

CITY OF SAN DIEGO

RIGHT OF ENTRY PERMIT

THIS RIGHT OF ENTRY PERMIT ("Permit") is executed by and between the CITY OF SAN DIEGO, a municipal corporation ("City"), and Lamps Plus, a corporation ("Permittee").

1. Right to Enter. City grants permission to Permittee to enter upon City-owned property located at Lot 10 of Boulevard Gardens, adjacent to 1303 West Morena Blvd. consisting of approximately 11,929 square feet, set forth on the attached Exhibit "A" ("Permit Area"). Permission to enter the Permit Area is conditioned upon the terms set forth in this Permit.
2. Use of Permit Area. Permittee shall have exclusive use of the Permit Area for parking, storage of three (3) large container bins, and three (3) trash dumpsters and for no other purpose. The days and hours of operation and use of the Permit Area will be Permittee's normal business hours. Permittee shall be responsible for the maintenance and use of the Permit Area and shall fence, screen, and secure the Permit Area.
3. Permit Fee. Consideration to City for granting this Permit shall be a one thousand nine hundred eighty-eight dollars 16/100 (\$1,988.16) monthly Permit fee commencing on the Effective Date, as defined below. Permit fees should be made by check payable to the City Treasurer and mailed to the Office of the City Treasurer, P.O. Box 122289, San Diego, CA 92112-4165 or hand delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, CA 92101, on or before the first day of each month. If the Effective Date is not the first day of a calendar month, then the Permit fee shall be pro-rated on a per diem basis for the partial months at the beginning and end of the term. Permit fees postmarked or paid in person after the first of the month will be subject to a late fee of five percent (5%) of the monthly Permit fee if one (1) to fifteen (15) days past due, and to an additional five percent (5%) [for a total of ten percent (10%)] late fee if sixteen (16) or more days past due. In no event shall the late fee be less than sixty dollars (\$60).
4. Term. The term of this Permit is three (3) years. This Permit shall be effective upon execution by City and Permittee, and approval of the City Attorney ("Effective Date").
5. Insurance. Prior to the Effective Date of this Permit, Permittee shall provide City with a certificate of insurance for public liability and property damage which names "The City of San Diego, its elected officials, officers, representatives, agents and employees" as additional insureds, in an amount of not less than two million dollars (\$2,000,000) combined single limit liability with an occurrence claims form. The policy shall be kept in force at all times during the term of this Permit. The certificate of insurance shall be filed with City's Real Estate Assets Department upon execution of this Permit.

6. Hold Harmless. Permittee shall defend, indemnify, protect, 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 employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the grant of this Permit to the Permittee, the development or operation of the Permit Area or the work and operations to be performed under this Permit, and all expenses of investigating and defending against same. 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, its elected officials, officers, representatives, agents and employees.
7. No Discrimination. Permittee shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, 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.
8. Permittee's Risk. All risks in connection with Permittee's use of the Permit Area and any damages to the improvements on, under, or in the vicinity of the Permit Area, shall be borne in full by Permittee.
9. Nuisance. Permittee shall not use the Permit Area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
10. Revocable Permit. This Permit is not a lease. It is a license to use City property, revocable at any time by City. The City shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of this Permit. Permittee waives any claim for expense or loss which Permittee might incur as a result of termination of this Permit.
11. Possessory Interest Tax. Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on the interest. The tax payment shall not reduce any fee paid City under this Permit. Permittee shall pay any tax or assessment before it becomes delinquent.
12. Compliance with Laws. Permittee shall at its sole cost and expense comply with all current and future requirements of all municipal, state, and federal authorities which pertain to the Permit Area.
13. Deposit. Upon execution of this Permit, Permittee shall deliver to the City's Real Estate Assets Department a one thousand two hundred dollar (\$1,200) cash performance deposit.

14. Hazardous/Toxic Waste. Permittee shall not allow the release of hazardous substances in, on, under or from the Permit Area. 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, leeching, dumping or otherwise disposing of hazardous substance. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's office as City Clerk Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance which is caused by Permittee's activities, Permittee shall be responsible for all costs of remediation and removal of such substances in accordance with applicable rules and regulations of governmental authorities.

Permittee agrees to assume the defense of, indemnify and hold City, its elected officials, officers, representatives, agents, and employees harmless from any and all claims, costs and expenses related to environmental liabilities resulting from Permittee's operations on the Permit Area, including, but not limited to costs of environmental assessments, cost of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If Permittee knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, Permittee shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however if Permittee knows, or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, Permittee shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all acts necessary to alleviate such danger. Permittee will notify the City Manager immediately of any notice of violation received or initiation of environmental action or private suits relative to the Permit Area. In addition, Permittee shall not utilize any hazardous substance on the property without the prior written consent of City.

15. Assignment. Permittee shall not assign any rights granted by this Permit or any interest in this Permit without the prior written approval of the City Manager. Approval of any proposed assignment may be withheld in the sole and absolute discretion of the City Manager. Any assignment by operation of law shall automatically terminate this Permit.
16. Signs. No signs shall be displayed on the Permit Area without the prior written consent of the City Manager.
17. Encumbrances. Permittee shall keep the Permit Area free from all encumbrances and liens of any nature during the term of this Permit. Permittee shall defend, hold harmless and indemnify City from and against any and all such encumbrances and/or liens and from and against any claim, liability, cost or expense, including all costs and attorneys' fees which may be filed or instituted 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.

18. Maintenance of the Permit Area. Permittee shall be solely responsible for maintaining the Permit Area in a decent, safe, healthy and sanitary condition at all times during the term of this Permit to the satisfaction of the City Manager.
19. Waiver. The failure of City to insist upon strict performance by Permittee of any condition of this Permit, in one or more instances, shall not be construed as a waiver of any condition, and the condition shall remain in full force and effect.
20. Oral Representations. This Permit contains the complete expression of the agreement between the parties, and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as set forth herein. The conditions of this Permit cannot be changed in any respect except by written agreement between the parties.
21. Permit Fee Adjustment. The Permit fee will be adjusted upward three percent (3%) on an annual basis. The adjustment will take effect on the first day of the first full month following the anniversary date of this Permit.
22. Inspection. City may enter and inspect the operations permitted under this Permit at any time.
23. Legal Fees. In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
24. Notices.

Notices to City shall be mailed to:

City of San Diego

Real Estate Assets Department

Attention: Deputy Director, Asset Management and Marketing Division

1200 Third Avenue, Suite 1700 (MS 51A)

San Diego, CA 92101

Notices to Permittee shall be mailed return receipt to:

Attn: Jerry Bass

Lamps Plus

20250 Plummer Street

Chatsworth, CA 91311

25. Governmental Approvals. By entering into this Permit, neither City nor the council of City is obligating itself to any other governmental agent, board, commission, or agency

with regard to any other discretionary action relating to development or operation of the Permit Area. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Permit Area.

26. Restoration of Permit Area. Upon the expiration or earlier termination of this Permit, Permittee shall at its sole cost restore the Permit Area to the condition that existed prior to the Effective Date of this Permit.
27. Counterparts. This Permit may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.
28. Water Quality – Best Management Practices and Stormwater Pollution Prevention Plan. Permittee shall comply with the Best Management Practices ("BMP") including the Stormwater Pollution Prevention Plan ("SWPPP") approved by City's Stormwater Management Program. At all times during the term of this Permit, Permittee shall control erosion and reduce the amount of pollutants and other sediments discharged from the Permit Area. It is Permittee's responsibility to inform employees, agents, invitees, and vendors of BMP and SWPPP.

This Right of Entry Permit is executed by City, acting by and through its City Manager, and by Permittee, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date: _____

By: _____
Jack D. Farris, Deputy Director
Real Estate Assets Department

LAMPS PLUS, a corporation

Date: _____

By: _____
Jerry Bass, Chief Operating Officer

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

Date: 11/9/05

By: *Michael J. Aguirre*

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date: _____

By: _____
Deputy City Attorney

Site No. _____

BM/cj

11/3/05

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This Right of Entry Permit is executed by City, acting by and through its City Manager, and by Permittee, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date: 12/15/05

By: Jack D. Farris
Jack D. Farris, Deputy Director
Real Estate Assets Department

LAMPS PLUS, a corporation

Date: 12/12/05

By: Jerry Bass
Jerry Bass, Chief Operating Officer

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

Date: 11/9/05

By: Michael J. Aguirre

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date: 12/15/05

By: Hilda P. Hernandez
Deputy City Attorney

Site No. _____

BM/cj
11/3/05
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