

READ No. _____
 (Original Request) (Resubmitted) (Resubmitted)

City Atty LE No. MMS# 4786

OFFICE OF THE CITY ATTORNEY
Legal Services Request Form

To: City Attorney (MS-59) Attention: TOD BRADLEY Black Hawk, Deputy City Attorney

From: GARY JONES gje 5-2-07
 Signature of Supervising Agent Authorizing Legal Request Date of Original Request

Re: LAKE HAWES, LOWER OXY LAKE [SPA]
 Location/Identification of Property Initials Req. for Followup Action

R.E.I. ☐ _____
 Name of Lessee, Permittee or Third Party Date

ROE PERMIT ☐ _____
 Type of Legal Document (e.g., Lease Amendment, ROE Permit, Easement, etc...) Date

This is a request for legal services. Please establish an assignment based upon the following information:

A. Property Agent (please print): ROY NAIL Telephone: X66727

B. Requested Response Date: 5/14/07 (If response needed in less than 10 working days from the date of your request, please state specific reasons, including reference to any legal deadlines)

Requested response for Followup Action(s): _____

C. Requested form of response (please check one): ☒ Written ☐ Oral ☐ Attend Mtg/Hearing

☐ Edit Document ☐ Sign as to Form and Legality ☐ Other: APPROVE DRAFT FOR PERMITTEE SIGNATURE

D. Subject Matter of Legal Request: APPROVE DRAFT AS TO FORM (REVISED)

☐ Please provide an e-mail response acknowledging receipt of this Request for Legal Services.

☐ Follow-up action required: ☐ Review second draft ☐ Execute document ☐ Other

(PLEASE SEE PAGE 2 FOR DESCRIPTION OF LEGAL REQUEST)

ATTORNEY TRANSMISSION RECORD

Date Received: _____ ☐ Sent Acknowledgment Email on _____
☐ Returned for additional information on _____ Information needed: _____
☐ Returned for further drafting on _____ ☐ PLEASE RETURN FOR FURTHER REVIEW
☒ Assignment completed and returned on 5-17-07
☐ Signed as to form and legality on _____

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

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Description of Legal Request (Please provide a detailed statement of the question or issue, including all necessary background information. Copies of background documents should be attached.):

REI - APPROVE ROE AS TO FORM. SEE ATTACHED

INFORMATION ON REI OUTDOOR SCHOOL. JOE WEBER, LAKES

PROGRAM MANAGER, REVIEWED ROI & APPROVED.

Attorney Notes/Response:

Ray, I thought you were revising the
See Loc this. However, the form is
OK. Thank You

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CITY OF SAN DIEGO

RIGHT OF ENTRY PERMIT

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and Recreational Equipment Incorporated; a Washington State Corporation d.b.a. SAN DIEGO REI OUTDOOR SCHOOL (SDREIODS) ("PERMITTEE"), to be effective as of the date of execution by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY Of San Diego is the owner of certain real property (the "City Property") consisting of various CITY reservoirs and bodies of water specifically Lake Hodges and Lower Otay Lake, known as Permit Areas.
- B. Under the terms and conditions of this Permit, CITY will allow PERMITTEE to use the Permit Area for the sole purpose of conducting instruction in kayaking, mountain biking, road biking, climbing, and GPS/compass use. Such uses must be compatible with existing recreational activities at Permit Areas and during normal hours of operation. Such uses are subject to limiting conditions as further defined in paragraph C below.
- C. SDREIODS will collect the instruction fee from students at REI retail locations only; not on City Property. The activities of SDREIODS conducted on City Property will not interfere with any other activities at the Permit Areas and will be conducted in safe conditions. Cycling, climbing or activities which operate in close proximity to environmentally sensitive areas are limited to eight (8) students held up to twice per month. The maximum number of students for kayaking is 12; not to exceed two classes per month. SDREIODS will submit a report to CITY every 60 days reporting number of students for each event at each location. SDREIODS will van pool students to the instruction locations in a 15 passenger van. The van and trailer will be parked in the most remote location in the parking area and will not have any form of REI advertising except a vanwrap.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its employees, agents, contractors, and invitees to enter upon the Permit Area solely for the purpose of conducting instruction, as defined in Recitals (B) and (C) above (the "Permit Uses"), and for no other purpose whatsoever.
- 2. Use of Permit Area. PERMITTEE may use the Permit Area on a non-exclusive basis solely for the purposes of the Permit Use. PERMITTEE shall obtain all related permits and comply with all applicable environmental laws, rules and regulations related to the Permit Use.
 - 2.1 Cal/OSHA. PERMITTEE and its employees, agents, contractors, and invitees shall comply at all times with the health and safety requirements Title 8 of the California

Code of Regulations; as such regulations are enforced by the State of California Division of Occupational Safety and Health (also known as "Cal/OSHA").

2.2 Vehicles. All vehicles used in relation to the Permit Use shall remain on existing roadways or designated access routes at all times while conducting the Permit use.

3. Term. The term of this Permit ("Term") shall commence on June 1 2007, and shall expire on May 31, 2008 unless otherwise revoked by City per paragraph 5 of this Permit.
4. Option to Extend. Given PERMITTEE is not in default under any terms of conditions of this Permit, PERMITTEE shall be granted two (2), one (1) year options to extend the original one-year term of this Permit. PERMITTEE must provide no less than a ninety (90) day prior written notice to the City to exercise each option to extend. The applicable permit fee, as determined by the City, shall be payable to the City on or before June 15 of each year the Permit is extended by exercise of Option to Extend. If the Permit is extended, the additional consideration of public service provided by SDREIODS will apply as further described in paragraph 6 of this Permit.
5. Revocable License. This Permit is not a lease. It is a non-exclusive license to use the Permit Area, and may be revoked at will by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit. CITY may at all times enter upon the Permit Area.
6. Permit Fee. On or before the Effective date, PERMITTEE shall pay to City a one-time non-refundable permit processing fee of \$600.00. As additional consideration for this permit, SDREIODS agrees to organize volunteer efforts to provide public service to City owned parks and or recreational areas at a minimum of 3 times per year. The public service activities are at the sole discretion of the City and shall be supervised by City staff.
7. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
8. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Permit Area or PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the PERMITTEE'S use of the Permit Area.
9. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area or the City Property. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous

substance on the Permit Area or the City Property without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Lease.

- 9.1 Remediation. If PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 9.2 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, or restoration of the Permit Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- 9.3 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area or the City Property, PERMITTEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area or the City Property.
- 9.4 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property ("PERMITTEE'S Operations"), resulted in any hazardous substance being released on or beneath the Permit Area or the City Property, CITY may cause an environmental assessment 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 Operations on, in, or under the Permit Area or the City Property, 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, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect 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, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor.

10. Noninterference. PERMITTEE shall not interfere with CITY'S use, operations, and activities on the City Property, and PERMITTEE shall use such routes and follow such procedures on the City Property as shall result in the least damage and inconvenience to CITY and other users of the City Property.
11. Property Damage. PERMITTEE shall pay for all damage to the City Property and CITY'S personal property on the City Property, and the personal property of third parties on the City Property resulting from PERMITTEE'S exercise of the rights granted by this Permit. PERMITTEE shall promptly repair and restore to its original condition all such property.
12. Signs. No signs may be displayed on the Permit Area without CITY'S prior written consent.
13. Maintenance of the Permit Area. PERMITTEE shall maintain the Permit Area, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, in a decent, safe, healthy and sanitary condition. SDREIODS shall reimburse the City for documented additional costs associated with SDREIODS use of City property. Such costs include but are not limited to trash abatement, landscaping maintenance, restroom maintenance and water and utility charges.
14. Inspection. CITY may, at any and all times, enter and inspect the Permit Area.
15. Restoration. Immediately upon the expiration or earlier termination of this Permit, PERMITTEE shall promptly remove any and all improvements it installed in, on, under, or above the Permit Area and restore the Permit Area to its original condition, all at PERMITTEE'S sole cost and expense.
16. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold 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 PERMITTEE'S officers, employees, agents, contractor's, and invitees, 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 Permit Area or the City Property, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole 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. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

17. Taxes. PERMITTEE, alone, shall pay any and all taxes, charges, and use fees levied by any governmental agency against PERMITTEE or against any of the City Property as a result of PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area.
18. Encumbrances. PERMITTEE shall keep the City Property 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 use of the Permit Area. 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 City Property, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
19. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S use of the Permit Area and any damages to the improvements on, under, or in the vicinity of the City Property resulting directly or indirectly thereby.
20. Insurance. On or before the Effective Date, PERMITTEE shall deliver to CITY a current certificate of insurance for a Commercial General Liability policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence.
 - 20.1 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 - 20.2 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Permit.
 - 20.3 Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are

included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

- 20.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 20.5 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- 20.6 Modification. To assure protection from and against the kind and extent of risk existing on the Permit Area, 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, in order to meet the requirements of this Permit.
- 20.7 Accident Reports. PERMITTEE shall report to CITY any accident causing property damage or injury to persons on the Permit Area. 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.
- 20.8 Failure to Comply. If PERMITTEE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. PERMITTEE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify PERMITTEE of such payment of premiums stating the amount paid, the name(s) of the insurer(s), and the rate of interest. PERMITTEE shall pay such reimbursement and interest within thirty (30) days following CITY'S notice. Notwithstanding any other provision of this Permit, if PERMITTEE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit immediately upon such breach.
- 20.9 All-Risk Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, All-Risk Property insurance on all insurable property on the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver to CITY a certificate of such insurance.
21. Compliance with Law. PERMITTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which

may hereafter be in effect, which pertain to the Permit Area and PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property.

22. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
23. Waiver. 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. The property constituting the Permit Area is publicly-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
24. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
25. Entire Permit. This Permit contains the entire agreement between the parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Permit shall be valid unless in writing and signed by the party to be charged.
26. Legal Proceedings. In the event of any controversy, claim, or dispute relating to this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation attorney fees and costs.
27. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight service with receipt signature required, or delivery by United States mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

CITY: THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: James F. Barwick, Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

With a copy by First Class mail to: SAN DIEGO CITY ATTORNEY
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

PERMITTEE: San Diego REI Outdoor School
5556 Copley Drive
San Diego, CA 92111

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

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: 6-6-07

Recreational Equipment Incorporated; a Washington
State corporation

BY: [Signature]

Name: John Sheppard

Title: Director of REI Adventures

Date: 6/12/07

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: [Signature]

Name: David A. Sandoval, CCIM

Title: Deputy Director, Real Estate Assets

ENVIRONMENTAL CLEARANCE:

THIS ACTIVITY IS CATEGORICALLY EXEMPT FROM CEQA PURSUANT TO STATE
CEQA GUIDELINES, SECTION 15060 (C) (2).

BY: [Signature]

Name: NICOLE A. MCGINNIS

Title: SENIOR PLANNER

APPROVED AS TO FORM AND LEGALITY:

Date: 6/12/07

MICHAEL J. AGUIRRE, City Attorney

BY: [Signature]

Name: Tommy B. [Signature]

Title: Deputy City Attorney

RN/nb

I:\WPO\2007\NAIL\ROE-REI.doc
5/8/07

READ No. _____
 (Original Request) (Resubmitted) (Resubmitted)

City Atty LE No. MMS # 4786

OFFICE OF THE CITY ATTORNEY
Legal Services Request Form

To: City Attorney (MS-59) Attention: TOO BUSY Black Varsity, Deputy City Attorney

From: GARY JONES gje
 Signature of Supervising Agent Authorizing Legal Request Date of Original Request 5-2-07

Re: LAKE HOPES, LOWER DRY LAKE
 Location/Identification of Property [SPA] Initials Req. for Followup Action

R.E.I.
 Name of Lessee, Permittee or Third Party [] 6/12/07
 Date

ROE PERMIT
 Type of Legal Document (e.g., Lease Amendment, ROE Permit, Easement, etc...)
 Date

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Requested response for Followup Action(s): EXECUTE ROE

- C. Requested form of response (please check one): ☒ Written ☐ Oral ☐ Attend Mtg/Hearing
☐ Edit Document ☐ Sign as to Form and Legality ☐ Other: APPROVE PERMIT FOR PERMITTEE SIGNATURE
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☒ Signed as to form and legality on 6/12/07

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Description of Legal Request (Please provide a detailed statement of the question or issue, including all necessary background information. Copies of background documents should be attached.):

REI - Approve ROE as to form. See attached

information on REI OUTDOOR school. Joe Weber, Lakes

Program Manager, reviewed ROI & approved.

Attorney Notes/Response:

Ray, I thought you were revising the
See for this. However, the form is
OK. Thank You

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