

DUPLICATE

**CITY OF SAN DIEGO
CONCESSION AGREEMENT**

THIS CITY OF SAN DIEGO CONCESSION AGREEMENT ("AGREEMENT") 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 FEBRUARY 20, 2018 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. CITY owns certain land throughout the County of San Diego, and further defined in Section 1.1, below. Said locations are hereinafter called collectively the "**PREMISES**." The CITY reservoirs are hereinafter called collectively the "**Reservoirs**" or individually "**Reservoir**," "**El Capitan Reservoir**," "**Hodges Reservoir**," "**Otay Reservoir**," "**San Vicente Reservoir**," "**Sutherland Reservoir**," "**Murray Reservoir**" or "**Miramar Reservoir**."
- B. CITY seeks to secure from CONCESSIONAIRE concession services on the Premises as further set forth in this AGREEMENT.
- C. On JAN 09 2018, 2018, the City Council of CITY approved the award of this AGREEMENT to CONCESSIONAIRE pursuant to CONCESSIONAIRE's response to the Request for Proposals, dated October 3, 2016.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this AGREEMENT, and for valuable consideration, the receipt and sufficiency of which is acknowledged, CITY and CONCESSIONAIRE agree as follows:

SECTION 1: PREMISES; ALLOWED USES

- 1.1 Premises. CITY hereby leases to CONCESSIONAIRE and CONCESSIONAIRE leases from CITY the PREMISES for the purpose of operation of concessions at the reservoirs, described in Exhibits A1-A7, attached hereto.
- 1.2 Uses. CONCESSIONAIRE may only use the PREMISES for the following purposes (the "**Uses**") in compliance with all laws, rules and regulations of competent governmental authority: 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 tournaments, community awareness programs and classes; and use of on-site RV pads for manager housing at **El Capitan Reservoir, Hodges Reservoir, Otay Reservoir, San Vicente Reservoir and Sutherland Reservoir**. CITY may approve uses that are incidental or supplementary to the Uses upon prior written consent of CITY.

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Filed JAN 09 2018
Office of the City Clerk
San Diego, California

CONCESSIONAIRE covenants and agrees to use the PREMISES throughout the Term, as defined in Section 2.1, below, for the Uses and to diligently conduct the business thereon to produce the most gross income that can be reasonably expected. Failure to continuously use the PREMISES for the Uses, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY as further set forth in Section 10, below.

- 1.3 Governmental Approvals. CONCESSIONAIRE shall obtain and maintain all necessary permits and licenses for the operations and activities on the PREMISES. CONCESSIONAIRE must maintain an "A Card" rating issued by the San Diego County Department of Environmental Health.

By the granting of this Agreement, neither CITY nor the Council of CITY is obligating itself to CONCESSIONAIRE or to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the PREMISES. Discretionary action includes, but is not limited to, rezoning, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the PREMISES. CITY makes no representation or warranty regarding review or approval of CONCESSIONAIRE's development plans for the PREMISES, and failure of the CITY or CITY's City Council to approve any plans or grant any required permits for development shall not give rise to any claim, liability, obligation, or cause of action related to this Agreement.

- 1.4 Superior Interests. This Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements and rights-of-way pertaining to the PREMISES, whether or not of record. 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 PREMISES, relative to any such superior interest. If CONCESSIONAIRE's use of the PREMISES 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.
- 1.5 Quiet Possession. CONCESSIONAIRE, performing the covenants and agreements in this Agreement, shall at all times during the term of this Agreement peaceably and quietly have, hold, and enjoy the PREMISES. If CONCESSIONAIRE is temporarily dispossessed through action or claim of a title superior to CITY's, this Agreement shall not be voidable nor shall CITY be liable to CONCESSIONAIRE for any loss or resulting damages.
- 1.6 Reservation of Rights.
- a. Mineral Rights. CITY reserves all rights, title and interest in and to any and all subsurface natural gas, oil, minerals and water on or within the PREMISES.
 - b. Easements. CITY reserves the right to grant, establish and use easements and rights-of-way over, under, along, across and through the PREMISES for utilities, thoroughfares or access as it deems advisable for the public good.

- c. Repairs. CITY may at all reasonable times enter the PREMISES for the purpose of making repairs to or developing municipal resources and municipal services.
 - d. Noninterference. CITY shall not unreasonably interfere with CONCESSIONAIRE's use of the PREMISES. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
- 1.7 Competent Management. Throughout the Term, defined in Section 2.1, below, and to the satisfaction of CITY, CONCESSIONAIRE shall provide competent management of the PREMISES for the Uses. For the purposes of this Agreement, "competent management" shall mean demonstrated ability in the management and operation of a concession of the Uses in a fiscally responsible manner.
- 1.8 CITY Use. The PREMISES shall be available to CITY for civic events and special programs, free of charge, except where CONCESSIONAIRE has scheduled events or programs. For all major events on the PREMISES by CITY, CONCESSIONAIRE shall have the first right of refusal to provide concession services. For purposes of this Agreement, "major events" are defined as those events which involve proposed assemblages of more than 100 persons. CITY will notify CONCESSIONAIRE in writing of such major events and CONCESSIONAIRE shall notify CITY in writing within ten (10) days of the date of such written notification as to CONCESSIONAIRE's decision of whether or not to provide concession services to said major event. Failure to respond within said ten (10) days or a determination by CONCESSIONAIRE not to provide concession services shall end any rights of CONCESSIONAIRE under this Agreement with regard to said major event. CITY may, in its sole discretion, determine not to grant the first right of refusal to CONCESSIONAIRE in an amount not to exceed two major events per calendar year. CITY's determination with regard to such matters shall be final and conclusive and CONCESSIONAIRE agrees that it shall not be entitled to any damages whatsoever as a result of such determination by CITY not to provide the first right of refusal with regard to any such major event. After every CITY use, the PREMISES shall be left in the same condition found, and CONCESSIONAIRE shall not be required to incur any additional costs by reason of CITY use.
- 1.9 Political Activities. The PREMISES shall be used exclusively for the Uses. The PREMISES shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that CONCESSIONAIRE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate -forum" and similar events.
- 1.10 Public Use. The general public shall not be wholly or permanently excluded from any portion of the PREMISES. CONCESSIONAIRE may develop reasonable restrictions provided they are consistent with the rights of the general public, and are designed to allow CONCESSIONAIRE to use the PREMISES for the purposes specified herein. CONCESSIONAIRE agrees that all activities conducted on the PREMISES will be as stated in Section 1.2, Uses, hereof.

CONCESSIONAIRE shall, at all times during the Term, defined in Section 2.1, below, maintain CITY-approved signs identifying the PREMISES as CITY-owned and available for public use consistent with the terms of this Agreement. The signs shall be installed by CONCESSIONAIRE at locations agreeable to CITY.

SECTION 2: TERM

- 2.1 Commencement. The term of this Agreement ("Term") shall be twenty (20) years commencing on the first day of the calendar month following the Effective Date. "Agreement Year" as used in this Agreement shall mean the 12-month period commencing on the first day of the calendar month following the Effective Date.
- 2.2 Holdover. Any holding over by CONCESSIONAIRE after expiration shall not be considered as a renewal or extension of this Agreement. The occupancy of the PREMISES after the expiration of this Agreement constitutes a month-to-month tenancy, and all other terms and conditions of this Agreement shall continue in full force and effect; provided, however, CITY shall increase the rent to be one hundred twenty-five percent (125%) of the then rental rate and to terminate the holdover tenancy at will.
- 2.3 Surrender of Premises. Concurrent with the execution of this Agreement, CONCESSIONAIRE shall execute, acknowledge and deliver to CITY a valid and recordable _____ quitclaim deed quitclaiming all its rights in and to all of the PREMISES. CITY may record such deed only on the expiration of the Term or earlier termination of this Agreement. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) business days after receipt of written demand therefor. At the expiration or earlier termination of this Agreement, the PREMISES shall be delivered free and clear of all liens and encumbrances, and in a decent, safe and sanitary condition.

SECTION 3: RENT

- 3.1 Minimum Rent. The minimum rent ("Minimum Rent") is Forty Two Thousand Dollars (\$42,000.00), to be paid, as further set forth in this Section 3, in a monthly installment of Three Thousand Five Hundred Dollars (\$3,500.00).
- a. 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 this Section 3.
- b. Minimum Rent Adjustment. Effective at the beginning of the first day of each Agreement Year, the Minimum Rent shall be adjusted to eighty percent (80%) of the annual average of actual rent paid in the immediately preceding Agreement Year, but in no event less than the Minimum Rent of the immediately preceding Agreement Year.

- 3.2 Percentage Rent. Percentage rent ("**Percentage Rent**") will be calculated on a calendar month basis and will consist of ten percent (10.00%) of the Gross Income, as defined in Section 3.4, below. 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 Uses authorized as set forth above in Section 1.2.
- 3.3 Unauthorized Use Charge. The CONCESSIONAIRE shall pay the City one-hundred percent (100%) of the gross receipts for any service or use that is not permitted by the Agreement.
- 3.4 Gross Income. Gross income ("**Gross Income**") shall include all income resulting from the PREMISES from whatever source derived whether received or to become due; provided, however, that Gross Income shall not include (1) 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 the CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law; and (2) income produced by the sale of State of California fishing licenses, license stamps and permits and any income produced therefrom. Possessory interest taxes or other property taxes shall not be deducted by the CONCESSIONAIRE in computing Gross Income. Gross Income shall not include refund of deposits.
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- 3.5 Closures. Occasionally, and for various reasons, City's Public Utilities Department may find it necessary, in its sole discretion, to close a Reservoir because of storms, low water levels, scheduled and unscheduled maintenance, improvements, and for other reasons that may arise during the Term. In most cases, advanced notice of such closure will be provided to the CONCESSIONAIRE. However, the City cannot guarantee that any individual Reservoir will be open for fishing or other activities at all times. If any such closure should become necessary, the City may, at the City's sole discretion, reduce the agreed-upon rent in proportion to the length of any closure.
- 3.6 Delinquent Rent. If the CONCESSIONAIRE fails to pay all or any part of the rent or ANY other rent when due, the CONCESSIONAIRE shall pay, in addition to the unpaid amount, five percent (5%) of the unpaid amount. If the rent is still unpaid at the end of fifteen (15) days, the CONCESSIONAIRE shall pay an additional five percent (5%) of the unpaid amount [for a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from the delinquency, including lost interest, lost opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25) each time. In no event shall any penalties or default interest rates charged to the CONCESSIONAIRE exceed the amount permitted under applicable law. After thirty (30) days past due, unpaid amounts due CITY under this Agreement may be referred to the City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. The CONCESSIONAIRE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the 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 the CONCESSIONAIRE's breach or default with respect to the late payment nor prevent the City from exercising any other rights and remedies available at law or in equity. As required by law, the 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.

- 3.7 Invoicing Courtesy. CITY may invoice CONCESSIONAIRE for amounts payable under this Agreement. However, any such invoicing shall be deemed a courtesy only; CONCESSIONAIRE shall make all payments under this Agreement on or before each applicable due date, regardless of being invoiced. No grace period shall apply to any amount payable under this Agreement.
- 3.8 Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Income subject to Percentage Rent was earned. All payments to be paid by the CONCESSIONAIRE under this Agreement shall be made payable to the 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 the 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. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- 3.9 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 PREMISES together with the 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; 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 3.9.

3.10 Inspection of Records.

- a. Records. CONCESSIONAIRE shall, at all times during the 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 PREMISES. 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 or other comparable devices provided such a system is first approved by CITY in writing.
- b. 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 Uses. Said statement shall be signed by CONCESSIONAIRE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon CONCESSIONAIRE.
- c. Right to Inspect. All CONCESSIONAIRE's books of account, records, and supporting documentation, as described under this SECTION 3, 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 PREMISES. 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 PREMISES as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this Agreement. 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 Agreement information or reports concerning the PREMISES. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.

- d. 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 Agreement 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 3.

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

- e. 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 Agreement, a breach of this Agreement and cause for termination.

- 3.11 Unauthorized Use Charge. CONCESSIONAIRE shall pay CITY one hundred percent (100%) of the gross receipts for any service or use that is not permitted by this Agreement ("**Unauthorized Use Charge**"). The Unauthorized Use Charge is subject to the due date provided in this Agreement for rent payments, and the provision for delinquent rent. The existence or payment of the Unauthorized Use Charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default CONCESSIONAIRE for participating in or allowing any unauthorized use of the PREMISES.

SECTION 4: ASSIGNMENT AND SUBLETTING; ENCUMBRANCES

- 4.1 Right to Assign and Sublet. The CONCESSIONAIRE shall not assign this Agreement or any interest therein and shall not sublet the PREMISES or any part of the PREMISES, or grant any license or other right or appurtenant privilege to the PREMISES, or permit any other person, except CONCESSIONAIRE's employees, agents, and guests, to use or

occupy the PREMISES or any part of the PREMISES without prior written approval from CITY. CITY's approval may be conditioned upon the proposed assignee or sublessee agreeing to revisions to this Agreement, to reflect market conditions or CITY requirements that are then in effect. Any such approval shall not be deemed approval to any subsequent assignment, subletting, occupation, or use by another person. This Agreement and any interest therein shall not be assignable by operation of law without the written consent of CITY. The following action will not be allowed under this Agreement and will be considered as contrary to CITY's best interest: Assignment by CONCESSIONAIRE for a consideration in excess of CONCESSIONAIRE's installed improvements and/or services rendered.

"Assignment" for the purposes of this clause shall include without limitation any transfer of any interest in this Agreement by CONCESSIONAIRE or by any partners, principals, or stockholders, as the case may be, from the original CONCESSIONAIRE, its general partners or principals.

Approval of any assignment shall be conditioned upon the assignee agreeing in writing that it will assume the rights and obligations thereby assigned and that it will keep and perform all covenants, conditions and provisions of this Agreement which are applicable to the rights acquired. CITY may require, as a condition to consenting of any assignment, that ~~the proposed assignee pay additional rent to CITY to equal the full fair market rent~~ justifiable at the date of such proposed assignment and that this Agreement otherwise be revised to comply with standard CITY lease requirements that are then current. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the PREMISES, that this Agreement be revised to comply with then-current CITY lease provisions, and that the sublease be subject and subordinate to each and every provision of this Agreement. Also, no assignee will be approved who is not at least comparable to the original CONCESSIONAIRE in financial and professional capabilities to operate the PREMISES, as determined by the City.

Pursuant to San Diego City Charter section 225, CONCESSIONAIRE and each of its subtenants and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Agreement and the precise nature of all interests of all persons therein. Pursuant to San Diego City Charter Section 225, every person or entity which will have an interest in this Agreement must be reviewed and approved by CITY.

- 4.2 Additional Consideration to CITY. In the event of an Assignment (as defined in Section 4.1, above); in the event of a subletting of the majority portion of the leasehold; or in the event of a refinancing creating an encumbrance against the leasehold, CONCESSIONAIRE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved Assignment of the Agreement, two percent (2%) of any amount paid CONCESSIONAIRE in consideration of a sublease of all or a majority portion of the leasehold, two percent (2%) of any amount paid CONCESSIONAIRE in consideration of a sublicense or all or a majority portion of the License, or two percent (2%) of the amount of any new loan or encumbrance against the property plus, if

applicable, the cost of the new improvements constructed on the Lease PREMISES as required or allowed under this Agreement. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments, less the amount listed in CONCESSIONAIRE most recent federal tax return as the current depreciated value of the improvements upon the Lease PREMISES. Prior to CITY'S consent to any assignment, majority subletting or sublicense, or refinancing, CONCESSIONAIRE shall deliver to CITY a written statement of all sums due and owing to CITY from CONCESSIONAIRE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed assignee, sublessee, sublicensee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, a sublicense, or a refinancing. For majority subleases or sublicenses, such additional consideration shall be payable to CITY when accrued regardless of actual receipt by CONCESSIONAIRE. Any assignment, subletting, sublicense, or refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

- a. an Allowed Assignment as defined in Section 5.2, Assignment and Subletting, below;

- b. such other assignment deemed by CITY, in its sole reasonable discretion, not to materially affect the legal and equitable ownership interests in the leasehold or license, such as a change in the legal or fictitious name of the CONCESSIONAIRE without any other change in the equity in, beneficial use of, or legal title to, the leasehold or license as an asset or the income produced thereby.

4.3 Encumbrance of Agreement. Subject to CITY's prior written consent, CONCESSIONAIRE may encumber this Agreement, its interest in the Agreement and its improvements on the PREMISES by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of CONCESSIONAIRE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of improving PREMISES.

- a. CITY shall not be required to subject its fee estate and interest in the PREMISES to the lien of any leasehold financing or mortgage sought or obtained by CONCESSIONAIRE.
- b. The term of the encumbrance shall not exceed the Term.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this Agreement with all the rights, privileges, and duties granted and imposed in this Agreement.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this Agreement or its rights hereunder to its designee, if, in the opinion of CITY, the designee is a reputable, qualified, and financially responsible person. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this Agreement and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to San Diego City Charter section 225, all mortgagees, beneficiaries, designees and nominees shall make a full and complete disclosure of the name and identity of any and all persons or entities proposed to be directly or indirectly involved in this Agreement and the precise nature of all interests of all persons or entities therein. Every person or entity which will have an interest in this Agreement must be reviewed and approved by CITY in advance.

SECTION 5: DEFAULT AND REMEDIES

5.1 Default. CONCESSIONAIRE shall be in default of this Agreement if any of the following occurs:

- a. CONCESSIONAIRE fails to make any payment required under this Agreement when due;
- b. ~~CONCESSIONAIRE breaches any of its obligations under this Agreement, other than~~ those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, shall fail to commence to cure the breach within thirty (30) days and diligently pursue such cure to completion;
- c. CONCESSIONAIRE voluntarily files or has involuntarily filed against it any petition under any bankruptcy or insolvency act or law;
- d. CONCESSIONAIRE is adjudicated a bankrupt; or
- e. CONCESSIONAIRE makes a general assignment for the benefit of creditors.

5.2 Remedies. Upon CONCESSIONAIRE's default, CITY may, at its option, give CONCESSIONAIRE, or any person claiming rights through CONCESSIONAIRE, (1) a written "Three Day Notice to Pay or Quit," for failures to make required payments, or (2) a "Notice of Termination" for defaults not requiring payment to CITY, in order that CITY may seek to terminate this Agreement and all rights of CONCESSIONAIRE, and all persons claiming rights through CONCESSIONAIRE, to the PREMISES or to possession of the PREMISES. Upon termination, CITY may enter and take possession of the PREMISES, and may recover from CONCESSIONAIRE the sum of:

- a. the worth at the time of award of any unpaid rent that was due at the time of termination;
- b. the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if

any, that CONCESSIONAIRE affirmatively proves could have been reasonably avoided;

- c. the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss, if any, that CONCESSIONAIRE affirmatively proves could be reasonably avoided;
- d. any other amount necessary to compensate CITY for all the detriment proximately caused by CONCESSIONAIRE's breach and default, or that in the ordinary course of things, would be likely to result; and
- e. all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses (a) and (b), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by CONCESSIONAIRE under this Agreement.

5.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on _____

CONCESSIONAIRE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of CONCESSIONAIRE's default under this Agreement, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- a. CITY may correct the default and charge the costs to the account of CONCESSIONAIRE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to CONCESSIONAIRE, and mortgagee or beneficiary;
- b. CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and CONCESSIONAIRE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and
- c. CITY may terminate this Agreement as to the rights of CONCESSIONAIRE by assuming or causing the assumption of liability for any trust deed or mortgage. CONCESSIONAIRE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated CONCESSIONAIRE with a new lessee reasonably satisfactory to the mortgagee or

beneficiary. CONCESSIONAIRE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is non-curable by CONCESSIONAIRE, then any lender holding a beneficial interest in the PREMISES, whose qualifications as an assignee have been approved by CITY, shall have the right to substitute itself to the estate of CONCESSIONAIRE hereunder and to commence performance of this Agreement. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Agreement will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Agreement with all the rights, privileges, and obligations of CONCESSIONAIRE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, CONCESSIONAIRE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Agreement.

5.4 Abandonment by CONCESSIONAIRE. If CONCESSIONAIRE abandons the PREMISES, this Agreement shall continue in effect for so long as CITY does not terminate this Agreement, and CITY may enforce all its rights and remedies hereunder, including without limitation to the right to recover the rent as it becomes due, plus damages.

5.5 Waiver. Any waiver by CITY of a breach or default by CONCESSIONAIRE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Agreement. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. CONCESSIONAIRE acknowledges that the PREMISES are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

SECTION 6. EMINENT DOMAIN

6.1 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and CONCESSIONAIRE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this Agreement shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking of the premises occurs, and in the opinion of CITY, the remaining part of the premises is unsuitable for the continued Agreement operation, this

Agreement shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

- c. In the event of a partial taking of the premises occurs, and in the opinion of CITY, the remainder of the premises is suitable for continued Agreement operation, this Agreement shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The Annual Minimum Rent shall be equitably reduced to reflect the portion of the premises taken, only to the extent that CONCESSIONAIRE's operations are reduced or impaired.
- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, CONCESSIONAIRE shall be entitled to any award attributable to the taking of or damages to CONCESSIONAIRE'S then remaining leasehold interest in installations or improvements owned by CONCESSIONAIRE. CITY shall have no liability to CONCESSIONAIRE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain.

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- 6.2 No Inverse Condemnation. The exercise of any CITY right under this Agreement shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for condemnation or inverse condemnation.

SECTION 7: INDEMNITY; HOLD HARMLESS; INSURANCE

- 7.1 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 Agreement or CONCESSIONAIRE's acts or omissions in the performance of its rights and obligations under this Agreement, 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.

- 7.2 Insurance. CONCESSIONAIRE shall not begin operating under this Agreement 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 Agreement, 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 Agreement 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 Agreement 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 Agreement.

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

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 \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
2. 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).
3. Workers' Compensation. For all of CONCESSIONAIRE's employees who are subject to the Agreement 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.

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 Agreement or the PREMISES in an amount to cover one hundred percent (100%) of the replacement cost.
 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.
 6. Cyber Liability Insurance. The selected Proposer shall provide, at its sole cost and expense, evidence of Cyber Liability insurance with limits of not less than \$1,000,000 for each occurrence and an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to the selected Proposer and for claims involving any professional services for which the selected Proposer's contractor is engaged with the selected Proposer for such length of time as necessary to cover any and all claims.
 7. Crime Insurance. The selected Proposer shall keep in full force and effect a crime insurance policy which shall include employee dishonesty/fidelity coverage for a minimum of twenty-five thousand dollars (\$25,000.00) per employee or one hundred thousand dollars (\$100,000.00) blanket limit. This coverage shall protect against loss by the theft or mysterious disappearance of property by any of selected Proposer's employees or third parties while the PREMISES are in the care, custody, or control of selected Proposer resulting directly or indirectly from the performance or execution of the Agreement, and a contract or subcontract thereunder.
- b. 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.
 - c. Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Agreement 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.

- d. Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY prior to the Effective Date.
- e. 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.
- f. 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.
- g. 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.
- h. 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.
- i. 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.
- j. 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 Uses, CITY, at its reasonable discretion, may require the revision of amounts and/or coverage of any insurance required under this Agreement 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 Uses.

- k. Additional Insurance. CONCESSIONAIRE may obtain additional insurance not required by this Agreement.
- l. 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.
- m. Accident Reports. CONCESSIONAIRE shall immediately report to CITY any accident causing property damage or injury to persons on the PREMISES or otherwise related to the 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.

----- SECTION 8: IMPROVEMENTS; ALTERATIONS; REPAIRS; MAINTENANCE -----

- 8.1 Waste, Damage, or Destruction. CONCESSIONAIRE agrees to give notice to CITY of any fire or other damage that may occur on the leased PREMISES within ten (10) days- of such fire or damage. CONCESSIONAIRE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the PREMISES clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. CITY will provide adequate trash receptacles and shall dispose of all garbage, trash and rubbish. If the leased PREMISES shall be damaged by any cause which puts the PREMISES into a condition which is not decent, safe, healthy and sanitary, CONCESSIONAIRE agrees to make or cause to be made full repair of said damage and to restore the PREMISES to the condition which existed prior to said damage; or, at CITY'S option, CONCESSIONAIRE agrees to clear and remove from the leased PREMISES all debris resulting from said damage and rebuild the PREMISES in accordance with plans and specifications previously submitted to the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 7.2, Insurance, above.

CONCESSIONAIRE agrees that preliminary steps toward performing repairs, restoration, or replacement of the PREMISES shall be commenced by CONCESSIONAIRE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said PREMISES are un-tenantable by reason of such damage.

- 8.2 Acceptance of Premises. By signing this Agreement, CONCESSIONAIRE represents and warrants that it has independently inspected the PREMISES and made all tests,

investigations, and observations necessary to satisfy itself of the condition of the PREMISES. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Agreement. CONCESSIONAIRE further acknowledges that the PREMISES is in the condition called for by this Agreement, that CITY has performed all work, if any, related to the PREMISES and required by this Agreement, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the PREMISES, including without limitation the presence of any hazardous substances.

- 8.3 Entry and Inspection. CITY may at all times enter and inspect the Property and the operations conducted on the Property. Provided further that CITY's right to entry and inspection of the PREMISES, in the absence of any emergency or other proper authorization, shall require reasonable notice and be limited to reasonable business hours.
- 8.4 Maintenance. The PREMISES are offered in "as is" condition and all maintenance and repairs shall be the responsibility of the CONCESSIONAIRE throughout the Term without expense to CITY. The CONCESSIONAIRE shall maintain the PREMISES and all improvements thereon in a clean, safe, healthy and sanitary condition throughout the Term, to the satisfaction of the City and in compliance with all applicable laws. CITY will maintain the structural supports and exterior walls, roof and floor of the buildings of the PREMISES in good order and repair. CONCESSIONAIRE shall be responsible for the maintenance of the buildings on the PREMISES, including interior painting, interior and exterior lights, sewer and water line maintenance and HVAC System.

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.

- 8.5 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the PREMISES, and the PREMISES 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 PREMISES 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 Agreement to maintain the PREMISES 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 Agreement to make or assume any expense for any improvements or alterations.
- 8.6 Ownership of Improvements. All structures and improvements existing on the PREMISES on the Effective Date are owned by CITY. Any and all improvements, except trade fixtures and equipment, structures and installations or additions installed on the PREMISES during the Term shall be owned by the CONCESSIONAIRE during the Term. Upon the expiration

or termination of the Agreement, all such improvements, except trade fixtures and equipment, structures and installations or additions shall be deemed a part of the PREMISES and owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE upon termination or thirty (30) days prior to the expiration of this Agreement, elect to have part or all of such improvements, fixtures, structures and installations or additions removed by LESSEE. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the PREMISES. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required in this section, CITY may, at its option, remove them at LESSEE's sole cost and expense.

- a. Personal Property. CONCESSIONAIRE shall remove from the PREMISES all CONCESSIONAIRE-owned machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of this Agreement, or as soon as practicable after termination of this Agreement, but in no event later than thirty (30) days after the expiration or termination of this Agreement. 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 PREMISES.
 - b. Late Removal. Notwithstanding any provision of this Agreement to the contrary, CONCESSIONAIRE shall pay rent to CITY for any period of time after the expiration or termination of this Agreement needed to remove CONCESSIONAIRE improvements or personal property as required by this Agreement, 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 Agreement.
 - c. CITY's Right to Acquire Personal Property. If CONCESSIONAIRE wants to dispose of any of its personal property used in its operations on the PREMISES upon expiration or termination of this Agreement, CITY shall have the first right to acquire such personal property.
- 8.7 Utilities. The CONCESSIONAIRE agrees to order, obtain and pay for all utilities, including telecommunication, services, installation and repair charges in connection with the operation of the PREMISES. All utilities, including telecommunication, shall be installed underground.
- 8.8 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 PREMISES, 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.

SECTION 9: SPECIAL PROVISIONS

9.1 Supervision. The CONCESSIONAIRE shall have qualified on-site personnel to conduct and operate activities at the PREMISES at all times when each Reservoir is open to the public. The CONCESSIONAIRE and the CONCESSIONAIRE's employees shall at all times conduct themselves in a professional, creditable and polite manner in the operations at the PREMISES.

- a. CITY may request that the CONCESSIONAIRE immediately remove from assignment to the City any employee, including the any on-site managers living at Reservoirs, found unfit to perform duties at the discretion of CITY and the CONCESSIONAIRE shall comply with all such requests

9.2 Public Service. The CONCESSIONAIRE shall perform the following public services in connection with its operations at the PREMISES at all times that each Reservoir is open for public use:

- a. Answer public requests for information and reservations relative to recreational use of the Reservoirs.
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- b. CONCESSIONAIRE has the sole and exclusive right to sell recreational daily use permits at the Reservoirs. Notwithstanding the foregoing, CITY reserves the right to sell and/or assign the sale of the recreational daily use permits at any of the Reservoirs or other CITY-owned reservoirs.
 - c. CONCESSIONAIRE shall sell boating tickets and such other tickets and permits issued by the City.
 - (1) In return for sale of the aforementioned permits, the selected CONCESSIONAIRE shall receive as commission, an amount equal to five percent (5%) of the permit sales.
 - (2) CITY shall not pay the CONCESSIONAIRE a greater amount in commission than CITY receives in rent from the CONCESSIONAIRE, pursuant to SECTION 3, above.
 - d. Keep detailed records and is responsible for the handling of the CITY ticket sales to the satisfaction of the CITY including:
 - (1) The number of tickets issued to the CONCESSIONAIRE. Any missing or stolen tickets shall be reported to CITY immediately. The CONCESSIONAIRE shall not reimburse CITY for any loss of tickets as a result of a theft if CONCESSIONAIRE files a police report. In such instance, the CONCESSIONAIRE shall provide CITY with a copy of the police report and a statement giving an account of missing or stolen tickets within 30 days of

occurrence. However, the CONCESSIONAIRE shall reimburse CITY for any tickets which are missing or stolen as a result of the CONCESSIONAIRE or its employees' negligence or theft.

- (2) Tickets will be issued for a particular Reservoir and may not be used for another Reservoir without prior written CITY approval.
- (3) Tickets shall not be used for other than their designated purpose without prior written CITY approval.
- (4) Tickets shall be stored in a secure area.
- (5) Ticket sales shall be accounted for separately from other operations at the Reservoir.
- (6) The CONCESSIONAIRE shall track all CITY Permit sales. All revenue collected on behalf of CITY shall be deposited and recorded in accordance with the CITY's Treasurer Department's depositing and recording requirements as set forth in the San Diego Municipal Code. The CONCESSIONAIRE will be required to maintain reconciliation and depositing procedures that will be reviewed and approved by CITY's Public Utilities Department and reviewed by CITY's Treasurer Department.
- (7) The CONCESSIONAIRE shall have an anti-theft safe in which to secure CITY monies, placed in a secure location in the PREMISES.
- (8) The CONCESSIONAIRE shall provide daily reconciliation documentation, such as deposit slips and summary of items sold at each Reservoir, to CITY's Public Utilities Department.
- (9) CONCESSIONAIRE shall provide cash handling training to its employees. The cash handling training shall be approved by the City of San Diego.
- (10) At the close of business, each Sunday of the week, CONCESSIONAIRE shall perform a complete ticket inventory at each Reservoir. The inventory and ticket reconciliation shall be faxed or emailed to CITY's Public Utilities Department the following workday by noon.
- (11) CONCESSIONAIRE shall respond to all of CITY's deposit inquiries within one (1) business day. CONCESSIONAIRE shall assign and dedicate a resource individual to respond to any deposit exception inquiries.

9.3 Reservoir RV Pads. El Capitan Reservoir, Hodges Reservoir, Otay Reservoir, San Vicente Reservoir and Sutherland Reservoir each have designated RV Pads that CONCESSIONAIRE shall use only for manager housing, in accordance with Section 1.2, above.

SECTION 10: GENERAL PROVISIONS

- 10.1 Notices. Any notice required or permitted to be given under this Agreement 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:

If to CONCESSIONAIRE:

Attention: Chet Roberts
Pyramid Enterprises, Inc., dba Rocky Mountain Recreation Co.
28368 Constellation Road, Suite 380
Valencia, CA 91355-5016
661-702-1420

If to CITY:

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

- 10.2 Restriction on Plastic Food Containers. The CONCESSIONAIRE shall not provide to its customers any prepared, takeout, or supplied/resale food in polystyrene foam packaging, nor shall the CONCESSIONAIRE obtain or keep any such customer food packaging at or on the PREMISES. The CONCESSIONAIRE's food packaging for all foods shall be recyclable plastic or recyclable paper, and the 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. Post-consumer recycled plastic or recycled paper is preferred for all customer food packing related to the use and operation of the PREMISES. No biodegradable or compostable packaging is to be used by the 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 Reservoirs for immediate consumption at the Reservoirs or elsewhere on the Reservoirs. "Takeout food" means all food or beverage to be consumed off of the Reservoirs or elsewhere in the Reservoirs. "Supplied/Resale food" means foods or beverages which are supplied by a third party to the 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 Reservoirs. The CONCESSIONAIRE should also limit its distribution of plastic bags to its customers.

10.3 Hazardous Substances. The 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 Reservoirs. The CONCESSIONAIRE and the CONCESSIONAIRE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Reservoirs without City's prior written consent. The 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.

- a. 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.
- b. 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.
- c. Remediation. If the CONCESSIONAIRE's occupancy, use, development, maintenance or restoration of the Reservoirs results in a release of a Hazardous Substance, the CONCESSIONAIRE shall pay all costs of remediation and removal to the City's satisfaction for unrestricted reuse of the Reservoirs, and in accordance with all applicable laws, rules and regulations of governmental authorities.
- d. Removal. If the CONCESSIONAIRE or the 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 Reservoirs, the CONCESSIONAIRE and/or the CONCESSIONAIRE's contractors or agents shall remove all Hazardous Substances and hazardous wastes in any type of container, equipment or device from the Reservoirs immediately upon or prior to the expiration or earlier termination of the Agreement. Upon City's request, the 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 Reservoirs. The 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.
- e. Indemnity. The CONCESSIONAIRE shall protect, defend, indemnify, and hold City harmless from any and all claims, costs, and expenses related to environmental

liabilities resulting from the CONCESSIONAIRE's occupancy, use, development, maintenance, or restoration of the Reservoirs, 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, the CONCESSIONAIRE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

- f. Notice of Release. If the CONCESSIONAIRE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the PREMISES, the CONCESSIONAIRE shall immediately notify City and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. The 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 the 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, the CONCESSIONAIRE shall take all actions necessary to alleviate the danger. The 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 Reservoirs.

- g. Environmental Assessment. Upon reasonable cause to believe that CONCESSIONAIRE's occupancy, use, development, maintenance or operation of the PREMISES ("CONCESSIONAIRE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the PREMISES, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at 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 PREMISES, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the PREMISES, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. 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 PREMISES and compliance with environmental

law and regulations are achieved, and CONCESSIONAIRE shall pay all costs and expenses therefor.

10.4 Nondiscrimination. The CONCESSIONAIRE shall not discriminate in any manner against any person by reason of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, age, marital status, or disability in the use of the PREMISES, including, but not limited to, the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

10.5 Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon CONCESSIONAIRE or the PREMISES 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 PREMISES, including without limitation licensing and permitting costs and fees. CONCESSIONAIRE acknowledges that this Agreement may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that possessory 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. CITY shall not incur or assume any responsibility for any taxes whatsoever resulting from CONCESSIONAIRE's possession, use or occupancy of the PREMISES

10.6 Payment Card Industry Data Security Standards (PCI DSS).

- a. PCI Compliance. CONCESSIONAIRE acknowledges and agrees that to the extent that credit card data is collected, processed, stored or transmitted, CONCESSIONAIRE must adhere to the Payment Card Industry Data Security Standards (PCI DSS) and must specifically comply with the City PCI requirements described in this Section 10.6.
- b. CONCESSIONAIRE Compliance with Payment Card Industry Security Standards Council Standards. CONCESSIONAIRE must maintain full compliance with all current and applicable Payment Card Industry Security Standards Council Standards (PCI SSC), for all Services performed under this Contract or other contracts managed by CONCESSIONAIRE. CONCESSIONAIRE acknowledges and agrees that it will ensure that any subcontractors or other service providers that it uses to assist with performance of this Agreement will also maintain full compliance with all current and applicable PCI SSC standards.
- c. Attestation of PCI Compliance. CONCESSIONAIRE must, upon request of CITY annually on the anniversary of the Effective Date, provide CITY with a

copy of the Level 1 Service Provider attestation of compliance which must be approved and signed by a qualified security assessor (QSA) company recognized by the PCI SSC. Any deficiencies noted in an annual assessment must be communicated to CITY, in writing, within thirty (30) days of the report, and include a remediation date in accordance with the PCI SSC's prioritized approach. Any deficiencies noted in an annual assessment must be remediated at CONCESSIONAIRE's sole cost and expense.

- d. CONCESSIONAIRE Remediation. CONCESSIONAIRE must remediate, in a timely manner and at CONCESSIONAIRE's sole cost and expense, any outstanding audit finding by CONCESSIONAIRE or CITY's QSA as it relates to CONCESSIONAIRE's provision of PCI related hardware or services in compliance with the most current PCI DSS and PCI SSC.
- e. Service Provider Responsibility Matrix. CONCESSIONAIRE must complete a Service Provider Responsibility Matrix (Matrix) in either the form provided by CITY, or in a format approved by CITY, and account for all management services that will be supplied to CITY as they relate to cardholder data that is stored, processed, or transmitted on behalf of CITY. The Matrix shall be updated in regularly and in a timely manner to reflect any changes in the provision of such management services. Upon its completion, the Matrix is hereby incorporated into this Agreement and any updates or revisions to the Matrix will also be incorporated into this Agreement without need for an amendment.
- f. Contractor Hardware Inspections, Checklist and Notice of Unauthorized Access. CONCESSIONAIRE must physically inspect all kiosk devices, merchant terminals, and related payment hardware, accessible to CONCESSIONAIRE, used in the acceptance, transmission, or storage of credit card data, at a frequency determined by CITY. CONCESSIONAIRE must document all hardware inspections using a checklist in accordance with PCI DSS requirement 9.9 (Checklist), located at

https://www.pcisecuritystandards.org/document_library?category=pcidss&document=pci_dss

or located at such other website as the PCI SSC may describe from time to time.

- (1) CONCESSIONAIRE must report immediately to CITY, via email and phone call, any known device tampering or other breach, intrusion, or unauthorized access to cardholder data stored by or on behalf of CONCESSIONAIRE. For purposes of this subsection (1), reporting to CITY's Information Security Officer (CISO) and the Office of the City Treasurer will be deemed sufficient for notifying CITY. CONCESSIONAIRE also agrees to assume responsibility for informing all affected individuals in accordance with applicable law.

- (2) Upon CITY's request, CONCESSIONAIRE must provide to CITY a copy of the Checklist.

10.7 Construction Requirements. The CONCESSIONAIRE shall construct all improvements in accordance with all federal, state and local laws, rules and regulations, including, but not limited to the California Environmental Quality Act, Americans with Disabilities Act and this Agreement.

10.8 Prevailing Wage and Living Wage. By signing this Agreement, the 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.

- a. Prevailing Wage. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Agreement is subject to State prevailing wage laws. For construction work performed under this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Agreement cumulatively exceeding \$15,000, the CONCESSIONAIRE and its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

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

- a. 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>. The 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.

- b. 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 the Agreement. 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 the Agreement 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 Agreement, each successive predetermined wage rate shall apply to the Agreement 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 the Agreement, such wage rate shall apply to the balance of the Agreement.

- (2) Penalties for Violations. The 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.
- a. Payroll Records. The 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. The CONCESSIONAIRE shall require its contractors and subcontractors to also comply with section 1776. The CONCESSIONAIRE and its contractors and subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. The CONCESSIONAIRE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City. The CONCESSIONAIRE, its contractors and subcontractor 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.
- b. Apprentices. The 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. The 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.
- c. Working Hours. The 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.

- d. Required Provisions for Subcontracts. The 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.
- e. Labor Code Section 1861 Certification. The CONCESSIONAIRE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing the Agreement, the 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 Agreement."
- f. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
- g. 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."
 - (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.

(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.

(3) By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of subcontractor registration to the City upon request.

b. Living Wages. The Agreement is subject to the 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, the CONCESSIONAIRE agrees to require all of its contractors, subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

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

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

10.9 Performance and Payment Bond.

a. Performance Bond. The CONCESSIONAIRE shall provide to City, prior to commencement of any construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated design and construction costs of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to City. The bond shall insure that the construction to be commenced by the CONCESSIONAIRE shall be completed in accordance with

the plans approved by City or, at the option of City that the uncompleted construction shall be removed and the PREMISES restored to a condition satisfactory to City. The bond or cash shall be held in trust by City for the purpose specified above, or at City's option may be placed in an escrow approved by City. This requirement is not intended to be duplicative of a construction bond otherwise required of the CONCESSIONAIRE.

- b. Payment Bond. Prior to the commencement of any work on the PREMISES, Proposer shall deliver to City a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract(s) for construction on the PREMISES to satisfy claims of material suppliers and of mechanics and laborers employed on the contract(s) for construction on the PREMISES. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. Proposer shall maintain the bond in full force and effect until all improvements for the construction on the PREMISES are accepted by City and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, Proposer shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from City.

- 10.10 Equipment. The CONCESSIONAIRE shall furnish all equipment necessary for the operation of the PREMISES in conformity with this Agreement, and agrees to properly maintain such equipment.
- 10.11 Storage. The CONCESSIONAIRE may provide storage lockers, Conex boxes, or the like for storage of rental items with prior written City approval.
- 10.12 Hours of Operation. A regular schedule of days and hours of operation shall be established by the CONCESSIONAIRE to best serve the public. The schedule shall be subject to prior written approval by the City.
- 10.13 Rate of Charges. All prices of merchandise, equipment, and services shall be comparable with the prices of like merchandise, equipment, and services offered in the San Diego County area. All prices charged must be approved in writing by the City; provided, however, that the CONCESSIONAIRE shall not be required to sell any merchandise or offer any services at a loss.
- 10.14 Criminal Background Screenings. The City may require background investigations on all employees of the CONCESSIONAIRE assigned to the PREMISES, including when information becomes available that indicates a potential breach in safety or security.
- 10.15 CITY's Consent, Discretion. CITY's consent or approval under this Agreement 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.

10.16 Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the PREMISES in a professional and creditable manner.

10.17 California Public Records Act. CITY shall determine, in its sole discretion, whether this Agreement or information provided to CITY by CONCESSIONAIRE pursuant to this Agreement 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.

a. 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 Agreement 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 AGREEMENT OR ANY CONCESSIONAIRE INFORMATION REQUESTED PURSUANT TO THE CPRA.

10.18 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 Agreement 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 Agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

10.19 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 Agreement. CONCESSIONAIRE's failure to maintain equal benefits shall be a material breach of this Agreement.

10.20 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:

- a. 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;
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of CONCESSIONAIRE;
- c. CONCESSIONAIRE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
- d. 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 PREMISES which deny access to disabled persons; and
- e. 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 Agreement.

- 10.21 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 Agreement 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.
- 10.22 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 PREMISES and any damages to the improvements on, under or in the vicinity of the PREMISES resulting directly or indirectly thereby.
- 10.23 No Nuisance. CONCESSIONAIRE shall not use the PREMISES in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
- 10.24 Security and Safety of Premises. CONCESSIONAIRE shall bear sole responsibility for the security and safety of the PREMISES affected by or relating to the Uses during the Term. CONCESSIONAIRE shall be responsible for the maintenance, cleanup, and securing of the PREMISES 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 Uses or staffing or resources for the Uses at the PREMISES during the Term.
- 10.25 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the premises has not been inspected by a Certified Access Specialist (CASp).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

- 10.26 Waiver. The property constituting the PREMISES is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of CONCESSIONAIRE's obligations under this Agreement, 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 Agreement, 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.

- 10.27 Cumulative Remedies. CITY's rights and remedies under this Agreement are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 10.28 Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
- 10.29 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 Agreement.
- 10.30 No Affiliation. Nothing contained in this Agreement 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.
- 10.31 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Agreement and CONCESSIONAIRE's occupancy, use, development, maintenance and operation of the PREMISES. Any modification, alteration or amendment of this Agreement shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Agreement is binding upon such party in accordance with its terms.
- 10.32 Partial Invalidity. If any term, covenant, condition or provision of this Agreement is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 10.33 Compliance with Laws. The CONCESSIONAIRE shall secure and maintain full compliance with all applicable municipal, county, state, and federal laws and regulations at its own cost, regarding all aspects of this Agreement and activities at the PREMISES.
- 10.34 Counterparts. This Agreement 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.

10.35 Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement 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.

10.36 Concessionaire Contact. The following are designated by CONCESSIONAIRE as CONCESSIONAIRE's contacts for all purposes of this Agreement:

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

10.37 Water Quality - Best Management Practices. City and the CONCESSIONAIRE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Reservoirs in a manner which aids in the protection of City's precious water resources. It is the CONCESSIONAIRE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, the CONCESSIONAIRE shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately the CONCESSIONAIRE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the CONCESSIONAIRE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

10.38 Controlling Law and Venue. This Agreement and all Agreement documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. The venue for any suit or proceeding concerning this Agreement, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California.

- 10.39 No Third Party Beneficiaries. None of the provisions of this Agreement are intended to benefit any third party not specifically referenced herein. No party other than CITY and CONCESSIONAIRE shall have the right to enforce any of the provisions of this Agreement.
- 10.40 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Agreement 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 Agreement. It is not the intent of this policy that these provisions apply to members of the City Council.
- 10.41 General Contract Terms and Provisions. The General Contract Terms and Provisions Applicable to Goods, Services, and Consultant Contracts ("GCTP"), attached hereto as **Exhibit B**, are incorporated in to this Agreement as if fully set forth in this Agreement. For purposes of this Agreement, the following terms used in the GCTP shall have the following meanings: (1) "Contractor" shall mean the CONCESSIONAIRE; (2) "Purchasing Agent" shall mean the Director of City's Real Estate Assets Department; and (3) "Contract" shall mean this Agreement. If this Agreement conflicts with the GCTP, this Agreement shall control. Varying degrees of stringency among the Agreement, its exhibits and the GCTP are not deemed conflicts, and the most stringent requirement shall control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

Date: 11/24/17

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

BY: [Signature]
Name: Chet Roberts
Title: president

Date: 1/23/18

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: [Signature]
CYBELE THOMPSON
Director, Real Estate Assets

Approved as to form this 20th day
of February, 2018

MARA W. ELLIOTT, City Attorney

By: [Signature]
Name: Hilda P. Mendoza
Title: Deputy City Attorney

00-20895

EXHIBIT "A"
RESERVOIR SITE MAPS

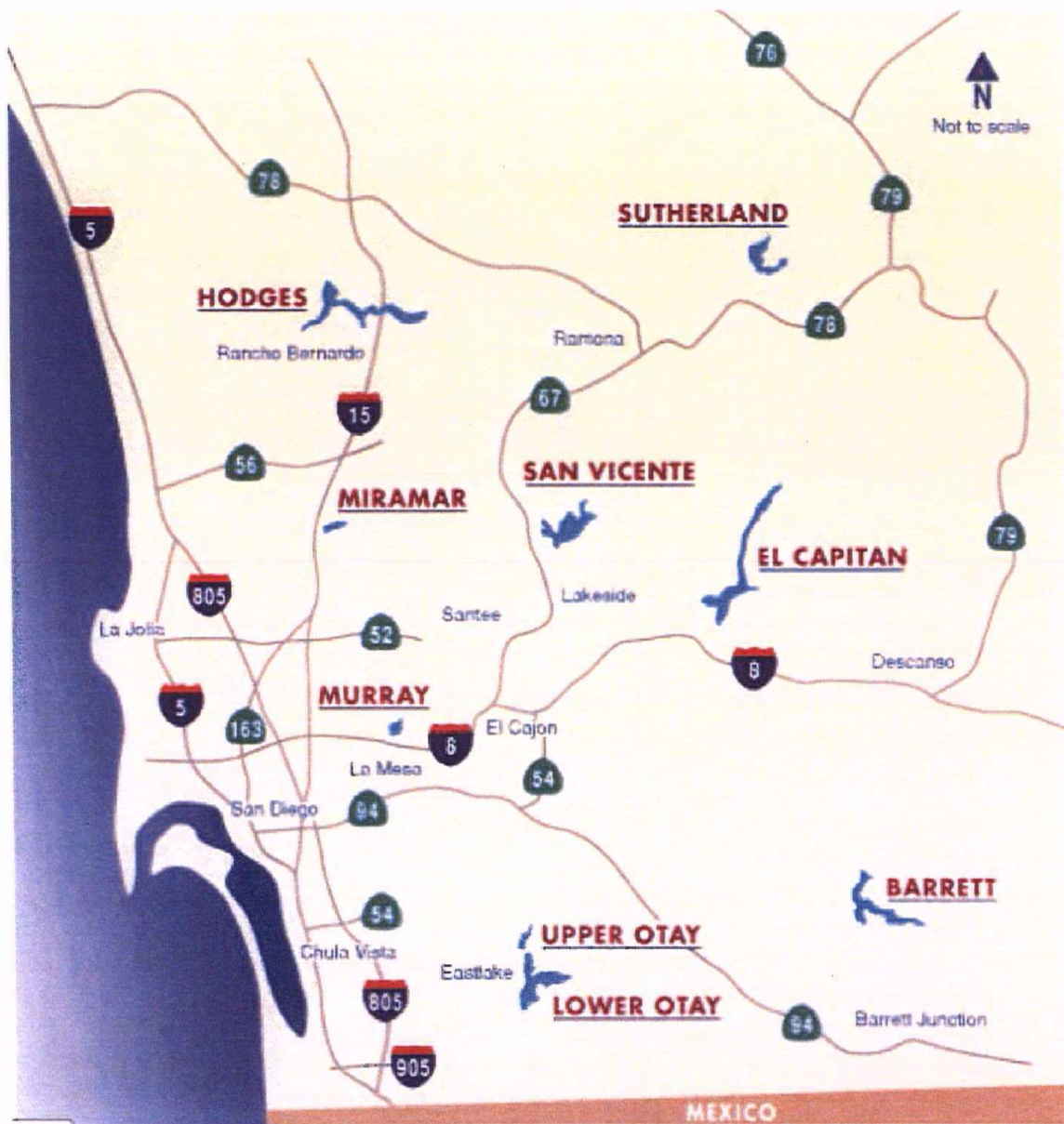


Exhibit A-1

El Capitan Reservoir Recreation Area Footprint



Prepared by Watershed and Resource Protection, July 2016



The **El Capitan Reservoir** concession facilities include a 12-foot by 60-foot trailer which was built in 1992. The trailer has a heating and air cooling system, as well as a restroom. Additionally, the concession facilities has one RV pad with utility hook ups.

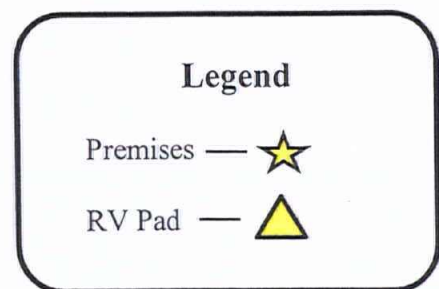


Exhibit A-2

Hodges Reservoir Recreation Area Footprint



Prepared by Watershed and Resource Protection, July 2016



The **Hodges Reservoir** concession facilities include a 23-foot by 49-foot single story building, which was built in 1992. The building has a heating and air cooling system. However, the building does not have a restroom. Additionally, the concession facilities has one RV pad with utility hook ups.

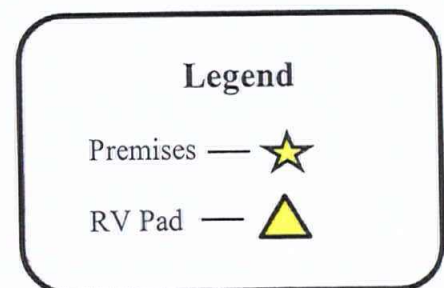
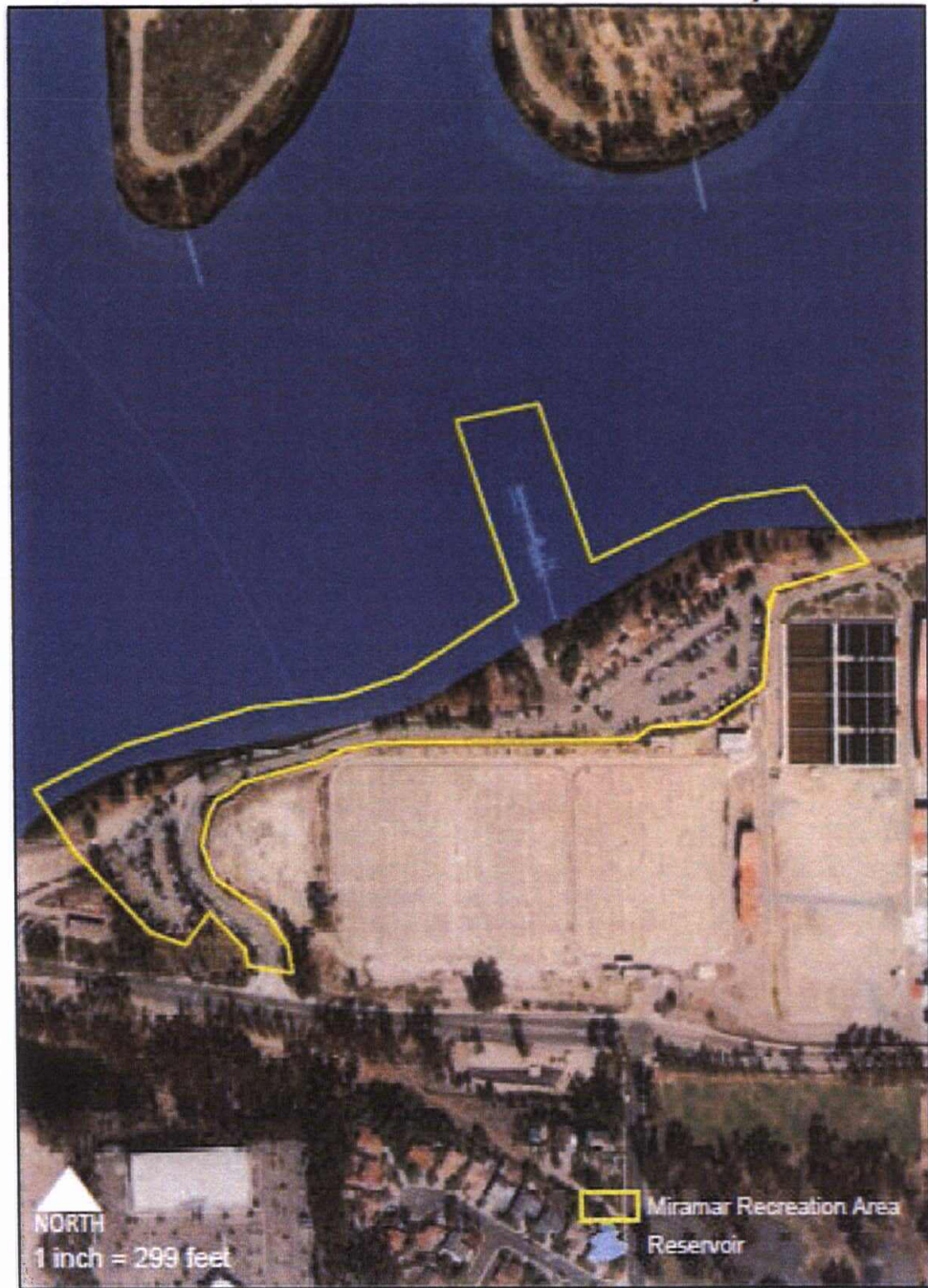


Exhibit A-3

Miramar Reservoir Recreation Area Footprint



Prepared by Watershed and Resource Protection, July 2016



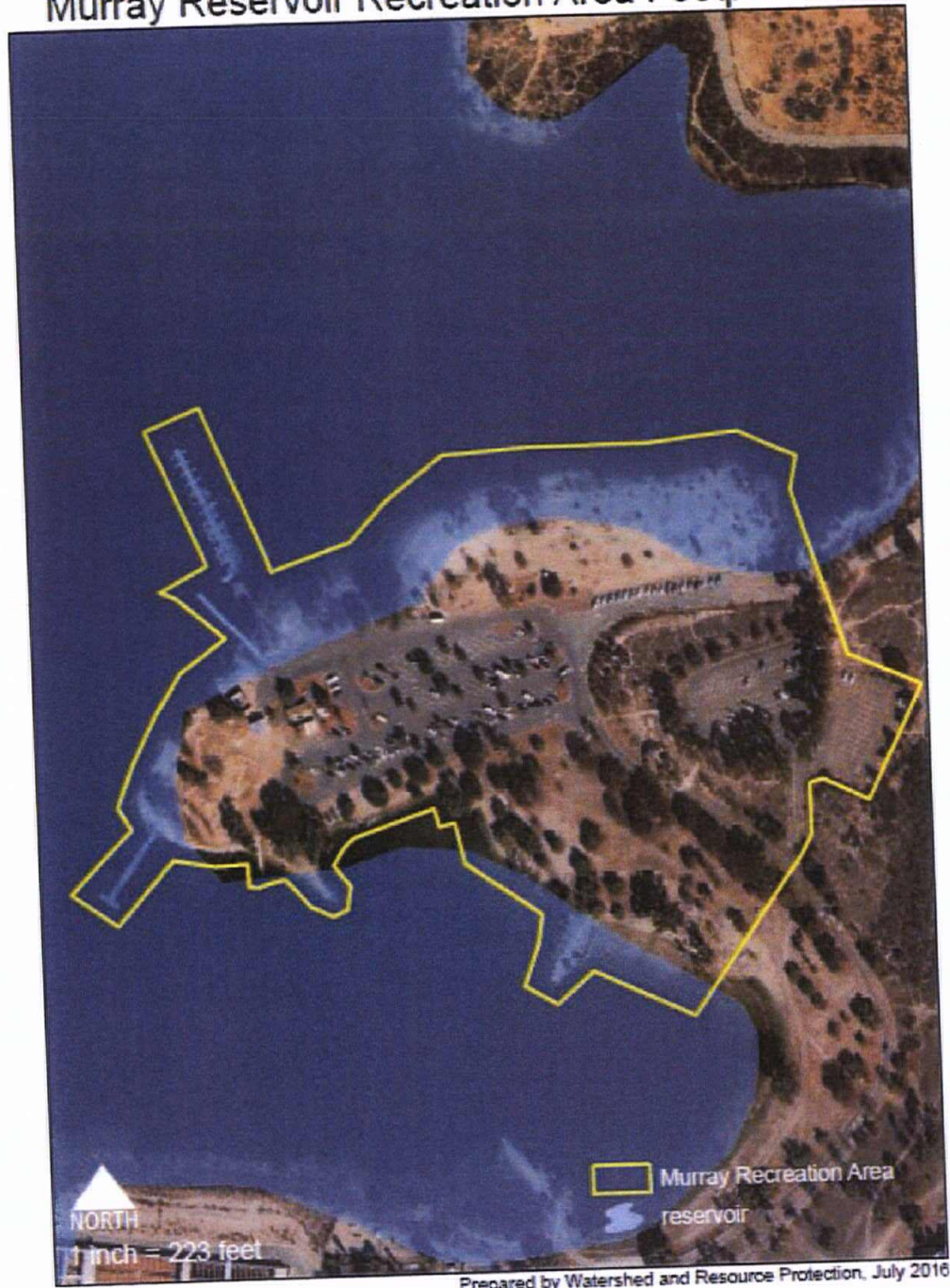
The **Miramar Reservoir** concession facilities include a 21-foot by 37-foot single story building, which was built prior to 1980. The building has a heating and air cooling system. However, the building does not have a restroom. Additionally, the concession facilities does not have a RV pad.

Legend

Premises — ★

Exhibit A-4

Murray Reservoir Recreation Area Footprint





The **Murray Reservoir** concession facilities include a 21-foot by 36-foot single story building, which was built prior to 1980. The building has a heating and air cooling system. However, the building does not have a restroom. Additionally, the concession facilities does not have a RV pad.

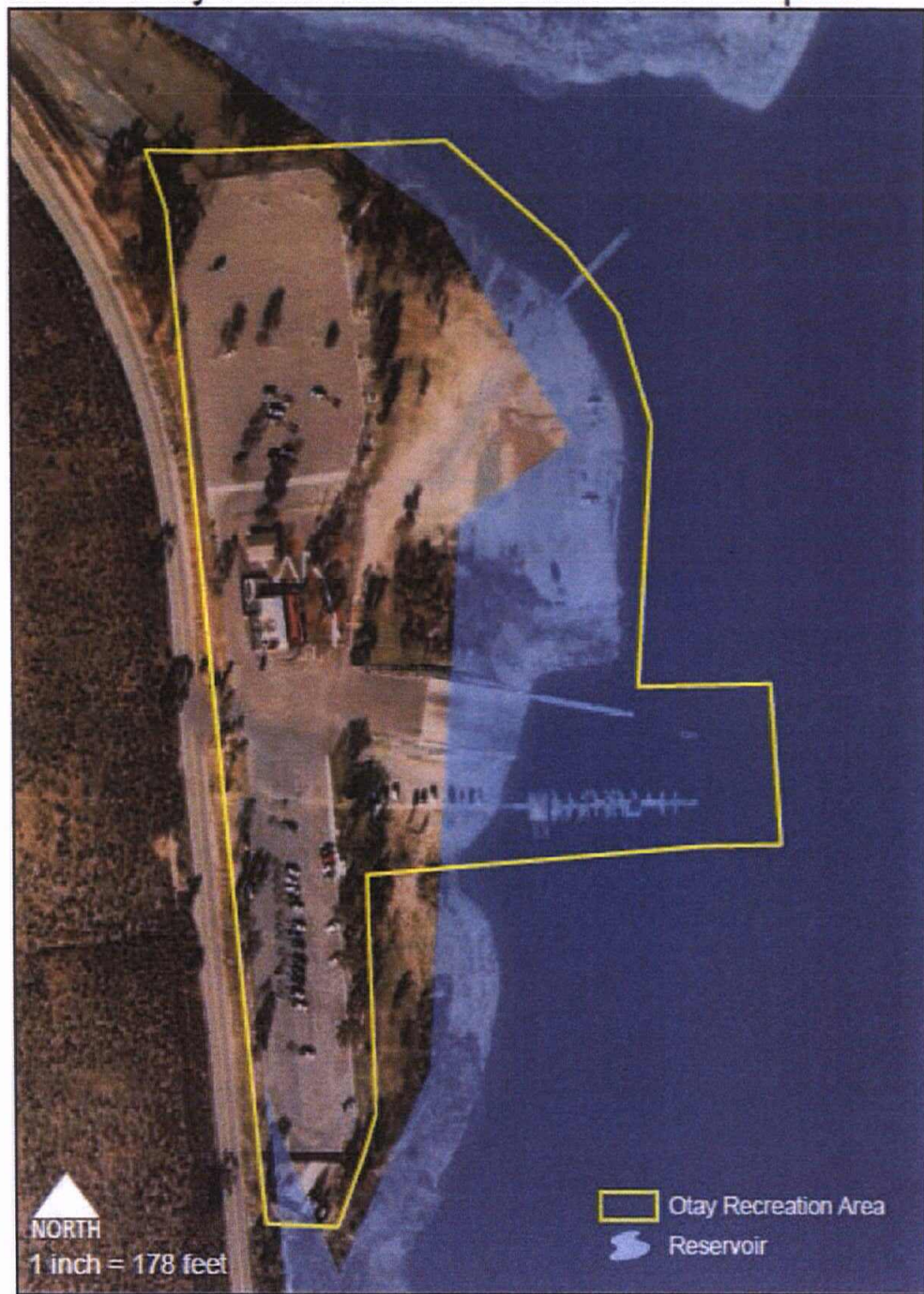
Legend

Premises

★

Exhibit A-5

Lower Otay Reservoir Recreation Area Footprint



Prepared by Watershed and Resource Protection, July 2016



The **Lower Otay Reservoir** concession facilities include a 12-foot by 60-foot trailer, which was built in 1995. The trailer has a heating and air cooling system, as well as a restroom. Additionally, the concession facilities has one RV pad with utility hook ups.

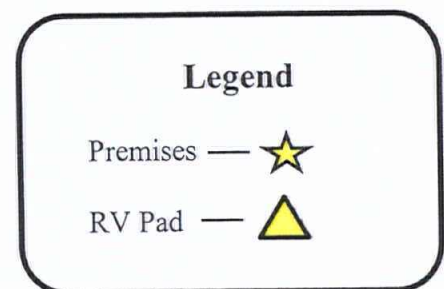
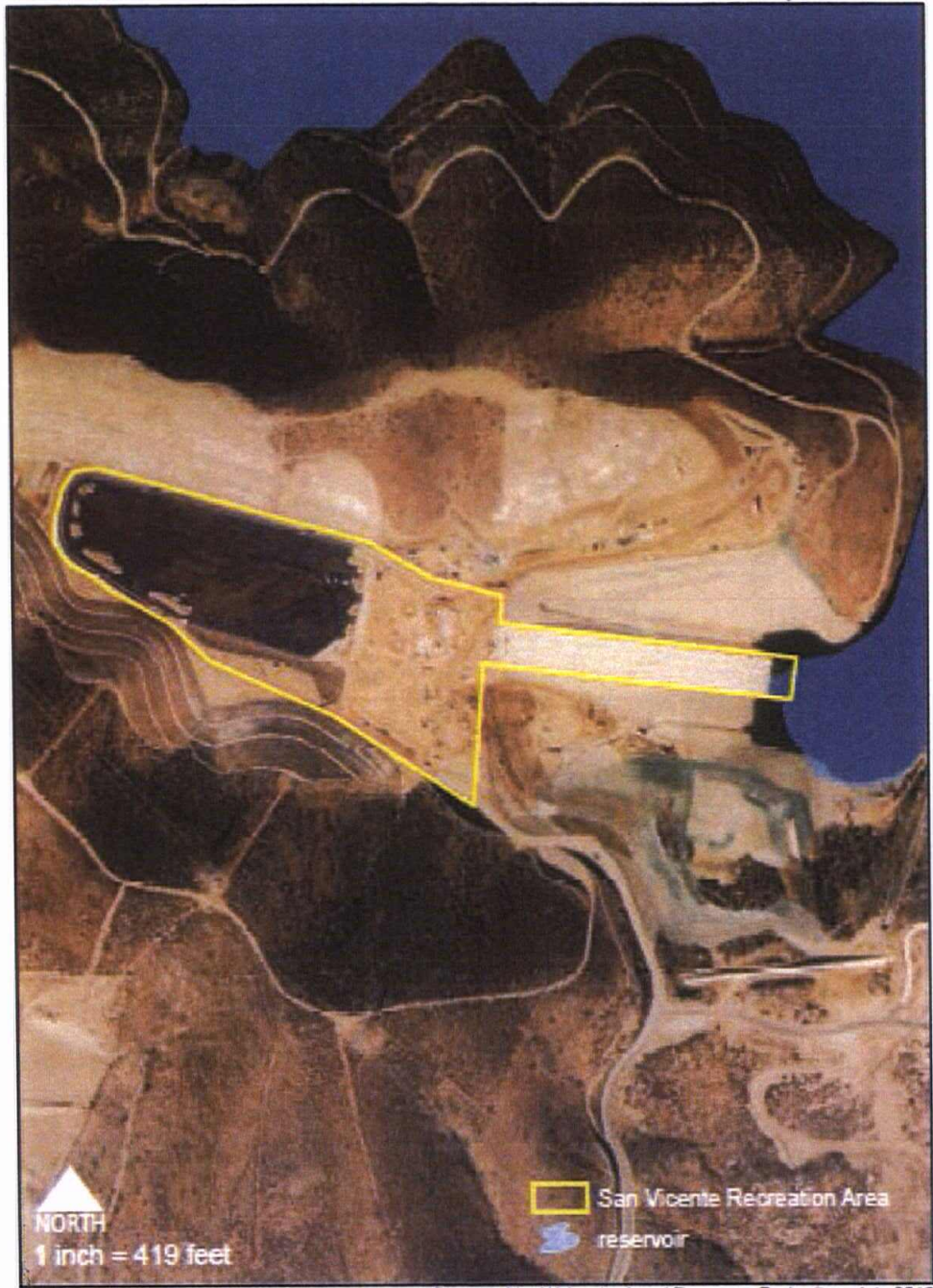


Exhibit A-6

San Vicente Reservoir Recreation Area Footprint



Prepared by Watershed and Resource Protection, July 2016



The **San Vicente Reservoir** concession facilities include a 30-foot by 30-foot building, which was built in 2016. The building has a heating and air cooling system, as well as a restroom. Additionally, the concession facilities has one RV pad with utility hook ups.

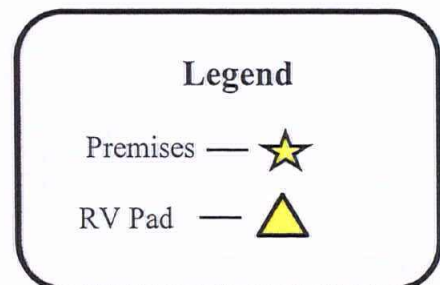


Exhibit A-7

Sutherland Reservoir Recreation Area Footprint



Prepared by Watershed and Resource Protection, July 2016



The **Sutherland Reservoir** concession facilities include a 20-foot by 30-foot single story building which was built prior to 1980. The building has a heating and air cooling system. However, the building does not have a restroom. The concessions facilities has one RV pad with utility hook ups.

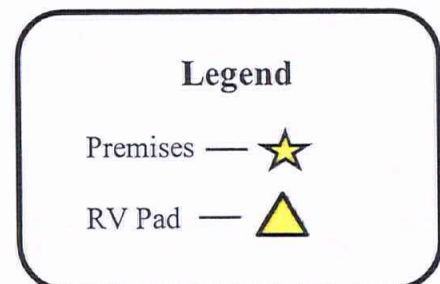


EXHIBIT "B"
GENERAL CONTRACT TERMS AND PROVISIONS
APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS



THE CITY OF SAN DIEGO
GENERAL CONTRACT TERMS AND PROVISIONS
APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

General Contract Terms and Conditions
Revised: November 8, 2016
OCA Document No. 845794_5

ARTICLE I SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

1.3 Contract Extension. The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

ARTICLE II CONTRACT ADMINISTRATOR

2.1 Contract Administrator. The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

2.1.1 Contractor Performance Evaluations. The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

General Contract Terms and Conditions
Revised: November 8, 2016
OCA Document No. 845794_5

Purchasing Agent
City of San Diego, Purchasing and Contracting Division
1200 3rd Avenue, Suite 200
San Diego, CA 92101-4195

ARTICLE III COMPENSATION

3.1 Manner of Payment. Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and conditions specified in the Contract.

3.2 Invoices.

3.2.1 Invoice Detail. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Goods Contracts. Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 Reporting Requirements. Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

3.2.6.1 Monthly Employment Utilization Reports. Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

General Contract Terms and Conditions
Revised: November 8, 2016
OCA Document No. 845794_5

3.2.6.2 Monthly Invoicing and Payments. Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

3.4 Price Adjustments. Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

ARTICLE IV SUSPENSION AND TERMINATION

4.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and conditions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

4.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs

otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

4.3 City's Right to Terminate for Default. Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

4.3.1 If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

4.3.2 If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

4.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

4.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

4.6 Remedies Cumulative. City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Inspection and Acceptance. The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

5.4 Delivery. Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

5.7 Warranties. All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.10 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Safety Data Sheets. If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

5.13 Project Personnel. Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

5.14.3 Removal of Employees. City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

6.1 Rights in Data. If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

6.2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

6.3 Contractor Works. Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

6.4 Subcontracting. In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a "works for hire" as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

6.5 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or

proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

6.6 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

6.7 Publication. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

6.8 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

ARTICLE VII INDEMNIFICATION AND INSURANCE

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

7.2.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Contractor's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

7.2.5.2 Primary Coverage. For any claims related to this contract,

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OCA Document No. 845794_5

Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

7.2.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

7.2.5.4 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

7.2.5.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

7.3 Deductibles/Self Insured Retentions. All deductibles on any policy shall be the sole responsibility of Contractor and shall be disclosed to City at the time the evidence of insurance is provided. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

7.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to 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 Approved Surplus Lines Insurers (LASLI 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.

7.5 Verification of Coverage. Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right

to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

7.8 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.

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

ARTICLE VIII BONDS

8.1 Payment and Performance Bond. Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

8.1.1 Bond Amount. The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and conditions of the Contract.

8.1.2 Bond Term. The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

8.1.3 Bond Surety. The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

8.1.4 Non-Renewal or Cancellation. The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or

material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

8.2 Alternate Security. City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

9.1.1 Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of

subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements 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.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor 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.

9.1.8 Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

9.1.10 Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

11.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and

employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

ARTICLE XIII MISCELLANEOUS

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

13.2 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

13.7 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

13.8 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

13.9 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

13.10 No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

13.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

13.15 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all

continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

Appendix B: Sample PCI DSS Responsibility Matrix

A PCI DSS responsibility matrix may help to clarify and confirm how responsibilities for maintaining PCI DSS requirements are shared between the entity and TPSP. The High-Level Discussion Points for Determining Responsibility in Appendix A may help in the completion of a detailed PCI DSS responsibility matrix.

Considerations for each PCI DSS requirement include:

- Does the TPSP perform/manage/maintain the required control?
- How is the control implemented, and what are the supporting processes—e.g., process for patch updates would include details of testing, scheduling, approvals, etc.?
- How and when will the TPSP provide ongoing assurance and/or evidence to the entity that controls are met—for example, periodic reports, real-time notifications, results of testing, etc.?

Note: This Appendix is intended for optional use at the discretion of the entity and/or TPSP; completion of this Appendix is not a requirement.

PCI DSS Requirement	Responsibility			Specific coverage/ scope of entity responsibility	Specific coverage/ scope of TPSP responsibility	How and when TPSP will provide evidence of compliance to entity
	TPSP only	Entity only	Shared			
1.1 Establish and implement firewall and router configuration standards that include the following:	☐	☐	☐			
1.1.1 A formal process for approving and testing all network connections and changes to the firewall and router configurations	☐	☐	☐			
1.1.2 Current network diagram that identifies all connections between the cardholder data environment and other networks, including any wireless networks	☐	☐	☐			
1.1.3 Current diagram that shows all cardholder data flows across systems and networks	☐	☐	☐			
1.1.4 Requirements for a firewall at each Internet connection and between any demilitarized zone (DMZ) and the internal network zone	☐	☐	☐			

PCI DSS Requirement	Responsibility			Specific coverage/ scope of entity responsibility	Specific coverage/ scope of TPSP responsibility	How and when TPSP will provide evidence of compliance to entity
	TPSP only	Entity only	Shared			
1.1.5 Description of groups, roles, and responsibilities for logical management of network components	☐	☐	☐			
1.1.6 Documentation and business justification for use of all services, protocols, and ports allowed including documentation of security features implemented for those protocols considered to be insecure. <i>Examples of insecure services, protocols, or ports include but are not limited to FTP, Telnet, POP3, IMAP, and SNMP v1 and v2.</i>	☐	☐	☐			
1.1.7 Requirement to review firewall and router rule sets at least every six months	☐	☐	☐			
1.2 Build firewall and router configurations that restrict connections between untrusted networks and any system components in the cardholder data environment. <i>Note: An "untrusted network" is any network that is external to the networks belonging to the entity under review, and/or which is out of the entity's ability to control or manage.</i>	☐	☐	☐			
1.2.1 Restrict inbound and outbound traffic to that which is necessary for the cardholder data environment, and specifically deny all other traffic.	☐	☐	☐			
1.2.2 Secure and synchronize router configuration files.	☐	☐	☐			
...And so on.						

ORDINANCE NUMBER O- 20895 (NEW SERIES)

DATE OF FINAL PASSAGE JAN 18 2018

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE CITY OF SAN DIEGO
CONCESSION AGREEMENT FOR THE OPERATION OF
CONCESSION STANDS AT THE CITY-OWNED EL CAPITAN
RESERVOIR, HODGES RESERVOIR, MIRAMAR
RESERVOIR, MURRAY RESERVOIR, LOWER OTAY
RESERVOIR, SAN VICENTE RESERVOIR, AND
SUTHERLAND RESERVOIR.

ITEM # 58
1/19/18

WHEREAS, on October 3, 2016, a request for proposals (RFP) was issued for concession services at the concession stands on City-owned El Capitan Reservoir, Hodges Reservoir, Miramar Reservoir, Murray Reservoir, Lower Otay Reservoir, San Vicente Reservoir, and Sutherland Reservoir (Reservoirs); and

WHEREAS, City staff determined that the Pyramid Enterprises, Inc., dba Rocky Mountain Recreation Co. (Pyramid) proposal, in response to the RFP, was made in accordance with the evaluation criteria specified in the RFP, and is responsive, responsible and delivers the best overall value to the City, and based on the foregoing recommends that the City enter into a concession agreement with Pyramid for the use and occupancy of the concession stands at the Reservoirs; and

WHEREAS, the proposed concession agreement with Pyramid is for a 20 year term; and

WHEREAS, Pyramid will operate the concession stands at the Reservoirs by selling fishing tackle, bait, State of California fishing licenses, license stamps, and daily recreational use permits; renting motorboats, rowboats, kayaks, paddleboats, and bicycles; and hosting fishing tournaments, community awareness programs, and classes at the Reservoirs; and

WHEREAS, as appraised by an independent fee appraiser, the market percentage rental value applicable to the concession facilities at the Reservoirs is eight percent of gross income; and

WHEREAS, under San Diego Charter section 99, a supermajority vote of the City Council is required for passage of this ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego as follows:

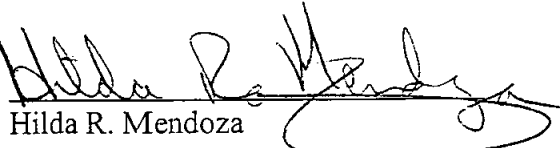
Section 1. That the Mayor, or his designee, is authorized and directed to execute the City of San Diego Concession Agreement between the City of San Diego and Pyramid Enterprises, Inc., dba Rocky Mountain Recreation Co, which is on file with the City Clerk as Document No. OO- 20895 for operation of concession stands at various City-owned reservoirs.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Hilda R. Mendoza
Deputy City Attorney

HRM:als
11/16/2017
Or.Dept:READ
Doc. No.: 1628626

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JAN 09 2018.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 1/18/18
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JAN 09 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Georgette Gomez	☒	☐	☐	☐

JAN 18 2018

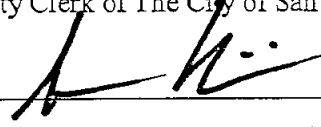
Date of final passage _____

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

DEC 05 2017

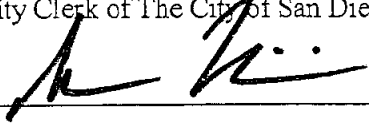
JAN 18 2018

_____, and on _____.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- **20895**

Passed by the Council of The City of San Diego on January 9, 2018, by the following vote:

YEAS: **BRY, ZAPF, WARD, COLE, KERSEY, CATE, SHERMAN,**
ALVAREZ, GOMEZ.

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Stacy Ready, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. **O-20895** (New Series) of The City of San Diego, California.

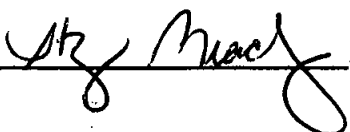
I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **December 5, 2017**, and on **January 18, 2018**.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy