

CITY OF SAN DIEGO  
SPECIAL USE PERMIT  
COMMUNITY GARDEN RELATED ACTIVIES

THIS CITY OF SAN DIEGO SPECIAL USE PERMIT (Permit) is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation (CITY) and [INSERT: NAME OF PERMITTEE], a [INSERT: Type of Corporation] (PERMITTEE), to be effective as of [INSERT: Effective Date] when signed by the parties and approved by the City of San Diego City Attorney as follows:

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

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

NOW, THEREFORE, it is hereby mutually agreed by and between

1. Occupancy. CITY does hereby grant to PERMITTEE a Special Use Permit for the non-exclusive use of certain premises as designated by the Park and Recreation Department, commonly known as [INSERT: Name of Premises], located at [INSERT: Location], and more particularly described on Exhibit A attached hereto (Premises).
2. Term. The term shall be for the period of three years, beginning on the first day of [INSERT: Month], and terminating on the [INSERT: twenty-eighth, twenty-ninth, thirtieth, OR thirty-first] day of [INSERT: Month], provided, however, that this Permit may be terminated by either party upon thirty (30) days written notice. This Permit does not guarantee that the Premises requested or assigned will always be available at the date and time requested by the PERMITTEE.
3. Fee. The PERMITTEE shall pay the CITY a one-time Permit processing fee of six hundred and three dollars (\$603.00) prior to commencement of this Permit.
4. Nonprofit Status. PERMITTEE shall provide the Park and Recreation Department with documentary evidence of current tax-exempt status at the beginning of each City Fiscal Year (July 1) which evidence shall include a copy of the most recent bylaws of the organization.
5. Use of Premises. Premises shall be used only for the purposes of Community Gardening and related activities, and for no other use whatsoever without obtaining the

prior written approval of the Park and Recreation Department Director. Violation of this section is cause for immediate termination of this Permit.

6. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE'S occupancy, use, development, maintenance or restoration of the Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.

7. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked at will by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S revocation or termination of this Permit.

8. No Holdover. If PERMITTEE continues to occupy the Premises after the expiration or earlier termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, 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 Permit, PERMITTEE shall pay to CITY rent calculated on a per diem basis at the market rental rate in effect just prior to such expiration or earlier termination. CITY'S acceptance of such rent shall neither constitute a renewal or extension of this Permit, nor give the PERMITTEE any rights in or to the Premises.

9. Restore and Vacate. Prior to the expiration or PERMITTEE'S earlier termination of this Permit, PERMITTEE shall restore the Premises to its condition on the Effective Date, normal wear and tear expected, and upon such expiration or earlier termination immediately vacate the Premises. Upon CITY'S termination of this Permit, PERMITTEE shall immediately cease all operations on the Premises and as soon as practicable thereafter restore the Premises to its condition on the Effective Date of this Permit (plus any improvements made by PERMITTEE), normal wear and tear expected, and vacate the Premises.

10. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether 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.

11. Maintenance of the Premises. PERMITTEE shall, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, maintain the Premises, including utilities, in good order and repair and in a safe, healthy and sanitary condition at all times during the Term, subject to normal and ordinary wear and tear resulting from the use of the Permit. CITY shall at no time during the Term of this Permit be required to make any improvements or repairs to the Premises. PERMITTEE shall keep the Premises free and clear of rubbish, debris and litter at all times. CITY will conduct an annual inspection of the condition and maintenance of the Premises and provide the PERMITTEE with the results of the inspection.

11.1 PERMITTEE shall develop the Community Garden in accordance approved community garden development plan attached as Exhibit B and maintain the site in accordance with CITY'S current Site Maintenance Standards and Guidelines and Site Inspection Form and Facility Management Roles and Responsibilities as generally described herein and as set out in Exhibit C. PERMITTEE will provide an updated schedule of this work for each Community Garden at the beginning of each CITY Fiscal Year (July 1).

11.2 PERMITTEE shall replace information kiosks, fences, gates, locking mechanisms, spigots, drinking fountains, tables and site furniture, mulch and composting equipment, raised bed structures and other garden accessories as necessary or as directed by CITY staff in order to maintain desirable working conditions (See Exhibit D suggested Site Improvement Repair and Replacement Checklist).

11.3 PERMITTEE shall completely clean the garden every month fully complying with any applicable recycling, green-waste and water restrictions and in full compliance with all (Storm Water and Discharge Control) Best Management Practices (BMP). PERMITTEE shall inspect the premises daily for hazards and debris, and correct or remove any hazard or debris immediately. Weekly inspection records will be kept for one (1) year.

11.4 PERMITTEE shall immediately repair or replace any defective equipment or improvements within three (3) working days of being noticed by the CITY.

11.5 PERMITTEE shall clean walkways and adjoining public areas on a daily basis on the Premises (see Exhibit A Premises) complying with any applicable water restrictions and in full compliance with all (Storm Water and Discharge Control) Best Management Practices (BMP).

11.6 PERMITTEE agrees that CITY shall not be required to perform or assume the cost of any maintenance, repairs, or services to the Premises except that specifically set forth in this Permit as CITY obligations.

11.7 PERMITTEE shall comply with San Diego Municipal Code section 43.0301 et seq., Storm Water Management Discharge and Control (see Exhibit E), in performing or delivering services at CITY-owned, leased, or managed property, or in performance of services and activities on behalf of the City of San Diego, regardless of the location.

11.8 PERMITTEE shall hold an annual meeting with CITY staff to review budget, inventory, facility maintenance, services offered, and to discuss the receipt and resolution of any complaints received.

12. Inspection. CITY may at all times enter and inspect the Premises (without notice) but shall annually conduct a full inspection and condition assessment of the property.

13. Improvements/Alterations.

13.1. PERMITTEE shall not make or cause any improvements, changes or alterations to be made to the Premises, without prior written CITY approval using a Right of Entry (ROE) permit. In the event that makes or causes to be made any improvements, repairs or alterations on the Premises. PERMITTEE shall file with the CITY a bond that provides for the payment in full of the claims of all persons performing labor upon or furnishing materials to be used, in the amount of the estimated cost of the improvement, alteration, or repair, as determined by the Park and Recreation Director of his or her designated representative. The bond shall be acknowledged by the PERMITTEE as principal and by a corporation licenses by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety. PERMITTEE shall hold CITY free and harmless and indemnify CITY against all claims for labor or materials furnished in connection with improvements, repairs or alterations to the Premises, and the cost of defending against such claims, including reasonable attorney's fees.

13.2 Any improvements, repairs or alterations to the Premises shall be done in accordance with the Park and Recreation Department Consultant's Guide to Park Design and Development which establishes general standards, guidelines and criteria for the design and development of improvements in City parks and open spaces. The document can be found at [www.sandiego.gov/park-and-recreation](http://www.sandiego.gov/park-and-recreation).

13.3 Under no circumstances shall PERMITTEE or PERMITTEE's agents place a temporary or permanent structure of any kind on the Premises, including but not limited to cargo containers, trailers, storage sheds, recreational vehicles, etc., without the prior written authorization of the CITY and obtaining any permits required by the City, County or other jurisdiction. Violation of this condition of the Permit may require the PERMITTEE to immediately remove any temporary structures at PERMITTEE's sole cost and expense.

14. Non-exclusive Use. The general public shall not be wholly or permanently excluded from the Premises or any sponsored activity. However, PERMITTEE, with prior written approval of the Department, may develop reasonable restrictions for the use of facilities and participation in certain activities, provided that they are consistent with the rights of the general public and are designed to enable PERMITTEE to use the Premises for the purposes herein granted. Under this Permit, the PERMITTEE must develop and administer a public outreach program to be sure that the public is aware of the rules and regulations and processes for gaining access to Community Garden facilities, enrolling in Community Garden programs and activities and becoming a member of the PERMITTEES organization. In addition the public must have supervised access to the Community Gardens twice monthly through a regularly scheduled community outreach program conducted by the PERMITTEE for the purpose of informing the community about community garden activities. The dates and times for the public access program shall be posted at the Community Garden in clear view of the public.

15. Fees. PERMITTEE shall have the right to charge reasonable fees to non-members (public) for the use of the facilities or services provided. Fees shall be designed to cover maintenance and program operation and are subject to prior written approval of the Park and Recreation Director or his or her designated representative. The public fee schedule is attached as Exhibit F.

16. Utilities. All utilities that may be reasonably necessary for the purpose of the occupancy permitted hereunder shall be the sole responsibility of PERMITTEE, to be provided at PERMITTEE'S sole cost and expense. Unless separate metering is not available in which case payment will be on a pro-rated basis as defined by the CITY.

17. 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.

18. Membership. Membership in the PERMITTEE'S organization shall be open to anyone meeting the requirements of PERMITTEE's rules and bylaws and the Non-Discrimination Provision referenced in Section 21 below. All restrictions, rules, bylaws and fees, if any, and changes thereto proposed by the PERMITTEE shall, before being put into effect, be submitted to and receive the written approval of the Park and Recreation Director or his or her designated representative. While community gardening classes and related training may be offered on the Premises, 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.

19. Records and Inspection. PERMITTEE shall keep accurate and complete books of account indicating all financial transactions made in connection with the Premises. Said records shall be based upon the municipal fiscal year and shall run from July 1<sup>st</sup> through June 30<sup>th</sup> of each year. In February of each year, PERMITTEE shall prepare and submit to the CITY 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 Park and Recreation Director on a semi-annual basis on January 31<sup>st</sup> and July 31<sup>st</sup> of each year. Financial reporting shall be in a format approved by the City Auditor and provided by the Park and Recreation Department to the PERMITTEE. In the event of a termination as set forth in Paragraph 3 hereof, said report must be submitted within thirty (30) days of the date said termination. PERMITTEE'S books of account shall be subject to inspection by an authorized representative of the CITY at all reasonable times (PERMITTEE to provide all such record).

20. Use of Funds. All funds collected by PERMITTEE from the use of the Premises shall be used for the sole purpose of developing and maintaining the facilities and promoting the PERMITTEE'S community garden and community garden-related activities.

21. Non Discrimination. PERMITTEE, in the promotion of their activities shall not discriminate or permit discrimination in any manner against any person or class of persons by reason of race, color, religion, gender, national origin, age, mental or physical disabilities or sexual orientation.

22. Drug Free Environment. It is the policy of CITY that all facilities provided under this Permit shall be utilized and operated in a drug-free environment. The PERMITTEE shall make this fact known, both in writing and in oral communication, to facility participants periodically throughout the Term of this Permit. PERMITTEE shall

document such written or oral communication and provide copies to CITY on an annual basis.

23. Insurance. PERMITTEE shall deliver to CITY a current certificate of insurance for:

- 1) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000);
  - 2) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the Premises. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage; and
  - 3) Worker's Compensation Insurance, as required by the laws of the State of California for all of PERMITTEE'S employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).
- 23.1. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additionally insured in all policies.
- 23.2. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Park and Recreation Department.
- 23.3. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

- 23.4. **Deductibles/Retentions.** All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 23.5. **Continuity of Coverage.** All policies shall be in effect on or before the first day of the Term, except “course of construction fire insurance” shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- 23.6. **Modification.** To assure protection from and against the kind of extent of risk existing on the Premises, CITY, at its 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.
- 23.7. **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.

24. **Indemnification.** PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE’S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE’S occupancy, use, development, maintenance or restoration of the Premises, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however that PERMITTEE’S duty to indemnify and hold harmless shall not include any willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all



of the costs related thereto, including without limitation reasonable attorney fees and costs.

25. Disabled Access Compliance. PERMITTEE shall comply with the 1990 Americans with Disabilities Act (ADA) and Title 24 of the California Code of Regulations (commonly known as the “building code”) as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

26. 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, and/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.

27. No Nuisance. PERMITTEE shall not use the Premises in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons on the Premises or within surrounding areas as determined by the Park and Recreation Director or designee.

28. Assignment and Sublease. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY’S prior written consent, which may be withheld or delayed in CITY’S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.

29. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY’S prior written consent. If any such unauthorized item is found on the Premises, PERMITTEE shall remove the item at its sole cost and expense within 24 hours after being provided notice by CITY, or CITY may thereafter remove the item at PERMITTEE’S sole cost and expense.

30. Encumbrances. PERMITTEE shall keep the Premises and any CITY-owned property of which the Premises is a part free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE’S occupancy, use, developments, maintenance, or restoration of the Premises. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Premises, including without limitation PERMITTEE’S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

31. Compliance with Laws. PERMITTEE shall, at its sole cost and expense, comply with all of the requirements of all rules, regulations, ordinances, laws and direction of all City, county, state, and federal governing authorities now in effect or which may hereafter be in effect, which pertain to PERMITTEE'S occupancy, use, development, maintenance and restoration of the Premises. Violation of this provision shall be cause for immediate revocation of this Permit.

32. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Premises, including the land, 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 or restoration of the Premises, including any licenses or permits. PERMITTEE acknowledges that this Permit 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 the CITY.

33. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Premises by PERMITTEE, its officers, employees, invitees, guests, agents, or contractors (PERMITTEE Parties). PERMITTEE shall not store, utilize, or sell any hazardous substances on the Premises without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.

33.1. Remediation. If any release of a hazardous substance occurs as a result of PERMITTEE'S use, development, or maintenance of the Premises (PERMITTEE'S Operations), PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.

33.2. Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S Operations, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for

injury to natural resources or the public, and costs of any health assessments or health effect studies.

33.3. Notice of Release. If PERMITTEE knows or has reasonable cause to believe that any hazardous substances has been released on or within the Premises, PERMITTEE shall give written notice to CITY within three (3) business days after receipt of such knowledge or belief and shall take all actions necessary to minimize the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private lawsuits related to the Premises.

33.4. Environmental Assessments. Upon reasonable cause to believe that PERMITTEE'S Operations resulted in a hazardous substances being released on or from the Premises, CITY may cause an environmental assessment of the Premises 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 whether any hazardous substances have been caused or produced by PERMITTEE'S Operations and the quantities. If any hazardous substances caused or produced by PERMITTEE'S operations exist in quantities greater than allowed by municipal, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to fully comply 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, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall be solely responsible for and pay all costs and expenses therefor. If the environmental assessment conclusively establishes that PERMITTEE'S Operations did not result in a hazardous substance being released on or from the Premises, CITY shall reimburse PERMITTEE for the cost of the assessment.

34. Alcohol. No alcohol may be served at any park identified under Municipal Code Section 56.54A, 24 Hour Ban (Exhibit E). Permission to serve alcohol on the Premises at any other park must be obtained in advance from the Park and Recreation Department. PERMITTEE shall follow and shall bear full responsibility to ensure such compliance whenever PERMITTEE obtains permission to serve alcohol pursuant to this provision.

All state and local regulations regarding the consumption of alcohol in public facilities must be followed.

35. Exclusive Beverage Vending Machine. PERMITTEE is aware that the Pepsi Bottling Company is the exclusive “beverage vending machine” provider for the CITY OF SAN DIEGO and must be used for beverage vending in public buildings and parks.

36. Music. PERMITTEE shall only perform music for which the CITY has obtained a “non-dramatic” (as hereinafter defined) performance license from ASCAP or any other musical industry licensing entity [Licensing Entity]. For a list of approved ASCAP music and artists, PERMITTEE may contact ASCAP at: ASCAP, One Lincoln Plaza, New York, NY 10023, Attn: Repertory Dept.- Clearance Section, or online at [www.ascap.com](http://www.ascap.com). 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 Licensing Entity. Failure to comply with this Section shall be deemed a material breach of this Permit. In the event that PERMITTEE does not agree to be bound by the Additional Requirements, this Permit shall terminate in accordance with Section 3 above.

For the purposes of this Permit, a “non-dramatic” performance includes live performances and recorded performances (CD, tapes, radio and television over loud speakers). PERMITTEE shall not perform music with any “dramatic” performances. For purposes of this Permit, “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 Permit, shall include, but not be limited to, a musical comedy, opera, and a play with music, revue or ballet.

PERMITTEE shall not play or allow to be played, music from a coin operated phone record (or CD) player commonly known as a “juke-box”.

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) the 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.

37. Waiver. The property constituting the Premises is publicly owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY'S waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY'S delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY'S acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY'S failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.

38. Cumulative Remedies. CITY'S rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of the CITY'S rights or remedies at law or in equity.

39. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.

40. 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 the performance of each and every obligation of PERMITTEE under this Permit.

41. No Affiliation. Nothing contained in this Permit 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.

42. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and PERMITTEE'S occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.

43. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE as follows:

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And to the City as follows:

THE CITY OF SAN DIEGO  
ATTENTION:

Staff name/Title  
Mailing Address

With a copy by First Class Mail to:

SAN DIEGO CITY ATTORNEY  
Attn: Real Property Section  
1200 Third Avenue, Suite 1100  
San Diego, California 92101-4106

44. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity’s articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

45. Acceptance of Premises. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Premises and its suitability for the Permit Use. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the own and independent inspections, tests, investigations and observations of the Premises

in entering into this Permit. PERMITTEE accepts the Premises in its current condition, and acknowledges and agrees that CITY has fulfilled all obligations it may have had 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.

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.

Date: \_\_\_\_\_.

THE CITY OF SAN DIEGO,  
a California Municipal Corporation

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Park and Recreation Department

Date: \_\_\_\_\_.

PERMITTEE

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_ AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, City Attorney

By: \_\_\_\_\_

[INSERT Attorney's Name]

Deputy City Attorney

SAMPLE



Exhibit A

Community Garden Premises Map

SAMPLE

Exhibit B

Community Garden Development Plan

SAMPLE

Exhibit C

Community Garden Maintenance Standards and Guidelines

SAMPLE

Exhibit D

Site Improvement Repair and Replacement Checklist

SAMPLE

Exhibit E

San Diego Municipal Code section 43.0301 et seq.,

Storm Water Management Discharge and Control

SAMPLE

Exhibit F  
Public Fee Schedule

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