

CITY OF SAN DIEGO

USE AND OCCUPANCY PERMIT

THIS CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and LANG BROTHERS, INC., dba MISSION BAY PLAYERS CLUB & WINE DECK, a California corporation ("PERMITTEE"), to be effective as of the date the Permit is signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

RECITALS

- A. CITY is the owner of real property consisting the Mission Bay Golf Course located at 2702 N. Mission Bay Drive, San Diego, CA 92109 (the "Property"), and more particularly depicted on **Exhibit A: Permit Area**, attached hereto and by this reference incorporated herein.
- B. PERMITTEE wishes to enter upon and use a portion of the Property for the nonexclusive purpose of providing food and beverage services, including alcoholic beverages pursuant to a valid alcohol license.
- C. PERMITTEE has previously used a portion of the Property under the terms of a Use and Occupancy Permit, effective September 1, 2013 between PERMITTEE and the CITY. The permit expired on its own terms on August 31, 2016 and the parties entered a subsequent Use and Occupancy Permit effective September 1, 2016. The CITY wishes to enter into a new Use and Occupancy Permit with PERMITTEE, and PERMITTEE wishes to enter into a Use and Occupancy Permit with CITY, to allow PERMITTEE to provide food and beverage services in accordance with the terms of this Permit.

NOW THEREFORE, based upon the foregoing Recitals, which are incorporated into this Permit by this reference, and for valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. **Permit Area**. The "Permit Area" shall mean a portion of the Property consisting of the exterior patio area adjacent to the clubhouse, the "island" to the north of the exterior patio area, a 10'x6' area in the breezeway and a storage closet depicted on **Exhibit A: Permit Area**, attached hereto.
 - 1.1 In addition, PERMITTEE shall also be allowed to conduct the Permit Use throughout the golf course using a mobile cart service, subject to PERMITTEE having first obtained all the appropriate permits and licenses (including, but not limited to all necessary licenses or other documents issued by the Department of Alcohol Beverage Control ("ABC") at its sole

cost and expense.

2. **Use of Permit Area.** Subject to the terms and conditions of this Permit PERMITTEE may nonexclusively enter and use the Permit Area for the purpose of providing food and beverage services, including alcoholic beverages pursuant to a valid alcohol license, beverage vending machines in the breezeway, and for other related incidental purposes as may be first approved in writing by CITY and for no other purpose whatsoever ("Permitted Use"). All sales and service of alcoholic beverages on or about the Permit Area shall be subject to the regulation and approval of the ABC.
 - 3.1 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, subject to normal and ordinary wear and tear resulting from the Permit Use.
3. **Revocable License.** This Permit is not a lease. It is a non-exclusive license to access and use the Permit Area for the purposes stated herein, and may be revoked at will by CITY, in its sole discretion, for any reason upon thirty (30) days prior written notice delivered to PERMITTEE by CITY. 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. PERMITTEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives, and agents for any burden, expense, or loss which PERMITTEE might incur as a result of CITY's revocation or termination of this Permit.
4. **Term.** The term of this Permit ("Term") shall commence on the Commencement Date as defined below in Paragraph 6, and continue for one (1) year.
5. **Extension of Term.** If at the end of the Term PERMITTEE is not in breach or default of any of PERMITTEE's obligations under this Permit, the CITY may, in CITY's sole discretion, extend this Permit for up to two (2) additional one-year periods. PERMITTEE shall provide CITY with an advance written request to renew this Permit for each additional one (1) year period. Such notice shall be provided no later than sixty (60) days prior to expiration of the Term. Under no circumstance shall the Term of this Permit exceed three (3) years unless authorized by the San Diego City Council.
6. **Commencement Date.** The Term shall commence on the first of the month following the execution of this Permit by the City Attorney (the "Commencement Date"). "Permit Year" as used in this Permit shall mean the 12-month period commencing on the Commencement Date.
7. **Permit Fee.** PERMITTEE shall pay CITY a one-time, non-refundable permit processing fee in the amount of Nine Hundred Eighty Dollars (\$980.00) payable to City Treasurer.

8. **Permit Monthly Concession Fee.** PERMITTEE shall pay to CITY, on a monthly basis, the greater of either the Percentage Fee or the Minimum Fee, as described below. In the event that the combined total amount of fees paid by PERMITTEE during any Permit Year equals or exceeds the annual Minimum Fee for that Permit Year, then PERMITTEE will only pay the Percentage Fee each subsequent month until either a new Permit Year begins or this Permit ends.
- A. **Percentage Fees.** Percentage Fees will consist of Twenty-Five Percent (25%) of the gross income from vending machines and Five Percent (5.00%) of the gross income resulting from all other Permitted Uses during each month of an Permit Year ("Percentage Fee"). The CITY, in its sole discretion, may approve another percentage rate or minimum rate for each other service or operation supplementary to the Permitted Uses stated in Section 3, as may be approved in writing by the CITY prior to the commencement of any additional service or operation. However, any activity conducted on the Permit Area without the prior written approval of the CITY will be subject to the unauthorized use charge in accordance with Section 8.D.
- B. **Minimum Fee.** The annual Minimum Fee established for the first Permit Year following the Effective Date is \$7,095.75 which is \$591.13 on a monthly installment basis ("Minimum Fee"). The monthly Minimum Fee is to be paid in monthly installments on or before the day of the calendar month when the Percentage Fee is due pursuant to Section 8.I.
- C. **Delinquent Permit Fee.** If PERMITTEE fails to pay any fees when due, PERMITTEE will pay the delinquent fee plus a late fee equal to five percent (5%) of the delinquent fee. If fees remain unpaid more than fifteen (15) days past the due date, the late fee will be increased to ten percent (10%) of the delinquent fee, which PERMITTEE will pay in addition to delinquent fee. The parties agree that such late fees are appropriate to compensate the CITY for loss resulting from delinquent fees, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- D. **Unauthorized Use Charge.** PERMITTEE will pay to CITY, as an additional fee, an unauthorized use charge equal to hundred percent (100%) of the Gross Revenue received from any service or use of the Permit Area that is not allowed under this Permit. Such payment is subject to the due date provided in the Permit for fee payments and the provisions for delinquent or unpaid fees. Neither the existence of such an unauthorized use charge nor the payment of such charge, or any part of it, will constitute an authorization of an unauthorized use, and will not be waiver of any of the CITY's rights under the Permit.
- E. **Gross Revenue.** ("Gross Revenue") as used in this Agreement, will include all income resulting from the PERMITTEE's operations on the Permit Area whether received or to become due; provided, however, that Gross Revenue

will not include federal, state, or municipal taxes collected from the PERMITTEE (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by PERMITTEE to a governmental agency accompanied by a tax return or statement as required by law. The Percentage Fee will be calculated and paid by PERMITTEE on the basis of Gross Revenue whether the income is received by PERMITTEE.

F. Payment Procedure. PERMITTEE will provide CITY with a correct income statement of Gross Revenue together with a payment of fees on all applicable Gross Revenue in a form selected by CITY. This income statement will be due to CITY by the end of the calendar month immediately following the month for which the income statement was generated. The income statement will be signed by PERMITTEE and its authorized agent attesting to the accuracy of the income statement. Each statement will include:

- i. Total Gross Revenue for the subject month itemized as to business categories for which the separate Percentage Fee is established.
- ii. The amount of the Percentage Fee due to CITY and the manner in which such Percentage Fee was computed and totaled.
- iii. The accumulated total of all fees previously paid to CITY for the current Permit Year.
- iv. Payments in the greater of the two following amounts: The monthly Minimum Fee or the total Percentage Fee due CITY computed as described in Sections 8.B and 8.A.

G. Inspection of Records.

- i. Records. PERMITTEE shall keep or cause to keep true, accurate, and complete books, records, and accounts of all financial transactions in the operation of PERMITTEE's business and all other business activities conducted on the Permit Area, and all financial transactions resulting from PERMITTEE's use of the Permit Area. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents (which may be in electronic form) as necessary to allow CITY to easily determine Gross Revenue. All retail sales or charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. Such registers or other devices shall record sales totals and other transaction numbers and sales detail, and shall not be re-settable. Registered totals shall be read and recorded at the beginning and end of each business day.

All sales and charges may be recorded by a system other than cash registers or other comparable devices, provided such system is approved by CITY.

- ii. Financial Statements. Within sixty (60) days after the end of the each Permit Year, PERMITTEE will at its sole cost and expense, submit to CITY a statement in which the total Gross Receipts and the corresponding amounts of Percentage Fees paid to CITY for the previous Permit Year are classified according to the categories of business established for any Percentage Fees and for any other business conducted on or from the Permit Area. The statement will be signed by PERMITTEE and a duly authorized financial representative of PERMITTEE attesting to the accuracy thereof, which will be legally binding upon PERMITTEE.
- iii. Right to Inspect. All of PERMITTEE's books of account, records, and supporting documentation, as described under Section 8.G.i, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Permit Area. The CITY, at its discretion, will have the right to inspect and audit the business of PERMITTEE, its agents, representatives and permittees operating on, and in connection with, the Permit Area as necessary and appropriate for CITY to determine the amounts of fees due CITY in compliance with the requirements of this Agreement. At CITY's request, PERMITTEE will promptly provide, at PERMITTEE's expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Permit information or reports concerning the operations. Such data will include, if required, a detailed breakdown of PERMITTEE's receipts and expenses.
- iv. Audit Cost. The full cost of the CITY's audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case PERMITTEE agrees to pay CITY's cost of audit(s):
 - a) The audit(s) reveal an underpayment by PERMITTEE to the CITY of more than five percent (5.00%) on an annual basis for any Permit Year or more than \$5,000, whichever is less, between the Total Fees Paid as reported and paid by PERMITTEE pursuant to this Permit and fees owed as determined by the audit(s).
 - b) PERMITTEE has failed to properly maintain complete and true books, records, accounts, and supporting documents in strict accordance with this section.

- v. Any fee deficiency determined by the audit will be considered a delinquent fee, subject to all penalties and remedies provided to CITY for delinquent fees under Section 8.C. CITY will credit any overpayment by PERMITTEE determined by the audit, without interest, against future fees due under this Agreement. If no future fees are due under this Agreement, CITY will refund PERMITTEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.
 - H. Default. PERMITTEE's failure to keep complete and accurate records by means of double-entry bookkeeping and failure to make them available for CITY inspection is, like all other failures to comply with covenants of this Agreement, a material breach of this Agreement and good cause for termination.
 - I. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Revenue subject to the Percentage Fee was earned. Checks will be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 129030, San Diego, California 92112-9030, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to PERMITTEE. Mailed payments will be deemed paid upon the date such payment is postmarked by the postal authorities. If any such postmark is illegible, the payment will be deemed paid upon actual receipt by the City Treasurer. PERMITTEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
9. CITY's Right to Enter and Inspect. CITY reserves the right to enter upon the Permit Area at all times, to perform any work or inspections related to the installation, use, and/or maintenance of wells on the Permit Area, and to inspect and maintain the Permit Area as CITY deems necessary.
10. Holdover. Any hold over by PERMITTEE after the expiration or earlier termination of this Permit shall not be considered a renewal or extension of this Permit. The occupancy of the Permit Area after the expiration or earlier termination of this Permit shall constitute a month-to-month at will revocable license, and all other terms and conditions of this Permit shall continue in full force and effect, except that PERMITTEE shall then pay to CITY an increased monthly permit fee up to one hundred twenty-five percent (125%) of the Monthly Permit Fee in effect upon expiration or earlier termination of this Permit, as determined by CITY and in CITY's sole discretion.
11. Renovation Project. The CITY has a renovation project planned for the Mission Bay Golf

Course and Clubhouse known as the MBGC Renovation Project, which in addition to improving the golf course and greens, includes demolishing and rebuilding a new club house. The project could begin as early as 2020 subject to final approval.

- i. Should the project be approved, the Permit Area will be relocated to a mutually agreeable location.
 - ii. The CITY may review and consider a temporary adjustment in the Monthly Permit Fee that is appropriate and mutually agreed upon, based on location during the construction period because a reduction in overall business is expected during construction.
12. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights of way pertaining to the Property, 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 its use of the Permit Area for the Permitted Use, 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.
13. Refuse Containers. PERMITTEE shall, at its sole cost and expense, provide containers on the Permit Area to receive trash and refuse generated on the Permit Area. Refuse containers shall not be located outside of the Permit Area. Such containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly, or unsanitary conditions. The contents of the containers shall be disposed of by PERMITTEE or others acting under PERMITTEE's direction at authorized landfills or other garbage reception areas as provided under applicable law at the time of collection.
14. Restoration of the Permit Area. Upon thirty (30) days after the expiration or termination of this Permit, PERMITTEE shall restore the Permit Area to the same condition as existed immediately prior to the PERMITTEE's use of the Permit Area, subject to the satisfaction of the CITY. This paragraph shall not apply to any maintenance or improvements CITY makes or performs to the Permit Area during the Term for CITY's own purposes unrelated to the Permitted Use or PERMITTEE's Occupancy of the Permit Area.
15. 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 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.

16. Unauthorized Activities. PERMITTEE shall not engage in any activity on the Permit Area other than the Permitted Use. Any use of the Permit Area that was not previously approved in writing by the CITY or otherwise authorized by this Permit, shall subject PERMITTEE to being liable for all costs and damages associated with inspecting, remediating, and/or taking other actions to ensure that the Property and the Permit Area shall be returned to its condition prior to PERMITTEE's use of the Permit Area, subject to the satisfaction of the CITY, at PERMITTEE's sole cost and expense, as well as being a basis for immediate termination of this Permit, all of which shall be subject to the sole discretion of the CITY.
17. Improvements/Alterations. Except as otherwise authorized by this Permit, 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, which consent shall be given in CITY's sole discretion. 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.
18. Insurance. PERMITTEE shall not enter or come onto the Permit Area, nor begin any use of the Permit Area under this Permit until it has done all of the following: (a) obtained, and provided to the 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 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 of this Permit 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 duration of this Permit.
 - 18.1 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, including Liquor Liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
 - 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. Causes of Loss-Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss-Special Form Property Insurance on all of PERMITTEE's insurable property related to the Permitted Uses of the Permit Area under this Permit or the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver a certificate of such insurance to the CITY's Real Estate Assets Department.
 - d. 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 employer's 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.
- 18.2 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.
- 18.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Permit or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the CITY. The 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.
- 18.4 Modification. To assure protection from and against the kind and extent of risk existing with the Permitted Uses, 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 Permitted Uses.

- 18.5 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Property or otherwise related to the Permitted Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 18.6 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the CITY before entering onto the Property or initiating any of the Permitted Uses under this Permit.

15.6.1 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 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 Contractor'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.

15.6.2 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 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.

20.6.3 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 the 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 the CITY.

18.7 Reservation of Rights. CITY reserves the right, from time to time, to review PERMITTEE's insurance coverage, limits, deductibles and self-insured retention to determine if they are acceptable to CITY.

- 19. 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 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 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.
- 17. Subcontractors' Insurance and Indemnification of City.** If PERMITTEE uses subcontractors for any part of the Permitted Use, unless PERMITTEE's insurance covers work performed by all of PERMITTEE's subcontractors, PERMITTEE shall require PERMITTEE's subcontractors to indemnify the CITY and to maintain insurance coverage to the same extent that PERMITTEE is required to indemnify the CITY and maintain insurance coverage pursuant to Sections 16 and 17 of this Permit, all of the endorsements set forth in Section 16, including naming the City of San Diego and its respective elected officials, officers, employees, agents, and representatives as an Additional Insured in each insurance policy.
- 18. Liability for Loss, Injury or Damage.** In addition to any other assumption of liability set forth herein, and excluding any loss or damage to the extent resulting from the CITY's

negligence or willful misconduct, PERMITTEE agrees that it assumes the sole risk and responsibility for any damage, destruction or theft of PERMITTEE's equipment, materials, or personal property placed on the Permit Area and for any injury to persons which occurs on the Permit Area as a result of the Permitted Use.

19. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender identity, gender expression, sexual orientation, medical status, national origin, age, marital status, or physical 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.
20. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. PERMITTEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Permit from local residents and firms as opportunities occur. PERMITTEE agrees to hire qualified local residents and firms whenever feasible.
21. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE's use or occupancy of the Permit Area and for any and all damages to the Permit Area and/or damages to the improvements on, under or in the vicinity of the Permit Area, resulting directly or indirectly thereby; provided, however, that PERMITTEE shall not be liable for damages established to have resulted from the sole negligence or intentional misconduct of CITY, and its elected officials, officers, employees, representatives, and agents, or any environmental conditions not caused by PERMITTEE, even if discovered by PERMITTEE.
22. Nuisance and Noise Disturbances. PERMITTEE shall not use the Permit Area in any manner which, in the opinion of the CITY creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area or that violates the CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).
23. 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.
24. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising in the Permit Area 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 (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at PERMITTEE's cost.
25. Utilities. City has agreed to pay for all utilities and waste service charges in connection

with its use of the Permit Area.

26. **Security and Safety of Permit Area.** PERMITTEE shall bear sole responsibility for the security and safety of the Permit Area during the Term. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of the Permit Area. PERMITTEE shall maintain the Permit Area in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY. PERMITTEE shall, at its cost and expense, obtain and maintain trash receptacles and trash-removal service. 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 Permit Area or staffing or resources for the maintenance of the Permit Area during the Term.
27. **Encumbrances.** PERMITTEE shall keep the Permit Area 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 the Permitted Use. 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 reasonable 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.
28. **Compliance with Laws.** PERMITTEE shall at all times in its use, occupancy, maintenance, and restoration of the Permit Area, at its sole cost and expense, comply with all the requirements of all applicable laws, rules, regulations, ordinances, laws, and directives of competent governmental authorities now in effect or which may hereafter be in effect, which pertain to the Permitted Use. 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).
29. **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. PERMITTEE and PERMITTEE's agents and contractors shall not install, store, utilize, generate, or sell any Hazardous Substance on the Permit Area without CITY's prior written consent. 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.

- 29.1 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.
- 29.2 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.
- 29.3 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.
- 29.4 Removal. If PERMITTEE or PERMITTEE’s agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Permit Area, PERMITTEE or PERMITTEE’s agent 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.
- 29.5 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.
- 29.6 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.

- 29.7 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 therefore.
30. Repair. PERMITTEE shall be responsible, at its sole cost and expense, for the repair or replacement of any damage to the Permit Area caused directly or indirectly by PERMITTEE's use of the Permit Area, including items that CITY staff has determined to be damaged. PERMITTEE shall comply with the direction of CITY's Real Estate Assets Department with respect to the method of any repairs or replacement arising under this Permit.
32. Grading and Barriers. 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 the CITY and are grounds, at the CITY's option, for immediate termination of this Permit.
33. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law, or in equity. The exercise of

any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.

34. 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. 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 Permitted Uses, 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 therefore.
35. 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.
36. Termination. CITY may terminate this Permit for any reason upon thirty (30) days prior written notice delivered to PERMITTEE by CITY; however, in the event of a default or emergency during which the CITY in its sole discretion determines it necessary to terminate the Permit, termination may occur upon 24 hours prior written notice. PERMITTEE may terminate this Permit for any reason upon thirty (30) days prior written notice delivered to CITY by PERMITTEE.
37. 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.
38. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
39. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them and pertaining to this Permit and the Permitted Use. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
40. 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 CITY or PERMITTEE, respectively, as follows:

THE CITY OF SAN DIEGO

Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

Lang Brothers, Inc.
Attn. Ted Lang
8854 Heraldry Street
San Diego, CA 92123
858-945-3318

41. 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.
42. Charter Section 225. Pursuant to San Diego City Charter section 225, PERMITTEE shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Permit and the precise nature of all interests of all persons therein. Pursuant to City Charter Section 225, every person or entity which will have an interest in this Permit must be reviewed and approved by CITY.
43. Performance and Payment Bonds: If PERMITTEE constructs any type of improvements or alterations on the Permit Area, CITY may require PERMITTEE to provide CITY with a performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed and a payment bond in the amount of one hundred percent (100%) of the total amount payable under the contract for construction of the improvement/alteration. The bonds shall be corporate surety bonds or other security satisfactory to CITY. The bonds shall insure that the construction be completed in accordance with this Permit and all applicable laws and regulations. At the option of CITY, in the event the construction is not completed in full satisfaction of the CITY and this Permit, CITY may use the performance bond to remove the uncompleted improvements/alterations and restore the Permit Area to a condition satisfactory to CITY. The bond shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
44. Equal Opportunity. PERMITTEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and

regulations. PERMITTEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth. PERMITTEE shall cause the foregoing provisions to be inserted in all of PERMITTEE's contracts for work related to this Permit so that such provisions will be binding upon each of PERMITTEE's contractors. PERMITTEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request PERMITTEE shall submit a current Workforce Report. PERMITTEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Permit and debarment from participating in CITY contracts for a period of not less than one (1) year.

45. Equal Benefits. PERMITTEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require applicable parties to offer the same employment benefits to employees with spouses and employees with domestic partners. PERMITTEE shall certify that it will maintain such equal benefits throughout the term of this Permit. PERMITTEE's failure to maintain equal benefits shall be a material breach of this Permit.

46. Disabled Access Compliance. PERMITTEE will, as applicable to the Permit Area and PERMITTEE's possession, use, and occupancy of the Permit Area, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, PERMITTEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). PERMITTEE's compliance will include without limitation the following:

46.1 PERMITTEE will not discriminate against qualified individuals with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.

46.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of PERMITTEE.

46.3 PERMITTEE will include language in each sublicense which indicates the sublicensee's agreement to abide by the provisions of this section.

46.4 PERMITTEE and each of its sublicensees will be individually responsible for their own ADA employment programs.

46.5 PERMITTEE will post a statement addressing the requirements of the ADA in a

prominent place at the work site.

46.6 Where required by law, all improvements, fixtures, structures, or installations on the Permit Area will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Permit Area which deny access to individuals with disabilities. All improvements and alterations will be at PERMITTEE's sole expense.

46.7 PERMITTEE's failure to comply with the accessibility requirements of this section or submitting false information in response to these accessibility requirements, or both, will be a default of this Permit.

47. CITY Employee Participation Policy: CITY may unilaterally and immediately terminate this Permit if PERMITTEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the selection of PERMITTEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.
48. 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.
49. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area, including the land and 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 the business of other PERMITTEE activities related to the Permit Area, including without limitation licensing and permitting costs and fees. PERMITTEE recognizes and agrees 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 of such taxes, fees, and assessments shall not reduce any payment due CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from PERMITTEE's possession, use, or occupancy of the Permit Area.
50. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
51. Single Use Plastic Reduction Ordinance. Unless an exception applies, PERMITTEE will

comply with the Single Use Plastic Reduction Ordinance codified in San Diego Municipal Code sections 66.0601 through 66.0907. By signing this Permit, PERMITTEE, certifies that it will comply with the requirements of the Single Use Plastic Reduction Ordinance throughout the Term.

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

Therefore, PERMITTEE will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a). PERMITTEE shall comply with the CITY's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries as adopted by the City Council on January 1, 2015, via Resolution No. 309791, as may be amended. PERMITTEE shall also comply with each CITY facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

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

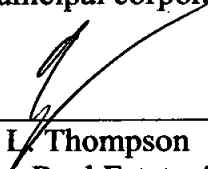
54. Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Permit.
55. Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
56. 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.
57. 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.

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

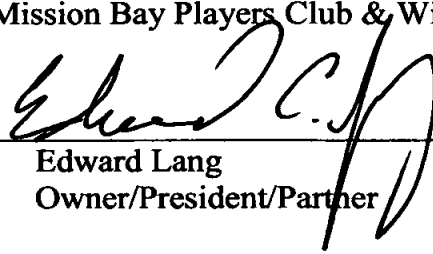
THE CITY OF SAN DIEGO,
a California municipal corporation

By:


Cybele L. Thompson
Director, Real Estate Assets

LANG BROTHERS, INC., a California corporation
dba Mission Bay Players Club & Wine Deck

By:


Edward Lang
Owner/President/Partner

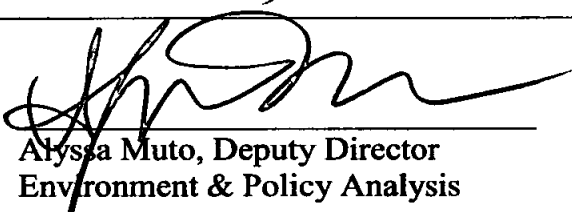
Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to
State CEQA Guidelines section 15301 (Existing Facilities).

Date:

12/12/19

By:


Alyssa Muto, Deputy Director
Environment & Policy Analysis

Approved as to form this 30th day
of December, 2019.

MARA W. ELLIOTT, City Attorney

By:


Name: Marco A. Verdugo
Title: Deputy City Attorney

READ LANG BROTHERS

Exhibit A: Permit Area
Exhibit B: Prevailing Wages

EXHIBIT A: Permit Area



EXHIBIT B: Prevailing Wages

By signing this Lease, Lessee certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing any construction or maintenance work as described in San Diego Municipal Code section 22.3019.

A. **PREVAILING WAGES.** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage laws. For construction work performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding \$15,000, LESSEE, its contractors and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code sections 22.4201 through 22.4245. LESSEE must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

1. **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, LESSEE, its contractors and its subcontractors shall ensure that all workers who perform work under this Lease 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>. LESSEE, its contractor 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 Lease. 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 Lease 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 Lease, each successive predetermined wage rate shall apply to this Lease 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 Lease, such wage rate shall apply to the balance of the Lease.

2. Penalties for Violations. LESSEE, its contractor and its 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. LESSEE, its contractor and its 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. LESSEE and its contractor shall require its subcontractors to also comply with section 1776. LESSEE, its contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City. LESSEE, its contractor and its 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. LESSEE, its contractor and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. LESSEE's contractor shall be held responsible for their compliance as well as the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. Working Hours. LESSEE, its contractor and its 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 Subcontracts. LESSEE shall, and shall require its Contractor, to include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. Labor Code Section 1861 Certification. LESSEEs and its contractor in accordance with California Labor Code section 3700 are required to secure the payment of compensation of its employees and by signing this Lease, LESSEE 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 Contract.” LESSEE shall require this certification in all of its contracts related to the Lease.

8. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The LESSEE shall withhold contract payments when notified by the City that LESSEE, its contractor’s or subcontractor’s 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 bidder 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 bidder’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 bidder 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, bidder, or any subcontractor to comply with the requirements of section 1725.5 of this section.

9.3. By submitting a bid or proposal to the City, LESSEE is certifying that he or she has verified that all contractors and subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of registration for themselves and all listed contractors and subcontractors to the City at the time of bid or proposal due date or upon request.

10. Stop Order. For LESSEE, its contractor or its 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 or unregistered subcontractor(s) on ALL public works until the unregistered contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

11. List of all Subcontractors. The City may ask LESSEE for the most current list of contractors and subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Lease at any time during performance of this Lease, and LESSEE shall provide the list within ten (10) working days of the City's request. Additionally, LESSEE shall provide the City with a complete list of all contractors and subcontractors utilized on this Lease (regardless of tier), within ten working days of the completion of any project requiring the payment of prevailing wages under the Lease, along with their DIR registration numbers. LESSEE shall withhold final payment to its contractor 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. The LESSEE shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

12.1. Registration. The LESSEE or its contractor 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 of San Diego, but will not be required to be submitted online with the DIR directly. The LESSEE and its contractor 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. The LESSEE's contractor 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).



Date of Notice: July 8, 2019

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Use and Occupancy Permit for Lang Brothers

COMMUNITY PLAN AREA: Mission Bay

COUNCIL DISTRICT: District 2

LOCATION: The City owned real property consisting of the patio and surrounding area adjacent to the clubhouse and the "island" to the north of the exterior patio area at the Mission Bay Golf Course located at 2702 N. Mission Bay Drive, San Diego, CA 92109.

PROJECT DESCRIPTION: Lang Brothers, Inc. wishes to enter into a one-year Permit with two 1-year extensions to provide food and beverage services, including alcoholic beverages, at the Mission Bay Golf Course. In addition to a bar on the patio outside of the clubhouse, they may also use the "Island" that is adjacent to the patio and have a mobile cart service which will allow them to service guests throughout the golf course.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The exceptions listed in CEQA Guidelines Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the action; and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

CITY CONTACT: Jayne Vanderhagen, Associate Property Agent
MAILING ADDRESS: Real Estate Assets Department
1200 Third Avenue, Suite 1700, MS 51A, San Diego, CA 92101
PHONE NUMBER: 619-236-6210

On July 8, 2019, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Contact listed above.

Applications to appeal the CEQA determination to the City Council must be filed in the Office of the City Clerk within 10 business days from the date of the posting of this Notice (**July 22, 2019**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: 7/8/2019

REMOVED: 7/24/2019

POSTED: J. Moore