

CITY OF SAN DIEGO
USE AND OCCUPANCY PERMIT

THIS CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT ("Permit") is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation ("CITY"), and **PYRAMID ENTERPRISES, INC.**, a California corporation dba Rocky Mountain Recreation Co. ("CONCESSIONAIRE"), to be effective as of August 9th, 2016 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

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

1. **Definitions.** As used in this Permit, the following terms shall be defined as follows:

- 1.1 **"Permit Area"** shall mean a portion of that certain CITY-owned real property commonly known as San Vicente Reservoir in San Diego, California, as more particularly depicted in **Exhibit A: Site Map** and **Exhibit B: Use Area**, attached hereto.
- 1.2 **"Permit Uses"** shall mean the operation of the Permit Area and serving the general public under the terms and conditions of this Permit, which shall include, but not be limited to, operating a snack bar; selling fishing tackle, bait, State of California fishing licenses, license stamps, and daily recreational use permits; rent motorboats, rowboats, kayaks, paddleboats, and bicycles; host fishing tournament and maintaining an on-site RV pad for manager housing. CITY may approve uses that are incidental or supplementary to the Permit Uses upon prior written consent of CITY, including special events.
- 1.3 **"CONCESSIONAIRE'S Address for Notices"** shall be:

Pyramid Enterprises, Inc., dba Rocky Mountain Recreation Co.
Chet Roberts
28368 Constellation Road, Suite 380
Valencia, CA 91355-5016
661-702-1420
- 1.4 **"Permit Processing Fee"** shall mean a one-time, non-refundable permit processing fee in the amount of Nine Hundred Eighty Dollars (\$980.00).
- 1.5 **"Security Deposit"** Security Deposit under this permit will be waived by the City of San Diego.
- 1.6 **"Term"** shall mean one (1) year, commencing on the Effective Date.

- 1.6.1 Option to Extend Term. CONCESSIONAIRE acknowledges that CITY may issue a request for proposals ("RFP") for the use and operation of the Permit Area and other CITY-owned real property for concessions and therefore this Permit shall terminate prior to the effective date of an agreement that results from a RFP. So long as this Permit remains in effect and CITY has not approved an agreement as a result of a RFP, CONCESSIONAIRE shall have two (2) options to extend the Term for an additional one (1) year each; however, the Term shall not exceed three (3) years unless authorized by the San Diego City Council. CONCESSIONAIRE shall give written notice of its intent to extend the Term to CITY no later than thirty (30) days prior to the expiration of the initial Term of this Permit for the first option period. Thereafter, if so desired and subject to CONCESSIONAIRE having exercised the first option, CONCESSIONAIRE shall give CITY written notice of its intent to extend the Term no later than thirty (30) days prior to the expiration of the then extended Term of this Permit. CITY reserves the right, in its sole discretion, to modify any of the terms, covenants and conditions of this Permit for each option period.
2. Entry and Occupancy. Subject to the terms and conditions of this Permit, CITY hereby grants permission to CONCESSIONAIRE and its officers, employees, agents and contractors to enter upon and occupy the Permit Area solely for the Permit Uses.
3. Use of Permit Area. CONCESSIONAIRE may use the Permit Area solely for the Permit Uses and for no other purpose whatsoever without CITY's prior written consent in each instance. CONCESSIONAIRE shall continuously occupy and use the Permit Area throughout the Term.
4. Maximum Days and Hours of Operation. CONCESSIONAIRE shall conduct the Permit Uses from sunrise to sunset. Hours may fluctuate according to weather conditions, season, and reservoir requirements, such as the CITY's Public Utilities Department determines that it necessary to close the San Vicente Reservoir because of storms, low water levels, scheduled and unscheduled maintenance, improvements, and for other reasons that may arise during the term of this Permit. In most cases, advanced notice of such closure will be provided to CONCESSIONAIRE. However, CITY cannot guarantee the San Vicente Reservoir will be open for fishing or other activities at all times. If any such closure should become necessary, CITY may, at CITY's discretion, reduce the agreed-upon rent in proportion to the length of any closure. Special events may operate outside of normal operating hours, if pre-approved by City.
5. Governmental Approvals. By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to CONCESSIONAIRE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to CONCESSIONAIRE's occupancy, use, and maintenance of the Permit Area. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.

6. CITY's Consent, Discretion. CITY's consent or approval under this Permit shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise required by law or expressly provided herein, and shall be made in the Mayor's discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.
7. Revocable License. This Permit is not a lease. It is a license to use CITY property, and may be revoked at will by CITY, in its sole discretion: (a) if for CONCESSIONAIRE's breach or default of any of CONCESSIONAIRE's obligations under this Permit or in case of an emergency, immediately upon written notice delivered to CONCESSIONAIRE; and (b) if for CITY's convenience, upon thirty (30) days prior written notice delivered to CONCESSIONAIRE. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of such revocation or the termination of this Permit.
 - 7.1 CONCESSIONAIRE's Waiver. CONCESSIONAIRE expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which CONCESSIONAIRE incurs as a result of CITY's revocation or termination of this Permit.
8. Holdover. If CONCESSIONAIRE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, nor give CONCESSIONAIRE any rights in or to the Permit Area. Subject to Section 19.2 Late Removal of this Permit, if CONCESSIONAIRE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, CITY may demand and receive from CONCESSIONAIRE rent for the Permit Area calculated on a per diem basis using up to two (2) times the fair market rental rate to be determined as of the date of the expiration or termination of this Permit by an appraisal prepared by a qualified appraiser selected by CITY in its sole discretion. CITY's acceptance of such rent shall neither constitute a renewal or extension of this Permit, nor give CONCESSIONAIRE any rights in or to the Permit Area.
9. Termination. CONCESSIONAIRE or CITY may terminate this Permit for any reason upon thirty (30) days prior written notice delivered to either party.
10. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements and rights-of-way pertaining to the Permit Area, whether or not of record. CONCESSIONAIRE 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 Permit Area, relative to any such superior interest. If CONCESSIONAIRE's use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, CONCESSIONAIRE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

11. Rent.

11.1 Percentage Rent. Percentage rent ("Percentage Rent") will be calculated on a calendar month basis and will consist of five percent (5.00%) of the Gross Income, as defined in Section 11.5 below, resulting from concession and boat rental sales authorized under this Permit. CITY, in its sole discretion, may approve a percentage rate or minimum rate for each other service or operation incidental or supplementary to the approved Permit Uses authorized as set forth above in Section 1.2.

11.2 Minimum Rent. The minimum rent ("Minimum Rent") for the Term of this Permit is Six Thousand Dollars (\$6,000.00), to be paid, as further set forth in this Section 11.2, in a monthly installment of Five Hundred Dollars (\$500.00) on a monthly basis.

If the monthly installment of the Minimum Rent is greater than the Percentage Rent for said calendar month, the monthly installment of the Minimum Rent is required to be paid for that month. The greater of the monthly installment of the Minimum Rent and the Percentage Rent shall be paid as set forth in Section 12.

11.3 Minimum Rent Adjustment. If CONCESSIONAIRE exercises its options to extend the Term as set forth in Section 1.6.1 of this Permit, then effective at the beginning of the first day of the 13th and 25th month of the extended Term of this Permit, the annual Minimum Rent shall be adjusted ("Minimum Rent Adjustment"), and adjusted upward only, to eighty percent (80.00%) of the annual average of actual rent paid in the immediately preceding twelve-month period of this Permit. The annual average shall then be divided by twelve (12) to establish the new monthly installment of Minimum Rent. It is recognized that the adjustments shall be calculated by the CITY upon completion of payments due for the preceding twelve-month period in order to determine the amount of the Minimum Rent for the upcoming option period. Until such calculations are completed, CONCESSIONAIRE shall continue paying the monthly installment of Minimum Rent at the prior rate or the Percentage Rent, whichever is greater. Any additional fees determined by the Minimum Rent Adjustment to be due for the months previously paid at the prior rate shall be paid to the CITY within thirty (30) days following written notice. In no event shall the Minimum Rent Adjustment result in a decrease in the Minimum Rent requirement in effect immediately prior to the adjustment date.

11.4 Annual Percentage Adjustment to Minimum Rent. In the event that only the Minimum Rent is paid during the twelve-month period immediately preceding a Minimum Rent Adjustment, the Minimum Rent for the upcoming option year shall increase to one-hundred five percent (105%) of the previous year's Minimum Rent.

11.5 Gross Income. "Gross Income" as used in this Permit shall include all income resulting from the Permit Uses from whatever source derived whether received or to become due; provided, however, that Gross Income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount is

stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by CONCESSIONAIRE in computing Gross Income. Gross Income shall not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The Percentage Rent shall be calculated and paid by CONCESSIONAIRE on the basis of Gross Income whether the income is received by CONCESSIONAIRE or by any CONCESSIONAIRE or licensee, or their agents, and all Gross Income received by any CONCESSIONAIRE, licensee, or other party as a result of occupancy or operation of the Permit Area shall be regarded as Gross Income of CONCESSIONAIRE for the purpose of calculating the Percentage Rent required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by or pursuant to this Permit. Gross Income shall not include income generated from the sale of California State Fishing Licenses.

11.6 All monies collected by CONCESSIONAIRE for the sale of boat tickets and recreational daily use permits shall be deposited in accordance with San Diego Municipal Code Section 22.0704, unless otherwise approved by CITY in writing. Deposits made after the period specified shall be considered delinquent and CONCESSIONAIRE shall be subject to late provisions and charges as set forth in Section 16, Default and Delinquent Payments. CONCESSIONAIRE shall keep true, accurate and complete records in a manner and form satisfactory to the City.

12. Payment Procedure. On or before the last day of the calendar month following the calendar month in which the Gross Income subject to rent was earned, CONCESSIONAIRE shall provide CITY with a correct income statement for the Permit Area together with a payment of the monthly installment of Minimum Rent or the Percentage Rent, whichever is greater. The statement will be signed by CONCESSIONAIRE or its authorized agent attesting to the accuracy of the statement. Each statement will include:

- a. Total Gross Receipts for the subject month itemized as to business categories for which separate Percentage Rents are established;
- b. The Percentage Rent due CITY, computed and totaled;
- c. The accumulated total of all rent previously paid for the Term or the applicable extension of the Term; and
- d. Payments in the greater of the two following amounts: One-twelfth of the annual Minimum Rent or the total Percentage Rent due CITY, computed as described in this section.

13. Inspection of Records.

- 13.1. Records. CONCESSIONAIRE shall, at all times during the Permit term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Permit Area. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, tour lists, or other documents as necessary to allow CITY to easily determine the Gross Income. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day. In the event of admission charges or concession rents, CONCESSIONAIRE shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is first approved by CITY in writing.
- 13.2. Financial Statements. Within sixty (60) days after the end of the Term, CONCESSIONAIRE will, at its sole cost and expense, submit to CITY a statement of total Gross Income ("Statement"). The Statement shall include corresponding amounts of Percentage Rent paid CITY for the year classified according to the categories of business, pursuant to the Permit Uses set forth in Section 1.2 of this Permit.
- 13.3. Right to Inspect. All CONCESSIONAIRE's books of account, records, and supporting documentation, as described under this Section 13, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Permit Area. CITY, at its discretion, shall have the right to inspect and audit the business of CONCESSIONAIRE, its agents, concessionaires, and licensees operating on, and in connection with, the Permit Area as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this Permit. At CITY's request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's sole cost and expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Permit information or reports concerning the Permit Uses. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.
- 13.4. Audit Cost. The full cost of the CITY's audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case CONCESSIONAIRE agrees to pay CITY's cost of audit(s): (1) The audit(s) reveal an underpayment of more than

five percent (5%) or more than \$10,000.00, whichever is less, between the rent due as reported and paid by CONCESSIONAIRE, pursuant to this Permit and rent determined by the audit(s); and (2) CONCESSIONAIRE has failed to maintain complete and true books, records, accounts, and supporting documents in strict accordance with this Section 13.

Any underpayment of rent less than five percent (5%) revealed by the audit shall be paid within thirty (30) days of written notice from the CITY without penalty. In lieu of late payment charges as provided herein, if an audit performed pursuant to the terms of this Permit reveals that CONCESSIONAIRE has underpaid concession fees by more than five percent (5%), then CONCESSIONAIRE shall pay, in addition to the underpaid fees, an audited-deficiency charge of ten percent (10%) of the underpaid rent, plus interest at the rate of ten percent per annum on the underpaid rent until paid. CITY will credit any overpayment against incoming rent. Any overpayment determined after the expiration or termination of this Permit will be refunded by CITY within thirty (30) days of confirmation by the CITY of the audit(s) findings.

13.5 Default. CONCESSIONAIRE's failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Permit, a breach of this Permit and cause for termination.

14. Invoicing Courtesy. CITY may invoice CONCESSIONAIRE for amounts payable under this Permit. However, any such invoicing shall be deemed a courtesy only; CONCESSIONAIRE shall make all payments under this Permit on or before each applicable due date, regardless of being invoiced. No grace period shall apply to any amount payable under this Permit.
15. Place of Payment. All payments to be paid by CONCESSIONAIRE under this Permit shall be made payable to "City Treasurer" and be mailed to:

San Diego City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

16. Default and Delinquent Payments. If CONCESSIONAIRE fails to make any payment under this Permit when due, CONCESSIONAIRE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, CONCESSIONAIRE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Permit may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. CONCESSIONAIRE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of CONCESSIONAIRE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, CONCESSIONAIRE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

16.1 General. Upon CONCESSIONAIRE'S default under this Permit, CITY may pursue any one or more of the remedies listed in this Section 16 in addition to any other remedies now or later available to CITY, in law or equity. Such remedies shall be cumulative and not exclusive.

17. Entry and Inspection. CITY may at all times enter and inspect the Permit Area.

18. Utilities. CONCESSIONAIRE shall order, obtain, and pay for all utilities and service and installation charges in connection with its use of the Permit Area.

19. Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Permit Area, and the Permit Area may not be altered by CONCESSIONAIRE without prior written approval by CITY. Further, CONCESSIONAIRE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Permit Area without prior written approval of CITY and that such approval shall not be unreasonably withheld. This provision shall not relieve CONCESSIONAIRE of any obligation under this Permit to maintain the Permit Area in a decent, safe, healthy, and sanitary condition and state or repair, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Permit to make or assume any expense for any improvements or alterations. Upon expiration or termination of this Permit, any and all improvements, trade fixtures, structures, and installations or additions to the Permit Area now existing or constructed on the Permit Area by CONCESSIONAIRE shall be deemed to be part of the Permit Area and shall become CITY's property free of all liens and claims.

19.1 Personal Property. CONCESSIONAIRE shall remove from the Permit Area all CONCESSIONAIRE-owned machines, appliances, equipment, trade fixtures and other

items of personal property upon the expiration of this Permit, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Permit. Any such items which CONCESSIONAIRE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at CONCESSIONAIRE's sole cost and expense. CONCESSIONAIRE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Permit Area.

- 19.2 Late Removal. Notwithstanding any provision of this Permit to the contrary, CONCESSIONAIRE shall pay rent to CITY for any period of time after the expiration or termination of this Permit needed to remove CONCESSIONAIRE improvements or personal property as required by this Permit, whether by CITY or CONCESSIONAIRE. Such rent shall be calculated on a per diem basis using the rental rate in effect just prior to the expiration or termination of this Permit.
- 19.3 CITY's Right to Acquire Personal Property. If CONCESSIONAIRE wants to dispose of any of its personal property used in its operations on the Permit Area upon expiration or termination of this Permit, CITY shall have the first right to acquire such personal property.
20. Maintenance of Permit Area. CONCESSIONAIRE agrees not to commit or allow to be committed any waste, injury, or create any public or private nuisance. CONCESSIONAIRE further agrees to keep the Permit Area clean and clear of refuse, obstructions, and to dispose of all garbage, trash, and rubbish nightly or more often if necessary, to the satisfaction of CITY, at CONCESSIONAIRE's sole cost. CONCESSIONAIRE may use CITY dumpsters. CONCESSIONAIRE shall clean the dock surfaces weekly and perform maintenance and repair of the dock bumpers. CITY will adjust the dock accordingly to fluctuations in the reservoir water level as needed. CONCESSIONAIRE shall maintain and repair any damage to the watercraft and motors. CONCESSIONAIRE is responsible for any stranded rental watercraft. CONCESSIONAIRE shall be responsible for the maintenance of the building on the Permit Area, including interior painting, interior and exterior lights, and sewer and water line maintenance.
21. Acceptance of Permit Area. CONCESSIONAIRE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Permit Area. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Permit. CONCESSIONAIRE further acknowledges that the Permit Area is in the condition called for by this Permit, that CITY has performed all work, if any, related to the Permit Area and required by this Permit, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Permit Area, including without limitation the presence of any hazardous substances.
22. Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Permit Area in a professional and creditable manner.

23. Competent Management. Throughout the term of this Permit, and to the satisfaction of CITY, CONCESSIONAIRE shall provide competent management of the Permit Area for the Permit Uses. CONCESSIONAIRE covenants to operate the Permit Area for the Permit Uses and diligently conduct the operations to produce a reasonable and substantial Gross Income.
24. Insurance. CONCESSIONAIRE shall not begin operating under this Permit until it has: (a) obtained, and upon CITY's request provided to CITY, insurance certificates reflecting evidence of all insurance required in below; however, CITY reserves the right to request, and CONCESSIONAIRE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each company or companies; and (c) confirmed that all policies contain the specific provisions required below. CONCESSIONAIRE's liabilities, including but not limited to CONCESSIONAIRE's indemnity obligations, under this Permit, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (ten days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Permit and CONCESSIONAIRE's failure to maintain or renew coverage or to provide evidence of renewal during the Term, and any extension of said Term, of this Permit may be treated as a material breach of contract by CITY.

Further, CONCESSIONAIRE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of this Permit.

- 24.1 Types of Insurance. At all times during the Term, and any extension of said Term, of this Permit, the CONCESSIONAIRE shall maintain insurance coverage as follows:

- 24.1.1 Commercial General Liability. 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.
- 24.1.2 Commercial Automobile Liability. For all of CONCESSIONAIRE's automobiles including owned, hired and non-owned automobiles, CONCESSIONAIRE 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).

- 24.1.3 Workers' Compensation. For all of CONCESSIONAIRE's employees who are subject to the Permit and to the extent required by the applicable state or federal law, CONCESSIONAIRE 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 CONCESSIONAIRE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives.
- 24.1.4 Causes of Loss - Special Form Property Insurance. CONCESSIONAIRE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of CONCESSIONAIRE's insurable property related to the Allowed Uses under this Lease or the Premises in an amount to cover one hundred percent (100%) of the replacement cost.
- 24.1.5 Watercraft Liability. CONCESSIONAIRE shall, at its sole cost and expense, maintain watercraft liability and property damage insurance covering both boat and kayak rentals with liability limits of no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate. It is further understood that applicants will name CITY as an Additional Insured with Waiver of Subrogation in favor of CITY.
- 24.2 Deductibles. All deductibles on any policy shall be the responsibility of CONCESSIONAIRE and shall be disclosed to CITY at the time the evidence of insurance is provided.
- 24.3 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 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.
- 24.4 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY prior to the Effective Date.
- 24.4.1 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, CITY 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.

- 24.4.2 Primary & Non-Contributory. 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 CITY and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by CITY and its elected officials, officers, employees, agents and representatives shall be in excess of CONCESSIONAIRE's insurance and shall not contribute to it.
- 24.4.3 Severability of Interest. The policy or policies must be endorsed to provide that the CONCESSIONAIRE'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.
- 24.4.4 Automobile Liability Insurance Endorsements. 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, CITY and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of CONCESSIONAIRE.
- 24.4.5 Worker's Compensation Insurance Endorsements. 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.
- 24.5 Reservation of Rights and Modification. CITY reserves the right, from time to time, to review CONCESSIONAIRE's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to CITY. To assure protection from and against the kind and extent of risk existing with the Permit Uses, CITY, at its reasonable discretion, may require the revision of amounts and/or coverage of any insurance required under this Permit at any time, by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE 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 the Permit Uses.
- 24.6 Additional Insurance. CONCESSIONAIRE may obtain additional insurance not required by this Permit.
- 24.7 Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.

- 24.8 Accident Reports. CONCESSIONAIRE shall immediately report to CITY any accident causing property damage or injury to persons on the Permit Area or otherwise related to the Permit Uses. 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.
25. Indemnification & Hold Harmless. CONCESSIONAIRE 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 CONCESSIONAIRE'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 CONCESSIONAIRE's acts or omissions in the performance of its rights and obligations under this Permit, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the gross negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives or 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, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
26. Compliance with Laws. CONCESSIONAIRE shall at all times in its use, occupancy, maintenance, and operation of the Permit Area comply with all applicable laws, rules, regulations and directives of competent governmental authorities, and at CONCESSIONAIRE's sole cost and expense. At least annually, or upon City's request, CONCESSIONAIRE shall deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to CONCESSIONAIRE (e.g., validation of periodic inspections, if applicable).
27. Permits & Approvals. CONCESSIONAIRE, at CONCESSIONAIRE's sole cost and expense, shall obtain all applicable and required permits and approvals from the applicable local, state and federal authorities, including without limitation from CITY.
28. Prevailing Wage and Living Wage. By signing this Permit, CONCESSIONAIRE certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing work or services.
- 28.1 Prevailing Wage. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Permit is subject to State prevailing wage laws. For construction work performed under this Permit cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Permit cumulatively exceeding \$15,000, CONCESSIONAIRE and its contractors and subcontractors shall comply

with State prevailing wage laws including, but not limited to, the requirements listed below.

28.1.1 Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, CONCESSIONAIRE and its contractors and subcontractors shall ensure that all workers who perform work under this Permit 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.

28.1.1.1 Copies of such prevailing rate of per diem wages are on file at the CITY 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>. CONCESSIONAIRE and 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.

28.1.1.2 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 Permit. 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 Permit 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 the Lease, each successive predetermined wage rate shall apply to this Permit 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 Permit, such wage rate shall apply to the balance of this Permit.

28.1.2 Penalties for Violations. CONCESSIONAIRE and 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.

- 28.1.3 Payroll Records. CONCESSIONAIRE and 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. CONCESSIONAIRE shall require its contractors and subcontractors to also comply with section 1776. CONCESSIONAIRE and its contractors and subcontractors shall submit weekly certified payroll records online via CITY's web-based Labor Compliance Program. CONCESSIONAIRE is responsible for ensuring its contractors and subcontractors submit certified payroll records to CITY. CONCESSIONAIRE, 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.
- 28.1.4 Apprentices. CONCESSIONAIRE and 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. CONCESSIONAIRE 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.
- 28.1.5 Working Hours. CONCESSIONAIRE and 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.
- 28.1.6 Required Provisions for Contractors and Subcontracts. CONCESSIONAIRE 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.
- 28.1.7 Labor Code Section 1861 Certification. CONCESSIONAIRE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Permit, CONCESSIONAIRE will certify 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 Permit."

28.1.8 Labor Compliance Program. CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. CITY will withhold contract payments when payroll records are delinquent or deemed inadequate by CITY or other governmental entity, or it has been established after an investigation by CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact CITY's Equal Opportunity Contracting Department at 619-236-6000.

28.1.9 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 engage in the performance of 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 Labor Code 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 2103.5 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."

28.1.9.1 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.

28.1.9.2 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.

28.1.9.3 By executing this Permit, CONCESSIONAIRE is certifying 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 CONCESSIONAIRE shall provide proof of contractor and subcontractor registration to CITY upon request.

28.2 Living Wages. This Permit is subject to CITY's Living Wage Ordinance ("LWO"), codified at SDMC sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. SDMC section 22.4225 requires each bidder to fill out and file a living wage certification with the City Manager within thirty (30) days of Award of the contract. LWO wage and health benefit rates are adjusted annually in accordance with SDMC section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and CITY facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition, CONCESSIONAIRE agrees to require all of its contractors, subcontractors, sublicensees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

28.2.1 Exemption from Living Wage Ordinance. Pursuant to SDMC section 22.4215, this Permit may be exempt from the LWO. For a determination on this exemption, CONCESSIONAIRE must complete the Living Wage Ordinance Application for Exemption.

28.3 Highest Wage Rate Applies. CONCESSIONAIRE is required to pay the highest applicable wage rate where more than one wage rate applies.

29. Restriction on Plastic Food Containers. CONCESSIONAIRE shall not provide to its customers any prepared, takeout, or supplied/resale food in polystyrene foam packaging, nor shall CONCESSIONAIRE obtain or keep any such customer food packaging at or on the Permit Area. CONCESSIONAIRE's food packaging for all foods shall be recyclable plastic or recyclable paper, and CONCESSIONAIRE shall deliver to CITY, upon request, evidence of such in the form of paid invoices for the purchase of recyclable plastic or recyclable paper containers in amounts sufficient to indicate compliance with this Section 28. Post-consumer recycled plastic or recycled paper is preferred for all customer food packing related to the use and operation of the Permit Area. No biodegradable or compostable packaging is to be used by CONCESSIONAIRE in lieu of recyclable plastic or recyclable paper unless with the prior written approval of CITY's Environmental Services Department. "Prepared food" means all food or beverage prepared on the Permit Area for immediate consumption at the Permit Area or elsewhere in the San Vicente Reservoir. "Takeout food" means all food or beverage to be consumed off of the Permit Area or elsewhere in the San Vicente Reservoir. "Supplied/Resale food" means foods or beverages which are supplied by a third party to CONCESSIONAIRE for either preparing food or beverages onsite or direct sell. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, and on or in which any prepared food or takeout food is provided on or from the Permit Area. CONCESSIONAIRE should also limit its distribution of plastic bags to its customers.

30. Payment Card Industry Data Security Standards.

- 30.1 CONCESSIONAIRE's Certification. The CONCESSIONAIRE shall certify that it will implement and at all times comply with the most current Payment Card Industry Data Security Standards (PCI DSS) regarding data security. CONCESSIONAIRE will provide written annual confirmation of PCI DSS compliance from the credit card types used by the City (i.e. VISA, MasterCard, Discover, and American Express). CONCESSIONAIRE will immediately notify CITY if it undergoes, or has reason to believe that it will undergo, an adverse change resulting in the loss of compliance with the PCI DSS standards and/or other material payment card industry standards. In addition, CONCESSIONAIRE shall provide payment card companies, acquiring financial institutions, and their respective designees required access to CONCESSIONAIRE's facilities and all pertinent records as deemed necessary by CITY to verify CONCESSIONAIRE's compliance with the PCI DSS requirements.
- 30.2 Data Security. CONCESSIONAIRE shall acknowledge responsibility for the security of cardholder data as defined within PCI DSS standards. CONCESSIONAIRE shall undergo independent third party quarterly system scans that audit for all known methods hackers use to access private information, in addition to vulnerabilities that would allow malicious software (i.e., viruses and worms) to gain access to or disrupt network devices. Upon request, CONCESSIONAIRE will provide the CITY's Chief Information Security Officer with copies of the quarterly scans for verification. CONCESSIONAIRE will provide reasonable care and efforts to detect fraudulent credit card activity in connection with credit card transactions processed during the performance of this Permit.
- 30.3 Use of Data. CONCESSIONAIRE shall acknowledge and agree that it may only use cardholder data for completing the work as described in this Permit consistent with PCI DSS standards or applicable law. CONCESSIONAIRE shall maintain and protect in accordance with all applicable laws and PCI DSS standards the security of all cardholder data when performing the services.
- 30.4 Indemnity. CONCESSIONAIRE shall indemnify and hold harmless CITY, its officers, and employees from and against any claims, loss, damages, or other harm related to a data security breach or CONCESSIONAIRE's failure to maintain PCI DSS compliance standards.
- 30.5 Notification Requirements. CONCESSIONAIRE shall immediately notify the CITY's Chief Information Security Officer of any breach, intrusion, or unauthorized card access to allow the proper PCI DSS breach notification process to commence. CONCESSIONAIRE shall agree to assume responsibility for informing all affected individuals in accordance with applicable law. All notifications and required compliance documents regarding PCI DSS shall be sent to:

Chief Information Security Officer

1010 2nd Avenue, Suite 500
San Diego, CA 92101
Cybersecurity@sandiego.gov
(619) 533-4840

31. Criminal Background Screenings. CITY may require background investigations on all employees of CONCESSIONAIRE assigned to the Permit Area, including when information becomes available that indicates a potential breach in safety or security.
32. Supervision. CONCESSIONAIRE shall have qualified on-site personnel to conduct and operate activities at the Permit Area at all times when the San Vicente Reservoir is open to the public. CONCESSIONAIRE and CONCESSIONAIRE's employees shall at all times conduct themselves in a professional, creditable and polite manner in the operations at the Permit Area.
 - 32.1 CITY may request that CONCESSIONAIRE immediately remove from assignment to CITY any employee, including the on-site managers living at Permit Area, found unfit to perform duties at the discretion of CITY and CONCESSIONAIRE shall comply with all such requests.
33. California Public Records Act. CITY shall determine, in its sole discretion, whether this Permit or information provided to CITY by CONCESSIONAIRE pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). CONCESSIONAIRE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA. Upon CITY's request, CONCESSIONAIRE shall provide CITY with specific and detailed legal grounds, including any applicable case law, upon which CITY may rely, in CITY's sole discretion, for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by CONCESSIONAIRE, CONCESSIONAIRE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at CONCESSIONAIRE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. 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, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
 - 33.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by CONCESSIONAIRE as a result of CITY's disclosure or non-disclosure of this Permit or CONCESSIONAIRE information requested pursuant to the CPRA. CONCESSIONAIRE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES

AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH CONCESSIONAIRE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF THIS PERMIT OR ANY CONCESSIONAIRE INFORMATION REQUESTED PURSUANT TO THE CPRA.

34. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person on account of race, color, religion, gender, gender identity, gender expression, sexual orientation, medical status, national origin, ethnicity, age, marital status or disability in CONCESSIONAIRE's use of the Permit Area, including without limitation the provision of goods, services, facilities, privileges, advantages and accommodations, and the hiring and retention of employees and contractors.
35. Equal Opportunity. CONCESSIONAIRE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. CONCESSIONAIRE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. CONCESSIONAIRE shall cause the foregoing provisions to be inserted in all of CONCESSIONAIRE's contracts for work related to this Permit so that such provisions will be binding upon each of CONCESSIONAIRE's contractors. CONCESSIONAIRE shall fully cooperate with any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request CONCESSIONAIRE shall submit a current Workforce Report. CONCESSIONAIRE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Permit and debarment from participating in CITY contracts for a period of not less than one (1) year.
36. Equal Benefits. CONCESSIONAIRE shall comply with San Diego Municipal Code Sections 22.4301-22.4308, which require applicable parties to offer the same employment benefits to employees with spouses and employees with domestic partners. CONCESSIONAIRE shall certify that it will maintain such equal benefits throughout the term of this Permit. CONCESSIONAIRE's failure to maintain equal benefits shall be a material breach of this Permit.
37. Disabled Access Compliance. CONCESSIONAIRE shall comply with Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. CONCESSIONAIRE's compliance shall include without limitation the following:
 - 37.1 CONCESSIONAIRE 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;

37.2 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 CONCESSIONAIRE;

37.3 CONCESSIONAIRE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;

37.4 Where required by law, CONCESSIONAIRE shall, at CONCESSIONAIRE's sole cost and in conformance with all applicable building codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the Permit Area which deny access to disabled persons; and

37.5 CONCESSIONAIRE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.

CONCESSIONAIRE and each of its sublicensees, if any, shall be individually responsible for their own ADA compliance program. CONCESSIONAIRE'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. 34. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Permit if CONCESSIONAIRE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of CONCESSIONAIRE for this Permit. It is not the intent of this policy that these provisions apply to members of the City Council.

38. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Permit and to the extent legally possible, CONCESSIONAIRE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. CONCESSIONAIRE shall use its best efforts to hire qualified local residents and firms whenever practicable.
39. CONCESSIONAIRE's Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE's use or occupancy of the Permit Area and any damages to the improvements on, under or in the vicinity of the Permit Area resulting directly or indirectly thereby.
40. No Nuisance. CONCESSIONAIRE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
41. Assignment and Sublicense. CONCESSIONAIRE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's prior written consent in

each instance. Any assignment by operation of law shall automatically terminate this Permit.

42. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Permit Area, CONCESSIONAIRE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at CONCESSIONAIRE's cost.
43. Security and Safety of Permit Area. CONCESSIONAIRE shall bear sole responsibility for the security and safety of the Permit Area affected by or relating to the Permit Uses during the Term. CONCESSIONAIRE shall be responsible for the maintenance, cleanup, and securing of the Permit Area daily, as appropriate to ensure security and safety. CONCESSIONAIRE shall comply with all applicable laws, rules, regulations and directives of competent governmental authorities, at CONCESSIONAIRE's sole cost and expense. CITY has no obligation to provide oversight of the Permit Uses or staffing or resources for the Permit Uses at the Permit Area during the Term.
44. Encumbrances. CONCESSIONAIRE shall keep the Permit Area and the property of which it is a part (the "Property") free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with CONCESSIONAIRE'S use or occupancy of the Permit Area. CONCESSIONAIRE 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 Property in connection with such encumbrances and/or liens, including without limitation CONCESSIONAIRE'S failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons entitled to lien or encumber the Property pursuant to the California Civil Code.
45. Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon CONCESSIONAIRE or the Permit Area during the Term, including the land and any buildings, structures, machinery, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by CONCESSIONAIRE, or levied by reason of CONCESSIONAIRE's occupancy, use, development, maintenance or operation of the Permit Area, including without limitation licensing and permitting costs and fees. CONCESSIONAIRE acknowledges that this Permit may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE shall pay all such possessory interest taxes. CONCESSIONAIRE's payment for such taxes, fees and assessments shall not reduce any payment due CITY.
46. Hazardous Substances. CONCESSIONAIRE shall not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Permit Area. CONCESSIONAIRE and CONCESSIONAIRE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Permit Area without CITY's prior written consent.

CONCESSIONAIRE 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.

- 46.1 Release. 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.
- 46.2 Hazardous Substance. "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.
- 46.3 Remediation. If CONCESSIONAIRE's occupancy, use, development, maintenance or operation of the Permit Area results in a release of a Hazardous Substance, CONCESSIONAIRE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules and regulations of governmental authorities.
- 46.4 Removal. If CONCESSIONAIRE or CONCESSIONAIRE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances or hazardous wastes to the Permit Area, CONCESSIONAIRE and/or CONCESSIONAIRE's contractor or agent shall remove all Hazardous Substances and hazardous wastes in any type of container, equipment or device from the Permit Area immediately upon or prior to the expiration or earlier termination of this Permit. Upon CITY's request, CONCESSIONAIRE shall deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Permit Area. CONCESSIONAIRE 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.
- 46.5 Indemnity. CONCESSIONAIRE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from CONCESSIONAIRE's occupancy, use, development, maintenance or restoration of the Permit Area, 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, CONCESSIONAIRE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

- 46.6 Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that a Hazardous Substance or petroleum related substance or its chemical constituents has been released on, from or beneath the Permit Area, CONCESSIONAIRE 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. CONCESSIONAIRE 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 CONCESSIONAIRE 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, CONCESSIONAIRE shall take all actions necessary to alleviate the danger. CONCESSIONAIRE 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 Permit Area.
- 46.7 Environmental Assessment. Upon reasonable cause to believe that CONCESSIONAIRE's occupancy, use, development, maintenance or operation of the Permit Area ("CONCESSIONAIRE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Permit Area, 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 CONCESSIONAIRE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by CONCESSIONAIRE's operations on, in, from or under the Permit Area, 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 Permit Area, 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. CONCESSIONAIRE shall cause, or if CONCESSIONAIRE 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 Permit Area and compliance with environmental law and regulations are achieved, and CONCESSIONAIRE shall pay all costs and expenses therefor.
47. Storm Water Pollution Prevention Program. CONCESSIONAIRE shall, at its sole cost and expense, comply with CITY's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the San Diego Municipal Code, as may be amended, and any and all applicable Minimum Best Management Practice requirements, as defined in the City's Jurisdictional Runoff Management Plan, in performing or delivering services at

City owned, leased, or managed property, or in performance of services and activities on behalf of CITY regardless of location.

CONCESSIONAIRE shall comply with the CITY's Jurisdictional Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries as adopted by the CITY's City Council on July 1, 2015, via Resolution No. 309791, as may be amended.

CONCESSIONAIRE shall comply with each CITY facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

48. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Permit Area has not been inspected by a Certified Access Specialist (CASP).
49. Waiver. The property constituting the Permit Area 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 CONCESSIONAIRE'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.
50. Cumulative Remedies. CITY's rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
51. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
52. Joint and Several Liability. If CONCESSIONAIRE 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 CONCESSIONAIRE under this Permit.
53. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and CONCESSIONAIRE or between CITY and any other entity or party, or cause CITY to be responsible in any way for

the debts or obligations of CONCESSIONAIRE or any other party or entity.

54. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and CONCESSIONAIRE's occupancy, use, development, maintenance and operation of the Permit Area. Any modification, alteration or amendment of this Permit shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Permit is binding upon such party in accordance with its terms.
55. Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
56. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CONCESSIONAIRE at CONCESSIONAIRE's Address for Notices, and to CITY as follows:
- THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020
57. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are 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. Each party which is not a natural person represents and warrants that it is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that it is qualified to do business in California.
58. Acceptance of Permit Area. By signing this Permit, CONCESSIONAIRE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Uses. CONCESSIONAIRE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Uses, and that CONCESSIONAIRE is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. CONCESSIONAIRE accepts the Permit Area in its current condition. CONCESSIONAIRE acknowledges and agrees that unless set forth in this Permit, CITY has no obligation to improve, modify, repair, replace, alter or otherwise develop the Permit Area at any time either prior to, on or after the Effective Date. CONCESSIONAIRE shall not hold CITY responsible for any defects in the Permit Area. CONCESSIONAIRE accepts and

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

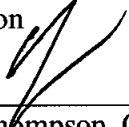
Date: 8/3/16

PYRAMID ENTERPRISES, INC., a California corporation dba Rocky Mountain Recreation Co.

BY: 
Name: Chet Roberts
Title: President

Date: 7/25/16

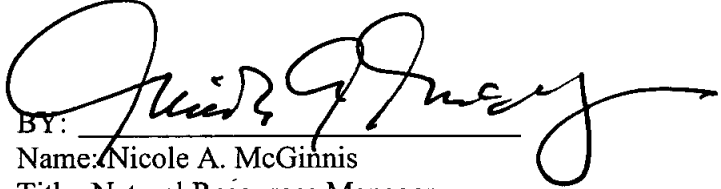
THE CITY OF SAN DIEGO, a California municipal corporation

BY: 
Cybele Thompson, CCIM
Director, Real Estate Assets

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State of California CEQA Guidelines, Section 15301.

Date: 7/26/16

BY: 
Name: Nicole A. McGinnis
Title: Natural Resources Manager

Approved as to form this 9th day
of August, 2016.

JAN I. GOLDSMITH, City Attorney

By: 
Name: Welda R. Mendoza
Title: Deputy City Attorney

assumes all risk of harm to all persons and property, including without limitation CONCESSIONAIRE's employees, from any defects in the Permit Area, and shall be solely responsible therefor.

59. CONCESSIONAIRE Contact. The following are designated by CONCESSIONAIRE as CONCESSIONAIRE's contacts for all purposes of this Permit:

Name: Chet Roberts

Alternate contact: Traci Roberts

Cell Number: 805-701-3992

Cell Number: 805-625-2709

Office Number: 661-702-1420

Office Number: 661-702-1420

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Exhibit A:
Site Map



Prepared by Watershed and Resource Protection, July 2016

Exhibit B:
Use Area



Legend

★ Permit Area

△ RV PAD

NOTICE OF EXEMPTION

(Check one or both)

TO: ☒ RECORDER/COUNTY CLERK
P.O. BOX 1750, MS A-33
1600 PACIFIC HWY, ROOM 260
SAN DIEGO, CA 92101-2422

FROM: CITY OF SAN DIEGO
PUBLIC UTILITIES DEPARTMENT
525 B STREET
SAN DIEGO, CA 92101

☐ OFFICE OF PLANNING AND RESEARCH
1400 TENTH STREET, ROOM 121
SACRAMENTO, CA 95814

PROJECT NO.: N/A

PROJECT TITLE: USE AND OCCUPANCY PERMIT FOR PYRAMID ENTERPRISES AT SAN VICENTE RESERVOIR

PROJECT LOCATION-SPECIFIC: Concession area on City of San Diego Public Utilities Department property at San Vicente Reservoir.

PROJECT LOCATION-CITY/COUNTY: Community of Lakeside, County of San Diego

DESCRIPTION OF NATURE AND PURPOSE OF THE PROJECT: Authorize the Mayor or his designee to sign a Use and Occupancy Permit allowing Pyramid Enterprises to maintain and operate the concession area at San Vicente Reservoir.

NAME OF PUBLIC AGENCY APPROVING PROJECT: City of San Diego - Public Utilities Department

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT:

Pyramid Enterprises, Inc., 28368 Constellation Road, Suite 380. Valencia, CA 91355-5016. (661) 702-1420

EXEMPT STATUS: (CHECK ONE)

- ☐ MINISTERIAL (SEC. 21080(b)(1); 15268);
- ☐ DECLARED EMERGENCY (SEC. 21080(b)(3); 15269(a);
- ☐ EMERGENCY PROJECT (SEC. 21080(e)(4))
- ☒ CATEGORICAL EXEMPTION: (SEC. 15301 EXISTING FACILITIES)
- ☐ STATUTORY EXEMPTIONS:

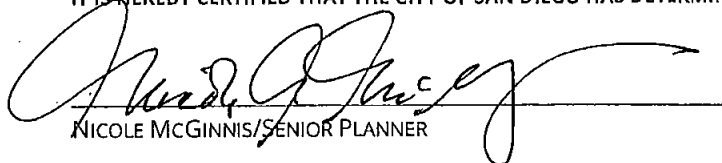
REASONS WHY PROJECT IS EXEMPT: This activity has been determined to be exempt from CEQA pursuant to the CEQA Section 15301 (Existing Facilities) Categorical Exemption which allows for the operation, repair, maintenance, permitting, leasing, or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use. All activity will be done solely on developed or disturbed areas.

LEAD AGENCY CONTACT PERSON: Joe Weber, Lakes Program Manager, Public Utilities, TELEPHONE: (619) 668-2030

IF FILED BY APPLICANT:

1. ATTACH CERTIFIED DOCUMENT OF EXEMPTION FINDING.
2. HAS A NOTICE OF EXEMPTION BEEN FILED BY THE PUBLIC AGENCY APPROVING THE PROJECT?
(X) YES () NO

IT IS HEREBY CERTIFIED THAT THE CITY OF SAN DIEGO HAS DETERMINED THE ABOVE ACTIVITY TO BE EXEMPT FROM CEQA


NICOLE MCGINNIS/SENIOR PLANNER

May 20, 2016
DATE

CHECK ONE:

- ☒ SIGNED BY LEAD AGENCY
- ☐ SIGNED BY APPLICANT

DATE RECEIVED FOR FILING WITH COUNTY CLERK OR OPR:



Date of Notice: May 20, 2016

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

PUBLIC UTILITIES DEPARTMENT
21002797

PROJECT NAME/NUMBER: Use and Occupancy Permit for Pyramid Enterprises at San Vicente Reservoir

COMMUNITY PLAN AREA: Community of Lakeside, County of San Diego

COUNCIL DISTRICT: County of San Diego

LOCATION: Concession area on City of San Diego Public Utilities Department property at San Vicente Reservoir.

PROJECT DESCRIPTION: Authorize the Mayor or his designee to sign a Use and Occupancy Permit allowing Pyramid Enterprises to maintain and operate the concession area at San Vicente Reservoir.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego - Public Utilities Department

ENVIRONMENTAL DETERMINATION: This activity is categorically exempt from CEQA pursuant to CEQA Guidelines, Section 15301 - Existing Facilities.

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Public Utilities Department Environmental Designee

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION: This activity has been determined to be exempt from CEQA pursuant to CEQA Section 15301 (Existing Facilities) Categorical Exemption which allows for the operation, repair, maintenance, permitting, leasing, or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use. All activity will be done solely on developed or disturbed areas.

PROJECT MANAGER: Joe Weber
Public Utilities Department

MAILING ADDRESS: 12375 Moreno Avenue
Lakeside, CA 92404

PHONE NUMBER: (619) 668-2030

On May 20, 2016, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City

Council. If you have any questions about this determination, contact the City Development Project Manager listed above.

Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (**June 3, 2016**). The appeal application can 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.