.com	
INSURED Bayside Community Center PO Box 712525 San Diego, CA 92171	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Philadelphia Indemnity Ins. Co.	18058
	INSURER B: Employers Preferred Insurance Company	10346
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

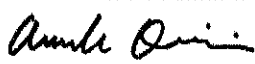
INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	PHPK2601128	9/15/2023	9/15/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			PHPK2601128	9/15/2023	9/15/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			PHUB881155	9/15/2023	9/15/2024	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	EIG285280604	7/1/2023	7/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liability			PHPK2601128	9/15/2023	9/15/2024	Aggregate 3,000,000
A	Abuse & Molestation			PHPK2601128	9/15/2023	9/15/2024	Aggregate 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of San Diego, its officers, officials, employees and volunteers are additional insured per endorsement on general liability only. Primary wording and waivers of subrogation apply.

CERTIFICATE HOLDER

CANCELLATION

City of San Diego Purchasing and Contracting 1200 Third Ave., 14th Floor San Diego, CA 92101	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**GENERAL LIABILITY DELUXE ENDORSEMENT:
HUMAN SERVICES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE

It is understood and agreed that the following extensions only apply in the event that no other specific coverage for the indicated loss exposure is provided under this policy. If such specific coverage applies, the terms, conditions and limits of that coverage are the sole and exclusive coverage applicable under this policy, unless otherwise noted on this endorsement. The following is a summary of the Limits of Insurance and additional coverages provided by this endorsement. For complete details on specific coverages, consult the policy contract wording.

Coverage Applicable	Limit of Insurance	Page #
Extended Property Damage	Included	2
Limited Rental Lease Agreement Contractual Liability	\$50,000 limit	2
Non-Owned Watercraft	Less than 58 feet	2
Damage to Property You Own, Rent, or Occupy	\$30,000 limit	2
Damage to Premises Rented to You	\$1,000,000	3
HIPAA	Clarification	4
Medical Payments	\$20,000	5
Medical Payments – Extended Reporting Period	3 years	5
Athletic Activities	Amended	5
Supplementary Payments – Bail Bonds	\$5,000	5
Supplementary Payment – Loss of Earnings	\$1,000 per day	5
Employee Indemnification Defense Coverage	\$25,000	5
Key and Lock Replacement – Janitorial Services Client Coverage	\$10,000 limit	6
Additional Insured – Newly Acquired Time Period	Amended	6
Additional Insured – Medical Directors and Administrators	Included	7
Additional Insured – Managers and Supervisors (with Fellow Employee Coverage)	Included	7
Additional Insured – Broadened Named Insured	Included	7
Additional Insured – Funding Source	Included	7
Additional Insured – Home Care Providers	Included	7
Additional Insured – Managers, Landlords, or Lessors of Premises	Included	7
Additional Insured – Lessor of Leased Equipment	Included	7
Additional Insured – Grantor of Permits	Included	8
Additional Insured – Vendor	Included	8
Additional Insured – Franchisor	Included	9
Additional Insured – When Required by Contract	Included	9
Additional Insured – Owners, Lessees, or Contractors	Included	9
Additional Insured – State or Political Subdivisions	Included	10

Duties in the Event of Occurrence, Claim or Suit	Included	10
Unintentional Failure to Disclose Hazards	Included	10
Transfer of Rights of Recovery Against Others To Us	Clarification	10
Liberalization	Included	11
Bodily Injury – includes Mental Anguish	Included	11
Personal and Advertising Injury – includes Abuse of Process, Discrimination	Included	11

A. Extended Property Damage

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Subsection 2. **Exclusions**, Paragraph a. is deleted in its entirety and replaced by the following:

a. Expected or Intended Injury

"Bodily injury" or property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

B. Limited Rental Lease Agreement Contractual Liability

SECTION I – COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Subsection 2. **Exclusions**, Paragraph b. **Contractual Liability** is amended to include the following:

- (3) Based on the named insured's request at the time of claim, we agree to indemnify the named insured for their liability assumed in a contract or agreement regarding the rental or lease of a premises on behalf of their client, up to \$50,000. This coverage extension only applies to rental lease agreements. This coverage is excess over any renter's liability insurance of the client.

C. Non-Owned Watercraft

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Subsection 2. **Exclusions**, Paragraph g. (2) is deleted in its entirety and replaced by the following:

- (2) A watercraft you do not own that is:

- (a) Less than 58 feet long; and
- (b) Not being used to carry persons or property for a charge;

This provision applies to any person, who with your consent, either uses or is responsible for the use of a watercraft. This insurance is excess over any other valid and collectible insurance available to the insured whether primary, excess or contingent.

D. Damage to Property You Own, Rent or Occupy

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE

LIABILITY, Subsection 2. **Exclusions**, Paragraph j. **Damage to Property**, Item (1) is deleted in its entirety and replaced with the following:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property, unless the damage to property is caused by your client, up to a \$30,000 limit. A client is defined as a person under your direct care and supervision.

E. Damage to Premises Rented to You

1. If damage by fire to premises rented to you is not otherwise excluded from this Coverage Part, the word "fire" is changed to "fire, lightning, explosion, smoke, or leakage from automatic fire protective systems" where it appears in:

- a. The last paragraph of **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Subsection 2. **Exclusions**; is deleted in its entirety and replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE**.

- b. **SECTION III – LIMITS OF INSURANCE**, Paragraph 6. is deleted in its entirety and replaced by the following:

Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems while rented to you or temporarily occupied by you with permission of the owner.

- c. **SECTION V – DEFINITIONS**, Paragraph 9.a., is deleted in its entirety and replaced by the following:

A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

2. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Subsection 4. **Other Insurance**, Paragraph b. **Excess Insurance**, (1) (a) (ii) is deleted in its entirety and replaced by the following:

That is insurance for fire, lightning, explosion, smoke, or leakage from automatic fire protective systems for premises rented to you or temporarily occupied by you with permission of the owner;

3. The Damage To Premises Rented To You Limit section of the Declarations is amended to the greater of:

- a. \$1,000,000; or
- b. The amount shown in the Declarations as the Damage to Premises Rented to You Limit.

This is the most we will pay for all damage proximately caused by the same event, whether such damage results from fire, lightning, explosion, smoke, or leaks from automatic fire protective systems or any combination thereof.

F. HIPAA

SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, is amended as follows:

1. Paragraph 1. **Insuring Agreement** is amended to include the following:

We will pay those sums that the insured becomes legally obligated to pay as damages because of a "violation(s)" of the Health Insurance Portability and Accountability Act (HIPAA). We have the right and the duty to defend the insured against any "suit," "investigation," or "civil proceeding" seeking these damages. However, we will have no duty to defend the insured against any "suit" seeking damages, "investigation," or "civil proceeding" to which this insurance does not apply.

2. Paragraph 2. **Exclusions** is amended to include the following additional exclusions:

This insurance does not apply to:

- a. **Intentional, Willful, or Deliberate Violations**

Any willful, intentional, or deliberate "violation(s)" by any insured.

- b. **Criminal Acts**

Any "violation" which results in any criminal penalties under the HIPAA.

- c. **Other Remedies**

Any remedy other than monetary damages for penalties assessed.

- d. **Compliance Reviews or Audits**

Any compliance reviews by the Department of Health and Human Services.

3. **SECTION V – DEFINITIONS** is amended to include the following additional definitions:

- a. "Civil proceeding" means an action by the Department of Health and Human Services (HHS) arising out of "violations."
- b. "Investigation" means an examination of an actual or alleged "violation(s)" by HHS. However, "investigation" does not include a Compliance Review.
- c. "Violation" means the actual or alleged failure to comply with the regulations included in the HIPAA.

G. Medical Payments – Limit Increased to \$20,000, Extended Reporting Period

If **COVERAGE C MEDICAL PAYMENTS** is not otherwise excluded from this Coverage Part:

1. The Medical Expense Limit is changed subject to all of the terms of **SECTION III - LIMITS OF INSURANCE** to the greater of:
 - a. \$20,000; or
 - b. The Medical Expense Limit shown in the Declarations of this Coverage Part.
2. **SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS**, Subsection 1. **Insuring Agreement**, a. (3) (b) is deleted in its entirety and replaced by the following:
 - (b) The expenses are incurred and reported to us within three years of the date of the accident.

H. Athletic Activities

SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS, Subsection 2. **Exclusions**, Paragraph e. **Athletic Activities** is deleted in its entirety and replaced with the following:

e. Athletic Activities

To a person injured while taking part in athletics.

I. Supplementary Payments

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGE A AND B are amended as follows:

1. b. is deleted in its entirety and replaced by the following:
 1. b. Up to \$5000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these.
- 1.d. is deleted in its entirety and replaced by the following:
 1. d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.

J. Employee Indemnification Defense Coverage

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B the following is added:

We will pay, on your behalf, defense costs incurred by an "employee" in a criminal proceeding occurring in the course of employment.

The most we will pay for any "employee" who is alleged to be directly involved in a criminal proceeding is \$25,000 regardless of the numbers of "employees," claims or "suits" brought or persons or organizations making claims or bringing "suits."

K. Key and Lock Replacement – Janitorial Services Client Coverage

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B is amended to include the following:

We will pay for the cost to replace keys and locks at the "clients" premises due to theft or other loss to keys entrusted to you by your "client," up to a \$10,000 limit per occurrence and \$10,000 policy aggregate.

We will not pay for loss or damage resulting from theft or any other dishonest or criminal act that you or any of your partners, members, officers, "employees", "managers", directors, trustees, authorized representatives or any one to whom you entrust the keys of a "client" for any purpose commit, whether acting alone or in collusion with other persons.

The following, when used on this coverage, are defined as follows:

a. "Client" means an individual, company or organization with whom you have a written contract or work order for your services for a described premises and have billed for your services.

b. "Employee" means:

(1) Any natural person:

- (a) While in your service or for 30 days after termination of service;
- (b) Who you compensate directly by salary, wages or commissions; and
- (c) Who you have the right to direct and control while performing services for you; or

(2) Any natural person who is furnished temporarily to you:

- (a) To substitute for a permanent "employee" as defined in Paragraph (1) above, who is on leave; or
- (b) To meet seasonal or short-term workload conditions;

while that person is subject to your direction and control and performing services for you.

(3) "Employee" does not mean:

- (a) Any agent, broker, person leased to you by a labor leasing firm, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
- (b) Any "manager," director or trustee except while performing acts coming within the scope of the usual duties of an "employee."

c. "Manager" means a person serving in a directorial capacity for a limited liability company.

L. Additional Insureds

SECTION II – WHO IS AN INSURED is amended as follows:

1. If coverage for newly acquired or formed organizations is not otherwise excluded from this

Coverage Part, Paragraph 3.a. is deleted in its entirety and replaced by the following:

- a. Coverage under this provision is afforded until the end of the policy period.
2. Each of the following is also an insured:
- a. **Medical Directors and Administrators** – Your medical directors and administrators, but only while acting within the scope of and during the course of their duties as such. Such duties do not include the furnishing or failure to furnish professional services of any physician or psychiatrist in the treatment of a patient.
 - b. **Managers and Supervisors** – Your managers and supervisors are also insureds, but only with respect to their duties as your managers and supervisors. Managers and supervisors who are your “employees” are also insureds for “bodily injury” to a co-“employee” while in the course of his or her employment by you or performing duties related to the conduct of your business.

This provision does not change Item 2.a.(1)(a) as it applies to managers of a limited liability company.

- c. **Broadened Named Insured** – Any organization and subsidiary thereof which you control and actively manage on the effective date of this Coverage Part. However, coverage does not apply to any organization or subsidiary not named in the Declarations as Named Insured, if they are also insured under another similar policy, but for its termination or the exhaustion of its limits of insurance.
- d. **Funding Source** – Any person or organization with respect to their liability arising out of:
 - (1) Their financial control of you; or
 - (2) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

- e. **Home Care Providers** – At the first Named Insured's option, any person or organization under your direct supervision and control while providing for you private home respite or foster home care for the developmentally disabled.
- f. **Managers, Landlords, or Lessors of Premises** – Any person or organization with respect to their liability arising out of the ownership, maintenance or use of that part of the premises leased or rented to you subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any “occurrence” which takes place after you cease to be a tenant in that premises; or
 - (2) Structural alterations, new construction or demolition operations performed by or on behalf of that person or organization.
- g. **Lessor of Leased Equipment – Automatic Status When Required in Lease Agreement With You** – Any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization is to be added as an additional insured on your policy. Such person or

organization is an insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- h. **Grantors of Permits** – Any state or political subdivision granting you a permit in connection with your premises subject to the following additional provision:
 - (1) This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with the premises you own, rent or control and to which this insurance applies:
 - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;
 - (b) The construction, erection, or removal of elevators; or
 - (c) The ownership, maintenance, or use of any elevators covered by this insurance.
- i. **Vendors** – Only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:
 - (1) The insurance afforded the vendor does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by the vendor;
 - (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in Sub-paragraphs (d) or (f); or
 - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing.
- j. **Franchisor** – Any person or organization with respect to their liability as the grantor of a franchise to you.
- k. **As Required by Contract** – Any person or organization where required by a written contract executed prior to the occurrence of a loss. Such person or organization is an additional insured for "bodily injury," "property damage" or "personal and advertising injury" but only for liability arising out of the negligence of the named insured. The limits of insurance applicable to these additional insureds are the lesser of the policy limits or those limits specified in a contract or agreement. These limits are included within and not in addition to the limits of insurance shown in the Declarations
- l. **Owners, Lessees or Contractors** – Any person or organization, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:
 - (1) Your acts or omissions; or
 - (2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured when required by a contract.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

m. State or Political Subdivisions – Any state or political subdivision as required, subject to the following provisions:

- (1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit, and is required by contract.
- (2) This insurance does not apply to:
 - (a) "Bodily injury," "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard."

M. Duties in the Event of Occurrence, Claim or Suit

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 2. is amended as follows:

a. is amended to include:

This condition applies only when the "occurrence" or offense is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

b. is amended to include:

This condition will not be considered breached unless the breach occurs after such claim or "suit" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

N. Unintentional Failure To Disclose Hazards

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 6. **Representations** is amended to include the following:

It is agreed that, based on our reliance on your representations as to existing hazards, if you should unintentionally fail to disclose all such hazards prior to the beginning of the policy period of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

O. Transfer of Rights of Recovery Against Others To Us

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 8. **Transfer of Rights of**

Recovery Against Others To Us is deleted in its entirety and replaced by the following:

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

Therefore, the insured can waive the insurer's rights of recovery prior to the occurrence of a loss, provided the waiver is made in a written contract.

P. Liberalization

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, is amended to include the following:

If we revise this endorsement to provide more coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

Q. Bodily Injury – Mental Anguish

SECTION V – DEFINITIONS, Paragraph 3. Is deleted in its entirety and replaced by the following:

"Bodily injury" means:

- a. Bodily injury, sickness or disease sustained by a person, and includes mental anguish resulting from any of these; and
- b. Except for mental anguish, includes death resulting from the foregoing (Item a. above) at any time.

R. Personal and Advertising Injury – Abuse of Process, Discrimination

If **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY COVERAGE** is not otherwise excluded from this Coverage Part, the definition of "personal and advertising injury" is amended as follows:

- 1. **SECTION V – DEFINITIONS**, Paragraph 14.b. is deleted in its entirety and replaced by the following:

- b. Malicious prosecution or abuse of process;

- 2. **SECTION V – DEFINITIONS**, Paragraph 14. is amended by adding the following:

Discrimination based on race, color, religion, sex, age or national origin, except when:

- a. Done intentionally by or at the direction of, or with the knowledge or consent of:
 - (1) Any insured; or
 - (2) Any executive officer, director, stockholder, partner or member of the insured;
- b. Directly or indirectly related to the employment, former or prospective employment, termination of employment, or application for employment of any person or persons by an insured;

- c. Directly or indirectly related to the sale, rental, lease or sublease or prospective sales, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured; or
- d. Insurance for such discrimination is prohibited by or held in violation of law, public policy, legislation, court decision or administrative ruling.

The above does not apply to fines or penalties imposed because of discrimination.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**GENERAL LIABILITY DELUXE ENDORSEMENT:
HUMAN SERVICES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE

It is understood and agreed that the following extensions only apply in the event that no other specific coverage for the indicated loss exposure is provided under this policy. If such specific coverage applies, the terms, conditions and limits of that coverage are the sole and exclusive coverage applicable under this policy, unless otherwise noted on this endorsement. The following is a summary of the Limits of Insurance and additional coverages provided by this endorsement. For complete details on specific coverages, consult the policy contract wording.

Coverage Applicable	Limit of Insurance	Page #
Extended Property Damage	Included	2
Limited Rental Lease Agreement Contractual Liability	\$50,000 limit	2
Non-Owned Watercraft	Less than 58 feet	2
Damage to Property You Own, Rent, or Occupy	\$30,000 limit	2
Damage to Premises Rented to You	\$1,000,000	3
HIPAA	Clarification	4
Medical Payments	\$20,000	5
Medical Payments – Extended Reporting Period	3 years	5
Athletic Activities	Amended	5
Supplementary Payments – Bail Bonds	\$5,000	5
Supplementary Payment – Loss of Earnings	\$1,000 per day	5
Employee Indemnification Defense Coverage	\$25,000	5
Key and Lock Replacement – Janitorial Services Client Coverage	\$10,000 limit	6
Additional Insured – Newly Acquired Time Period	Amended	6
Additional Insured – Medical Directors and Administrators	Included	7
Additional Insured – Managers and Supervisors (with Fellow Employee Coverage)	Included	7
Additional Insured – Broadened Named Insured	Included	7
Additional Insured – Funding Source	Included	7
Additional Insured – Home Care Providers	Included	7
Additional Insured – Managers, Landlords, or Lessors of Premises	Included	7
Additional Insured – Lessor of Leased Equipment	Included	7
Additional Insured – Grantor of Permits	Included	8
Additional Insured – Vendor	Included	8
Additional Insured – Franchisor	Included	9
Additional Insured – When Required by Contract	Included	9
Additional Insured – Owners, Lessees, or Contractors	Included	9
Additional Insured – State or Political Subdivisions	Included	10

Duties in the Event of Occurrence, Claim or Suit	Included	10
Unintentional Failure to Disclose Hazards	Included	10
Transfer of Rights of Recovery Against Others To Us	Clarification	10
Liberalization	Included	11
Bodily Injury – includes Mental Anguish	Included	11
Personal and Advertising Injury – includes Abuse of Process, Discrimination	Included	11

A. Extended Property Damage

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Subsection 2. Exclusions, Paragraph a. is deleted in its entirety and replaced by the following:

a. Expected or Intended Injury

“Bodily injury” or property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” or “property damage” resulting from the use of reasonable force to protect persons or property.

B. Limited Rental Lease Agreement Contractual Liability

SECTION I – COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Subsection 2. Exclusions, Paragraph b. Contractual Liability is amended to include the following:

- (3) Based on the named insured's request at the time of claim, we agree to indemnify the named insured for their liability assumed in a contract or agreement regarding the rental or lease of a premises on behalf of their client, up to \$50,000. This coverage extension only applies to rental lease agreements. This coverage is excess over any renter's liability insurance of the client.

C. Non-Owned Watercraft

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Subsection 2. Exclusions, Paragraph g. (2) is deleted in its entirety and replaced by the following:

- (2) A watercraft you do not own that is:

- (a) Less than 58 feet long; and
- (b) Not being used to carry persons or property for a charge;

This provision applies to any person, who with your consent, either uses or is responsible for the use of a watercraft. This insurance is excess over any other valid and collectible insurance available to the insured whether primary, excess or contingent.

D. Damage to Property You Own, Rent or Occupy

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE

LIABILITY, Subsection 2. Exclusions, Paragraph j. Damage to Property, Item (1) is deleted in its entirety and replaced with the following:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property, unless the damage to property is caused by your client, up to a \$30,000 limit. A client is defined as a person under your direct care and supervision.

E. Damage to Premises Rented to You

1. If damage by fire to premises rented to you is not otherwise excluded from this Coverage Part, the word "fire" is changed to "fire, lightning, explosion, smoke, or leakage from automatic fire protective systems" where it appears in:

- a. The last paragraph of **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Subsection 2. Exclusions**; is deleted in its entirety and replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE**.

- b. **SECTION III – LIMITS OF INSURANCE, Paragraph 6.** is deleted in its entirety and replaced by the following:

Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems while rented to you or temporarily occupied by you with permission of the owner.

- c. **SECTION V – DEFINITIONS, Paragraph 9.a.,** is deleted in its entirety and replaced by the following:

A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

2. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Subsection 4. Other Insurance, Paragraph b. Excess Insurance, (1) (a) (ii)** is deleted in its entirety and replaced by the following:

That is insurance for fire, lightning, explosion, smoke, or leakage from automatic fire protective systems for premises rented to you or temporarily occupied by you with permission of the owner;

3. The Damage To Premises Rented To You Limit section of the Declarations is amended to the greater of:

- a. \$1,000,000; or
- b. The amount shown in the Declarations as the Damage to Premises Rented to You Limit.

This is the most we will pay for all damage proximately caused by the same event, whether such damage results from fire, lightning, explosion, smoke, or leaks from automatic fire protective systems or any combination thereof.

F. HIPAA

SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, is amended as follows:

1. Paragraph 1. **Insuring Agreement** is amended to include the following:

We will pay those sums that the insured becomes legally obligated to pay as damages because of a "violation(s)" of the Health Insurance Portability and Accountability Act (HIPAA). We have the right and the duty to defend the insured against any "suit," "investigation," or "civil proceeding" seeking these damages. However, we will have no duty to defend the insured against any "suit" seeking damages, "investigation," or "civil proceeding" to which this insurance does not apply.

2. Paragraph 2. **Exclusions** is amended to include the following additional exclusions:

This insurance does not apply to:

- a. **Intentional, Willful, or Deliberate Violations**

Any willful, intentional, or deliberate "violation(s)" by any insured.

- b. **Criminal Acts**

Any "violation" which results in any criminal penalties under the HIPAA.

- c. **Other Remedies**

Any remedy other than monetary damages for penalties assessed.

- d. **Compliance Reviews or Audits**

Any compliance reviews by the Department of Health and Human Services.

3. **SECTION V – DEFINITIONS** is amended to include the following additional definitions:

- a. "Civil proceeding" means an action by the Department of Health and Human Services (HHS) arising out of "violations."
- b. "Investigation" means an examination of an actual or alleged "violation(s)" by HHS. However, "investigation" does not include a Compliance Review.
- c. "Violation" means the actual or alleged failure to comply with the regulations included in the HIPAA.

G. Medical Payments – Limit Increased to \$20,000, Extended Reporting Period

If **COVERAGE C MEDICAL PAYMENTS** is not otherwise excluded from this Coverage Part:

1. The Medical Expense Limit is changed subject to all of the terms of **SECTION III - LIMITS OF INSURANCE** to the greater of:

- a. \$20,000; or
- b. The Medical Expense Limit shown in the Declarations of this Coverage Part.

2. **SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS**, Subsection 1. **Insuring Agreement**, a. (3) (b) is deleted in its entirety and replaced by the following:

- (b) The expenses are incurred and reported to us within three years of the date of the accident.

H. Athletic Activities

SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS, Subsection 2. **Exclusions**, Paragraph e. **Athletic Activities** is deleted in its entirety and replaced with the following:

e. Athletic Activities

To a person injured while taking part in athletics.

I. Supplementary Payments

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGE A AND B are amended as follows:

1. b. is deleted in its entirety and replaced by the following:

1. b. Up to \$5000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these.

- 1.d. is deleted in its entirety and replaced by the following:

1. d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.

J. Employee Indemnification Defense Coverage

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B the following is added:

We will pay, on your behalf, defense costs incurred by an "employee" in a criminal proceeding occurring in the course of employment.

The most we will pay for any "employee" who is alleged to be directly involved in a criminal proceeding is \$25,000 regardless of the numbers of "employees," claims or "suits" brought or persons or organizations making claims or bringing "suits."

K. Key and Lock Replacement – Janitorial Services Client Coverage

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B is amended to include the following:

We will pay for the cost to replace keys and locks at the "clients" premises due to theft or other loss to keys entrusted to you by your "client," up to a \$10,000 limit per occurrence and \$10,000 policy aggregate.

We will not pay for loss or damage resulting from theft or any other dishonest or criminal act that you or any of your partners, members, officers, "employees", "managers", directors, trustees, authorized representatives or any one to whom you entrust the keys of a "client" for any purpose commit, whether acting alone or in collusion with other persons.

The following, when used on this coverage, are defined as follows:

a. "Client" means an individual, company or organization with whom you have a written contract or work order for your services for a described premises and have billed for your services.

b. "Employee" means:

(1) Any natural person:

- (a) While in your service or for 30 days after termination of service;
- (b) Who you compensate directly by salary, wages or commissions; and
- (c) Who you have the right to direct and control while performing services for you; or

(2) Any natural person who is furnished temporarily to you:

- (a) To substitute for a permanent "employee" as defined in Paragraph (1) above, who is on leave; or
- (b) To meet seasonal or short-term workload conditions;

while that person is subject to your direction and control and performing services for you.

(3) "Employee" does not mean:

- (a) Any agent, broker, person leased to you by a labor leasing firm, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
- (b) Any "manager," director or trustee except while performing acts coming within the scope of the usual duties of an "employee."

c. "Manager" means a person serving in a directorial capacity for a limited liability company.

L. Additional Insureds

SECTION II – WHO IS AN INSURED is amended as follows:

1. If coverage for newly acquired or formed organizations is not otherwise excluded from this

Coverage Part, Paragraph 3.a. is deleted in its entirety and replaced by the following:

- a. Coverage under this provision is afforded until the end of the policy period.
2. Each of the following is also an insured:
- a. **Medical Directors and Administrators** – Your medical directors and administrators, but only while acting within the scope of and during the course of their duties as such. Such duties do not include the furnishing or failure to furnish professional services of any physician or psychiatrist in the treatment of a patient.
 - b. **Managers and Supervisors** – Your managers and supervisors are also insureds, but only with respect to their duties as your managers and supervisors. Managers and supervisors who are your "employees" are also insureds for "bodily injury" to a co-"employee" while in the course of his or her employment by you or performing duties related to the conduct of your business.

This provision does not change Item 2.a.(1)(a) as it applies to managers of a limited liability company.

- c. **Broadened Named Insured** – Any organization and subsidiary thereof which you control and actively manage on the effective date of this Coverage Part. However, coverage does not apply to any organization or subsidiary not named in the Declarations as Named Insured, if they are also insured under another similar policy, but for its termination or the exhaustion of its limits of insurance.
- d. **Funding Source** – Any person or organization with respect to their liability arising out of:
 - (1) Their financial control of you; or
 - (2) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

- e. **Home Care Providers** – At the first Named Insured's option, any person or organization under your direct supervision and control while providing for you private home respite or foster home care for the developmentally disabled.
- f. **Managers, Landlords, or Lessors of Premises** – Any person or organization with respect to their liability arising out of the ownership, maintenance or use of that part of the premises leased or rented to you subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
 - (2) Structural alterations, new construction or demolition operations performed by or on behalf of that person or organization.
- g. **Lessor of Leased Equipment – Automatic Status When Required in Lease Agreement With You** – Any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization is to be added as an additional insured on your policy. Such person or

organization is an insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- h. **Grantors of Permits** – Any state or political subdivision granting you a permit in connection with your premises subject to the following additional provision:
 - (1) This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with the premises you own, rent or control and to which this insurance applies:
 - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;
 - (b) The construction, erection, or removal of elevators; or
 - (c) The ownership, maintenance, or use of any elevators covered by this insurance.
- i. **Vendors** – Only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:
 - (1) The insurance afforded the vendor does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by the vendor;
 - (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in Sub-paragraphs (d) or (f); or
 - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing.
- j. Franchisor** – Any person or organization with respect to their liability as the grantor of a franchise to you.
- k. As Required by Contract** – Any person or organization where required by a written contract executed prior to the occurrence of a loss. Such person or organization is an additional insured for "bodily injury," "property damage" or "personal and advertising injury" but only for liability arising out of the negligence of the named insured. The limits of insurance applicable to these additional insureds are the lesser of the policy limits or those limits specified in a contract or agreement. These limits are included within and not in addition to the limits of insurance shown in the Declarations
- l. Owners, Lessees or Contractors** – Any person or organization, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:
 - (1) Your acts or omissions; or
 - (2) The acts or omissions of those acting on your behalf;
 in the performance of your ongoing operations for the additional insured when required by a contract.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

m. State or Political Subdivisions – Any state or political subdivision as required, subject to the following provisions:

- (1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit, and is required by contract.
- (2) This insurance does not apply to:
 - (a) "Bodily injury," "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard."

M. Duties in the Event of Occurrence, Claim or Suit

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 2. is amended as follows:

a. is amended to include:

This condition applies only when the "occurrence" or offense is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

b. is amended to include:

This condition will not be considered breached unless the breach occurs after such claim or "suit" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

N. Unintentional Failure To Disclose Hazards

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 6. Representations is amended to include the following:

It is agreed that, based on our reliance on your representations as to existing hazards, if you should unintentionally fail to disclose all such hazards prior to the beginning of the policy period of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

O. Transfer of Rights of Recovery Against Others To Us

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 8. Transfer of Rights of

Recovery Against Others To Us is deleted in its entirety and replaced by the following:

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

Therefore, the insured can waive the insurer's rights of recovery prior to the occurrence of a loss, provided the waiver is made in a written contract.

P. Liberalization

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, is amended to include the following:

If we revise this endorsement to provide more coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

Q. Bodily Injury – Mental Anguish

SECTION V – DEFINITIONS, Paragraph 3. Is deleted in its entirety and replaced by the following:

"Bodily injury" means:

- a. Bodily injury, sickness or disease sustained by a person, and includes mental anguish resulting from any of these; and
- b. Except for mental anguish, includes death resulting from the foregoing (Item a. above) at any time.

R. Personal and Advertising Injury – Abuse of Process, Discrimination

If **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY COVERAGE** is not otherwise excluded from this Coverage Part, the definition of "personal and advertising injury" is amended as follows:

1. **SECTION V – DEFINITIONS**, Paragraph 14.b. is deleted in its entirety and replaced by the following:

- b. Malicious prosecution or abuse of process;

2. **SECTION V – DEFINITIONS**, Paragraph 14. is amended by adding the following:

Discrimination based on race, color, religion, sex, age or national origin, except when:

- a. Done intentionally by or at the direction of, or with the knowledge or consent of:
 - (1) Any insured; or
 - (2) Any executive officer, director, stockholder, partner or member of the insured;
- b. Directly or indirectly related to the employment, former or prospective employment, termination of employment, or application for employment of any person or persons by an insured;

- c. Directly or indirectly related to the sale, rental, lease or sublease or prospective sales, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured; or
- d. Insurance for such discrimination is prohibited by or held in violation of law, public policy, legislation, court decision or administrative ruling.

The above does not apply to fines or penalties imposed because of discrimination.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED
PRIMARY AND NON-CONTRIBUTORY INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization (Additional Insured):

City of San Diego, its elected officials, officers, employees, representatives, and agents

SECTION II – WHO IS AN INSURED is amended to include as an additional insured the person(s) or organization(s) shown in the endorsement Schedule, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" arising out of or relating to your negligence in the performance of "your work" for such person(s) or organization(s) that occurs on or after the effective date shown in the endorsement Schedule.

This insurance is primary to and non-contributory with any other insurance maintained by the person or organization (Additional Insured), except for loss resulting from the sole negligence of that person or organization.

This condition applies even if other valid and collectible insurance is available to the Additional Insured for a loss or "occurrence" we cover for this Additional Insured.

The Additional Insured's limits of insurance do not increase our limits of insurance, as described in **SECTION III – LIMITS OF INSURANCE.**

All other terms, conditions, and exclusions under the policy are applicable to this endorsement and remain unchanged.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2 % of the California workers' compensation premium otherwise due on such remuneration.

Schedule**Person or Organization****Job Description**

With respect to all employees subject to the workers' compensation laws of the state of California, any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

This policy is subject to a minimum charge of \$250 for the issuance of waivers of subrogation

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective 07/01/2023 at 12:01 AM standard time, forms a part of

Policy No. EIG 2852806 04


Of the EMPLOYERS PREFERRED INS. CO.

Carrier Code 00920

Issued to BAYSIDE COMMUNITY CENTER

Endorsement No.

Premium

Countersigned at _____ on _____ By: 

Authorized Representative