

CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT

(Construction Activity)

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation ("CITY"), and **The San Diego River Park Foundation, a California nonprofit corporation** ("PERMITTEE"), to be effective as of 12/21/2020 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

CITY hereby grants PERMITTEE the non-exclusive right to enter upon the Permit Area, based upon the following terms and conditions:

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

1.1 **"CITY Contact"** shall mean the CITY's Parks and Recreation Department District Manager or designee. For purposes of this Permit, the CITY Contact is currently Mark Berninger, who can be contacted at (619) 685-1314.

1.2 **"CITY Authority"** shall mean the following individuals according to the location of the property within the Permit Area where the specific Project will be performed:

For property that is managed by the CITY's Open Space Division of the Park and Recreation Department:

Natural Resource Manager, Mark Berninger 619-685-1314
or Open Space Trails Manager, Laura Ball 619-685-1301

1.3 **"Permit Area"** shall mean that certain CITY-owned real property as generally described in **Exhibit A Permit Area**, attached hereto.

1.4 **"PERMITTEE"** shall mean The San Diego River Park Foundation, a California nonprofit corporation, which shall include PERMITTEE's contractors, subcontractors, agents, employees and volunteers. PERMITTEE shall be responsible for all of PERMITTEE's contractors, subcontractors, agents, employees and volunteers and ensure that they adhere to all conditions as stated in this Permit.

1.5 **"PERMITTEE's Address for Notices"** shall be:

Rob Hutsel
President and CEO The San Diego River Park Foundation
4891 Pacific Highway, Suite 114
San Diego, CA 92110

2. Right to Enter: The use of the Permit Area by PERMITTEE shall be limited to the work as set forth in attached **Exhibit B-Scope of Permit Use**, and **Exhibit C-Conditions of Work** ("Permit Use") and in accordance with each specific project ("Project") submitted to the CITY Contact and CITY Authority for approval as further set forth in Section 6, below.

CITY reserves the right to enter upon the Permit Area at all times and to inspect and maintain the Permit Area as CITY deems necessary.

3. Fee: The processing fee for this Permit is hereby waived because the Project provides a public benefit to the City of San Diego's open space and parks and helps meet the City's Multiple Species Conservation Program ("MSCP") requirements because each Project includes habitat restoration/enhancement activities (including but not limited to non-native plant removal, herbicide application, tree removal, native planting, seed collection, restoration planning, including upland and wetland areas); mulching and wood chip spreading; brush management; trash, debris and graffiti removal; or trail improvements (tread maintenance, trail closures, barriers, signage).
4. Term: This Permit shall be effective upon the Effective Date, and shall expire at the close of business three (3) years after the date permit is signed by the Deputy City Attorney, or upon earlier completion of the Project, as shown by acceptance of the Project by the CITY ("Term"). A reasonable extension to the Term may be granted at the sole discretion of the CITY.
5. CITY's Consent, Discretion. CITY's consent or approval under this Permit shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise required by law or expressly provided herein, and shall be made in the Mayor's discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.
6. Commencement of Work and Pre-Construction Activities:
 - 6.1 Project Scope and Work Schedule Approval: Not less than sixty (60) days prior to PERMITTEE applying for any applicable permits for the Project, PERMITTEE shall submit to the CITY Contact and CITY Authority the specific scope of work, schedule of work and location of work for each Project ("Project Description"). The Project Description shall include a detailed description of the work to be performed, the specific location of such work within the Permit Area, and the dates and times of such work. CITY reserves the right to (1) deny approval of a Project, in its sole discretion; and (2) impose restrictions and scheduling conditions, in its sole discretion, in addition to those set forth in attached **Exhibit C-Conditions of Work** for any activities directly or indirectly related to the Project. Following review of the Project Scope and Work Schedule, the City shall provide written approval or denial of the individual Project. No work shall commence on a Project without the prior written (which may be by electronic mail) approval by the CITY Contact and CITY Authority. Copies of all applicable local, state, and federal permits for each Project shall be provided to the CITY Contact and CITY Authority prior to start of work on each Project. Following

approval of an individual Project, the Permittee shall provide the CITY a minimum of 14 days of notice prior to construction or commencement onsite of Project activities.

- 6.2 Public Access Approval: Following each Project approval, as set forth in subsection 6.1 above, and notwithstanding the time periods set forth in subsection 6.1 above, PERMITTEE shall notify CITY Contact and CITY Authority a minimum of ten (10) working days prior to start of any work associated with the Project that may affect the use of any public access in the Permit Area.
7. Unauthorized Activities: PERMITTEE shall not engage in any activity on CITY-owned property other than pre-approved aspects of the Project. Any work performed by PERMITTEE that was not previously approved or otherwise authorized by this Permit, shall be removed and the CITY-owned property shall be put back to its condition on the Effective Date at the PERMITTEE's sole cost and expense, subject to the satisfaction of the CITY Contact.
8. Insurance: PERMITTEE shall not begin any work on the Project until it has: (a) provided to CITY insurance certificates reflecting evidence of all insurance required below; however, the CITY reserves the right to request, and the PERMITTEE shall submit, copies of any policy upon reasonable request by the CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed with CITY that all policies contain the specific provisions required below. PERMITTEE's liabilities, including but not limited to PERMITTEE's indemnity obligations, under this Permit, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Permit and PERMITTEE's failure to maintain or renew coverage or to provide evidence of renewal during the Term may be treated as a material breach of contract by the CITY. The PERMITTEE shall not modify any policy or endorsement thereto which increases the CITY's exposure to loss for the Term.
- 8.1 Types of Insurance: At all times during the term of this Permit, the PERMITTEE shall maintain insurance coverage as follows:
- a. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- b. Commercial Automobile Liability For all of the PERMITTEE's automobiles including owned, hired and non-owned automobiles, the PERMITTEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

- c. Workers' Compensation. For all of the PERMITTEE's employees who are subject to this Permit and to the extent required by the applicable state or federal law, the PERMITTEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the PERMITTEE shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives
- 8.2 Deductibles: All deductibles on any policy shall be the responsibility of the PERMITTEE and shall be disclosed to the CITY at the time the evidence of insurance is provided.
- 8.3 Acceptability of Insurers: Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VT" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein
- 8.4 Modification. To assure protection from and against the kind and extent of risk existing with the Project, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Project.
- 8.5 Accident Reports: PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Permit Area or otherwise related to the Project. 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.
- 8.6 Required Endorsements: The following endorsements to the policies of insurance are required to be provided to CITY before any work is initiated under this Permit.
 - 8.6.1 Commercial General Liability Insurance Endorsements:
 - i. Additional Insured: To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your

completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

- ii. Primary and Non-Contributory Coverage: The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of PERMITTEE's insurance and shall not contribute to it.
- iii. Severability of Interest. The policy or policies must be endorsed to provide that the PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

8.6.2 Automobile Liability Insurance Endorsements:

- i. Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the PERMITTEE.
- ii. Severability Of Interest. The policy or policies must be endorsed to provide that PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

8.6.3 Worker's Compensation Insurance Endorsements:

- i. Waiver of Subrogation: The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for CITY.
9. Indemnification: PERMITTEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE's officers, employees, agents, contractors, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Permit, entering into this Permit, the Permit Use, or PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area, including damages arising out of release of hazardous materials, and all expenses of investigating and defending against

same, including without limitation reasonable attorney fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any established liability arising from the active negligence, sole negligence or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

10. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, age, marital status, or disability in PERMITTEE's use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
11. Nuisance and Noise Disturbances: PERMITTEE shall not use the Permit Area in any manner which, in the opinion of CITY creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area or that violates CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).
12. Revocable Permit: This Permit is not a lease. It is a license to use CITY property, and may be revoked by CITY, in its sole discretion, for failure to comply with any obligation required in the permit. Upon written notice delivered to PERMITTEE, the City will allow 30 days for corrective action. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit.
13. Compliance with Law: PERMITTEE shall at all times in its use, occupancy, and maintenance of the Permit Area comply with all applicable laws, rules, regulations and directives of competent governmental authorities, and at PERMITTEE's sole cost and expense. If the Term of this Permit exceeds one (1) year, at least annually, PERMITTEE shall deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to PERMITTEE (e.g., validation of periodic inspections, if applicable).
14. Governmental Approvals: By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to PERMITTEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.
15. No Assignment: PERMITTEE shall not assign any rights granted by this Permit nor any interest therein without the prior written approval of the CITY. Approval of any such

proposed assignment may be withheld at the sole and absolute discretion of the CITY. Any assignment by operation of law shall automatically terminate this Permit.

16. Signs: PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising (collectively referred to as "signs") in the Permit Area without CITY's prior written consent. If any such unauthorized signs are found on the Permit Area, PERMITTEE shall remove the signs at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the signs at PERMITTEE's cost. Notwithstanding the foregoing, PERMITTEE may erect temporary canopies, and temporary table(s) or equivalent. For all signs proposed, Permittee shall provide to the CITY Authority prior to installing such sign a copy of all applicable approvals, authorizations and permits. These materials shall be located where they will not obstruct public access to the Permit Area and where they will not impact any park resources, e.g. wildlife habitat and shall be removed at the end of the day of a given activity.
17. Security and Safety of Permit Area: PERMITTEE shall bear sole responsibility for the security and safety of the Permit Area during the Term relating to any work performed as authorized by this Permit or under the direction of PERMITTEE. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of the Permit Area, as appropriate, immediately following each day's work to ensure security and safety. PERMITTEE shall comply with all applicable laws, rules, regulations and directives of competent governmental authorities, at PERMITTEE's sole cost and expense, with respect to maintaining the Permit Area in a safe and secure manner during the Term. CITY has no obligation to provide oversight of the Project or staffing or resources for the maintenance of the Permit Area during the Term.
18. Hazardous Materials: PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Permit Area by any of PERMITTEE's officers, employees, agents, contractors, invitees and guests. PERMITTEE and PERMITTEE's officers, employees, agents, contractors, invitees and guests shall not install, store, utilize, generate or sell any Hazardous Substance on the Permit Area without CITY's prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.
 - 18.1 Release. For all purposes of this Permit, 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.

- 18.2 Hazardous Substance. For all purposes of this Permit, "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.
- 18.3 Remediation. If PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a Hazardous Substance, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 18.4 Removal. If PERMITTEE or PERMITTEE's officers, employees, agents, contractors, invitees and guests has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Permit Area, PERMITTEE shall remove all Hazardous Substances in any type of container, equipment or device from the Permit Area immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Permit Area and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Permit Area. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- 18.5 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 18.6 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Permit Area, PERMITTEE 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. PERMITTEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Permit Area.

- 18.7 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area resulted in any Hazardous Substance being released on, from or beneath the Permit Area, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by CITY, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Permit Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit Area and compliance with environmental laws and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.
19. Repair: PERMITTEE shall be responsible, at its sole cost and expense, for the repair or replacement of any damage caused by PERMITTEE or by PERMITTEE's work on the Project, including items that CITY staff has determined to be damaged. PERMITTEE shall comply with the direction of CITY Contact or other competent CITY staff with respect to the method of any repairs or replacement arising under this Permit.
20. Vehicular Traffic: All vehicular traffic shall be confined to concrete, asphalt or decomposed aggregate surfaces unless otherwise approved in writing by CITY Contact prior to the commencement of the Project.
21. Restoration of Permit Area: Except as otherwise provided in this Permit, prior to the expiration or as soon as practicable after termination of this Permit, PERMITTEE shall restore the Permit Area to its condition on the Effective Date, subject to the satisfaction of CITY Contact.
22. Subcontractors: PERMITTEE shall provide a list of any and all contractors and subcontractors to CITY Contact, including name, address, email, fax and phone number. All construction work requiring a licensed contractor pursuant to the Contractors' State Licensing Laws (California Business & Professions Code sections 7000-7191) shall be done by contractors licensed within the State of California. If there is any future construction project for which a contractor is hired, an additional ROE will be required and prevailing wage provisions will apply.

23. Storm Water Pollution Prevention Program: PERMITTEE shall, at its sole cost and expense, comply with the CITY's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the San Diego Municipal Code, as may be amended, and any and all applicable Minimum Best Management Practice requirements, as defined in the CITY's Jurisdictional Runoff Management Plan, in performing the Permit Use, each Project or delivering services at CITY owned, leased, or managed property, or in performance of services and activities on behalf of CITY regardless of location.

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

PERMITTEE 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 Permit Use and each Project to minimize any negative impact to the storm water collection system and environment.

24. Grading and Barriers: With the exception of trail improvements and/or native plant plantings approved within a Project Description for each Project, PERMITTEE shall not change the surface grade or construct any permanent barriers within the Permit Area. Any violations shall be corrected by PERMITTEE at its sole expense to the satisfaction of CITY and are grounds, at CITY's option, for immediate termination of this Permit.
25. Prevailing Wage. Prevailing wage rates apply to the Permit Use and each Project. PERMITTEE shall comply with State prevailing wage laws, including, but not limited to, those requirements set forth in **Exhibit D**, attached hereto and incorporated herein by this reference. Any construction/improvement work performed by the River Park Foundation using its own volunteers is exempt from prevailing wage requirements because the work is performed by volunteers
26. Cumulative Remedies. CITY's rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
27. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
28. Exhibits. All exhibits referenced in this Permit are incorporated into this Permit by this reference. In the event of a conflict between this Permit and any exhibit to this Permit, the terms, conditions, and obligations of this Permit shall control.
29. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Project. PERMITTEE further represents and warrants that it is not relying

on any representation by CITY as to the condition of the Permit Area or its suitability for the Project, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition. PERMITTEE acknowledges and agrees that unless set forth in this Permit, CITY has no obligation to improve, modify, repair, replace, alter, secure, or otherwise develop the Permit Area at any time either prior to, on or after the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property from any defects in the Permit Area or any improvements thereon, and shall be solely responsible therefor.

30. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
31. PERMITTEE Contact: The following are designated by PERMITTEE as PERMITTEE's contacts for all purposes of this Permit:

Rob Hutsel
Office Phone :619 297-7380 , ext. 108

Alternate: Sarah Hutmacher
Office Phone: 619 297-7380 , ext 102.

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

PERMITTEE:
The San Diego River Park Foundation

Right of Entry Permit

The San Diego River Park Foundation

By: [Signature] Date: 12-5-2020

Rob Hutsel (President)

CITY:

By: [Signature]

Date: 12/17/2020

Andrew Field, Director
Parks and Recreation Department

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This Right of Entry Permit has been reviewed for consistency and is covered in the Multiple Species Conservation Program Master Environmental Impact Statement/Environmental Impact Report LDR No. 93-0287 (SCH No. 93121073, August 1996) approved by City Council (R-288457, 03/18/1997) and is part of a series of subsequent discretionary actions and therefore not considered a separate project per CEQA Guidelines §15378 (c). Pursuant to §21166 of CEQA, there is no change in circumstance, additional information, or project changes to warrant additional environmental review for the current action.

Approved as to form
this 21st day of December, 2020

MARA W. ELLIOTT, City Attorney

By: [Signature]

Catherine Morrison

Deputy City Attorney

Attachments: Exhibit A-Permit Area
Exhibit B-Scope of Permit Use
Exhibit C Conditions of Work
Exhibit D-Prevailing Wage

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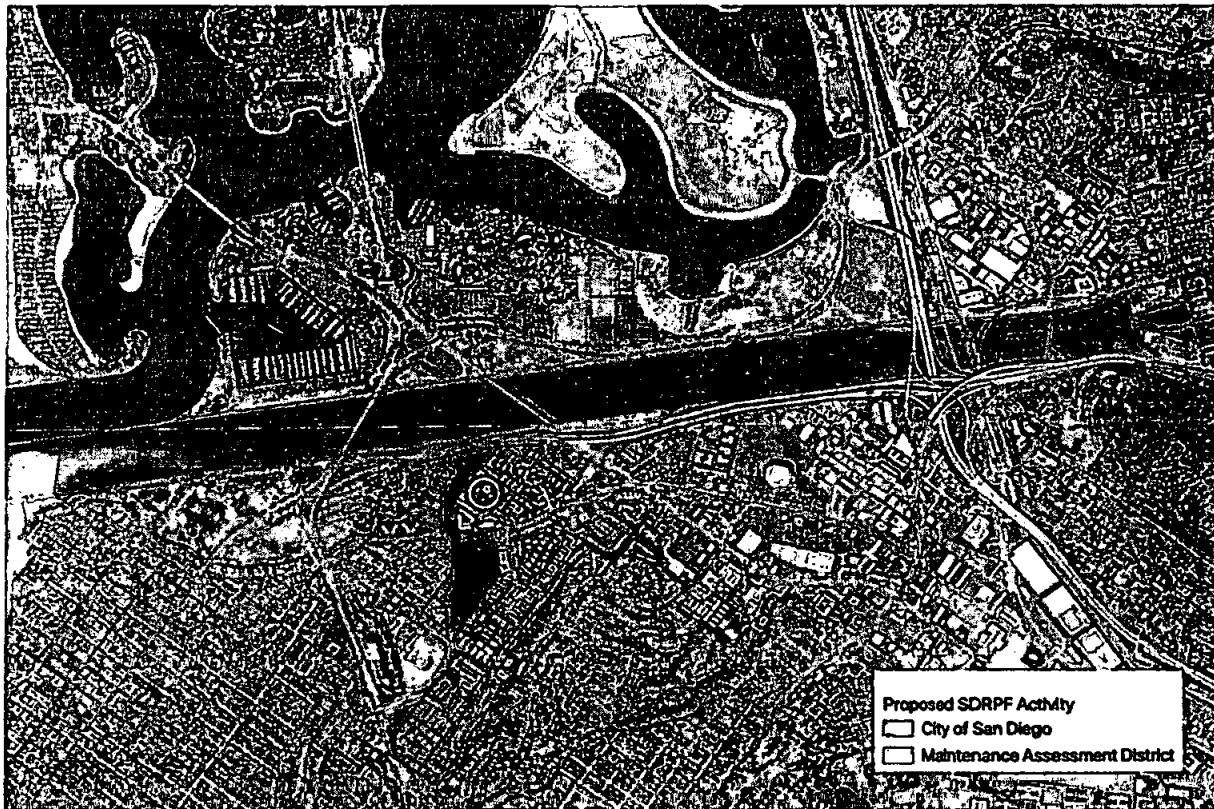
The San Diego River Park Foundation

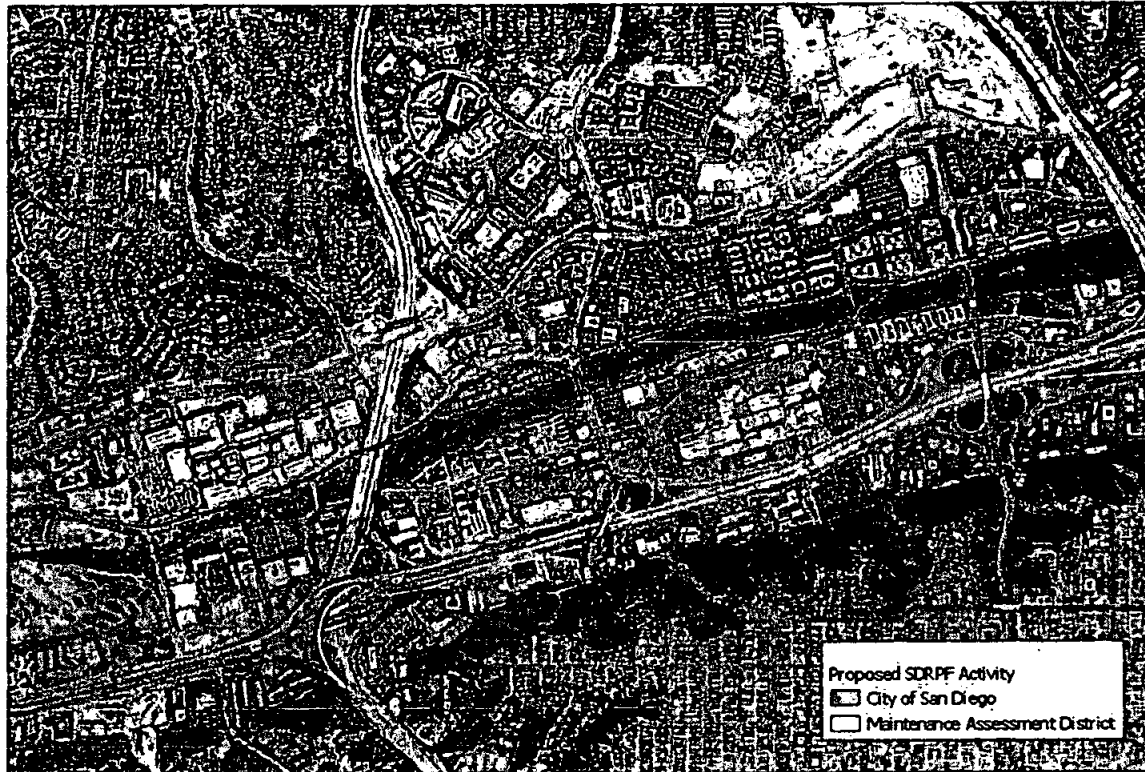
cc: Mark Berninger, Parks and Recreation Department
San Diego River Senior Ranger, Parks and Recreation Department
Steve Haupt, Parks and Recreation Department
Nikki McGinnis, Public Utilities Department

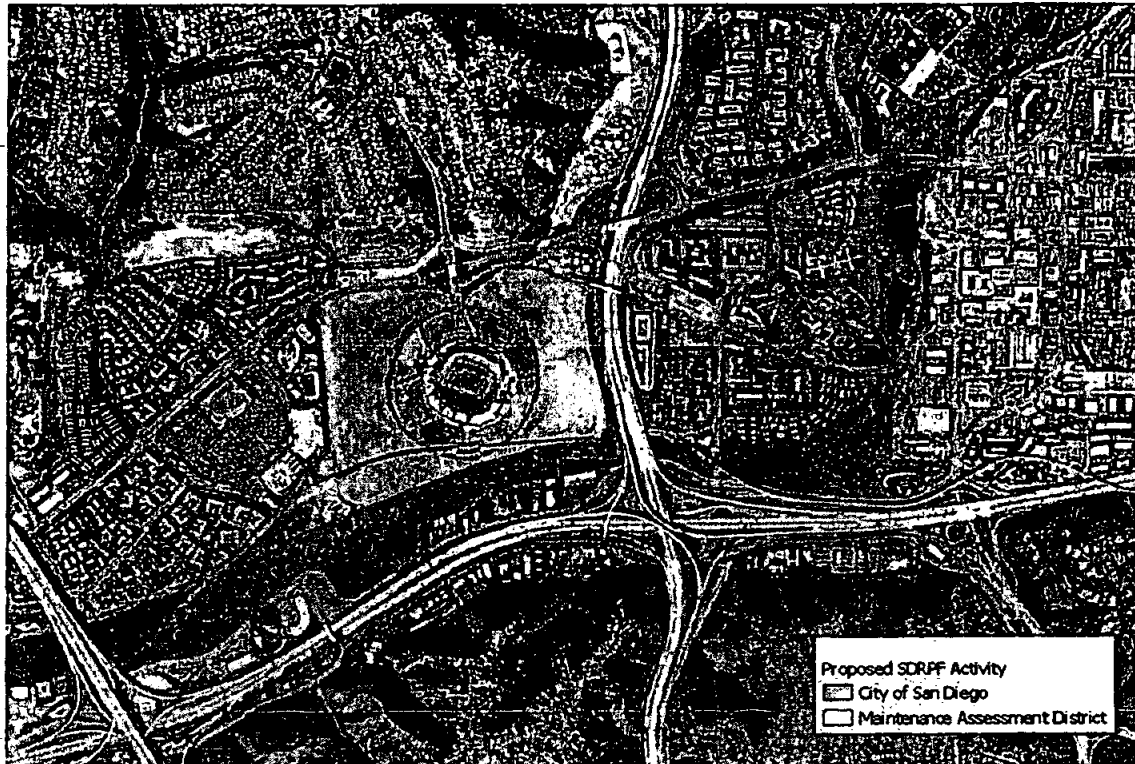
EXHIBIT A
Permit Area

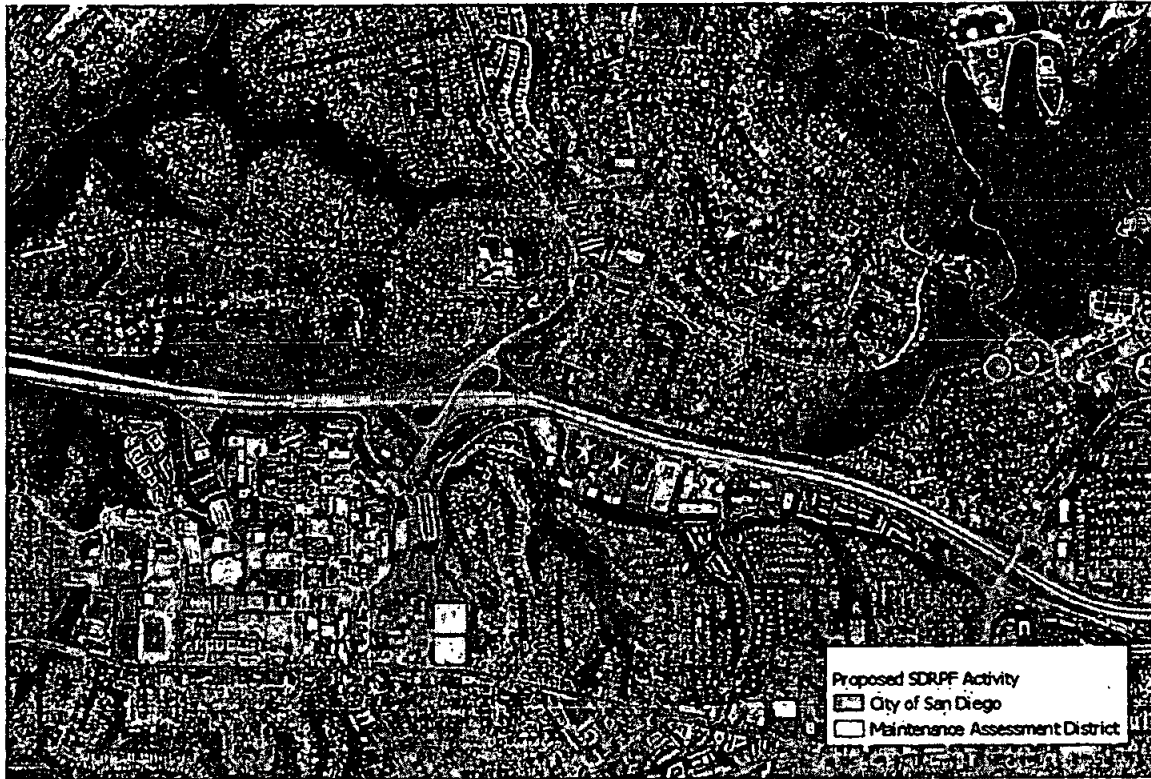
The area covered by the Permit includes:

CITY-owned real property managed by the Parks and Recreation Department within the watershed of the San Diego River











List of Parcel Numbers to be Included

Segment Description	APN	MVP	
Estuary	4354801600	MVP	4366601900
Estuary	4354801700	MVP	4366604200
Pac Hwy	4354801700	MVP	4366602900
Pac Hwy	4354801600	MVP	4366700600
Pac Hwy	4366603300	MVP	4366700400
Pac Hwy	4366600600	MVP	4366800500
Pac Hwy	4366605100	MVP	4364510800
Pac Hwy	4366602000	MVP	4364702800
Pac Hwy	7602453100	MVP	4366900700
MVP	4366604600	MVP	4366800500
		MVP	4367000400

MVP	4364902000
MVP	4365200300
MVP	4367100700
MVP	4367200700
MVP	4365300700
MVP	4365200500
MVP	4367200700
Sefton/YMCA	4367300500
Sefton/YMCA	7602165000
Small Fashion Valley Mall Parcel	4372911600
FSDRIP	4380205500
FSDRIP	4380205400
FSDRIP	4383700200
FSDRIP	4383711887
FSDRIP	4380205859
FSDRIP	4380304700
FSDRIP	4380304400
FSDRIP	4383621100
FSDRIP	4383611100
FSDRIP	4380304600
FSDRIP	4380304500
Stadium - PUD	7602411613
Stadium - PUD	7602411700
Stadium - PUD	4332501600
Stadium - PUD	7602411000
Stadium - PUD	7602411100

Stadium - PUD	4332304600
Stadium - PUD	4332303400
Murphy	4332501400
Grantville	4583001700
Famosa Slough	4498700300
Famosa Slough	4498700200
Famosa Slough	4410904400
Chap Canyon	4630104000
Chap Canyon	4636131400
Chap Canyon	4641310100
Chap Canyon	4640100500
Chap Canyon	6740100500
Chap Canyon	7601040900
Adobe Falls	4622102900
PLNPG	4491100900
PLNPG	7601023900
Pumphouse - PUD	7601430700
Pumphouse - PUD	3830800300
Pumphouse - PUD	3830800400
Pumphouse - PUD	7601430700
Pumphouse - PUD	3830800300
Pumphouse - PUD	3830711000
Reservoir - PUD	4020300100
Reservoir - PUD	4020400500
Reservoir - PUD	3321300100
Reservoir - PUD	3320700100
Reservoir - PUD	3320700400

EXHIBIT B

Scope of Permit Use

Permit Use Description

The purpose of each Project that is approved pursuant to the Permit is to increase access, remove trash and litter, provide educational opportunities, and promote ecosystem health throughout the San Diego River Watershed. Work to be performed will include maintenance activities such as trash removal, invasive plant removal, weeding, gardening to enhance native plant areas, re-planting of these areas with native plants, trail maintenance, and maintenance of amenities such as painting, graffiti removal, bench or fence repair. Monitoring of ecosystem health will be conducted, including water quality monitoring and bioassessment. In coordination with and with permission from land manager, work may also include interpretive elements or amenities in publicly accessible areas. PERMITTEE will conduct educational programming at appropriate locations. As required, appropriate permits may be secured prior to work being completed. Applicant does not accept maintenance obligation for all of the above described maintenance but seeks to expand capacity of land manager by assisting with this maintenance as funding and availability allows. SDRPF will coordinate with land managers and/or City staff to practice adaptive management throughout the course of the project to maximize positive impact on sites. PERMITTEE, at its sole cost and expense, shall secure all applicable permits and approvals from the applicable local, state, and federal authorities prior to initiating any work associated with Permit. Copies of all applicable permits shall be provided to the CITY Contact and CITY Authority prior to start of work on each Project.

- **1: Remove trash, debris and graffiti.** Conduct educational and general stewardship and cleanup events/activities. Illegally dumped debris, such as tires, trash, and larger items will be removed by PERMITTEE and will be properly disposed of either in a landfill or brought to a recycling facility in accordance with the current CITY Waste Disposal and Hazardous Materials procedures.
- **2: Habitat Restoration/Enhancement.** Restore and enhance disturbed habitat.
 - Non-Native Plant Removal
 - Herbicide Application
 - Tree Removal of non-native trees less than 3" DBH. Removal of live, non-native trees greater than three inches (3") in diameter is prohibited unless a plan is approved in writing, in advance by the managing department City staff.
 - Native Plant Planting
 - Seed Collection for use in restoration/enhancement activities on City owned land.
 - Upland and Wetland Restoration
 - Habitat Project Maintenance
 - Erosion Control BMPs
 - Spreading mulch or wood chips
- **3: Trails.** Improve and maintain existing, approved trail system to improve safety and increase trail sustainability.

- **4: Signage.** Install trailhead, access point, interpretive, way-finding, warning signage (such as warning trail users as to the presence/location of Poison Oak) and commemorative signage.
- **5: Environmental Surveys.** Water Quality, Vegetation, and Bio-assessment Surveys
- ~~6: Educational Programming.~~ Providing educational opportunities to residents, volunteers and schools throughout the San Diego River Watershed

Each Project shall be approved as set forth in Section 6 of this Permit.

EXHIBIT C

CONDITIONS OF WORK

Each Project approved pursuant to Section 6 of this Permit shall include the following conditions and restrictions, in addition to any further conditions and restrictions imposed by the CITY, in its sole discretion. Projects shall be determined to be compliant with the City's Multi Species Conservation Program Sub-Area Plan. Specifically projects shall meet the goals and objectives set forth in Section 1.5 Framework Management Plan and sub-section 1.5.8 (Specific Management Policies and Directives for the Northern Area) of the MSCP City of San Diego Sub-Area Plan, as amended from time to time. (Below)

Conditions of approval

PERMITTEE activities shall not be performed with motorized equipment between March 1st and September 15th of each year to avoid impacts to nesting birds. A bird nesting survey, at the sole cost and expense of PERMITTEE, will be performed by CITY, or by a qualified Biologist approved in advance by CITY, prior to any trimming, grubbing or clearing work being done from March 1st thru September 15th of each year. All nesting bird surveys must be conducted within 72 hours of the start of the project.

All plantings will avoid proximity to the utility access path, storm water outlets, and utility power poles/equipment. No trees shall be planted within 10 feet of any sewer or water main or lateral. No shrubs that mature over 5 feet in height shall be planted within 5 feet of any sewer or water main or lateral. Trees or shrubs that mature over 3 feet in height shall not be planted on the sewer access paths and shrubs that would otherwise overgrow the access paths shall not be planted adjacent to the edges of the path. Planting on the paths must be consistent with the approved planting palette and requirements included as Exhibit "C". Additional or alternate plant species not included may be approved by the EPM Environmental Section.

All vehicular traffic will stay on existing access paths. The CITY Authority for the task/project must be contacted three working days prior to the commencement of work using vehicles and Permittee must have prior approval before entering with a vehicle.

EXHIBIT D

PREVAILING WAGE REQUIREMENTS

By signing this Permit, PERMITTEE certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing any work.

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

1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, PERMITTEE, its contractors and subcontractors shall ensure that all workers who perform work under this Permit are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. PERMITTEE, its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Permit. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Permit in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Permit, each successive predetermined wage rate shall apply to this Permit on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Permit, such wage rate shall apply to the balance of the Permit.

2. Penalties for Violations. PERMITTEE, its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

3. Payroll Records. PERMITTEE, its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. PERMITTEE shall require its contractors and subcontractors to also comply with section 1776. PERMITTEE, its contractors and subcontractors shall submit weekly certified payroll records online via the CITY's web-based Labor Compliance Program. PERMITTEE is responsible for ensuring its contractors

and subcontractors submit certified payroll records to the CITY. PERMITTEE, its contractors and subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

4. Apprentices. PERMITTEE, its contractors and subcontractors shall comply with California Labor Code sections ~~1777.5, 1777.6 and 1777.7~~ concerning the employment and wages of apprentices. PERMITTEE shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. Working Hours. PERMITTEE, its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

6. Required Provisions for Contracts and Subcontracts. PERMITTEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861. PERMITTEE shall ensure its contractors shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. Labor Code Section 1861 Certification. PERMITTEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Permit, PERMITTEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Permit."

8. Labor Compliance Program. The CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. PERMITTEE shall withhold contract payments pursuant to the contract between PERMITTEE and PERMITTEE's contractors or subcontractors when payroll records are delinquent or deemed inadequate by the CITY or other governmental entity, or it has been established after an investigation by the CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

9. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1.(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

9.1. A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

9.2. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.

9.3. By signing this Permit, PERMITTEE certifies that he or she has verified that all contractors and subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and PERMITTEE shall provide proof of registration for themselves and all listed contractors and subcontractors to the CITY at the time of execution of this Permit or upon request.

10. Stop Order. For PERMITTEE or its contractor(s) or subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor(s) or unregistered subcontractor(s) on ALL public works until the unregistered contractor(s) or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

11. List of all Subcontractors. The CITY may ask PERMITTEE for the most current list of contractors or subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Permit at any time during performance of this Permit, and PERMITTEE shall provide the list within ten (10) working days of the CITY's request. PERMITTEE shall notify CITY of any contractors or subcontractors, including their DIR registration numbers, which have not previously performed work on this Permit prior to said contractors or subcontractors performing work on this Permit. Additionally, PERMITTEE shall provide the CITY with a complete list of all contractors or subcontractors utilized on this Permit (regardless of tier), within ten (10) working days of the completion of the work authorized by this Permit, along with their DIR registration numbers. PERMITTEE shall withhold final payment to contractor(s) until at least 30 days after this information is provided to the CITY.

12. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. PERMITTEE shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

12.1. Registration. PERMITTEE and its contractors will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

12.2. Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the CITY, but will not be required to be submitted online with the DIR directly. PERMITTEE will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

12.3. List of all Subcontractors. PERMITTEE and its contractors shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).