



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

43. Compliance with Laws	Page 26
44. Taxes	Page 26
45. Hazardous Substances	Page 27
46. Alcohol	Page 29
47. Special Events	Page 29
48. Exclusive Beverage Vending Machine	Page 29
49. Music	Page 30
50. Waiver	Page 30
51. Cumulative Remedies	Page 31
52. Survival	Page 31
53. Joint and Several Liability	Page 31
54. No Affiliation	Page 31
55. Entire Agreement	Page 31
56. Notices	Page 31
57. Authority to Contract	Page 32
58. Acceptance of Premises	Page 32
Exhibit A - Premises	Page 34
Exhibit B - Employees, Sublicensee, Subpermitees and Renter List	Page 35
Exhibit C - Senior Center Facility Rental Fees	Page 36
Exhibit D - Hour of Operations Schedule	Page 37
Exhibit E - Sublicensing Agreement	Page 38
Exhibit F - Facility Inspection Form	Page 42
Exhibit G - Prevailing Wage Requirements	Page 44
Exhibit H - Equal Employment Opportunity Policy	Page 48

CITY OF SAN DIEGO
SPECIAL USE PERMIT

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 Ed Brown Senior Center at Rancho Bernardo, a Non-profit 501(C)(3) Corporation (**PERMITTEE**), to be effective June 10, 2024 when signed by the parties and approved by the San Diego City Attorney, as follows:

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

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

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

1. Definitions. As used in this Permit, the following terms are defined as follows:
 - 1.1 **"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 Deputy Director, Steve Palle, who can be contacted at 619-235-1155.
 - 1.2 **"Party"** shall mean each signatory to this SUP individually; or **"Parties"** shall mean the collective signatories to this SUP.
 - 1.3 **"Premises"** or **"Permit Area"** means that certain CITY-owned real property commonly known as the Rancho Bernardo Community Park – Senior Center Building located at 18402 West Bernardo Drive, San Diego, CA 92127, as more particularly described in Exhibit A attached hereto (**Premises**).
 - 1.4 **"PERMITTEE"** means Ed Brown Senior Center at Rancho Bernardo a Non-profit 501(C)(3) Corporation, which includes PERMITTEE's directors, officers, members, partners, employees, agents, subpermittees, sublicensees, attorneys, and all other persons whom PERMITTEE authorizes or allows to use or occupy the Premises. PERMITTEE must be responsible for all of PERMITTEE's agents, board members, employees, and volunteers and ensure that they adhere to all conditions as stated in this Permit.
 - 1.5 **"PERMITTEE's Address for Notices"** is: 18402 West Bernardo Drive
San Diego, CA 92127

- 1.6 **“Volunteer”** means an instructor, person or entity providing free senior related activities on the Premises and has completed the criminal offender record information review.

PERMITTEE will perform all aspects of volunteer recruitment, screening, onboarding, training, and selection process. CITY will provide any CITY required waivers, CITY required forms, and training. PERMITTEE will review applications and conduct reference checks on all applications. PERMITTEE will publicize the various volunteer programs. PERMITTEE must send any volunteer documentation to the CITY Contact upon request.

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

Prior to scheduling any volunteer to work or assist on the Premises, PERMITTEE will confirm with CITY's Parks and Recreation Volunteer Office that they have cleared the Background/Fingerprint check conducted by the CITY's Personnel Department. CITY will pay the cost and will provide results of Background/Fingerprint check.

- 1.7 **“Subpermittees”** means an instructor, person or entity providing senior related activities on the Premises under contract agreement with the PERMITTEE. Subpermittees must follow the terms and conditions per section 8 of this permit.
- 1.8 **“Sublicensee”** is considered to be any commercial enterprise occupying space on the Premises to run and operate a business (including commercial kitchen, café/snack bar or gift shop). Sublicensee must follow the terms and conditions per section 10.
- 1.9 **“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. Facility Rentees must follow the terms and conditions per section 8 of this permit.
- 1.10 **“Limited Duration Events”** means any activity that takes place over the course of several hours during one (1) day (including set-up and dismantling time). Any rental authorization issued by PERMITTEE beyond the authority granted pursuant to this Permit shall be deemed null and void by operation of law. Nothing in this Permit shall be construed as exempting PERMITTEE or any third party from the Special Events Ordinance (San Diego Municipal Code section 22.4001-22.4038) if applicable, including obtaining a “Special Event Permit” for a “Special Event” to be conducted on the Premises, as defined in Section 44.

2. Occupancy. CITY does hereby grant to PERMITTEE a non-exclusive Permit for the use and occupancy of the Premises, specifically for the purposes enumerated in this Permit,

and for no other purposes. This Permit does not guarantee that the Premises requested or assigned will always be available at the date and time requested by the PERMITTEE.

3. Term. The term (**Term**) shall be for the period of three years, beginning on the Effective Date. At the CITY'S option and discretion, this SUP may be extended for up to two (2) additional one (1) year periods, subject to a Processing Fee for each additional year term and subject to the same terms and conditions in this SUP. Permittee shall have no further option to extend the Term. A new SUP will need to be issued to continue operations for another Term. However, this SUP may be terminated by either Party for convenience upon thirty (30) days prior written notice to the non-terminating Party.
4. CITY's Consent, Discretion. CITY's consent or approval under this Permit means the advanced written consent or approval of the Mayor of the City of San Diego, or the Mayor's designee ("Mayor"), unless otherwise required by law or expressly provided and will be made in the Mayor's discretion, subject to all applicable laws, rules, regulations, and directives of competent governmental authorities.
5. Processing Fee. The PERMITTEE shall pay the CITY a one-time SUP processing fee of Four hundred and forty-eight dollars (\$448.00) prior to the Effective Date. Upon written request and approval of the Parks and Recreation Department Director or his or her designee (**Director**), a payment plan may be entered into with the CITY.
6. Nonprofit Status. PERMITTEE shall provide the Director with documentary evidence, to CITY's satisfaction, of PERMITTEE's current Federal tax-exempt status by prior to the signing this SUP and May 1st of each year during the Term. PERMITTEE shall inform CITY immediately if this status changes or is cancelled.
 - 6.1 PERMITTEE will be an active California non-profit corporation with the California Secretary of State and will be a current registrant of the Registry of Charitable Trusts with the California Office of the Attorney General for the entire Term of this SUP.
7. Use of Premises. Premises must be supervised at all times when facility is in use during the Term. Premises shall be used only for the purposes of senior recreation and related activities which may include special events and fund-raising activities (Permit Use) and for no other use whatsoever without obtaining the prior written approval of the Director. In all cases where the Director's prior written approval is required, PERMITTEE shall submit a written request to the Director prior to engaging in such activity. The Director may, in his or her sole discretion, approve or deny PERMITTEE's request. If the request is approved by the Director, PERMITTEE shall maintain the approval in PERMITTEE'S files at all times. The following shall apply to the Permit Use:
 - 7.1 PERMITTEE may offer programs and activities to the public at market rate and in compliance with all applicable laws and CITY policies.
 - 7.2 PERMITTEE may offer memberships for use of the facility in compliance with Section 14.

- 7.3 PERMITTEE may utilize employees, volunteers, Subpermittees, and Facility Rentees to offer senior-related programs and activities on the Premises. A list of all employees, Subpermittees, and Facility Rentees must be submitted to the Director for review and approval on an annual basis. Attached as **Exhibit B** is an approved list as of the Effective Date of this SUP. **Exhibit B** may be amended throughout the Term of this SUP to reflect the current Subpermittees and Facility Rentees. 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 the annual meeting with City Contact.
- 7.4 PERMITTEE may operate a food service or kitchen facility located on Premises. Food service or kitchen operations 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. PERMITTEE must obtain any other required and applicable permits and licenses before operating at the Premises. The operator of a Food Service or kitchen operation must dispose of trash in accordance with all local, state, and federal laws, including the California Health and Safety Code.
- 7.5 PERMITTEE may rent out the Premises (or a portion of it) at market rate for Permit Use activities and for Limited Duration Events by entering into a rental agreement for use of the Premises under the terms and conditions of this Permit. A list of rental rates must be submitted to the Director for review and approval on an annual basis. Attached as **Exhibit C** is an approved list as of the Effective Date of this SUP. **Exhibit C** may be amended throughout the Term of this SUP to reflect the current rental rates.
- 7.6 Subject to the terms and conditions of the SUP, the Parks and Recreation Department consents to the Permittee sublicensing a portion of the Premises. Any commercial activities on the Premises (such as operation of a commercial kitchen, café/snack bar, and gift shop) are prohibited unless PERMITTEE obtains prior written approval of the Director and then enters into a Sublicense Agreement as stated in Section 10. All terms and conditions of the SUP shall control and supersede all inconsistent or contrary provisions in the Sublicense Agreement.
8. Subpermittees and Facility Rentees. If PERMITTEE allows Subpermittees and Facility Rentees for activities related to the Permit Use on the Premises, PERMITTEE must issue and retain a written agreement with each Subpermittee and Facility Rentee onsite. Upon request, the Director can review all Agreements. A List of approved Subpermittees and Facility Rentees as of the date of signing this SUP is attached as **Exhibit B**, as maybe amended throughout the Term of this SUP.
- 8.1 CITY acknowledges that PERMITTEE intends to subpermit and rent areas within the Premises for senior related activities.

- 8.2 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 as stated in this SUP.
- 8.3 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 34 before operating on the Premises.
- 8.3.1 The certificate of insurance must name PERMITTEE and the "City of San Diego, its elected officials, officers, representative, agents, and employees," as additional insured for the entire term of the Agreement.
- 8.4 PERMITTEE will have oversight of all program and/or activity fees charged by Subpermittees and Facility Rentees for activities related to the Permit Use to ensure fees are charged at market rate to the participant.
- 8.4.1 PERMITTEE may charge Subpermittees an administrative or Facility Rentees a maintenance fee of gross activity revenue collected.
- 8.5 PERMITTEE agrees that CITY will not be required to perform or assume the cost of any additional maintenance, repairs, or services to the Premises as a result of having Subpermittees and Facility Rentees.
- 8.6 All funds and 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 senior activities and related services on the Premises.
- 8.7 PERMITTEE must not use any net asset proceeds generated from the Permit Use, for any of PERMITTEE's other activities, services, expenses, salaries, unrelated to this SUP or the Premises. However, PERMITTEE can use donations received from Permit Use for any Permit Use activity, including scholarships for persons who cannot pay the fee for an activity. If any net proceeds are used to provide scholarships for any activity related to the Permit Use, those net proceeds shall be deposited in a separate account to use for that purpose only.
- 8.8 Budget, Records, and Inspection. PERMITTEE, Subpermittee and Facility Rentees must keep accurate and complete books of accounts and records indicating all financial transactions made in connection with the Premises. All records and accounts must be available for review and inspection by an authorized representative of CITY upon request. Records must be maintained for a minimum period of five years from the end of the Term.
- 8.9 Criminal Background Requirements and Mandated Training. PERMITTEE must complete the criminal offender record information review, including Fingerprinting and Backgrounding as required by federal and state laws of all

employees, volunteers, Facility Rentees, and Subpermittees engaging in activities on the Premises or in accordance with this Permit Use. PERMITTEE must not employ nor utilize anyone, including employees, volunteers, or subpermittees, with criminal convictions that would bar their work with or supervision of minors or seniors under federal or state laws. PERMITTEE must ensure that anyone employed or utilized by PERMITTEE (all employees, volunteers, Subpermittees, 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 seniors. Upon request by the CITY, PERMITTEE must provide CITY with access to PERMITTEE's records showing that these requirements have been met. Failure to comply with these requirements is grounds for immediate revocation of this SUP.

8.10 PERMITTEE and any of its Subpermittees and Facility Rentees who are retained or hired by PERMITTEE are independent of CITY and are not agents of CITY. Nothing contained in this SUP will be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, including any Sublicensee, Facility Rentee or third-party permittee, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE, any Sublicensee, third-party permittee, or any other party or entity

9. Limited Duration Events. PERMITTEE may rent portions of the Premises at market rate to third parties for Limited Duration Events and , as defined in this SUP, provided that any third parties using the Premises shall comply with all of the terms and conditions as defined in Section 8 of this SUP. All rental activities must be consistent with the Permit Use and PERMITTEE must charge rental fees at market rate and in compliance with all applicable laws and CITY policies. A List of approved Rental rates as of the date of signing this SUP is attached as **Exhibit C**, as maybe amended throughout the Term of this SUP. Insurance requirements as defined in Section 34 is required for all Limited Duration Events and Facility Rentees.

9.1 Provision of Monthly Calendar of All Activities. PERMITTEE shall provide CITY with a complete and accurate written calendar of all rental activities authorized by PERMITTEE to utilize any portion of the Premises, including all Limited Duration Events. PERMITTEE shall include the full name of any individual or organization conducting activities on the Premises, including a brief description of the activity, and the date and time of the particular activity. PERMITTEE shall provide a monthly calendar by the end of the calendar month for all activities taking place on the Premises in the following month (Example: PERMITTEE is to provide calendar of all activities on the Premises for October 2023 no later than September 30, 2023).

9.2 Insurance and Indemnity to CITY from Limited Duration Events. PERMITTEE shall require each and every third party engaging in a Limited Duration Event on the Premises to indemnify CITY and name CITY as an additional insured in any insurance related to any Limited Duration Event authorized by PERMITTEE or any agreement for the use of any portion of the Premises. PERMITTEE shall

ensure that any agreement for the use of any portion of the Premises contains the following language:

Indemnity. _____ (*insert name of third-party*) shall protect, defend, indemnify and hold the City of San Diego (City), its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to _____'s (*insert name of third party*) officers, employees, agents, contractors, invitees, and guests, which arise out of or are in any manner directly or indirectly connected with this agreement, or the occupancy, use, development, or maintenance of that portion of the Premises occupied or otherwise used by _____ (*insert name of third party*), provided, however, that the duty of _____ (*insert name of third party*) to indemnify and hold harmless shall not include any established claims or liability arising from the sole negligence or willful misconduct of City, its elected officials, officers, representatives, agents, and employees. City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification.

Insurance. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form] _____ (*insert name of third party permittee*) shall name "City of San Diego" its elected officials, officers, representatives, agents, and employees as additional insured in all policies issued to _____ (*insert name of third party*) relating to the agreement between the alliance for Quality Education and _____ (*insert name of third party*) including, but not limited to coverage under endorsement CG2010 (11/85) or its equivalent. 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 entire duration of this agreement between the Alliance for Quality Education and _____ (*insert name of third party*).

PERMITTEE shall make a copy of any and all insurance certificates required by third parties pursuant to this Permit available to CITY within seven (7) calendar days of CITY's request.

- 9.3 Limited Duration Events 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 established willful misconduct of CITY, its agents, officers, or employees.

10. 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 or deny 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.

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

10.2 A Sublicensee is considered to be any commercial enterprise occupying space on the Premises to run and operate a business (including commercial kitchen, café/snack bar or gift shop).

10.3 Every Sublicensee using or occupying space on the Premises, as of the Effective Date of this SUP, 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 34 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.

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 Sublicense Agreement.

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

10.5 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.

10.6 As of the Effective Date of this SUP, each commercial operation that obtains a Sublicense with CITY must pay one-time processing fee of One thousand and fifty dollars \$1,050.00 per term, not subject to proration. Upon written request and approval of the Director, a payment plan may be entered into with the CITY.

10.7 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.

- 10.8 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 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.
- 10.9 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 established sole willful misconduct of CITY, its agents, officers, or employees.
- 10.10 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.
- 10.11 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.
- 10.12 Commercial Kitchen/Snack bar or Café/Gift Shop
- i. The operator of a Commercial Kitchen/Snack Bar or Café/Gift Shop (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 Commercial Kitchen, café, and snack bar operator(s), he or she/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.
11. 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. Default and cure language in section 19 and 20.

12. Fees Charged by PERMITTEE. PERMITTEE shall have the right to charge reasonable fees for the use of the facilities and services provided on the Premises by the PERMITTEE as stated in Section 7 above. All fees shall be limited to recovery of PERMITTEE's reasonable costs for the 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.
13. Use of Funds. All funds collected by PERMITTEE from the use of the PREMISES pursuant to this Permit shall be used in a fiscally responsible manner and to further PERMITTEE's activities or other services related to the Permit Use and the operation, maintenance, and improvement of the PREMISES.
14. 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. All restrictions, rules, bylaws, and fees, if any, and changes thereto proposed by the PERMITTEE shall, before being put into effect, be submitted to the Director for review. PERMITTEE shall provide a current copy of its adopted bylaws to CITY. While senior classes and related activities 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.
15. 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, except as it relates to any Limited Duration Event which is not open to the public. PERMITTEE, with the prior written approval of the Director, may develop reasonable and non-discriminatory restrictions for the use of facilities located on the Premises and participation in certain activities held by PERMITTEE on the Premises that are consistent with the rights of the general public, designed to enable the use of the Premises for the purposes granted herein, and are in compliance with all applicable laws.
 - 15.1 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.
16. City Use. CITY may use the Premises, at no charge to CITY, for no more than six CITY sponsored events upon reasonable availability and approval by the Parks and Recreation Director or his designated representative.
17. 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, list of Subpermittees and Facility Rentees, activities, and receipt and resolution of any complaints received, if necessary.

18. 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.
19. Default and Termination of SUP
- a. Failure to carry and maintain the insurance required by this SUP will be considered a default of this SUP. This SUP will be terminated if PERMITTEE fails to cure the default within 20 calendar days.
 - b. Failure to comply with any material term, condition, or obligation of this SUP will be considered a default of this SUP. CITY may provide PERMITTEE at their discretion with time to cure the default before termination of this SUP as a result of the default.
 - c. This SUP will immediately terminate if PERMITTEE starts a voluntary case or other proceeding seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or similar law, or shall make a general assignment for the benefit of creditors, or shall have an involuntary case or other proceeding instituted against it seeking similar relief.
 - d. This SUP will immediately terminate if PERMITTEE commits a criminal or illegal act, which brings CITY's name into disrepute, or otherwise substantially affects the reputation of CITY.
 - e. This SUP will immediately terminate if PERMITTEE fails to Comply with Laws, as stated in section 42.
20. Revocable License. This SUP is not a lease. This SUP is a non-exclusive license to use CITY-owned property and may be revoked at will by CITY, in its sole discretion: (a) following written notice of delivered to PERMITTEE and reasonable opportunity to cure within 20 days of written notice if PERMITTEE breaches or defaults any of PERMITTEE's obligations under this SUP, or in case of an emergency; or (b) upon reasonable prior written notice, but not less than thirty (30) days, delivered to PERMITTEE if for CITY's convenience. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the 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.
21. 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 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 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) maybe issued during this interim period. This TPUP shall not be considered a renewal or extension of the SUP. This TPUP allows for the use of the premises (identified above) 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.

22. Restore and Vacate. Prior to the expiration or PERMITTEE's earlier termination of this SUP, PERMITTEE shall restore the Premises to its condition on the Effective Date, excepting therefrom normal wear and tear, and upon such expiration or earlier termination immediately vacate the Premises.
23. Keys. PERMITTEE will be issued five (5) keys that shall not be duplicated. PERMITTEE assumes all the risk for lost or misplaced keys. PERMITTEE shall notify CITY of any lost or misplaced keys and will pay CITY for all costs associated with the loss or misplacement of CITY keys, including without limitation changing locks. All keys must be returned to CITY upon expiration or earlier termination of this SUP.
24. 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.
25. Maintenance, Installation, Improvements and Repairs of the Premises. For purposes of this Section 24, "CITY Contact" shall mean CITY's Parks and Recreation Department Area Manager (or designee), who currently is Area Manager Mark Moncey and contact number is 858-538-8204.
 - a) Maintenance. PERMITTEE shall at PERMITTEE's sole cost and expense and to CITY's satisfaction, maintain the Premises in good order and repair and in a safe, healthy, and sanitary condition at all times during the Term, subject to normal wear and tear. PERMITTEE shall keep the Premises as identified in **Exhibit A** free and clear of rubbish, debris, and litter at all times.

- i) General maintenance repairs to the building asset fall under the responsibility of the CITY. PERMITTEE must report damages to CITY staff as soon as possible. CITY Maintenance staff will assess damages and perform repairs for general maintenance repairs and damages as follows:
1. Shell of building (roof, wall, windows, and doors)
(a) Standard doors, hinges, handles and locks
 2. Main building system infrastructure (Main components of plumbing, electrical, HVAC systems)
 3. Fire Alarms and Suppression Systems
 4. Grease Trap – repairs and replacement

When assessing repairs, CITY has the discretion to accept responsibility for the repairs or not.

Other repairs caused by wear and tear and rentals do not fall under the responsibility of the CITY. PERMITTEE is responsible for, including but not limited to, repair or replacement of the following:

1. Appliances
2. Commercial kitchen appliances and equipment
3. Grease trap – ongoing cleaning service
4. Furniture replacement or repairs
5. Stages and staging equipment (lamps, curtains, audio, etc.)
6. Flooring including carpet, vinyl, tiles etc.
7. Window coverings or shades
8. Specialty door systems and components

- b) Notwithstanding any other provision of this SUP to the contrary, CITY approves the following maintenance and improvements at the Premises to be done by PERMITTEE:

- 1) Cleaning and Daily Maintenance. PERMITTEE shall inspect the Premises daily and ensure the Premises is clean and free of rubbish, debris, litter, and graffiti. PERMITTEE shall clean the Premises as needed and/or correct or remove any hazard or debris immediately. Daily inspection records shall be kept for one (1) year. PERMITTEE agrees that CITY shall not be required to perform or assume the cost of any maintenance, repairs, or services to the Premises other than what is stated in 25(a)(i).
- 2) Water Regulation. All cleaning required under this Permit and all activities on the Premises shall comply, at all times, with the current level of Emergency Water Regulations (San Diego Municipal Code section 67.3801 – 67.3811) with respect to water usage and all applicable water

restrictions relating to water quality assurance and storm water management, as amended from time to time.

- 3) Pest Management. Permittee shall regularly inspect all buildings and landscaped areas in the Premises for the presence of disease, and/or insect or rodent infestation. If any disease, insect or rodent infestation is discovered, the Permittee shall immediately notify the City Contact of discovery in order to remedy the issue in a timely manner. Permittee is responsible for pest management within the Premises, and shall comply, at all times, with the current shall conduct all disease and pest control operations in accordance with current standard practices accepted by the State of California Department of Food and Agriculture. PERMITTEE shall implement the approved control measures until the disease, insect infestation or rodent infestation is controlled to the satisfaction of the Department Administrator. Permittee shall utilize all safeguards necessary during disease, insect or rodent control operations to ensure the safety of the public, volunteers, and employees. Permittee agrees that CITY shall not be required to perform or assume the cost of any Pest Management services.
- c) Improvements/Alterations – Payment Bond. PERMITTEE shall not make or cause any improvements, changes, or alterations to be made to the Premises or to any improvements thereon without prior written CITY approval. Any and all improvements, repairs and alterations made to the Premises by PERMITTEE with CITY's approval shall become the sole property of CITY. See § 27 below for Bond requirement.
- d) 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.
- e) Structures. 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 competent governmental entities. Any structure violating this provision will be subject to immediate removal at PERMITTEE's sole cost and expense.
- f) 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.
- g) 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.

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

- o) 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.
- 26. Inspection. CITY may at all times enter and inspect the Premises, without prior notice to PERMITTEE. A Facility inspection will be conducted by CITY at least once (1) a year or as needed to verify Parks and Recreation Department and CITY maintenance standards are being met in accordance with Facility Inspection Form as listed in **Exhibit F**.
- 27. 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.
- 28. 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.
- 29. 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.

30. Utilities. All utilities that may be necessary for the use and occupancy of the Premises shall be provided at PERMITTEE's sole cost and expense. If separate metering is not available at the Premises, payment for sublicensee's portion will be proportional based on estimates of PERMITTEE use, as calculated by CITY in its sole discretion.
31. Campaigning. The PREMISES shall not be utilized for the purpose of working or campaigning for the nomination or election to any public office, be it partisan or non-partisan, or for the adoption or defeat of any ballot measure; provided however, that PERMITTEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidates forum" and similar events.
32. 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 during the Term, PERMITTEE shall prepare and submit to the Director a proposed budget for PERMITTEE's use of the Premises for the following fiscal year to the Director. The proposed budget will include estimated revenues and expenditures, including salaried positions (if any), salaries and wages, personnel expenses, 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 a semi-annual basis on January 31st and July 31st of each year during the Term. Financial reporting will be in a format approved by the CITY. In the event of early termination of this Permit, PERMITTEE will submit a financial report within thirty (30) days of the date of said termination. PERMITTEE's books of account shall be subject to inspection by CITY at all reasonable times. PERMITTEE shall maintain all such records and accounts for a minimum period of five (5) years.
33. Nondiscrimination. This SUP is made and accepted upon and subject to the covenant and condition, which will run with the land, that PERMITTEE or any person claiming under or through PERMITTEE will not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use or occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises, including without limitation the provision of goods, services, facilities, privileges, advantages and accommodations, and the hiring and

retention of employees and contractors. Unless an exception applies, PERMITTEE shall also comply with the Equal Benefits Ordinance codified in the San Diego Municipal Code. PERMITTEE is expected to support and adhere to the principles of the City of San Diego's Equal Employment Opportunity (EEO) policy and the standards of conduct stated in this EEO policy as attached in **Exhibit H**.

34. Smoke/Vape/Drug Free Environment. The Premises provided under this Permit 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.
35. Insurance. Prior to the execution of this Permit, PERMITTEE shall: (a) provide to CITY insurance certificates reflecting evidence of all insurance required below; however, the CITY reserves the right to request, and the PERMITTEE shall submit, copies of any policy upon reasonable request by the CITY; (b) obtain CITY approval of each insurance company or companies; and (c) confirm with CITY that all policies contain the specific provisions required below. PERMITTEE's liabilities, including but not limited to PERMITTEE's indemnity obligations, under this Permit, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Permit and PERMITTEE's failure to maintain or renew coverage or to provide evidence of renewal during the Term may be treated as a material breach of contract by the CITY. The PERMITTEE shall not modify any policy or endorsement thereto which increases the CITY's exposure to loss.
 - a. Types of Insurance. At all times during the Term of this Permit, the PERMITTEE shall maintain insurance coverage and shall deliver to CITY current certificates of insurance for:
 - (1) Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which 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) Workers' Compensation. For all of the PERMITTEE's employees who are subject to this Permit and to the extent required by the applicable state or federal law, the PERMITTEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the PERMITTEE shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.
- (4) Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE's insurable property related to the Permit Use of the Premises under this Permit or the Premises in an amount to cover 100 percent (100%) of the replacement cost.
- b. Required Endorsements: The following endorsements to the policies of insurance are required to be provided to CITY before any work is initiated under this Permit.
- (1) Commercial General Liability Insurance Endorsements:
- i. Additional Insured: To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.
- ii. Primary and Non-Contributory Coverage: The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents, and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of PERMITTEE's insurance and shall not contribute to it.
- iii. Severability of Interest. The policy or policies must be endorsed to provide that the PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

(2) Worker's Compensation Insurance Endorsements:

- i. Waiver of Subrogation: The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for CITY.
- c. Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- d. Deductibles. All deductibles on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- e. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- f. Modification. To assure protection from and against the kind and 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 re-evaluation 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 or otherwise related to the Permit. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- h. Indemnification and Hold Harmless. PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees,

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

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 shall not discriminate against qualified persons 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 shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.
 - f. PERMITTEE and each of its sublicensees shall be individually responsible for their own ADA compliance program. PERMITTEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Permit.
37. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises has not been inspected by a Certified Access Specialist (CAsp).
- 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 and 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. Assignment and Sublease. PERMITTEE shall not assign any rights granted by this Permit or any interest in this Permit without CITY's prior written consent in each instance, which may be withheld or delayed in CITY's sole discretion. Any assignment by operation of law shall automatically terminate this Permit. PERMITTEE's agreements with third parties for Limited Duration Events consistent with the Permit Use do not constitute an assignment in violation of this Section.
41. Signs. PERMITTEE will not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising on the Premises without CITY's prior written consent. If any such unauthorized item is found on the Premises, PERMITTEE will remove the item at its expense within twenty-four (24) hours after

notice by CITY, or CITY may thereafter summarily remove the item at PERMITTEE's cost. Notwithstanding the foregoing, PERMITTEE may erect temporary canopies, and temporary table(s) or equivalent after written authorization from the CITY Contact. PERMITTEE must comply with CITY's sign regulations in Chapter 14, Article 2, Division 12 of the San Diego Municipal Code, as amended from time to time. For all signs proposed, PERMITTEE will provide to the CITY Contact prior to installing such sign, a copy of all applicable approvals, authorizations, and permits. These materials will be located where they will not obstruct public access to the Premises and where they will not impact any park resources, e.g., wildlife habitat, and will be removed at the end of the day.

42. Encumbrances. PERMITTEE shall keep the Premises and any CITY-owned property of which the Premises is a part free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE's occupancy, use, development, maintenance or restoration of the Premises. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Premises, including without limitation PERMITTEE's failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to record a lien or encumber the Premises or City-owned property pursuant to of the California Civil Code or other applicable sections thereof.
43. Compliance with Laws. PERMITTEE shall, at its sole cost and expense, comply with all the all rules, regulations, ordinances, laws and direction of all CITY, county, state, and federal governing authorities now in effect or which may hereafter be in effect, which pertain to PERMITTEE's occupancy, use, development, maintenance and restoration of the Premises. Violation of this provision shall be cause for immediate revocation of this SUP.
44. 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 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 pay all such possessory interest taxes. PERMITTEE's payment of such taxes, fees, and assessments shall not reduce any payment due CITY.
45. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substance or otherwise regulated substances in, on, under, or from the Premises. PERMITTEE and PERMITTEE's officers, employees, agents, contractors, invitees, and guests, including third parties conducting Limited Duration Events on the Premises 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. For all purposes of this SUP, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of a Hazardous Substance.
- b. For all purposes of this SUP, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- c. 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.
- d. 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.
- e. 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.

- f. 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.
 - g. 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.
46. 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 43. 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.

47. 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>

48. Exclusive Beverage 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 the 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 be informed in writing by the CITY and shall comply with whomever has been designated the exclusive vendor as set forth by CITY.
49. 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. (BMI), 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 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. A “dramatic” performance includes, but is 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 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) 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.

50. 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.

51. Cumulative Remedies. CITY's rights and remedies under this SUP are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
52. Survival. Any obligation which accrues under this SUP prior to its expiration or termination shall survive such expiration or termination.
53. 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 SUP.
54. 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.
55. Entire Agreement. This SUP including the Exhibits attached hereto, constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this SUP and PERMITTEE's occupancy, use, development, maintenance, and restoration of the Premises. Any modification, alteration, or amendment of this SUP shall be in writing and signed by all the parties hereto.
56. 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:

Ed Brown Senior Center at Rancho Bernardo
Attn: Kim Lange, Executive Director
18402 West Bernardo Drive
San Diego, CA 92127

And to the CITY as follows:
THE CITY OF SAN DIEGO
Attn: Steve Palle, Deputy Director
City of San Diego Parks and Recreation Department, Community Parks I Division
2125 Park Blvd., 4th Floor
San Diego, California, 92101
57. 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. Each person executing this SUP on behalf of another person or legal entity shall, upon request, 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.

58. 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 or its suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations and observations 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 it may have had to improve, modify, repair, replace, alter, or otherwise develop the Premises prior to the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Premises. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation PERMITTEE's employees, from any defects in the Premises, and shall be solely responsible, therefore.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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

CITY:

THE CITY OF SAN DIEGO, a California Municipal Corporation

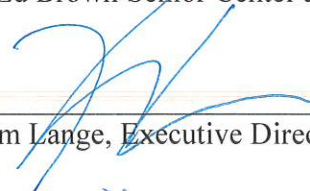
By: 

Date

10 JUN 24

Kristina Peralta, Deputy Chief Operating Officer

PERMITTEE: Ed Brown Senior Center at Rancho Bernardo, a Non-profit 501(c)(3) Corporation

By: 

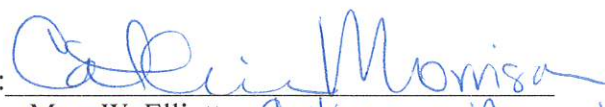
Date

5/31/24

Kim Lange, Executive Director

APPROVED THIS 10th DAY OF June, 2024 AS TO FORM:

MARA W. ELLIOTT, City Attorney

By: 

~~Mara W. Elliott~~

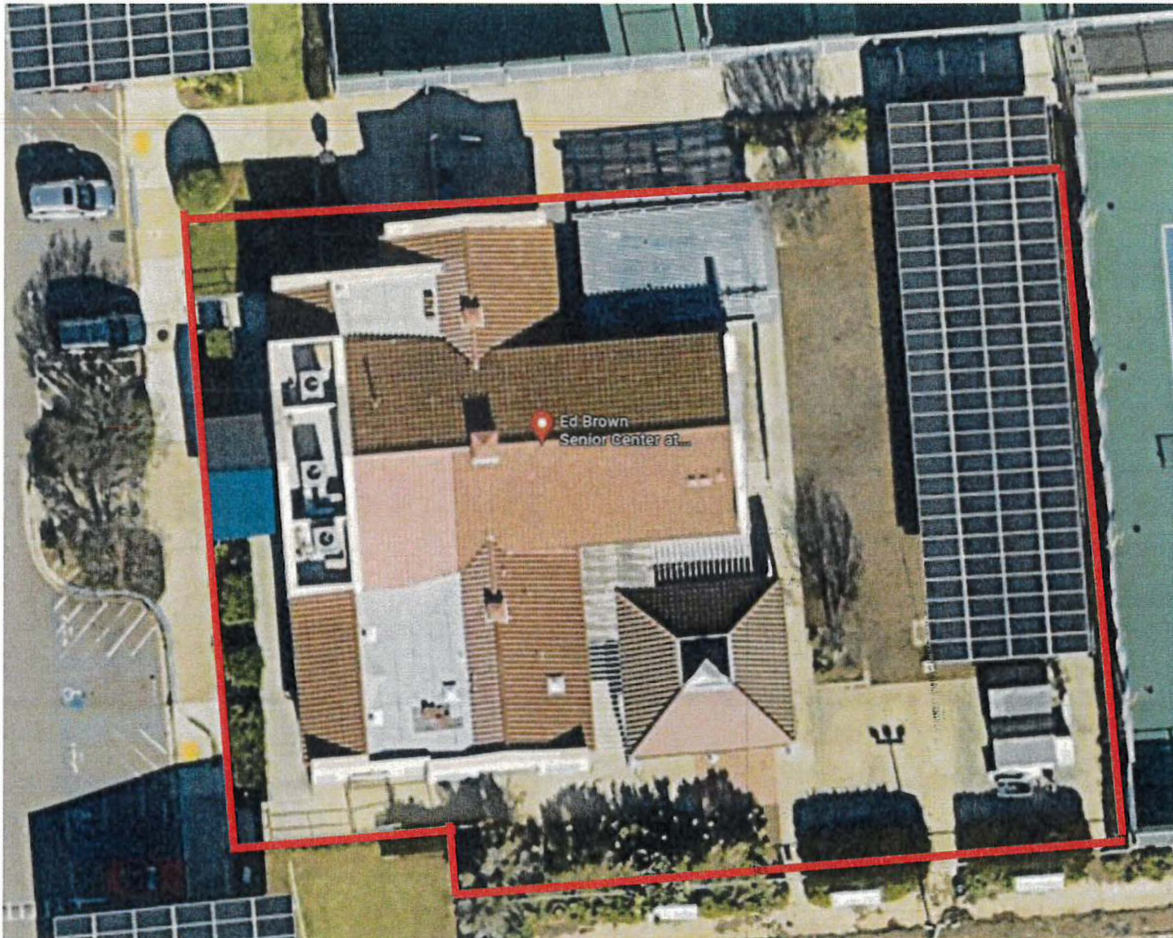
Catherine Morrison
Deputy City Attorney

Attachments: Exhibit A - Premises
Exhibit B - Employees, Sublicensee, Subpermittees and Facility Rentee List
Exhibit C - Senior Center Facility Rental Fees
Exhibit D - Hour of Operations Schedule
Exhibit E - Sublicensing Agreement
Exhibit F - Facility Inspection Form
Exhibit G - Prevailing Wage Requirements
Exhibit H - Equal Employment Opportunity Policy

SPECIAL USE PERMIT

Exhibit A - Premises

Description: The Premises consists of the building known as the Ed Brown Senior Center at Rancho Bernardo and the surrounding area including: all perimeter landscaping, solar panels located within the premises, 2 storage sheds, and restrooms.



Special Use Permit
Exhibit B - Employees, Sublicensee, Subpermitees and Renters

Board Members	First and Last Name
Chairperson	Lynn Woolsey
Vice Chairperson	Tim Rohane
Club Manager	Kim Lange

EMPLOYEES				
First Name:	Last Name:	Job Title:	Service Provided:	Hire Date:
Brielle	Butler	Asst to ED	programming and membership	3/15/2024

SUBLICENSEES				
First Name:	Last Name:	Business Name:	Service Provided:	Agreement Date:
None				

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

FACILITY RENTEES				
First Name:	Last Name:	Rental type:	List of Services Provided and Rental Rates:	Agreement Date:
San Diego Harmonics		Weekly	rehearsals	3 years
Gamblers Anonymous		Weekly	Meetings	10 years
Guide Does for the Blind		Monthly	Meetings	5 years
RC Democratic Club		Monthly	Meetings	5 years
Toastmasters		Weekly	Meetings	5 years

Special Use Permit
Exhibit C - Senior Center Facility Rental Fees

Rental Rates - Limited Duration Events

Daily Rates	Fee	Per	Unit
Full Package (Aud, Kitchen, RM2, patio)	\$350.00	per	first 3 hours
Full Package - extra hour after 3hrs	\$75.00	per	hour after first 3hrs
Room 2	\$75.00	per	hour
Patio	\$50.00	per	hour
Casey Room	\$35.00	per	hour
Equipment available for rent upon request. Rates vary			

Special Use Permit
Exhibit D - Hours of Operation

Senior Center Hours of Operation		
Day of Week	OPEN	CLOSE
Monday	9:00 AM	3:00 PM
Tuesday	9:00 AM	3:00 PM
Wednesday	9:00 AM	3:00 PM
Thursday	9:00 AM	3:00 PM
Friday	9:00 AM	1:00 PM
Saturday	9:00 AM	1:00 PM
Sunday	Closed	

SPECIAL USE PERMIT
Exhibit E – Sublicensing Agreement

SUBLICENSE 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 – Facility Inspection Form

SAN DIEGO PARK AND RECREATION DEPARTMENT WEEKLY Facility, Furnishings & Grounds Safety Inspection

DEPARTMENT INSTRUCTION 6.6
P = Pass F = Fail N/A = Not Applicable

Location Inspected _____ Date of Inspection _____

Name (print) _____

Signature of Inspector _____ Title _____ Time Req'd _____

1.) GENERAL ENVIRONMENT

	P	F	N/A		P	F	N/A
A. Picnic Tables	☐	☐	☐	B. Picnic Shelters	☐	☐	☐
C. Benches	☐	☐	☐	D. Barbecue Grills	☐	☐	☐
E. Hot Coal Containers	☐	☐	☐	F. Drinking Fountains	☐	☐	☐
G. Signs	☐	☐	☐	H. Telephones	☐	☐	☐
I. Graffiti	☐	☐	☐	J. No Obstructions	☐	☐	☐
K. Other _____	☐	☐	☐				

2.) RESTROOM

	P	F	N/A		P	F	N/A
A. Clean & Free of Debris	☐	☐	☐	B. Doors Free of Obstacles	☐	☐	☐
C. Fixtures (Shower Heads, Sink, Bowls, Hand Dryer)	☐	☐	☐	D. Graffiti	☐	☐	☐
E. Drinking Fountains	☐	☐	☐	F. Floor Surfaces	☐	☐	☐
				G. Other _____	☐	☐	☐

3.) PARKING LOTS/SIDEWALKS (Cracks, Chips, Sand) STAIRWAYS

	P	F	N/A		P	F	N/A
A. Pot Holes	☐	☐	☐	B. Signs	☐	☐	☐
C. Lights	☐	☐	☐	D. Sidewalk	☐	☐	☐
E. Railings	☐	☐	☐	F. Stairs	☐	☐	☐
G. Landings	☐	☐	☐	H. Other _____	☐	☐	☐

4.) TURF AREAS/ATHLETIC FIELDS/MULTI-PURPOSE COURTS

	P	F	N/A		P	F	N/A
A. Free of Debris	☐	☐	☐	B. Exposed or Broken Sprinkler Heads	☐	☐	☐
C. Holes	☐	☐	☐	D. Base Anchors/Plates	☐	☐	☐
E. Dugout Benches/Bleachers	☐	☐	☐	F. Backboard/Rims	☐	☐	☐
G. Nets	☐	☐	☐	H. Cables	☐	☐	☐
I. Surfacing	☐	☐	☐	J. Other _____	☐	☐	☐

5.) TREES

(Broken Limbs, Stubs, etc.)

P	F	N/A
☐	☐	☐

6.) FENCING

	P	F	N/A		P	F	N/A
A. Holes	☐	☐	☐	B. Protruding Wire	☐	☐	☐
C. Gates (Operational, Locks Functional)	☐	☐	☐				

7.) TRAILS

	P	F	N/A		P	F	N/A
A. Free of Debris	☐	☐	☐	B. Erosion	☐	☐	☐
C. Hand Rails	☐	☐	☐	D. Trail Markers	☐	☐	☐
E. Railroad Ties/Telephone Post	☐	☐	☐	F. Obstructions	☐	☐	☐
G. Stairs/Steps	☐	☐	☐	H. Other _____	☐	☐	☐

8.) BUILDINGS			P	F	N/A		P	F	N/A
<u>Fire Prevention</u>									
A. Flammable Liquids stored properly	☐	☐	☐	B. Fire extinguishers full	☐	☐	☐	☐	☐
C. Other _____	☐	☐	☐						
<u>Electrical</u>			P	F	N/A		P	F	N/A
A. All junction boxes, outlets, switches installed & covered	☐	☐	☐	B. Only one electrical plug per outlet	☐	☐	☐	☐	☐
C. Electrical panel accessible (nothing within 30" in front of panel)	☐	☐	☐	D. Other _____	☐	☐	☐	☐	☐
<u>Building, Restrooms & General</u>									
A. All rooms clean & free of debris	☐	☐	☐	B. Panic hardware in working order	☐	☐	☐	☐	☐
C. Fixtures, (Shower Heads, Sink, Bowls, Hand Dryer)	☐	☐	☐	D. Doors free of obstacles & properly hinged	☐	☐	☐	☐	☐
E. Floor Surfaces	☐	☐	☐	F. Drinking Fountains	☐	☐	☐	☐	☐
G. Graffiti	☐	☐	☐	H. Other _____	☐	☐	☐	☐	☐
<u>First Aid Treatment</u>									
A. Minimum Supply on hand according to standard first aid list	☐	☐	☐	B. Other _____	☐	☐	☐	☐	☐

9) SHORELINE			P	F	N/A		P	F	N/A
A. Irrigation Exposed	☐	☐	☐	B. Wash Outs	☐	☐	☐	☐	☐
C. Rip Rap	☐	☐	☐	D. Erosion	☐	☐	☐	☐	☐
E. Drain Outlets	☐	☐	☐	F. Sign	☐	☐	☐	☐	☐
G. Above Grade Drain Swales	☐	☐	☐	H. Beach Mooring Bars (Weeds, Signs, Wash Outs)	☐	☐	☐	☐	☐
I. Coastal Bluffs (Stability, Slumps, Park Improvements)	☐	☐	☐	J. Volleyball Courts (Nets, Poles)/ Basketball Courts	☐	☐	☐	☐	☐
K. Fire Rings	☐	☐	☐	L. Street End Barricades	☐	☐	☐	☐	☐
M. Offshore Buoys	☐	☐	☐	N. Other _____	☐	☐	☐	☐	☐

10.) BOAT RAMP/DOCKS			P	F	N/A		P	F	N/A
A. Railings	☐	☐	☐	B. Deck	☐	☐	☐	☐	☐
C. Cleats	☐	☐	☐	D. Signs	☐	☐	☐	☐	☐
E. Ramps	☐	☐	☐	F. Bolts	☐	☐	☐	☐	☐
G. Hinges	☐	☐	☐	H. Chains	☐	☐	☐	☐	☐
I. Rollers	☐	☐	☐	J. Nails	☐	☐	☐	☐	☐
K. Nonskid	☐	☐	☐	L. Other _____	☐	☐	☐	☐	☐

PLEASE EXPLAIN ANY "FAILED" RATINGS AND ACTIONS TAKEN

COMMENTS: _____

District Manager (if required) _____ Date _____

Grounds Maintenance Manager/Area Manager _____ Date _____

Grounds Maintenance Supervisor _____ Date _____

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: September 11, 2023

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

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

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

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

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

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

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

1. FAIR AND EQUAL TREATMENT

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

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

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

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

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

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

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

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

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

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

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

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

3. **SEXUAL HARASSMENT**

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

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

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

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

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

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

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

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

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

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

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

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

Sexually harassing conduct may also include:

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

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

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

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

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

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

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

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

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

4. PERSONS WITH DISABILITIES

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

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

5. RELIGIOUS ACCOMMODATION

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

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

6. PREGNANCY AND LACTATION ACCOMMODATION

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

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

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

7. MEDICAL AND FAMILY CARE LEAVE

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

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

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

8. CITY EMPLOYEE RECRUITMENTS

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

9. INTERVIEWS AND SELECTIONS BY APPOINTING AUTHORITY

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

10. PERFORMANCE EVALUATIONS OF MANAGERS AND SUPERVISORS

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

11. ENFORCEMENT OF THE EEO POLICY

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

12. REPORTING A VIOLATION

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

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

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

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

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

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

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

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

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

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

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

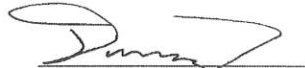
Employee Assistance Program (EAP). City employees have access to confidential emotional support, assistance, and resources to address employees' personal work-life concerns and emotional well-being, at no cost, through the City's EAP. EAP professionals are available 24/7 to discuss employee and household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

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

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

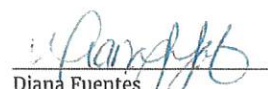

Todd Gloria
Mayor


Mara W. Elliott
City Attorney


Douglas Edwards
Personnel Director


Eric Dargan
Chief Operating Officer


Julie Rasco
Human Resources Director


Diana Fuentes
City Clerk



Date of Notice: May 22, 2024

NOTICE OF RIGHT TO APPEAL

ENVIRONMENTAL DETERMINATION

CITY PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Special Use Permit with Ed Brown Senior Center

COMMUNITY PLAN AREA: Rancho Bernardo

COUNCIL DISTRICT: 5

LOCATION: Ed Brown Senior Center –18402 West Bernardo Drive San Diego, CA 92127

PROJECT DESCRIPTION: Special Use Permit with Ed Brown Senior Center at Rancho Bernardo, a nonprofit 501C(3) corporation (Permittee), to continue to occupy the building for the sole purpose of providing senior programs and service for the community.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: Categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities) and 15323 (Normal Operations of Facilities for Public Gatherings)

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment pursuant to CEQA Guidelines Section 15301 (Existing Facilities) which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use; and Section 15323 (Normal Operations of Facilities for Public Gatherings) which consists of the normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose. For the purposes of this section, "past history" shall mean that the same or similar kind of activity has been occurring for at least three years and that there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility. The exceptions listed in CEQA Guidelines Section 15300.2 would not apply in that no cumulative impacts were identified, no significant effects on the environment were identified, the project is not adjacent to a scenic highway, no historical resources would be affected by the action, and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

CITY CONTACT: Mark Moncey – Area Manager II, City of San Diego Parks & Recreation Department

MAILING ADDRESS: 18402 West Bernardo Dr., San Diego, CA 92127

PHONE NUMBER/E-MAIL: (858) 538-8204 / MMoncey@sandiego.gov

On May 22, 2024, the City of San Diego made the above-referenced environmental determination pursuant to CEQA. This determination is appealable to the City Council. If you have any questions about this determination, contact the City Contact listed above.

Applications to appeal the CEQA determination to the City Council must be filed with the Office of the Clerk within (5) business days from the date of the posting of this Notice (**May 30, 2024**). Appeals to the City Clerk must be filed via e-mail or in-person as follows:

1. Appeals filed via Email: The Environmental Determination Appeal Application Form [DS-3031](#) can be obtained at <https://www.sandiego.gov/sites/default/files/legacy/development-services/pdf/industry/forms/ds3031.pdf>. Send the completed appeal form (including grounds for appeal and supporting documentation in pdf format) by email to Hearings1@sandiego.gov by 5:00p.m. on the last day of the appeal period; your email appeal will be acknowledged within 24 business hours. You must separately mail the appeal fee by check payable to the City Treasurer to: City Clerk/Appeal, MS 2A, 202 C Street, San Diego, CA 92101. The appeal filing fee must be United States Postal Service (USPS) postmarked before or on the final date of the appeal.

2. Appeals filed In-Person: The Environmental Determination Appeal Application Form [DS-3031](#) can be obtained at: <https://www.sandiego.gov/sites/default/files/legacy/development-services/pdf/industry/forms/ds3031.pdf>. Bring the fully completed appeal application [DS-3031](#) (including grounds for appeal and supporting documentation) to the City Administration Building—Public Information Counter (Open 8:00am to 5:00pm Monday through Friday excluding City approved holidays), 1st Floor Lobby, located at 202 C Street, San Diego, CA 92101, by 5:00pm on the last day of the appeal period. The completed appeal form shall include the required appeal fee, with a check payable to: City Treasurer.

The appeal application can also be obtained from the City Clerk, 202 C Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED ON THE CITY'S CEQA WEBSITE

POSTED: May 22, 2024

REMOVED: May 30, 2024

POSTED: Z. Marquez

05/31/2024

Attachment B

Environmental Determination (NORA)	
Environmental Planner	Zaira Marquez (zmarquez@saniego.gov)
Project Name	Special Use Permit with Ed Brown Senior Center
Environmental Determination	This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities) and 15323 (Normal Operations of Facilities for Public Gatherings)
Date NORA Posted	05/22/2024
Date NORA Removed	05/30/2024



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/03/2024

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

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

PRODUCER Michael Ehrenfeld Company Insurance Agents An Acrisure Agency CA 0K07568 2655 Camino Del Rio North #200 San Diego CA 92108	CONTACT NAME: Gail DeFalco PHONE (A/C, No, Ext): (619) 683-9990 E-MAIL ADDRESS: gd@ehrenfeldinsurance.com FAX (A/C, No): (619) 683-9999
INSURED Ed Brown Senior Center at Rancho Bernardo 18402 W Bernardo Drive San Diego CA 92127	INSURER(S) AFFORDING COVERAGE INSURER A: Nonprofits Insurance Alliance Of California INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
	NAIC # NIAC

COVERAGES**CERTIFICATE NUMBER:** CL2371200234**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y		2023-14334	09/12/2023	09/12/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 20,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Liquor Liability \$ 1,000,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY			2023-14334	09/12/2023	09/12/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☐	N / A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Directors & Officers Liability			2023-14334-DO-NPO	09/12/2023	09/12/2024	Each Occurrence 1,000,000 Aggregate 1,000,000

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

As respects operations of the named insured.

The certificate holder the City of San Diego, its employees, officers and agents are included as Additional Insured as respects general liability.

CERTIFICATE HOLDER**CANCELLATION**City of San Diego, its employees, officers and agents
1200 Third Ave

San Diego

CA 92101

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

City of San Diego, Purchasing & Contract Department, City of San Diego, its elected officials, representatives, employees and agents

Operations of the Named Insured

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

Any person or organization that you are required to add as an additional insured on this policy, under a written contract or agreement currently in effect, or becoming effective during the term of this policy. The additional insured status will not be afforded with respect to liability arising out of or related to your activities as a real estate manager for that person or organization.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
1. In the performance of your ongoing operations; or
 2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

BUSINESS AUTO COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERED AUTOS

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

A. Description Of Covered Auto Designation Symbols

Symbol	Description Of Covered Auto Designation Symbols	
1	Any "Auto"	
2	Owned "Autos" Only	Only those "autos" you own (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.
3	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
4	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
5	Owned "Autos" Subject To No-fault	Only those "autos" you own that are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.
6	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
7	Specifically Described "Autos"	Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to any power unit described in Item Three).
8	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
9	Non-owned "Autos" Only	Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households but only while used in your business or your personal affairs.

19	Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only	Only those "autos" that are land vehicles and that would qualify under the definition of "mobile equipment" under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.
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B. Owned Autos You Acquire After The Policy Begins

1. If Symbols **1, 2, 3, 4, 5, 6** or **19** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol **7** is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
 - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
 - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos

If Covered Autos Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Covered Autos Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. "Mobile equipment" while being carried or towed by a covered "auto".
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;
 - d. "Loss"; or
 - e. Destruction.

SECTION II – COVERED AUTOS LIABILITY COVERAGE

A. Coverage

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Covered Autos Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

1. Who Is An Insured

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
 - (1) The owner or anyone else from whom you hire or borrow a covered "auto".

This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
 - (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
 - (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
 - (5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.
- c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

2. Coverage Extensions

a. Supplementary Payments

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

b. Out-of-state Coverage Extensions

While a covered "auto" is away from the state where it is licensed, we will:

- (1) Increase the Limit of Insurance for Covered Autos Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

B. Exclusions

This insurance does not apply to any of the following:

1. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

2. Contractual

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- b. That the "insured" would have in the absence of the contract or agreement.

3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

- a. An "employee" of the "insured" arising out of and in the course of:
 - (1) Employment by the "insured"; or
 - (2) Performing the duties related to the conduct of the "insured's" business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph **a.** above.

This exclusion applies:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

5. Fellow Employee

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph **a.** above.

6. Care, Custody Or Control

"Property damage" to or "covered pollution cost or expense" involving property owned or transported by the "insured" or in the "insured's" care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

7. Handling Of Property

"Bodily injury" or "property damage" resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or

- b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured".

8. Movement Of Property By Mechanical Device

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto".

9. Operations

"Bodily injury" or "property damage" arising out of the operation of:

- a. Any equipment listed in Paragraphs **6.b.** and **6.c.** of the definition of "mobile equipment"; or
- b. Machinery or equipment that is on, attached to or part of a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

10. Completed Operations

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraph **a.** or **b.** above.

Your work will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed;
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site; or
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

11. Pollution

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
 - (1) Being transported or towed by, handled or handled for movement into, onto or from the covered "auto";
 - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
 - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts if:

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment".

Paragraphs b. and c. above of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

12. War

"Bodily injury" or "property damage" arising directly or indirectly out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

13. Racing

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

C. Limit Of Insurance

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" is the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations.

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

SECTION III – PHYSICAL DAMAGE COVERAGE

A. Coverage

1. We will pay for "loss" to a covered "auto" or its equipment under:

- a. **Comprehensive Coverage**

From any cause except:

- (1) The covered "auto's" collision with another object; or
 - (2) The covered "auto's" overturn.

- b. **Specified Causes Of Loss Coverage**

Caused by:

- (1) Fire, lightning or explosion;
 - (2) Theft;
 - (3) Windstorm, hail or earthquake;
 - (4) Flood;
 - (5) Mischief or vandalism; or
 - (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

- c. **Collision Coverage**

Caused by:

- (1) The covered "auto's" collision with another object; or
 - (2) The covered "auto's" overturn.

2. **Towing**

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

3. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

4. Coverage Extensions

- a. **Transportation Expenses**

We will pay up to \$20 per day, to a maximum of \$600, for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes Of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

- b. **Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicates that Comprehensive Coverage is provided for any covered "auto";
 - (2) Specified Causes Of Loss only if the Declarations indicates that Specified Causes Of Loss Coverage is provided for any covered "auto"; or

- (3) Collision only if the Declarations indicates that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

B. Exclusions

1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

a. Nuclear Hazard

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

b. War Or Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.

3. We will not pay for "loss" due and confined to:

- a. Wear and tear, freezing, mechanical or electrical breakdown.
- b. Blowouts, punctures or other road damage to tires.

This exclusion does not apply to such "loss" resulting from the total theft of a covered "auto".

4. We will not pay for "loss" to any of the following:

- a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.

- b. Any device designed or used to detect speed-measuring equipment, such as radar or laser detectors, and any jamming apparatus intended to elude or disrupt speed-measuring equipment.

- c. Any electronic equipment, without regard to whether this equipment is permanently installed, that reproduces, receives or transmits audio, visual or data signals.

- d. Any accessories used with the electronic equipment described in Paragraph c. above.

5. Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- a. Permanently installed in or upon the covered "auto";
- b. Removable from a housing unit which is permanently installed in or upon the covered "auto";
- c. An integral part of the same unit housing any electronic equipment described in Paragraphs a. and b. above; or
- d. Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

6. We will not pay for "loss" to a covered "auto" due to "diminution in value".

C. Limits Of Insurance

1. The most we will pay for:

- a. "Loss" to any one covered "auto" is the lesser of:

- (1) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
- (2) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

- b. All electronic equipment that reproduces, receives or transmits audio, visual or data signals in any one "loss" is \$1,000, if, at the time of "loss", such electronic equipment is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;

- (2) Removable from a permanently installed housing unit as described in Paragraph **b.(1)** above; or
 - (3) An integral part of such equipment as described in Paragraphs **b.(1)** and **b.(2)** above.
2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
 3. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

D. Deductible

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

SECTION IV – BUSINESS AUTO CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

A. Loss Conditions

1. Appraisal For Physical Damage Loss

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

2. Duties In The Event Of Accident, Claim, Suit Or Loss

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:
 - (1) How, when and where the "accident" or "loss" occurred;

- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

b. Additionally, you and any other involved "insured" must:

- (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
- (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
- (4) Authorize us to obtain medical records or other pertinent information.
- (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.

c. If there is "loss" to a covered "auto" or its equipment, you must also do the following:

- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
- (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
- (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.
- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

3. Legal Action Against Us

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all the terms of this Coverage Form; and
- b. Under Covered Autos Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

4. Loss Payment – Physical Damage Coverages

At our option, we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

B. General Conditions

1. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

2. Concealment, Misrepresentation Or Fraud

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceals or misrepresents a material fact concerning:

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

3. Liberalization

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

4. No Benefit To Bailee – Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

5. Other Insurance

- a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Covered Autos Liability Coverage this Coverage Form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own; or
- (2) Primary while it is connected to a covered "auto" you own.

- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

- c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Covered Autos Liability Coverage is primary for any liability assumed under an "insured contract".

- d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

6. Premium Audit

- a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.
- b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

7. Policy Period, Coverage Territory

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- (1) The United States of America;
- (2) The territories and possessions of the United States of America;
- (3) Puerto Rico;
- (4) Canada; and
- (5) Anywhere in the world if a covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less,

provided that the "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada, or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

8. Two Or More Coverage Forms Or Policies Issued By Us

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us applies to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

SECTION V – DEFINITIONS

- A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".
- B. "Auto" means:
 1. A land motor vehicle, "trailer" or semitrailer designed for travel on public roads; or

2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

- C. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these.
- D. "Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
 - (1) Being transported or towed by, handled or handled for movement into, onto or from the covered "auto";
 - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
 - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraph **6.b.** or **6.c.** of the definition of "mobile equipment".

Paragraphs **b.** and **c.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

- E.** "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- F.** "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- G.** "Insured" means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.
- H.** "Insured contract" means:
1. A lease of premises;
 2. A sidetrack agreement;
 3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or
6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
 - b. That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
 - c. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.
- I.** "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- J.** "Loss" means direct and accidental loss or damage.
- K.** "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 2. Vehicles maintained for use solely on or next to premises you own or rent;
 3. Vehicles that travel on crawler treads;

4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - a. Power cranes, shovels, loaders, diggers or drills; or
 - b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
5. Vehicles not described in Paragraph 1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or
 - b. Cherry pickers and similar devices used to raise or lower workers; or
6. Vehicles not described in Paragraph 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
 - a. Equipment designed primarily for:
 - (1) Snow removal;
 - (2) Road maintenance, but not construction or resurfacing; or
 - (3) Street cleaning;
 - b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well-servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

- L. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- M. "Property damage" means damage to or loss of use of tangible property.
- N. "Suit" means a civil proceeding in which:
 1. Damages because of "bodily injury" or "property damage"; or
 2. A "covered pollution cost or expense";
 to which this insurance applies, are alleged.
 "Suit" includes:
 - a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.
- O. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- P. "Trailer" includes semitrailer.