



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. The Director's Prior Written Approval	Page 6
6. Processing Fee	Page 6
7. Nonprofit Status	Page 6
8. Use of Premises	Page 6
9. Criminal Background Requirement and Mandated Training	Page 7
10. Volunteer Requirement	Page 8
11. Fees Charged by PERMITTEE	Page 8
12. Use of Funds	Page 9
13. Membership	Page 9
14. Non-Exclusive Use	Page 9
15. Subpermittees and Facility Rentees	Page 9
16. Permittee Independence from City statement	Page 12
17. Sublicensee	Page 12
18. Consent to Sublicense	Page 14
19. Sublicensee Assumption of Permittee's Obligations	Page 14
20. Annual Meeting	Page 14
21. Governmental Approvals	Page 14
22. Permits and Approval	Page 14
23. Early Termination of this SUP	Page 14
24. Revocable License	Page 15
25. No Holdover	Page 15
26. Restore and Vacate	Page 16
27. Keys	Page 16
28. Superior Interests	Page 16
29. Maintenance, Installation, Improvements and Repairs of the Premises	Page 16
30. Inspection	Page 20
31. Prevailing Wages	Page 20
32. Payment Bond	Page 20
33. Water Program Quality Assurances	Page 21
34. Utilities	Page 21
35. Campaigning	Page 21
36. Budget, Records, and Inspection	Page 21
37. Non-Discrimination	Page 22
38. Smoke/Vape/Drug Free Environment	Page 22
39. Insurance	Page 22
40. Indemnification	Page 22
41. Accessibility Compliance	Page 25
42. Accessibility Assessment	Page 25
43. PERMITTEE's Risk	Page 26
44. No Nuisance	Page 26
45. Signs	Page 27
46. Encumbrances	Page 27
47. Compliance with Laws	Page 27
48. Taxes	Page 27
49. Hazardous Substances	Page 28
50. Alcohol	Page 30

51. Special Events	Page 30
52. Exclusive Beverage Vending Machine	Page 31
53. Music	Page 31
54. Waiver	Page 32
55. Cumulative Remedies	Page 32
56. Survival	Page 32
57. Joint and Several Liability	Page 32
58. No Affiliation	Page 32
59. Entire Agreement	Page 32
60. Notices	Page 32
61. Authority to Contract	Page 33
62. Acceptance of Premises	Page 33
63. Unauthorized Use Charge	Page 33
Exhibit A - Premises	Page 35
Exhibit B - Employee, Sublicensee, Subpermitee, Facility Rentee List	Page 36
Exhibit C - Club Fee Schedule	Page 37
Exhibit D - Court Availability Schedule and Tournament/Event List	Page 38
Exhibit E - Sublicensing Agreement	Page 39
Exhibit F - Tennis Court Inspection Form	Page 43
Exhibit G - Prevailing Wage Requirements	Page 45
Exhibit H - Equal Employment Opportunity Policy	Page 50

CITY OF SAN DIEGO
SPECIAL USE PERMIT
Tennis and Tennis-Related Activities

THIS CITY OF SAN DIEGO SPECIAL USE PERMIT (SUP) is entered into by and between THE CITY OF SAN DIEGO, a California Municipal Corporation (CITY) and Balboa Tennis Club, a California non-profit corporation (PERMITTEE), to be effective as of the Effective Date.

WHEREAS, CITY desires to provide facilities to its citizens, guests, non-commercial local societies, clubs and organizations that are 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 voluntary contributions, special events, membership dues and fund-raising projects.

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:
 - a. **"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, Anthony Harrington, who can be contacted at 619-235-1106.
 - b. **"Director"** means the Director of the Parks and Recreation Department.
 - c. **"Effective Date,"** as referenced on signature page and in opening paragraph above, means the start of this SUP will begin once it is signed by all parties and approved by the City of San Diego City Attorney.
 - d. **"Party"** or **"Parties"** means the signatories to this SUP, both individually and collectively.
 - e. **"Premises"** or **"Permit Area"** means that certain CITY-owned real property commonly known as Morley Field Sports Complex, located at 2221 Morley Field Drive, San Diego, CA 92104, as more particularly described in **Exhibit A** attached hereto (**Premises**).
 - f. **"PERMITTEE"** means Balboa Tennis Club, a California 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.

g. **“PERMITTEE’s Address for Notices”** is:

Balboa Tennis Club
Attn: Dr. Gary L Smith, President
2221 Morley Field Drive
San Diego, CA 92104

- h. **“Hazardous Substance”** means any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- i. **“Release”** includes without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of a Hazardous Substance.
- j. **“Sublicense Agreement”** means an agreement between CITY, PERMITTEE and Sublicensee for the use of the Premises.
- k. **Sublicensee”** means any person, organization, commercial enterprise, or entity operating a business (including a commercial kitchen, café, snack bar or gift shop), or providing services consistent with the Permit Use on the Premises under an agreement between CITY, PERMITTEE and Sublicensee.
- l. **“Subpermittees”** means an instructor, person or entity providing youth related activities on the Premises under contract agreement with the PERMITTEE.
- m. **“Facility Rentees”** means any person or organization entering into a rental agreement consistent with the Permit Use and under the terms and conditions of this Permit.
- n. **“Volunteer”** means an instructor, person, or entity providing free Permit Use related activities on the Premises who has completed the criminal offender record information review. Regular Volunteer means a volunteer with the youth service organization who is 18 years of age or older and who has direct contact with, or supervision of, children for more than 16 hours per month or 32 hours per year.
2. **Occupancy.** CITY grants to PERMITTEE this SUP for the non-exclusive use of certain CITY-owned property, commonly known as Morley Field Sports Complex, located at 2221 Morley Field Drive, San Diego, CA 92104], and more

particularly described on **Exhibit A** attached hereto (Premises). This SUP does not guarantee that the Premises requested or assigned will always be available at the date and time requested by the PERMITTEE but does allow PERMITTEE to exclude non-members at days and times scheduled for PERMITTEE use.

3. Term. The term will be for a period of three years, beginning on the Effective Date. At the CITY'S sole discretion, this SUP may be extended for up to two additional one-year periods, subject to processing fees for each additional year term and subject to the same terms and conditions in this SUP. No additional extensions beyond those described in this section may be granted for this SUP. City has the right to negotiate an interim agreement after expiration of this SUP.
4. CITY's Consent, Discretion. CITY's consent or approval under this SUP 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. The Director's Prior Written Approval. In all cases where the Director's prior written approval is required in this SUP, PERMITTEE must submit a written request to the Director prior to engaging in such activity. The Director may, in the Director's sole discretion, approve or deny PERMITTEE's request. If the request is approved by the Director, PERMITTEE must maintain the approval in PERMITTEE's files at all times during the Term.
6. Processing Fee. The PERMITTEE shall pay the CITY a one-time SUP processing fee of four hundred 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.
7. Nonprofit Status. PERMITTEE shall provide the Director with documentary evidence, to CITY's satisfaction, of PERMITTEE's current Federal tax-exempt status prior to signing this SUP by May 1st of each year during the Term. PERMITTEE shall inform CITY immediately if its status changes or is cancelled. 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.
8. Use of Premises. Premises must be supervised during the hours of operation and when courts are in use by PERMITTEE if outside the hours of operation. Premises shall be used only for the purposes of a tennis club with tennis, racquet, or paddle court related activities (**Permit Use**), and for no other use whatsoever without obtaining the prior written approval of the Director.

In all instances where the Director's prior written approval is required, the 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:

- 8.1 PERMITTEE may offer programs and activities to the public at market rate and in compliance with all applicable laws and CITY policies, subject to section 8.
 - 8.2 PERMITTEE may offer memberships for use of the facility in compliance with Section 8.
 - 8.3 PERMITTEE may use employees, Subpermittees, and Facility Rentees to offer programs and activities on the Premises. A list of all employees, Subpermittees, and Facility Rentees must be submitted along with program rates to the Director for review and approval on an annual basis. Attached as **Exhibit B** is an approved list as of the date of signing this SUP. Exhibit B may be amended throughout the Term of this SUP. Subpermittees or Facility Rentees must not offer any programs and activities or engage in any activities without written approval and authorization by the CITY or City Contact. An updated list will be requested at annual meeting with City Contact.
 - 8.4 PERMITTEE may rent out the facilities at market rate for activities consistent with the Permit Use.
 - 8.5 Commercial activities on the Premises (such as food service, Pro Shop sales, and racquet repair services) are prohibited unless PERMITTEE obtains prior written approval of the Director and enters into a Sublicense Agreement as stated in Section 12.
9. Criminal Background Requirements and Mandated Training. PERMITTEE may utilize employees, regular Volunteers, and Sublicensees to offer programs and activities in accordance with the Permit Use on the Premises.
- 9.1 PERMITTEE must complete the criminal offender record information review, including fingerprinting and background, of all employees, regular Volunteers, and Sublicensees engaging in activities on the Premises as required by federal and state laws, or in accordance with this SUP.
 - 9.2 PERMITTEE must not employ nor utilize anyone, including employees, counters, regular Volunteers, or Sublicensees, with criminal convictions that would bar their work with or supervision of minors or people with

disabilities under federal or state laws.

- 9.3 PERMITTEE must ensure that anyone employed or utilized by PERMITTEE, including all employees, regular Volunteers, Sublicensees and those engaged in any activities authorized under this SUP, have received all trainings, and will comply with all laws required to ensure the safety, security, and well-being of members of the public, including minors and people with disabilities.
 - 9.4 Upon request by CITY, PERMITTEE must provide CITY with access to PERMITTEE's records showing that these requirements have been met.
 - 9.5 Failure of PERMITTEE to comply with these requirements is grounds for immediate revocation of this SUP.
10. Volunteer Recruitment. PERMITTEE will perform all aspects of Volunteer recruitment, screening, onboarding, training, and selection process. CITY will provide any CITY required waivers, CITY required forms, and training. PERMITTEE will review applications and conduct reference checks on all applications. PERMITTEE will publicize the various Volunteer programs. PERMITTEE must send any Volunteer documentation to CITY Contact upon request.
- 10.1 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.
 - 10.2 Prior to scheduling any regular Volunteer to work or assist on the Premises, PERMITTEE will confirm with CITY's Parks and Recreation Volunteer Office that they have cleared the Background/Fingerprint check conducted by CITY's Personnel Department.
11. 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 5 above. In no event shall fees for court use by the general public exceed \$10.00/day (per person). All fees shall be limited to recovery of PERMITTEE's reasonable costs for the program or activity, in compliance with all applicable laws and CITY policies. No fees prescribed by PERMITTEE for any program or activity 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. The public rates, member rates and programming fee schedule is attached as **Exhibit C**, as maybe amended throughout the Term of this SUP.

12. Use of Funds. All funds collected by PERMITTEE from the use of the Premises pursuant to this SUP must 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.
13. 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 SUP and applicable laws. 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.
14. 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 may develop reasonable and non-discriminatory restrictions for the use of facilities and participation in certain activities, provided that the restrictions are consistent with the rights of the general public and are designed to enable PERMITTEE to use the Premises for the purposes granted. Classes, camps, leagues, tournaments, and other racquet related activities that take place on the Premises may impact court availability from time to time. At a minimum, PERMITTEE shall maintain all courts on the Premises open for use pursuant to a weekly court schedule, which shall be subject to the prior written approval of the Director. The general public must have a minimum access of twenty percent (20%) of the available court times provided in PERMITTEE's weekly schedule. A sample court availability schedule and approved list of tournaments and events as of the date of signing this SUP is attached as **Exhibit D**, which may be amended throughout the Term of this SUP.
 - 14.1 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 32.
10. Subpermittees and Facility Rentees. If PERMITTEE allows Subpermittees and Facility Rentees for racquet related activities on the Premises, PERMITTEE must issue and retain a written Agreement with each Subpermittee and Facility Rentee onsite. All Agreements are subject to review by the Director upon request. A List of approved Subpermittees and Facility Rentees as of the date of signing this SUP is attached as **Exhibit B**, which may be amended throughout the Term of this SUP.
 - 10.1 CITY acknowledges that PERMITTEE intends to subpermit and to rent areas within the Premises for racquet related activities.

- 10.2 Subpermittees and Facility Rentees 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 per section 9.9(c) and 11.3 of this SUP and as listed in **Exhibit B**.
- 10.3 PERMITTEE shall collect the following from each Subpermittee and Facility Rentees: contact information, licenses, permits, additional forms required by CITY, and insurance as required in Section 31 before operating on the Premises.
- 10.3.1 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.
- 10.4 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 Subpermittees and Facility Rentees.
- 10.5 All net proceeds collected by PERMITTEE from Subpermittees or Facility Rentees must be used for the sole purpose of maintaining the Premises and promoting PERMITTEE's racquet activities and related services on the Premises.
- 10.6 PERMITTEE must not use any net 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.
- 10.7 Budget, Records, and Inspection. Subpermittee and Facility Rentees must keep accurate and complete books of accounts and records indicating all financial transactions made in connection with the Premises. PERMITTEE shall ensure Subpermittee provides all records and accounts 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 SUP Term.
- 10.8 Criminal Background Requirements and Mandated Training. PERMITTEE must complete the criminal offender record information review required by federal and state laws of all employees, volunteers, and Subpermittees working with or supervising minors in accordance with this

Permit Use. PERMITTEE must not employ anyone, including employees, volunteers, or Subpermittees, with criminal convictions that would bar their work with or supervision of minors under federal or state laws. PERMITTEE must ensure that anyone utilized by PERMITTEE (all employees, volunteers, Subpermittees, and those working in accordance with 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. The CITY acknowledges the "Safe Play" program as the USTA's comprehensive athlete safety program consisting of education, screening, reporting tools and policies for appropriate conduct in tennis. The USTA works with the U.S. Center for SafeSport and the United States Olympic & Paralympic Committee to develop Safe Play policies, procedures, and educational resources to support the USTA Safe Play program. 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.

10.9 Subpermittees. For purposes of this SUP, a Subpermittee is an instructor or person or entity providing racquet related activities on the Premises under an agreement with the PERMITTEE.

- a. PERMITTEE will have oversight of all program and/or activity fees charged by Subpermittees for racquet related activities to ensure fees are charged at market rate to the participant.
- b. PERMITTEE may charge Subpermittees an administrative or maintenance fee as a percentage of the gross activity revenue collected.
- c. All Subpermittee Tennis Instructors must be certified by the United States Tennis Professional Association (USPTA) or Professional Tennis Registry (PTR) and comply with all local, state, and federal laws including complying with all of CITY's business license and insurance requirements.

10.10 Facility Rentees. For purposes of this SUP, a Facility Rentee is an instructor or person or entity providing racquet related activities on the Premises under a rental agreement.

11. PERMITTEE and any of its Subpermittees and Facility Rentees who are retained or hired by PERMITTEE are independent of CITY and are not agents of CITY. Any provision of this SUP that may appear to give CITY any right to direct PERMITTEE concerning the details of performing under this SUP, or to exercise any

control over performance of the SUP, shall mean only that PERMITTEE shall follow the direction of CITY concerning the end results of the performance.

12. **Sublicensee.** PERMITTEE shall not assign or sublicense, in whole or in part, any part of the Premises, rights granted by this SUP, or any interest in this SUP without CITY's prior written consent in each instance, which may be withheld or delayed in CITY's sole and absolute discretion. Any Sublicensee without CITY's prior written consent by operation of law will automatically terminate this SUP. A list of approved Sublicensees as of the date of signing this SUP is attached as **Exhibit B**, as may be amended throughout the Term of SUP.

12.1 CITY acknowledges that PERMITTEE intends to sublicense parts of the Premises for commercial activities.

12.2 A Sublicensee is any commercial enterprise using and occupying space on the Premises to run and operate a business (including a Pro Shop, a snack bar/Café, or a coffee cart).

12.3 Every Sublicensee using and occupying space on the Premises, as of the Effective Date of this Permit, must submit a signed Sublicense Agreement, a sample of which is attached as **Exhibit E**. The Sublicense Agreement will require the Sublicensee's contact information, licenses, permits, and a certificate of insurance that complies with Section 31 of this SUP, along with any additional forms required by CITY. These will be made available to the Director upon request for review and written approval in the Director's sole and absolute discretion.

12.3.1 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 Sublicense Agreement.

12.4 The Director must approve all Sublicensees in writing before a Sublicensee uses or occupies the Premises.

12.5 Sublicense Fee(s): Every Sublicensee must pay a Fee in an amount to be determined by the Director to use or occupy the Premises. Failure of any Sublicensee to pay the required Fee(s) will be considered a default of their Sublicense Agreement and this SUP. CITY may also charge interest or penalties for failure to pay the required Sublicense Fee(s) when due.

12.6 As of the effective date of this SUP, each commercial operation that obtains a Sublicense with CITY must pay one-time processing fee of four hundred and forty-eight dollars \$448.00 per term, not subject to proration. Upon written request and approval of the Director, a payment plan may be entered into with the CITY.

- 12.7 The use and occupancy of any part of the Premises by a Sublicensee is subject to the terms and conditions of this SUP. If there is conflict between the Sublicense Agreement/Sublicense and this SUP, the terms, conditions, and obligations of this SUP will control.
- 12.8 Budget, Records, and Inspection. Sublicensee must keep accurate and complete books of accounts and records indicating all financial transactions made in connection with the Premises. PERMITTEE shall ensure Sublicensee provides all records and accounts 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 SUP term.
- 12.9 Sublicensee will defend, indemnify, and hold harmless CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the Premises, the condition of the Premises, or from any act or omission of Sublicensee, its agents, invitees, contractors, and guests; provided however, Sublicensee's duty to indemnify and hold harmless will not include any claims or liability arising from the established sole negligence or willful misconduct of CITY, its agents, officers, or employees.
- 12.10 Sublicensee must not sublicense or attempt to transfer any other interest or right to use the Premises, or any right or appurtenant privilege to the Premises, without CITY's prior written consent, which consent is in CITY's sole and absolute discretion.
- 12.11 A Sublicense Agreement may be terminated by CITY or the Sublicensee for convenience upon thirty (30) days prior written notice to the non-terminating party.
- 12.12 Pro Shop/Snack Bar/Coffee Cart/Racquet Re-stringing service.
- i. The operator of a Pro shop, Snack Bar, Coffee Cart or stringing service (Commercial Entities) must dispose of trash in accordance with all local, state, and federal laws, including the California Health and Safety Code.
 - ii. If there is a coffee cart and a snack bar operator(s), they must adhere to all local and state health and safety code requirements including obtaining a valid San Diego County Health Certificate, and San Diego County Food Handlers Card, and must obtain any other required permits and licenses before operating at the Premises.

13. Parks and Recreation Department Consent to Sublicense. Subject to the terms and conditions of the SUP, the Parks and Recreation Department consent to the Permittee sublicensing a portion of the Premises. All terms and conditions of the SUP shall control and supersede all inconsistent or contrary provisions in the Sublicense Agreement.
14. Sublicensee Assumption of Permittee's Obligations. The Parks and Recreation Department's consent to a Sublicense is conditioned upon Sublicensee's written agreement in the Sublicense Agreement to assume and perform all obligations of Permittee under the SUP that is applicable to the Sublicensee's portion of the Premises. Sublicensee's failure to perform one or more of these assumed obligations shall be a material default and breach under the SUP and may subject SUP to termination by the Parks and Recreation Department.
15. Annual Meeting. During the Term, PERMITTEE shall hold an annual meeting with the Director to review and discuss PERMITTEE's budget, "spend down plan", inventory, facility maintenance, services offered, and receipt and resolution of any complaints received, if necessary.
16. 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.
17. Permits and Approvals. PERMITTEE, at PERMITTEE's sole cost and expense, must obtain all required permits and approvals from the applicable local, state, and federal authorities, including without limitation from CITY.
18. Early Termination of this SUP. This SUP will automatically terminate or have cause for immediate termination in the event of the following, this list is not all-inclusive of automatic terminations or causes for immediate termination of this SUP:
 - 18.1 PERMITTEE's failure to carry and maintain the insurance required by this SUP will be cause for immediate termination.
 - 18.2 PERMITTEE's commencement of a voluntary case or other proceeding seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or similar law, or PERMITTEE making a general assignment for the benefit of creditors, or PERMITTEE having an involuntary case or other proceeding instituted against it seeking similar relief will automatically terminate this SUP.

- 18.3 PERMITTEE's commission of a criminal or illegal act, which brings CITY's name into disrepute, or otherwise substantially affects the reputation of CITY will be cause for immediate termination.
- 18.4 PERMITTEE's failure to comply with laws, as required in section 47, will be cause for immediate termination.
- 18.5 PERMITTEE's violation of section 24 of this SUP will be cause for immediate termination.
- 18.6 PERMITTEE's violation of section 9 of this SUP will be cause for immediate termination.
19. Revocable License. This SUP is not a lease. It is a non-exclusive license to use CITY-owned property and may be revoked at will by CITY, in its sole discretion: a) following written notice delivered to PERMITTEE and reasonable opportunity to cure the breach within 20 days of written notice 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.
20. No Holdover. If PERMITTEE continues to occupy the Premises after the expiration or earlier termination of this SUP, such occupancy shall neither constitute a renewal or extension of this SUP, nor give PERMITTEE any rights in or to the Premises. If PERMITTEE continues to occupy the Premises after the expiration or earlier termination 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 rent shall neither constitute a renewal or extension of this SUP, 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 shall result in month-to-month continued occupancy for up to a maximum of twelve (12) months or until a renewal contract is established. A Temporary Park Use Permit (TPUP) shall be issued during this interim period. The TPUP shall not be considered a renewal or extension of the SUP. The TPUP allows for use of the Premises on a month-to-month basis. All other terms and conditions of the expired SUP shall be in full force and effect as long as the organization's non-profit is in compliance of the provisions of the SUP.
21. Restore and Vacate. Prior to the expiration or termination of this SUP, PERMITTEE shall restore the Premises to its condition on the Effective Date,

excepting therefrom normal wear and tear and all authorized improvements, and upon such expiration or termination immediately vacate the Premises.

22. Keys. PERMITTEE acknowledges receipt of zero (0) keys to the Premises from CITY. PERMITTEE shall provide two (2) keys to the PERMITTEE-leased structure located on the Premises to the CITY.
23. 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.
24. Maintenance, Installation, Improvements and Repairs of the Premises. For purposes of this Section, "CITY Contact" shall mean CITY's Parks and Recreation Department District Manager (or designee), who currently is Anthony Harrington, and can be reached at 619-235-1106.
 - 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 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.
 - b. PERMITTEE shall conduct a thorough visual inspection on an annual basis for the entire facility including courts. Visual inspection should be conducted in accordance to the ASBA maintenance guidelines to identify required annual repairs.
 - c. 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 SUP, without prior written approval of CITY. Any and all improvements, repairs and alteration made to the Premises by PERMITTEE shall become the sole property of CITY.
 - d. Notwithstanding any other provision of this SUP 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:

- (1) Court Resurfacing. PERMITTEE is responsible for hiring an appropriate state licensed contractor to resurface all courts as needed on the Premises in accordance with CITY's current court specifications. Resurfacing for any individual court shall be completed within a 3 to 5-year time period. At the beginning of each CITY Fiscal Year (July 1), PERMITTEE shall provide an accurate schedule and history of resurfacing repairs, updated if necessary, for all resurfacing work for each court within the Premises for the balance of the Term. Proof of recent resurfacing may be acceptable in determining the resurfacing schedule from the date of execution of this SUP. On an ongoing basis the schedule may be adjusted to reflect climatic and soil conditions at a specific location which may vary from normal or unforeseen conditions. Any such schedule adjustments must be proposed by written request to the Director and are subject to written approval made at his or her sole discretion.
- (2) Court Accessories. PERMITTEE shall replace nets, windscreens, center straps, net cables, and other court accessories on the Premises, as necessary or as directed by the Director, in his or her sole discretion, in order to maintain safe and desirable playing conditions.
- (3) Court Lighting. On all lighted courts on the Premises, PERMITTEE shall immediately replace any failed lamp and shall correct any electrical malfunctions. The process for repairs must start within three (3) working days and should be completed as soon as possible. Any repairs that can't be complete in one-month period shall be reported to the department.
- (4) Cleaning and Daily Maintenance. PERMITTEE shall clean all walkways and non-court areas on the Premises on a daily basis. In addition, PERMITTEE shall completely clean all courts on the Premises every two (2) weeks. 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. PERMITTEE shall 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.

- b. PERMITTEE agrees that CITY shall not be required to perform or assume the cost of any maintenance, repairs, or services to the Premises.
- c. 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.
- d. Structures. Under no circumstances shall PERMITTEE or PERMITTEE's agents place, store, or allow temporary or permanent structures of any kind on the Premises, including but not limited to cargo containers, trailers, and storage sheds, without the prior written 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.
- e. 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.
- f. 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. 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.
- g. 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.

- h. 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.
- i. 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.
- j. 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.
- k. 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.
- l. 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.
- m. 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.

- n. Final Walkthrough. PERMITTEE shall conduct a final walkthrough with CITY Contact to review and inspect all improvements and installations, in each instance, for compliance with this SUP 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.
25. 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 Department maintenance standards are being met in accordance with the Court Inspection Form, attached as **Exhibit F**.
26. Prevailing Wages. Prevailing wage rates apply to the Project. PERMITTEE shall comply with State prevailing wage laws, including, but not limited to, those requirements pursuant to those listed in **Exhibit G**, attached.
27. Payment Bond. Prior to the commencement of any work 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.
28. 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.

29. 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 on the Premises, payment for sublicensee's portion will be proportional based on estimates of PERMITTEE use, as calculated by CITY in its sole discretion.
30. 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.
31. Budget, Records and Inspection. PERMITTEE shall keep accurate and complete books of account indicating all financial transactions made in connection with the Premises. On April 30th 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-personal 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 May 1st of each year. In the event of termination of this SUP, 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 and accounts for a minimum period of five (5) years.
32. 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. 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 H**.

33. 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.
34. Insurance of PERMITTEE. Prior to the Effective Date, 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 under this SUP, including without limitation PERMITTEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss.
 - a. Types of Insurance. At all times during the term of this SUP, PERMITTEE shall maintain insurance coverage as follows:
 - (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 SUP 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 SUP 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 SUP.
 - (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 SUP 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 SUP.
- 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.
35. Indemnification and Hold Harmless. PERMITTEE will 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 SUP or PERMITTEE's occupancy, use, development, maintenance, restoration, or improvement of the Premises, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold City harmless will not include any established liability arising from the sole negligence or willful misconduct of City and its elected officials, officers, employees, representatives, and agents. City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE will pay the City for all costs related thereto, including, without limitation, reasonable attorneys' fees and costs.
36. Accessibility Compliance. 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 will not discriminate against qualified individuals with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- 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 will 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 will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Premises which deny access to individuals with disabilities. All improvements and alterations will be at PERMITTEE's sole expense.
 - e. PERMITTEE's failure to comply with the accessibility requirements of this section or submitting false information in response to these accessibility requirements, or both, will be a default of this SUP.
37. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises has not been inspected by a Certified Access Specialist (CASP).
- 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."
38. 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.
39. 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).
40. 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.

41. Encumbrances. PERMITTEE shall keep the Premises, any CITY-owned property of which the Premises is a part, and all improvements thereon free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this SUP or PERMITTEE's occupancy, use, developments, maintenance, repair or restoration of the Premises. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Premises, including without limitation PERMITTEE's failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to lien or encumber property pursuant to the California Civil Code.
42. Compliance with Laws. PERMITTEE shall, at its sole cost and expense, comply with 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, repair or restoration of the Premises, including activities for minors. Violation of this provision shall be cause for immediate revocation of this SUP.
43. 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 and permitting costs or fees. PERMITTEE acknowledges that this SUP 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.
44. 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 SUP. 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.

- 45. Alcohol. No alcohol may be served at the Premises without the written permission of the Director obtained in advanced, which permission may be reasonably withheld or delayed in the Director's sole discretion. PERMITTEE must obtain a special event permit under Municipal Code section 56.54, as amended from time to time and as referenced in Section 45. PERMITTEE shall follow and shall bear full responsibility for compliance with all alcohol laws, special event permit conditions, and SUP conditions whenever PERMITTEE obtains permission to serve alcohol pursuant to this Section. All state and local regulations regarding the

consumption of alcohol must be followed at all times at the Premises, at PERMITTEE's sole risk and cost.

46. Special Events. If PERMITTEE's event meets the definition of a Special Event under San Diego Municipal Code § 22.4003, PERMITTEE must submit a Special Event permit application. The City's Office of Special Events is responsible for the overall management of the Citywide Special Event Permitting Process for all special events taking place on public right-of-way as well as events taking place on Park property that include event components that are considered complex. Examples of complex event elements:
- Alcohol
 - Road closures
 - Major structural elements
 - Events that require two (2) additional regulatory or public safety permits aside from a Parks permit
 - Commercial vending activity

As it relates to the special event permit application, all required information, documents, and application fee are required no later than 60 days prior to the actual date of the event. Permit applications submitted and/or incomplete with less than 60-days' notice will incur late fees per business day. A map of the event layout will be required, as part of the permit process, to ensure the event will take place within the Premises. For more information on the Citywide Special Event Permit Process and to submit a permit application, refer to the Special Events & Filming website: <https://www.sandiego.gov/specialevents-filming>.

Any event that will take place on City Park Property outside the Premises of this SUP will require a Park Use Permit issued through Parks and Recreation staff. All events must be in compliance of Parks and Recreation Park Use Rules and Regulations including undergoing a California Environmental Quality Act (CEQA) review if the event is over park capacity. Park Use Rules and Regulations including Park Capacities can be found at: <https://www.sandiego.gov/park-and-recreation/parks/rules>.

47. Exclusive Vending Machine. PERMITTEE acknowledges and understands that Compass Group USA, Inc., a Delaware corporation doing business as Canteen San Diego, is the exclusive "vending machine" provider for CITY and must be used for all machine vending at the Premises. PERMITTEE shall not procure, use, or otherwise allow any vending services at the Premises other than CITY's designated exclusive provider. If at any time CITY changes its exclusivity pertaining to the provision of vending machines, PERMITTEE shall adhere with whomever has been designated the exclusive vendor as set forth by CITY.
48. Music. PERMITTEE shall only perform music for which the CITY has obtained a "non-dramatic" (as hereinafter defined) performance license from ASCAP, Broadcast Music, Inc., SESAC, or any other musical industry licensing entity

(Licensing Entity). For a list of approved music and artists, PERMITTEE may contact the respective Licensing Entity. CITY shall notify PERMITTEE in writing of any other approved Licensing Entity and any additional PERMITTEE requirements (hereinafter "Additional Requirements") imposed upon PERMITTEE by CITY by virtue of its licensing agreement with any Licensing Entity.

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

PERMITTEE shall not perform music from a coin operated phonorecord (or CD) player commonly known as a "juke-box" or a computer on-line service or electronic bulletin board on the Premises.

It shall be PERMITTEE's sole responsibility to ensure it only performs music for which the CITY has obtained a valid music license. Should PERMITTEE desire to perform music for which CITY does not have a license, PERMITTEE shall obtain its own license from the appropriate Licensing Entity before PERMITTEE performs the desired music. PERMITTEE shall ensure that (1) CITY is named in the license; (2) each CITY premises/location where PERMITTEE intends to perform the music is identified in the license; and (3) PERMITTEE has provided CITY with a fully executed copy of the license at least ten days prior to the performance of the music.

49. 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 SUP, 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 SUP, 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.

50. 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.
51. Survival. Any obligation which accrues under this SUP prior to the expiration or termination of this SUP shall survive such expiration or termination.
52. 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.
53. 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.
54. 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. Any modification, alteration, or amendment of this SUP shall be in writing and signed by all the parties hereto.
55. 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:

Balboa Tennis Club
Attn: Dr. Gary L. Smith, President
2221 Morley Field Drive
San Diego, CA 92104

And to CITY as follows:

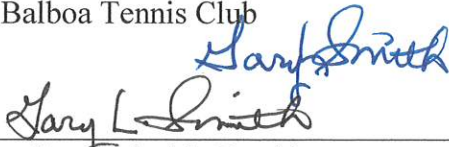
THE CITY OF SAN DIEGO
ATTENTION: Anthony Harrington, District Manager, Balboa Park Division
City of San Diego Parks and Recreation Department
2125 Park Boulevard MS#32

56. 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 SUP 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 SUP is binding upon such person or entity in accordance with its terms. Upon request, each person executing this SUP 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.
57. 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 SUP. 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.
58. Unauthorized Use Charge. PERMITTEE will pay CITY 100% of the gross revenue (all revenue without any deduction, credit, or set-off) from any use of the Premises that is not part of the Permit Use, in violation of the law, or in violation of the terms and conditions of this SUP, regardless of any related penalties charged PERMITTEE by competent Government authorities. The gross revenue from each use of the Premises that is not part of the Permit Use, in violation of the law, or in violation of any of the terms and conditions of this SUP is payable to the CITY within 30 days after PERMITTEE receives such revenue. Nothing in this section 58 is intended to authorize any use of the Premises that is not part of the Permit Use, waive PERMITTEE's default for conducting or allowing such use, or waive any CITY right or remedy under this SUP and Agreement.

(REMAINDER OF THIS PAGE PURPOSELY LEFT BLANK)

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

PERMITTEE: Balboa Tennis Club


BY:  Date: 04/24/2025
Dr. Gary L. Smith, President

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

BY:  Date: 13 JUN 25
Kristina Peralta, Deputy Chief Operating Officer

APPROVED THIS 18th DAY OF June, 2025 AS TO FORM:

HEATHER FERBERT, City Attorney

BY: 
Catherine Morrison
Deputy City Attorney

Attachments: Exhibit A - Premises

Exhibit B - Employees, Sublicensee, Subpermittees and Renter List

Exhibit C - Club Fee Schedule

Exhibit D - Court Availability Schedule and Tournament/Event List

Exhibit E - Sublicensing Agreement

Exhibit F - Tennis Court Inspection Form

Exhibit G - Prevailing Wage Requirements

Exhibit H - Equal Employment Opportunity Policy

Exhibit A - Premises

DESCRIPTION: The premises include twenty-four (24) tennis courts, one (1) stadium style tennis court, one (1) two-sided tennis backboard with a playing surface on either side, one (1) building for a café, one (1) building for the pro shop, and one (1) office building. There are six (6) bleachers including two (2) under a shaded cover. There are six (6) picnic tables, and twenty (20) benches. There are various trees, landscaped areas, planters, and a small turf area. See attached map.



SPECIAL USE PERMIT

Exhibit B – Employees, Sublicensee, Subpermittee, and Renters List

Board Members	First and Last Name
Chairperson	Dr. Gary L Smith
Vice Chairperson	Andrew Macfarlane
Club Manager	Colleen Clery Ferrell

Employees				
First Name	Last Name	Job Title	Service Provided	Agreement Date
Colleen	Ferrell	Director	Manage Club	7/5/2005
Timur	Sabirov	Attendant	reservation desk	4/6/2023
Andrew	Wickersham	Attendant	reservation desk	8/10/2022
Charles	Gusterine	Attendant	reservation desk	8/23/2023
David	Saranglao	Assistant Director	Assistant Manager	4/8/2015
Charles	St. Hill	Maintenance	Repair	10/20/2021

Sublicensees				
First Name	Last Name	Business Name	Service Provided	Agreement Date
Guillermo	Sanchez	Route 6 Café	Food and drink	2/10/2018
Hiromi	Sasano	HJK Venture	Tennis Instruction	5/9/2022

Subpermittees				
First Name	Last Name	Business Name	Service Provided	Agreement Date

Facility Rentees				
First Name	Last Name	Business Name	Service Provided	Agreement Date

**SPECIAL USE PERMIT
Exhibit C - Club Fee Schedule**

Club Fee Schedule

Daily Rates	Fee	Per	Unit
Guest with Member	\$ 10.00	Per	hour
Guest without Member	\$ 10.00	Per	hour

Annual Membership Rates	Fee	Per	Unit
Individual Membership	\$ 450.00	Per	year
Family Membership	\$ 900.00	Per	year
Senior Membership	\$ 300.00	Per	year

Lessons and Services*	Fee	Per	Unit
Private Tennis Lessons		Per	
Junior Clinic		Per	
Summer Youth Camps		Per	
Adult Clinics		Per	

***Lessons and fees provided by sublicensee, HJK Ventures**

SPECIAL USE PERMIT
Exhibit D - Court Availability Schedule Hours of Operation and Tournament List

Club Hours of Operation

Day of the Week	Members Hours	Non-Members Hours	Pro Shop Hours
Monday	8:00 AM-9:00 PM	8:00 AM-9:00 PM	
Tuesday	8:00 AM-9:00 PM	8:00 AM-9:00 PM	
Wednesday	8:00 AM-9:00 PM	8:00 AM-9:00 PM	
Thursday	8:00 AM-9:00 PM	8:00 AM-9:00 PM	
Friday	8:00 AM-9:00 PM	8:00 AM-9:00 PM	
Saturday	8:00 AM-9:00 PM	8:00 AM-8:00 PM	
Sunday	8:00 AM-9:00 PM	8:00 AM-8:00 PM	

List of Tournaments and Events

Name of Tournament/Event	Date(s)	Time(s)	Who can participate?	Estimated Attendance?
National Open, Hard	6/9/25-6/15/25	8:00 AM-6:00 PM	Anyone	250
Balboa Open	7/19/25-7/20/25 & 7/25/25-7/27/25	8:00 AM-7:00 PM	Anyone	350
SD Metro	9/20/25-9/21/25 & 9/26/25-9/28/25	8:00 AM-7:00 PM	Anyone	350
Tennis Fest	5/4/2025	12:00 PM-4:00 PM	Anyone	800

SPECIAL USE PERMIT
Exhibit E – Sublicensing Agreement

This Sublicense Agreement (**Sublicense**) is entered into between THE CITY OF SAN DIEGO, a California municipal corporation (**CITY**), [ENTER NAME], Inc, a non-profit California Corporation (**PERMITTEE**), and [COMMERCIAL ENTITY NAME AND ADDRESS] (**SUBLICENSEE**) to be effective when signed by all parties entering into this Sublicense and approved by the City of San Diego City Attorney (**Effective Date**).

PERMITTEE has previously entered into a SPECIAL USE AGREEMENT (SUP) with CITY effective _____ (**Permit**), a copy of which is attached as **Exhibit A**, for the non-exclusive use of certain CITY-owned property, commonly known as [NAME AND ADDRESS OF FACILITY] (**Premises**). PERMITTEE now desires to sublicense part of the Premises to SUBLICENSEE. Therefore, the parties agree as follows:

1. **FACILITY ON PREMISES.** SUBLICENSEE, in consideration of the License Fees provided pursuant to the Permit and this Sublicense, and with permission and approval by CITY, will use and occupy the [NAME/PART OF FACILITY] in order to [PURPOSE OF BUSINESS].
2. **TERM AND POSSESSION.** The term of this Sublicense will begin on the Effective Date and will continue for the remainder of the term provided in the Permit, which terminates on _____, unless terminated sooner pursuant to the terms of the Permit or this Sublicense.
3. **SUBLICENSE FEES.** SUBLICENSEE must pay to the CITY a one-time Sublicense fee of One thousand and fifty dollars \$1,050.00 per term, not subject to proration, and payable at least 30 days in advance of when it is due. Sublicense Fee payments must be made to _____ at _____, which may be changed from time to time by CITY. Failure of SUBLICENSEE to pay the required License Fee(s) will be considered a default of the Permit and this Sublicense. CITY may also charge interest or penalties for failure to pay the required License Fee(s) when due.
4. **BUDGET, RECORDS, AND INSPECTION.** SUBLICENSEE must keep accurate and complete books of its accounts and records indicating its financial transactions made in connection with the Premises. All of its records and accounts will be subject to inspection by an authorized representative of CITY at all reasonable times. Records must be maintained for a minimum period of five years starting from the end of the Permit Term.
5. SUBLICENSEE agrees to the following terms and conditions:
 - a. SUBLICENSEE is not authorized to allow any additional uses on the Premises or any additional persons or groups to use the Premises. This Sublicense will not be construed as a waiver of the requirement to obtain CITY's written consent to any other proposed sublicense, assignment, or transfer of any right to use or occupy the Premises by PERMITTEE or SUBLICENSEE. Any transfer of the right to use or occupy the Premises by another person or

entity without the written approval of the Director or designee (**Director**) will, by operation of law, automatically terminate the Sublicense Agreement and the underlying Permit.

b. SUBLICENSEE must abide by all local, state, and federal laws including continually having the proper licenses, permits, and insurance certificates (for example, having a CITY Business License and the insurance coverage required in section ____ of the Permit).

c. This Sublicense will not increase CITY's obligations or duties under the Permit or to SUBLICENSEE.

e. This Sublicense does not grant any rights to the SUBLICENSEE greater than those rights granted to PERMITTEE under the Permit.

f. This Sublicense does not create obligations or costs to CITY related to the Sublicense.

g. This Sublicense does not modify, waive, amend, or otherwise affect any provision of the Permit.

h. This Sublicense does not create any type of obligation by CITY to PERMITTEE, SUBLICENSEE, or to any governmental agent, board, commission, or agency with regard to any other action relating to Sublicensee's use, occupancy, or maintenance of any portion of the Premises or improvements thereon.

i. Prior to SUBLICENSEE's use or occupancy of the Premises, SUBLICENSEE must provide a certificate of insurance demonstrating that the SUBLICENSEE is in compliance with the insurance requirements in Section ____ of the Permit, which must name PERMITTEE and the "City of San Diego, its elected officials, officers, representative, agents, and employees," as additional insureds for the entire term of the Sublicense.

j. SUBLICENSEE will defend, indemnify, and hold harmless CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from, the operations conducted on the Premises, the condition of the Premises, or from any act or omission of SUBLICENSEE, its agents, invitees, contractors, and guests; provided however, SUBLICENSEE's duty to indemnify and hold harmless will not include any claims or liability arising from the established sole negligence or willful misconduct of CITY, its agents, officers, or employees.

k. SUBLICENSEE must not sublicense, or attempt to transfer any other interest or right to use the Premises, in whole or in part, any facility on the Premises, or any right or appurtenant privilege to the Premises, without CITY's prior written consent, which consent must be in CITY's sole and absolute discretion.

l. Any default of SUBLICENSEE or of this Sublicense will be considered a default by PERMITTEE or of the terms and conditions of the Permit.

m. This Sublicense may be terminated by CITY, PERMITTEE, or the SUBLICENSEE for convenience upon 30 days prior written notice to the non-terminating party.

n. SUBLICENSEE agrees to surrender and deliver to CITY the Premises and all furniture, appurtenances, and decorations within the Premises in as good a condition as they were at the beginning of the term, reasonable wear and tear excepted. SUBLICENSEE will be liable to CITY for any damages occurring to the Premises or the contents thereof or to the building which are used or occupied by SUBLICENSEE or their guests.

6. NOTICE. Notices under this Sublicense Agreement shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows to every interested party:

PERMITTEE:

(Include name, mailing address, phone number, email address)

SUBLICENSEE:

(Include name, mailing address, phone number, email address)

CITY: _____

(Include name, mailing address, phone number, email address)

Such addresses may be changed from time to time by any party by providing notice to the other interested parties as described above.

7. GOVERNING LAW. This Sublicense will be construed in accordance with the laws of the State of California.

8. CITY'S CONSENT. The Permit requires the prior written consent of CITY prior to any SUBLICENSEE using or occupying the Premises. Such consent has been obtained and a copy is attached as **Exhibit B**.

9. INCORPORATION OF THE PERMIT. This Sublicense incorporates and is subject to the original Permit between PERMITTEE and CITY, a copy of which is attached as Exhibit A, and which is referred to and incorporated as if it were fully set out here. SUBLICENSEE agrees to assume all the obligations and responsibilities of the PERMITTEE under the original Permit for the duration of this Sublicense.

Date: _____

SUBLICENSEE: _____

Print name: _____

Date: _____

PERMITTEE: _____

Print name/title: _____

Date: _____

CITY:

THE CITY OF SAN DIEGO, a California Municipal Corporation

BY: _____ Date: _____

Andrew Field, Director
Parks and Recreation Department

Approved by CITY:

Date: _____

Name and title: _____ (sign and print name)

SPECIAL USE PERMIT

Exhibit F - Tennis Court Inspection Form

SPECIAL USE PERMIT TENNIS COURT INSPECTION REPORT

SUPERVISOR LEADING THE INSPECTION: Anthony Harrington

RECORDS INSPECTION		NOTES
yes	Verify annual (April 1st) meeting to review records and resolution of issues/complaints	
yes	Non-profit Bylaws	
yes	IRS Tax-exempt Nonprofit Certification (Needs to be up to date)	
yes	Valid insurance meeting City specified requirements	
yes	Prior Year Financial Statements - Due annually on March 1st	
yes	Current Year Budget - report projected revenue; operating expenses by category, and capital outlay - Due annually on February 28th	
yes	Current Number of Members and Number of people on Waiting List	
yes	Current Board Member Roster with contact information	
yes	Current list of all contractors and subcontractors, including name, address, email, fax, phone number and business license	
yes	Daily Inspection Records - detailing routine cleaning, facility inspections, hazards and hazard mitigation efforts	
yes	Publications and Web Site - information is consistent with the terms of the SUP including public hours, fees, etc.	
SURFACING - All courts resurfaced at least once during the 3-year term		NOTES
yes	Dates and records of court resurfacing.	
yes	Surface is smooth, level, and well drained with no standing water.	
yes	Surface is free of large cracks, holes, and trip hazards.	
yes	Surface is painted and striped in accordance with the United States Tennis Association court specifications.	
yes	Worn painted surfaces do not exceed 20% of total court surface.	
yes	Surface is free of litter, debris, gravel and graffiti.	
NETS/EQUIPMENT - maintained in a safe and aesthetically acceptable manner		NOTES
yes	Nets are free from tears and frays.	
yes	Nets are properly installed and secured to support poles.	
yes	Nets have center straps installed at the regulated height (36") and are anchored to the court.	
yes	Nets are tight with no sagging at the top.	
yes	Support poles have hardware intact, properly anchored, and installed.	
LIGHTING - failed lamps replaced immediately; electrical malfunctions repaired within 3 working days		NOTES
yes	Electrical systems and components are operational and in compliance with appropriate building codes.	
yes	90% of lamps for each court are operational.	
yes	Timers are properly set for specific hours of operation.	
yes	No electrical conducting wires are exposed.	
yes	Ballast boxes and components are properly installed and secured.	
yes	Lighting controls with operation instructions and information are conveniently located for easy access.	
yes	Lights to give uniform coverage on facilities and fixtures are adjusted to eliminate dark or blind spots.	
yes	Electrical is properly metered for Permit Area	

FENCING		NOTES
yes	Fencing material is galvanized chain link and is the appropriate gauge wire for specified use.	
yes	Fencing material is properly secured to support rails and no curling occurring at bottom.	
yes	Support rails are properly connected and straight.	
yes	Fencing is free of holes, protrusions, and catch points.	
yes	Gates and latches are operational.	
yes	Windscreens are tightly secured to the fencing and are free of tears, holes and graffiti.	
yes	Tension wires are properly secured.	
yes	Fabric is straight and free of bending or sagging.	
SIGNS		NOTES
yes	All signs have prior written consent from the City.	
yes	Signage must be legible, current and not faded. (Included bulletin boards and kiosks)	
yes	All posted information is accurate to what is posted on website.	
yes	Link to the website is available on printed and posted materials.	
ACTIVITIES AND RENTALS		NOTES
yes	Fees Posted/Advertised are in compliance and consistent with SUP	
	Non-member/public court use shall not exceed hourly and daily rates (per person)	
yes	Advertised hours for non-members/public is a minimum of twenty percent (20%) of the available court times.	
yes	Instructions on how to become a member are advertised.	
yes	Membership not required to register for classes and activities or to use the facilities is posted	
yes	List/description of current planned programs, classes, etc.	
yes	List/description of all tournaments during the last 12 months and next 12 months.	
yes	List of past (12 months) and future rentals	

List inspection participants and maintenance concerns:

SPECIAL USE PERMIT
Exhibit G – 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.** This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."
- 9.1. A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.
- 9.2. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.

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



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: October 25, 2024

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

FROM: Todd Gloria, Mayor
Mara W. Elliott, City Attorney
Eric K. Dargan, Chief Operating Officer
Julie Rasco, Human Resources Director
David Dalager, Personnel Director
Diana J.S. 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 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 an inclusive, civil, and respectful work environment free of discrimination, harassment, and retaliation. The City will not tolerate discriminatory, harassing, or retaliatory conduct in or affecting the workplace 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 proportionate to the severity of the conduct, 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, lactation, 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, family care, military, or other protected leave,

request for reasonable accommodation, communication relating to an alleged violation of this Policy, or any other classification protected by federal, state, or local law, including being perceived or regarded as or associated with a 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 diversity, inclusion, respect, and the highest level of performance, professionalism, and civility. Conduct may violate this 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 the potential for their comments or actions to 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, lactation, 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 transition, use of medical, family care, military, or other protected leave, request for reasonable accommodation, communication relating to an alleged violation of this Policy, or any other classification protected by federal, state, or local law, including being perceived or regarded as or associated with a protected classification. These classifications are the "protected classifications" covered under this Policy. The City supports the reasonable accommodation of employees with a disability, known limitation related to pregnancy, childbirth, or a related medical condition, or sincerely held religious belief, observance, or practice.

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 discriminatory or harassing conduct in or affecting 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 retaliatory conduct against any City employee, applicant, elected official, intern, volunteer, or contract worker who requests or uses protected leave, requests or accepts reasonable accommodation, or reports, opposes, or complains, provides a statement or testimony, or otherwise participates or assists in an investigation or other proceeding regarding alleged conduct 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 can also create a hostile, offensive, oppressive, or intimidating work environment and deprive a person of their right to work in a place free of discrimination. This occurs when the harassing conduct sufficiently offends, humiliates, distresses, or intrudes upon a 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.

Additionally, harassment can include conduct that occurs in a work-related context outside of work (e.g., an off-site party), in a virtual context through work-related communication systems, devices, or technologies, such as email, chat or text messaging, or videoconferencing, or in a non-work-related context or on social media if it affects the workplace. Harassment that amounts to a threat or bullying also violates the City's Threat Management Policy, Administrative Regulation 97.10.

Retaliation includes an adverse employment action or threatening, intimidating, or harassing conduct because a person opposed or reported alleged conduct 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 a report of an alleged violation of this Policy; requested or used medical, family care, military, or other protected leave; or requested or accepted reasonable accommodation for a disability, known limitation related to pregnancy, childbirth, or a related medical condition, or religious belief, observance, or practice. 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, or retaliation. This means the City will promptly respond to all reports and complaints of potential discrimination, harassment, or retaliation in or affecting the workplace, conduct fair, timely, and thorough investigations, as needed, and take all appropriate action. The City's action may range from training or informal counseling to more severe disciplinary action, proportionate to the severity of the conduct, 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. Reporting a potential violation of this Policy is protected conduct; individuals may report allegedly discriminatory, harassing, or retaliatory conduct they experience, observe, or otherwise become aware of without fear of retribution.

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 immediately 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 misconduct did not take place in their work units.

3. SEXUAL HARASSMENT PROHIBITED

All City employees, applicants, elected officials, interns, volunteers, and contract workers are prohibited from engaging in sexual harassment in or affecting 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 regarding sexual harassment and will not tolerate sexual harassment in or affecting the workplace.

Sexual harassment can be unlawful and includes verbal, physical, or visual harassment, as well as unwanted sexual advances. Sexually harassing conduct need not be motivated by sexual desire. Further, a person alleging sexual harassment is not required to have sustained 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 conduct or comments based on sex, gender, gender identity, gender expression, or sexual orientation unreasonably interfere with a person's work performance or create 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 this 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, emails, 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.
- 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 that are available online at no cost: <https://calcivilrights.ca.gov/shpt/>.

4. DISABILITY ACCOMMODATION

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 accommodation to employees and qualified applicants with a disability, unless doing so would cause undue hardship.

The City determines reasonable accommodations for employees with a disability through timely, good faith interactive processes involving a Human Resources Department Disability Program Coordinator, 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 accommodation 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.

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.

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.

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, including the Pregnant Workers Fairness Act (PWFA), 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 accommodation to employees and qualified applicants with a disability or known limitation related to 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, deny employment opportunities based on the need or potential need to make reasonable accommodations, or to take adverse action against an employee because they requested or accepted a reasonable accommodation.

The federal Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), PWFA, 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 for the employee's infant child, or when medically advised, each time the employee has need to express milk.

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, PWFA, 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 deny, interfere with, or restrain 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 must 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, and for classified employees, in accordance with 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, lactation, 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, or any other classification protected by federal, state, or local law, including being perceived or regarded as or associated with a 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 Personnel Manual, Index Code K-2 (Equal Employment Opportunity Policy and Complaint Procedure), 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 reasonable accommodation).

12. REPORTING A VIOLATION

Any City employee, applicant, elected official, intern, volunteer, or contract worker who believes that a violation of this Policy may have occurred or may be 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 Civil Rights Department, (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 potential violation of this Policy, or observe or otherwise become aware of possible discriminatory, harassing, or retaliatory conduct toward or 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 alleged conduct in violation of this Policy or participating or assisting in any investigation or other proceeding under this Policy.

Confidentiality. The City will strive to protect the privacy interests of all individuals involved as much as possible when responding to a report or complaint of a potential violation of this Policy. However, anonymity or complete confidentiality cannot be guaranteed once allegedly inappropriate conduct is reported or a complaint is made. The City has a duty to investigate alleged violations of this Policy and take appropriate corrective and preventive action even if a complainant or alleged victim does not want a matter investigated or corrected. Information pertaining to reports or complaints of EEO violations and gathered as part of an investigation will be kept confidential 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, Equal Employment Opportunity Policy and](#)


Complaint Resolution Procedures. 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 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 their rights and responsibilities relating to fair and equal treatment in the workplace, equal opportunities to succeed, and a work environment free of discrimination, harassment, and retaliation. 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. The City is committed to providing a workplace that promotes diversity, inclusion, respect, and the highest levels of performance, professionalism, and civility.

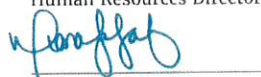

Todd Gloria
Mayor


Mara W. Elliott
City Attorney


David Dalager
Personnel Director


Eric K. Dargan
Chief Operating Officer


Julie Rasco
Human Resources Director


Diana J.S. Fuentes
City Clerk