

PREFERENTIAL NONEXCLUSIVE USE AND OCCUPANCY PERMIT

This preferential, nonexclusive use and occupancy permit ("Permit") is executed by and between THE CITY OF SAN DIEGO ("City") and MIRA MESA WEST ("Permittee"), a nonprofit organization promoting youth baseball.

WHEREAS, City desires to provide facilities to its citizens and noncommercial local societies, clubs, and organizations engaged in civic, social, educational, cultural, recreational or philanthropic work or activities; and

WHEREAS, Permittee is an organization that engages in the promotion and sponsorship of recreational activities that generate revenues from voluntary contributions, special events, membership dues, fees and charges, and fundraising projects.

NOW, THEREFORE, it is mutually agreed by and between the City and Permittee as follows:

1. City Approval. City and Permittee agree that "City approval" or "City-approved" as referenced in this Permit shall mean the written approval of the Director of City's Real Estate Assets Department, unless otherwise stated.
2. Premises. City grants to Permittee the Permit for preferential, nonexclusive use and occupancy of City-owned property consisting of baseball fields, a concession stand, automobile parking, and other structures on approximately 7.9 acres, located at 8575 New Salem Street in the Mira Mesa section of the City of San Diego, County of San Diego, State of California as shown on Exhibit "A" of this Permit which is hereinafter called "Premises."
3. Term. The term of this Permit shall be for one year beginning on January 1, 2007, and expiring on December 31, 2007. This Permit may be terminated at any time by either party giving the other party sixty (60) days written notice of intent to terminate.
4. Holdover. Any holding over by Permittee after the expiration or earlier termination of this Permit shall not be considered a renewal or extension of this Permit. The occupancy of the Premises after the expiration or earlier termination of this Permit constitutes a month-to-month tenancy, and all other terms and conditions of this Permit shall continue in full force and effect. City shall have the right to charge the City's current approved Permit Processing Fee and/or its current approved Annual Administrative Fee for Youth Sports Permit during any holdover period.
5. Processing Fee. Permittee shall pay the City an annual Permit processing fee of six hundred dollars (\$600) prior to commencement of this Permit.
6. Purpose. Permittee shall operate and maintain the Premises for youth baseball in accordance with Permittee's league franchise(s), to operate a concession stand in

accordance with Section 7 Concession Rights, and for public use in accordance with Section 9 Public Use and for no other use whatsoever without obtaining prior City approval.

7. Concession Rights. Permittee shall have the right to operate a concession stand during baseball games or other events if previously approved by City in each instance. Permittee may sell confections, soft drinks, gum, and other food products which are prepared and served in accordance with San Diego County Health Department regulations. All profits earned by Permittee from operating the concession stand must be used for the operation, maintenance, and improvement of the Premises.
8. Vending Machines. Permittee acknowledges that Pepsi Bottling Company is the exclusive "beverage vending machine" provider for the City and Pepsi products must be used for beverage vending in City occupied public buildings and parks.
9. Public Use. Whenever Permittee is not using the Premises and it is reasonably practical, Permittee shall allow other youth baseball and baseball organizations to use the Premises, with prior City approval in each instance.
10. Subletting and Maintenance Fees. Permittee shall not assign this Permit or any interest in this Permit and shall not sublet the Premises or any part of the Premises or any right or privilege appurtenant to the Premises, or allow any other person, except employees, agents, and guests of Permittee, to use or occupy the Premises or any part of the Premises, without the prior approval of City in each instance. Permittee may collect a reasonable maintenance fee from other City-approved groups, in accordance with a City-approved fee schedule. All maintenance fees collected by Permittee from any subtenant must be used for the operation, maintenance, and improvement of the Premises.
11. Bylaws. Membership in Permittee's organization shall be open to anyone meeting the requirements of Permittee's rules and bylaws. All restrictions, rules, bylaws, and fees, if any, and changes to the bylaws proposed by Permittee's organization shall require prior written approval of the City. A current copy of the bylaws shall be on file in the office of City's Real Estate Assets Department.
12. Nondiscrimination. Permittee shall not discriminate or permit discrimination against any person or class of persons by reason of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in any manner in the operation or use of the Premises.
13. Inspection of Records. Permittee shall make any and all records and accounts available to City for inspection at all reasonable times so that City can determine Permittee's compliance with the Permit. These records and accounts will be made available by Permittee and will be complete and accurate showing all income and receipts from use of the Premises. Permittee's failure to keep and maintain records and make the records

available for inspection by City is a breach of this Permit and cause for termination of the Permit. Permittee shall maintain all records and accounts for a minimum period of five (5) years.

14. Utilities. The City will provide, without charge, a reasonable amount of water to the Premises. The City will be the sole judge as to what constitutes a "reasonable amount" of water. Unless otherwise provided by City at City's option, all other utilities and services required by Permittee shall be provided by Permittee at Permittee's sole cost and expense.
15. Maintenance. Permittee shall, at its sole cost and expense, maintain the Premises in a safe, neat, clean, and sanitary condition acceptable to the City Manager throughout the term of the Permit.
16. Improvements.
 - a. Permittee shall not make or cause any improvements, changes, or alterations to be made to the Premises, without prior written City approval. If Permittee makes or causes to be made any improvements, repairs, or alterations on the Premises, Permittee shall file a bond with the City that provides for the payment in full of the claims of all persons performing labor upon or furnishing materials to be used on the Premises, in the amount of the estimated cost of the improvement, alteration, or repair as determined by the City. The bond shall be acknowledged by the Permittee as principal and by a corporation licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety. Permittee shall hold City free and harmless and indemnify City against all claims for labor and materials in connection with improvements, repairs or alterations to the Premises, and the cost of defending against claims, including reasonable attorney fees.
 - b. Under no circumstances shall Permittee or Permittee's agents place a temporary or permanent structure of any kind on the Premises, including but not limited to cargo containers, trailers, storage sheds, recreational vehicles, etc., without the prior written authorization of the City's Park and Recreation Department and Real Estate Assets Department and obtaining any required City, County or other jurisdiction permits. Violation of this condition of the Permit may require the Permittee to immediately remove of any temporary structures at Permittee's sole expense.
17. Indemnity. Permittee shall indemnify and hold the City of San Diego, its elected officials, officers, representatives, agents, and employees harmless from any and all liability, claims, damages or injuries to any person, including injury to Permittee or any of Permittee's subtenants, employees, representatives, agents, guests, licensees, invitees, patrons or of any other person whomsoever, and all expenses of investigating and defending against same: a) arising from or alleged to have arisen from or connected with the use of or operations on the Premises; and b) caused or claimed to be caused by the

independent acts of Permittee, Permittee's agents or employees, or the concurrent acts of the Permittee, the City, or their agents or employees.

18. Insurance.

- a. Permittee shall take out and maintain at all times during the term of this Permit the following insurance at its sole expense:
 - i. Public Liability and Property Damage. Public liability and property damage insurance in the amount of not less than one million dollars (\$1,000,000) combined single limit liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by City or Permittee or by authorized representatives of City or Permittee on or in connection with the use or operation of the premises.
 - ii. Fire, Extended Coverage, and Vandalism. Fire, extended coverage, and vandalism insurance policy on all insurable property on the Premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to City and Permittee. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the Premises the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to City has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.
- b. Permittee's responsibility to maintain insurance also includes the following:
 - i. Additional Insured. All insurance policies, by separate endorsement, shall name "The City of San Diego, its elected officials, officers, representatives, agents, and employees" as additional insureds, and protect against any legal costs in defending claims, and will not terminate without sixty (60) days prior written notice to City. All insurance companies must be satisfactory to City and licensed to do business in California. All policies will be in effect on or before the first day of this Permit, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with City during the entire term of this Permit. At least thirty (30) days prior to the expiration of each policy, Permittee shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Permit.

- ii. Modification. City, at its discretion, may require the revision of amounts and coverage at any time during the term by giving Permittee sixty (60) days prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. Permittee also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Permit.
 - iii. Accident Reports. Permittee shall report to City any accident causing more than ten thousand dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
 - iv. Failure to Comply. Failure by Permittee to take out and maintain the required insurance is ground for termination of this Permit by City.
19. Compliance with Law. Permittee shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments at Permittee's sole cost and expense. Permittee shall comply with any and all notices issued by the City under the authority of any law, statute, ordinance or regulation.
20. Advertising. Permittee shall not place or cause to be placed upon the Premises any signs, billboards, banners, posters or any other media advertising products or services without prior City approval.
21. Taxes. As further consideration for the execution of this Permit, Permittee shall pay and discharge before delinquency, all taxes and assessments which may be levied against the Premises by reason of any possessory interest of Permittee during the term.
22. Nonexclusive Occupancy. Permittee's use of the Premises is nonexclusive. City reserves the right to enter the Premises at any time during the Permit term in the event of an emergency to inspect the Premises to ascertain its condition, and to inspect the operations conducted on the Premises to ensure Permittee's compliance with this Permit.
23. Subject To Conditional Use Permit. This Permit is subject to the conditions of any Conditional Use Permit ("CUP") granted by City for use of the Premises. If any conditions of a CUP for the Premises are violated, this Permit may be immediately terminated at the sole discretion of the City.
24. Relocation. City is not obligated to provide Permittee with any relocation payment or relocation service upon the expiration or earlier termination of this Permit.

25. Notification to City. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to Permittee at the address below:

Mira Mesa West
Attention: Laurie Cohen, President
10933 Polaris Drive
San Diego, CA 92126

or at another address designated in writing by Permittee;
and to City as follows:

City of San Diego
Director, Real Estate Assets Department
Civic Center Plaza Building
1200 Third Avenue, Suite 1700
San Diego, CA 92101-4155

Any party entitled or required to receive notice under this Permit may by written notice designate a different address to which notices shall be sent.

26. Drug and Alcohol-Free Environment. It is the policy of the City of San Diego that all facilities provided under Permit shall be utilized and operated in a drug-free and alcohol-free environment. The Permittee shall make this fact known, both in writing and through oral communication, to facility participants periodically throughout the term of this Permit. Permittee shall document such written or oral communication and provide copies to the City on an annual basis.
27. Survival. All obligations and liabilities of Permittee that accrue prior to the expiration or earlier termination of this Permit shall survive the expiration or earlier termination of this Permit.
28. Disabled Access Compliance. Permittee shall comply with the California Fair Employment and Housing Act, the Federal Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and any other applicable local, state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. Permittee shall not exclude any qualified individual with a disability on the basis of that disability from the benefits of, services, programs or activities of Permittee or discriminate against any qualified individual with a disability.
29. Music. Permittee shall only perform music for which the City has obtained a "non-dramatic" (defined below) performance license from ASCAP or any other musical industry licensing entity ("Licensing Entity"). For a list of approved ASCAP music and artists, Permittee may contact ASCAP, One Lincoln Plaza, New York, NY 10023, Attn:

Repertory Dept.-Clearance Section or online at www.ascap.com. City shall notify Permittee in writing of any other approved Licensing Entity and any additional permittee requirements ("Additional Requirements") imposed upon Permittee by City by virtue of its licensing agreement with Licensing Entity. Failure to comply with this Section 29 shall be deemed a material breach of this Permit. In the event that Permittee does not agree to be bound by the Additional Requirements, this Permit shall be terminated by City. For the purposes of this Permit, a "non-dramatic" performance includes live performances and recorded performances (CD, tapes, radio and television over loud speakers). Permittee shall not perform music with any "dramatic" performances. For purposes of this Permit, "dramatic" performances shall include, but not limited to, the following: (a) performance of a "dramatico-musical work" (defined below) in its entirety; (b) performance of one or more musical compositions from a "dramatico-musical work" (defined below) accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken; (c) performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action or visual presentation; and (d) performance of a concert version of a "dramatico-musical work" (defined below). The term "dramatico-musical work" as used in this Permit, shall include, but not be limited to, a musical comedy, opera, play with music, revue or ballet. Permittee shall not perform music from a coin operated phonorecord (or CD) player commonly known as a "juke-box."

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

30. Best Management Practices. The Permittee shall comply with San Diego Municipal Code Section 43.0301 *et. Seq.*, Storm Water Management and Discharge Control, in performing or delivering services at City-owned, leased or managed property or in performance of service and activities on behalf of the City, regardless of the location.
31. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Permit shall be deemed to refer to "the Mayor or designee." This section shall remain in effect for the duration City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.
32. 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 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 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.

IN WITNESS WHEREOF, this Permit is executed by the City of San Diego, acting by and through its City Manager, and by the Permittee, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 12/27/06

By David Anderson, Deputy Director
FOR James F. Barwick, Director
Real Estate Assets Department

PERMITTEE: MIRA MESA WEST

Date 11/17/06

By Laurie Cohen
Laurie Cohen, President

APPROVED AS TO FORM AND LEGALITY THIS 29 DAY OF Dec., 2006

MICHAEL J. AGUIRRE, City Attorney

By [Signature]
Deputy City Attorney

VB/cj

10/24/06

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