

## **CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT**

This CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT [Permit] is entered into between THE CITY OF SAN DIEGO, a California municipal corporation [CITY], and HANO HANO OUTRIGGER CANOE CLUB, a California non-profit corporation and THE SAN DIEGO DRAGON BOAT TEAM, a California non-profit corporation [PERMITTEE], hereinafter collectively referred to as the "Parties," to be effective on the first day of the first month following the date of execution of this Permit by CITY [Effective Date], once the Permit is approved by the San Diego City Attorney.

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

### **1. DEFINITIONS.**

As used in this Permit, the following terms shall be defined as follows:

- 1.1. **"Permit Area"** – certain CITY-owned real property consisting of 6,460 square feet that is a portion of Fiesta Island located at Mission Bay adjacent to the Boy Scouts leasehold, more particularly described in Exhibit A incorporated herein by this reference.
- 1.2. **"Equipment"** – PERMITTEE'S outrigger canoes, dragon boats, and ancillary equipment stored by PERMITTEE in the Permit Area more particularly described in Exhibit B, incorporated herein by this reference.
- 1.3. **"Hazardous Substances"** – those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances.
- 1.4. **"Permit Use"** – the non-exclusive use of the Permit Area for the purposes of storing and having access to the Equipment in the Permit Area.
- 1.5. **"PERMITTEE'S Operations"** – PERMITTEE'S development, occupancy, use, maintenance, and/or restoration of the Permit Area.

### **2. RIGHT TO ENTER AND OCCUPY.**

Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its officers and employees to enter upon and occupy the Permit Area solely for the purpose of the Permit Use.

- 2.1 **License Only.** This Permit is a license to use CITY-owned property. It is not a

lease.

**3. USE OF PERMIT AREA.**

PERMITTEE may use the Permit Area solely for the Permit Use and for no other purpose whatsoever without CITY'S prior written consent in each instance.

3.1. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in the surrounding area.

**4. TERM.**

This Permit shall be effective from the Effective Date through December 31, 2011, with the option to renew the Permit for two (2) additional one-year periods. To exercise its option to renew this Permit, PERMITTEE shall provide CITY with written notice of PERMITTEE's intent to renew by July 31 of each calendar year.

4.1. No Holdover. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier revocation or termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area. In such event, PERMITTEE shall pay the "Administrative Fee" (defined below), calculated on a per diem basis at the rate in effect immediately prior to such expiration or earlier revocation or termination, as well as rent, calculated on a per diem basis at a rate three times the rental rate in effect immediately prior to such expiration or earlier revocation or termination. CITY'S acceptance of such "Administrative Fee" (defined below) and rent shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area.

**5. PERMIT PROCESSING FEE.**

Upon execution of this Permit by PERMITTEE, PERMITTEE shall pay CITY a one-time, non-refundable permit processing fee in the amount of \$600 (six hundred dollars).

**6. ADMINISTRATIVE FEE AND RENT.**

6.1. Administrative Fee. PERMITTEE shall pay to CITY a monthly administrative fee to compensate CITY for the cost of administering this Permit [Administrative Fee] as follows:

|                                           |                                 |
|-------------------------------------------|---------------------------------|
| Effective Date through December 31, 2011  | \$263.94                        |
| January 1, 2012 through December 31, 2012 | CPI adjustment, per Section 6.2 |
| January 1, 2013 through December 30, 2013 | CPI adjustment, per Section 6.2 |

- 6.2. CPI Adjustments. On January 1 of each calendar year following the Effective Date, the Administrative Fee shall be increased to reflect any percentage increase in the Consumer Price Index for All Urban Consumers for Los Angeles/Riverside/Orange County, California, based on the average indices for the third quarter of the calendar year prior to each adjustment [CPI].

If the CPI is no longer published, the index for adjustment will be the U.S. Department of Labor Comprehensive Official Index most comparable to the aforementioned index. If an Administrative Fee adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and PERMITTEE. If the Parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to CPI in any event.

Regardless of the index publication dates, the effective date of the Administrative Fee adjustment shall be January 1 of each calendar year following the Effective Date. Until the Administrative Fee adjustment can be reasonably determined by the index method, PERMITTEE shall continue to make payments at the existing Administrative Fee rate. Once the adjustment is determined, the balance of the Administrative Fee due at the adjustment rate will be paid to CITY within thirty (30) days after notice to PERMITTEE. In no event shall the adjusted Administrative Fee as established by the CPI be less than the Administrative Fee in existence immediately prior to the adjustment date. CITY'S failure to deliver timely notice of any Administrative Fee adjustment shall not constitute a waiver by CITY of its rights herein.

- 6.3. Rent. PERMITTEE shall pay to CITY rent as follows:

|                                     |                                  |
|-------------------------------------|----------------------------------|
| Effective Date though June 30, 2011 | \$274.00 per month               |
| July 1, 2011 through June 30, 2012  | Rent adjustment, per Section 6.4 |
| July 1, 2012 through June 30, 2013  | Rent adjustment, per Section 6.4 |

- 6.4. Rent Adjustments. Pursuant to Section C.7 of Council Policy No. 700-08 ("Mission Bay Park Policies"), the rent for non-profit organizations in Mission Bay Park shall be reviewed annually and shall be thirty-three and one-third (33 1/3) percent of the average total annual commercial square foot rent paid for leases in Mission Bay Park attributing the rent to the total land and water areas under lease. Each fiscal year (i.e., July 1, 2011 and July 1, 2012), the rent will be adjusted using this formula

based on the actual total annual commercial rent in Mission Bay Park paid to the CITY during the immediately preceding fiscal year (July1 through June 30).

- 6.5. Time and Place of Payment. The Administrative Fee and rent is due monthly (collectively referred to hereinafter as the "Monthly Payment"), in advance, on or before the first day of each month during the term of this Permit. The Administrative Fee check and the rent check shall be made payable to "City Treasurer" and delivered to the Office of the City Treasurer, Civic Center Plaza Building, 1200 Third Avenue, First Floor, San Diego, CA 92101, or mailed with an invoice to:

THE CITY OF SAN DIEGO  
Office of the City Treasurer  
P.O. Box 129030  
San Diego, CA 92112-9030

- 6.6. Delinquent Payments. If PERMITTEE fails to pay any portion of the Monthly Payment when due, PERMITTEE shall pay, in addition to the unpaid Monthly Payment, five percent (5%) of the delinquent Monthly Payment. If the Monthly Payment is still unpaid after fifteen (15) calendar days past due, PERMITTEE shall pay an additional five percent (5%) (i.e., for a total of ten percent (10%)), which is agreed by the Parties to be appropriate to compensate CITY for loss resulting from such delinquency, including, without limitation, the cost of servicing the delinquent account. In no event shall the charge for late payments of the Monthly Payment be less than \$25 (twenty-five dollars). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE'S default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.

## 7. INSURANCE.

- 7.1. Prerequisites to PERMITTEE'S Operations. Prior to PERMITTEE'S Operations, PERMITTEE shall complete each of the following:
- 7.1.1. PERMITTEE shall obtain a Commercial General Liability insurance policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least \$1,000,000 (one million dollars) per occurrence, subject to an annual aggregate of \$2,000,000 (two million dollars), and deliver to CITY'S Real Estate Assets Department [READ] a certificate of such insurance currently in effect;
  - 7.1.2. PERMITTEE shall obtain a Causes of Loss - Special Form Property Insurance policy on all of PERMITTEE'S insurable property within the Permit Area in an amount to cover one hundred percent (100%) of the replacement cost, and deliver to READ a certificate of such insurance currently in effect;

- 7.1.3. PERMITTEE shall obtain a Workers' Compensation Insurance policy, as required by the laws of the State of California, for all of PERMITTEE'S employees who perform any work in connection with this Permit, with Employers' Liability coverage with a limit of at least \$1,000,000 (one million dollars). PERMITTEE shall deliver to READ a certificate of such insurance currently in effect;
- 7.1.4. PERMITTEE shall obtain a separate endorsement(s) [CG2010 (11/85) or equivalent form], naming "The City of San Diego, its elected officials, officers, employees, representatives, and agents" as additional insureds in each of PERMITTEE's liability policies, and deliver to READ a copy of such endorsement(s); and
- 7.1.5. Each of the insurance policies described above shall be endorsed so that the coverage is primary and noncontributory to any coverage carried or maintained by CITY.
- 7.2. Qualified Insurer(s). All insurance required under this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. CITY may accept non-admitted surplus lines insurers, provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 7.3. Deductibles and Retentions. All deductibles and self-insured retentions on any insurance policy required under this Permit shall be the sole responsibility of PERMITTEE, and shall be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 7.4. Continuity of Coverage. Each insurance policy required under this Permit shall be in effect prior to PERMITTEE'S Operations, except that "course of construction fire insurance" shall be in force upon commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. PERMITTEE shall keep in force each of the above-referenced insurance policies throughout the term of this Permit and any extended use, without lapse. At least thirty (30) calendar days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- 7.5. Modification. To assure protection from and against the kind and extent of risk existing within the Permit Area, CITY, in its sole discretion, may require the revision of amounts and coverage, at any time during the term of this Permit, by giving PERMITTEE thirty (30) calendar 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 PERMITTEE'S use of the Permit Area.

- 7.6. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons within the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 7.7. Failure to Comply. If PERMITTEE fails or refuses to obtain or maintain any of the insurance required under this Permit, or fails to provide CITY proof of such insurance, CITY may obtain the insurance. PERMITTEE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify PERMITTEE of such payment of premiums, stating the amount paid, the name of each insurer, and the rate of interest. PERMITTEE shall pay such reimbursement and interest on the first day of the month following CITY'S notice. Notwithstanding any other provision of this Permit, if PERMITTEE fails or refuses to obtain or maintain any of the insurance required under this Permit, or fails to provide proof of such insurance, CITY may revoke this Permit immediately upon such breach. Upon such revocation, PERMITTEE shall immediately cease its use of the Permit Area and commence and diligently pursue the removal of its property from the Permit Area.

**8. PERMITTEE'S RISK.**

PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S Operations and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.

**9. 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 Permit Use. PERMITTEE further represents and warrants that PERMITTEE is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, 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, and acknowledges and agrees that CITY has fulfilled all obligations CITY may have had to improve, modify, repair, replace, alter, or otherwise develop the Permit Area prior to 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, including, without limitation, PERMITTEE'S employees, from any defects in the Permit Area, and shall be solely responsible therefor.

**10. IMPROVEMENTS AND ALTERATIONS.**

PERMITTEE shall not construct any improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.

**11. COMPLIANCE WITH LAWS AND POLICIES.**

11.1. General. PERMITTEE shall, at its sole cost and expense, comply with the requirements of all rules, regulations, ordinances, laws, and directives of governing authorities now in effect or which may hereafter be in effect, which pertain to PERMITTEE'S Operations.

11.2. No Discrimination. PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S Operations, including, without limitation, the provision of goods, services, facilities, privileges, advantages, and accommodations, and the hiring of employees and contractors.

11.3. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Permit and to the extent legally possible, PERMITTEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. PERMITTEE shall use its best efforts to hire qualified local residents and firms whenever practicable.

11.4. Drug-free Workplace. PERMITTEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

11.4.1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Permit Area and specifying the actions that will be taken against employees for violations of the prohibition;

11.4.2. Establish a drug-free awareness program to inform employees about all of the following:

- a) The dangers of drug abuse in the workplace;
- b) PERMITTEE'S policy of maintaining a drug-free workplace;
- c) Any available drug counseling, rehabilitation, and employee

assistance programs;

- d) The penalties that may be imposed upon employees for drug abuse violations; and

11.4.3. PERMITTEE shall include in each of its sublicenses and contracts related to this Permit language obligating each sub-licensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. PERMITTEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

11.5. Disabled Access. PERMITTEE shall comply with each of the following: the 1990 Americans with Disabilities Act; Title 24 of the California Code of Regulations (i.e., the California Building Standards Code); and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

11.6. Equal Benefits. PERMITTEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. PERMITTEE shall certify that it will maintain such equal benefits throughout the term of this Permit.

## **12. WATER QUALITY ASSURANCES.**

PERMITTEE shall comply with CITY'S Storm Water Management and Discharge Control Ordinance [Ordinance], codified in San Diego Municipal Code sections 43.0301 et seq., and employ "Best Management Practices," including a "Storm Water Pollution Prevention Plan" (as those terms are defined in the Ordinance), hereinafter collectively referred to as the "Prevention Plan," as approved by CITY under its Stormwater Management Program. Within thirty calendar days after the Effective Date, PERMITTEE shall submit a Prevention Plan satisfactory to CITY that will control erosion and reduce the amount of "Pollutants" (as defined in the Ordinance) and other sediments discharged from the Permit Area. CITY may review the Prevention Plan periodically. Within thirty calendar days after written notice from CITY requesting an update of the Prevention Plan, PERMITTEE shall submit an updated Prevention Plan satisfactory to CITY. PERMITTEE shall implement all changes to the Prevention Plan as required by CITY, to ensure compliance with all applicable laws, ordinances, and regulations. PERMITTEE shall inform its employees, contractors, subcontractors, agents, and vendors of the Prevention Plan and ensure their compliance therewith.

## **13. HAZARDOUS SUBSTANCES.**

PERMITTEE shall not allow the installation or release of Hazardous Substances in, on, under, or from the Permit Area by PERMITTEE, its officers, employees, invitees, guests, agents, or contractors. PERMITTEE and all such parties shall not store, utilize, or sell any

Hazardous Substance on the Permit Area without CITY'S prior written consent. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of Hazardous Substances. A copy of the presently effective EPA and State lists is on file in the Office of the City Clerk as Document 769704, and by this reference is incorporated into this Permit.

- 13.1. Remediation. If any release of a Hazardous Substance occurs as a result of PERMITTEE'S Operations, PERMITTEE shall pay all costs of remediation and removal of the Hazardous Substance in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 13.2. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S Operations, including, without limitation, costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- 13.3. Notice of Release. If PERMITTEE knows, or has reasonable cause to believe, that any Hazardous Substance has been released on or within the Permit Area, PERMITTEE shall give written notice to CITY within three calendar days after receipt of such knowledge or cause for belief. If PERMITTEE knows, or has reasonable cause to believe, that such substance is an imminent and substantial danger to public health and/or safety, PERMITTEE shall notify CITY by the most immediate means available, and immediately upon receipt of such knowledge or belief, shall take all actions necessary to minimize the danger. PERMITTEE shall notify CITY immediately of any notice of violation received, environmental actions initiated, or private lawsuits filed related to the Permit Area.
- 13.4. Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S Operations resulted in a Hazardous Substance being released on or from the Permit Area, CITY may cause an environmental assessment of the Permit Area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by PERMITTEE'S Operations and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by municipal, county, state, or federal laws, statutes, ordinances, and/or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws, statutes, ordinances, and/or regulations and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with

environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor. If the environmental assessment conclusively establishes that PERMITTEE'S Operations did not result in a Hazardous Substance being released on or from the Permit Area, CITY shall reimburse PERMITTEE for the cost of the assessment.

**14. SIGNS.**

PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within twenty-four hours after notice by CITY, or CITY may thereafter remove the item at PERMITTEE'S cost and expense.

**15. MAINTENANCE OF THE PERMIT AREA.**

PERMITTEE shall, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, maintain the Permit Area in good order and repair, and in a safe, healthy, and sanitary condition at all times during the term of this Permit, subject to normal and ordinary wear and tear resulting from the use of the Permit Area. At no time during the term of this Permit shall CITY be required to make any improvements or repairs to the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris, and litter, at all times.

**16. ENTRY AND INSPECTION.**

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

**17. UTILITIES.**

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

**18. TAXES.**

PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area, including the land, any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE, or levied by reason of PERMITTEE'S Operations, including any licenses or permits. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE'S payment for such taxes, assessments, and/or fees shall not reduce any payment due CITY.

**19. SUPERIOR INTERESTS.**

This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits, licenses, easements, and rights-of-way pertaining to the

Permit Area, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow PERMITTEE'S use of the Permit Area, relative to any such superior interest. If PERMITTEE'S use of the Permit Area is or becomes inconsistent or incompatible with a preexisting superior interest, PERMITTEE 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.

**20. ENCUMBRANCES.**

PERMITTEE shall keep the Permit Area and any CITY-owned property of which the Permit Area is a part free from all encumbrances and liens of any nature which arise out of, or are in any manner directly or indirectly connected with, this Permit or PERMITTEE'S Operations. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost, or expense, including, without limitation, all attorney fees and costs, relating to or charged against the Permit Area, including, without limitation, PERMITTEE'S failure, or the failure of any contractor or subcontractor hired by PERMITTEE, to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

**21. ASSIGNMENT AND SUBLICENSE.**

PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY'S prior written consent, which may be withheld or delayed in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.

**22. INDEMNIFICATION.**

PERMITTEE 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 PERMITTEE'S officers, employees, invitees, guests, agents, or contractors, which arise out of, or are in any manner directly or indirectly connected with, this Permit or PERMITTEE'S Operations, and all expenses of investigating and defending against same, including, without limitation, attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY and its elected officials, officers, employees, representatives, and 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, PERMITTEE shall pay all of the costs related thereto, including, without limitation, reasonable attorney fees and costs.

**23. OTHER GOVERNMENTAL ACTIONS.**

By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE'S Operations. Discretionary action includes, without limitation, re-zonings, variances, environmental clearances, and all other required governmental approvals.

**24. REVOCATION AND TERMINATION.**

- 24.1. Revocation by CITY. This Permit may be revoked at any time by CITY at will, in CITY'S sole discretion. Upon CITY'S revocation of this Permit, PERMITTEE shall immediately cease all operations on the Permit Area, and as soon as practicable thereafter, restore the Permit Area to the condition it was on the Effective Date, normal wear and tear excepted, and vacate the Permit Area. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S revocation of this Permit.
- 24.2. Termination by PERMITTEE. PERMITTEE may terminate this Permit for any reason upon sixty (60) calendar days prior written notice to CITY. Prior to the expiration or PERMITTEE'S earlier termination of this Permit, PERMITTEE shall restore the Permit Area to the condition it was on the Effective Date, normal wear and tear excepted, and upon such expiration or earlier termination, immediately vacate the Permit Area.
- 24.3. 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.
- 24.4. Waiver. The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instances, 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 writing and executed by CITY to constitute a valid and binding waiver. CITY'S delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY'S acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY'S failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may, at any

and all times, require the cure of the default.

**25. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY.**

- 25.1. Improvements. Upon expiration or earlier revocation or termination of this Permit, any and all improvements, trade fixtures, structures, and installations or additions to the Permit Area now existing or constructed on the Permit Area by PERMITTEE shall be deemed to be part of the Permit Area and shall become CITY'S property free of all liens and claims. Notwithstanding the foregoing, CITY may, upon notice to PERMITTEE at revocation or termination, or at any time prior to the expiration of this Permit, elect not to assume ownership of all or any PERMITTEE-installed improvements, trade fixtures, structures, and/or installations. In such event, PERMITTEE shall, at PERMITTEE'S sole cost and expense, remove all PERMITTEE-installed improvements, trade fixtures, structures, and installations as soon as practicable, but in no event, later than sixty calendar days after the expiration or earlier revocation or termination of this Permit. If any removal of such PERMITTEE-installed improvements, trade fixtures, structures, and/or installations by PERMITTEE results in damage to the Permit Area, PERMITTEE shall repair all such damage at PERMITTEE'S sole cost and expense. If PERMITTEE fails to remove any improvements, structures, and/or installations as required by this Permit, CITY may, at its option, remove them at PERMITTEE'S sole cost and expense.
- 25.2. Personal Property. PERMITTEE shall remove PERMITTEE-owned machines, appliances, Equipment, and other items of personal property upon the expiration of this Permit, or as soon as practicable after revocation or termination, but in no event later than sixty (60) calendar days after the expiration or earlier revocation or termination of this Permit. Any such items which PERMITTEE fails to 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 PERMITTEE'S sole cost and expense. If any removal of such personal property by PERMITTEE results in damage to the Permit Area, PERMITTEE shall repair all such damage at PERMITTEE'S sole cost and expense.
- 25.3. Late Removal. PERMITTEE shall pay to CITY the Administrative Fee and rent in accordance with Sections 5 and 6 of this Permit for any period of time needed to remove any improvements or personal property from the Permit Area, whether by CITY or PERMITTEE, after the expiration or earlier revocation or termination of this Permit.
- 25.4. CITY'S Right to Acquire. Notwithstanding the foregoing, if PERMITTEE elects to dispose of any of its personal property used in connection with PERMITTEE'S Operations, upon expiration or earlier revocation or termination of this Permit, CITY shall have the first right to acquire or purchase such personal property.

**26. NOTICES.**

Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE at PERMITTEE'S Address for Notices, and to CITY as follows:

If to PERMITTEE:

Hanohano Outrigger Canoe Club  
Attn: Suzanne Serafin  
2112 Garfield Road  
San Diego, CA 92110

San Diego Dragon Boat Team  
Les Hopper  
P.O. Box 60124  
San Diego, CA 92166

If to CITY:

City of San Diego  
Real Estate Assets Department  
Attention: Real Estate Assets Director  
1200 Third Avenue, Suite 1700, MS 51A  
San Diego, CA 92101-4155

With a copy by First Class Mail to:

Office of the City Attorney  
Attn: Real Estate and Economic Development Unit  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101-4106

**27. MISCELLANEOUS PROVISIONS.**

- 27.1. Governing Law. This Permit shall be governed, construed, and enforced in accordance with the laws of the State of California.
- 27.2. Entire Understanding. This Permit constitutes the entire understanding between the Parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and PERMITTEE'S Operations.
- 27.3. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture, or other affiliation between the Parties, 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.

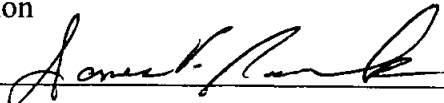
- 27.4. Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Permit.
- 27.5. CITY'S Consent or Approval. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the San Diego City Manager, or his designee [City Manager], unless otherwise expressly provided, without need for further resolution by the City Council. CITY'S discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. All references to "City Manager" in this Permit (and all subsequent amendments to this Permit) shall be deemed to refer to the Mayor of San Diego or his designee for the duration CITY operates under the mayor-council (commonly referred to as the "strong mayor") form of governance, pursuant to Article XV of The City Charter.
- 27.6. Permit Modifications. Any modification, alteration, or amendment of this Permit shall be in writing and signed by the Parties.
- 27.7. Survival. Any obligation under this Permit that requires a party's performance of that obligation after the expiration or earlier revocation or termination of this Permit shall survive such expiration, revocation, or termination.
- 27.8. Legal Proceedings. If one party brings an action or proceeding against the other party under this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including, without limitation, reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment. If, as a result of an action brought by or against PERMITTEE in connection with this Permit, CITY intervenes therein, becomes a party, or is made a party thereto, PERMITTEE shall pay all of CITY'S costs and expenses thereof, including, without limitation, reasonable attorney fees and costs.
- 27.9. Number and Gender. In this Permit, words in the singular number shall include the plural, and *vice versa*, as appropriate to the context. Words of either gender shall include the other gender.
- 27.10. Authority to Execute and Deliver Permit. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he or 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 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 the State of California.

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

Date: 3/24/11

THE CITY OF SAN DIEGO, a California municipal corporation

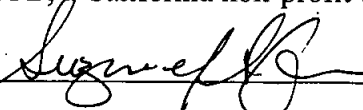
By 

(Print Name) James F. Barwick, CCIM  
Director, Real Estate Assets

(Title) \_\_\_\_\_

Date: 3/17/11

PERMITTEE: HANO HANO OUTRIGGER CANOE CLUB, a California non-profit corporation

By 

(Print Name) Suzanne H. Serafin

(Title) Executive Director

Date: 3/17/11

PERMITTEE: DRAGON BOAT CLUB, a California non-profit corporation

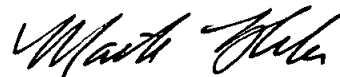
By 

(Print Name) Les Hopper

(Title) VICE PRESIDENT

ENVIRONMENTAL ANALYSIS SECTION:

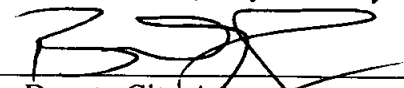
Date: 3/22/11

By   
Senior Planner

APPROVED AS TO FORM AND LEGALITY:

Date: 3/20/2011

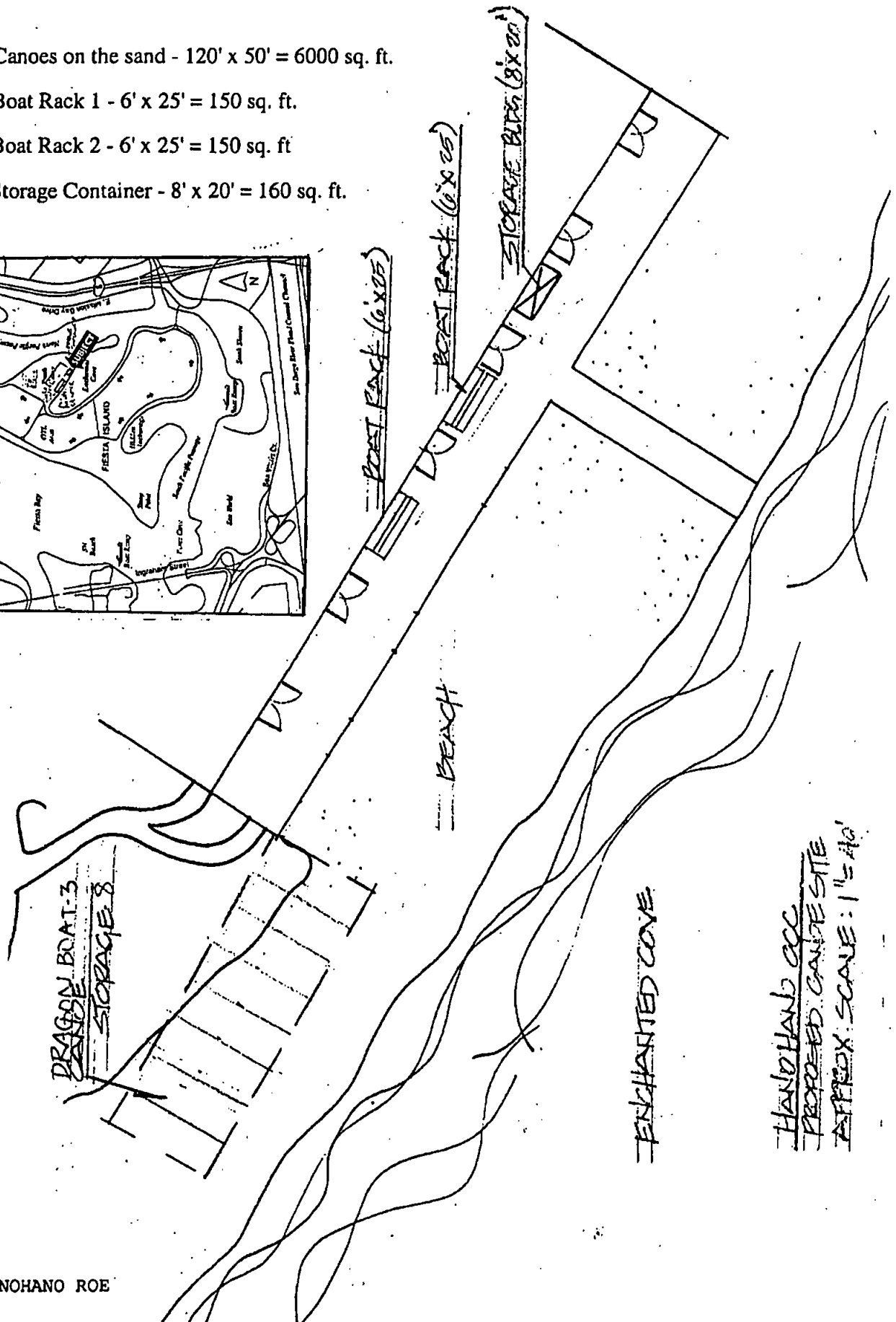
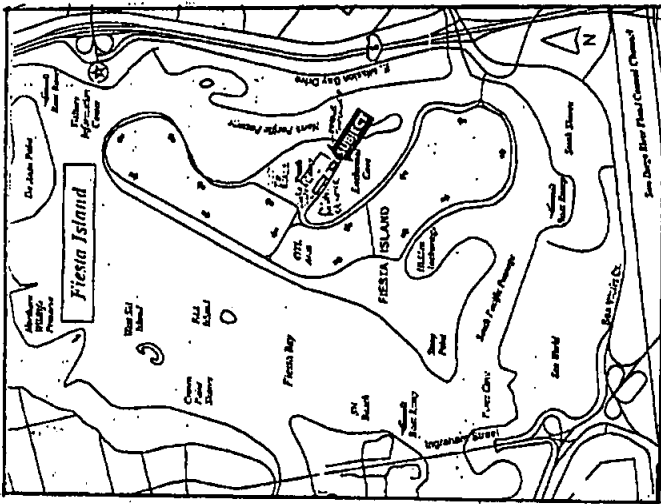
JAN I. GOLDSMITH, City Attorney

By   
Deputy City Attorney  
**Brock Ladewig**  
Deputy City Attorney

VEB/cb  
1-19/11

I:\Support Staff Group\WPO\2010\GILLIS\USE AND OCCUPANCY PERMIT- HANO HANO OUTRIGGER CANOE CLUB.doc

- Canoes on the sand -  $120' \times 50' = 6000$  sq. ft.
- Boat Rack 1 -  $6' \times 25' = 150$  sq. ft.
- Boat Rack 2 -  $6' \times 25' = 150$  sq. ft.
- Storage Container -  $8' \times 20' = 160$  sq. ft.



## **Exhibit B**

### **Equipment**

- No more than 12 dragon boats.
- No more than 10 outrigger canoes.
- 2 packs for individual boat storage.
- 1 container