

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Duration of Permit.

A. Permission to enter for purposes of project Construction shall begin on October 1, 2012 and shall end on December 31, 2012 unless sooner terminated as provided in this Permit, unless the services to be performed hereunder or the project is completed sooner.

B. Permission to enter for purposes of project Maintenance shall begin on October 1, 2012 and shall end on September 30, 2017 unless sooner terminated as provided in this Permit, unless the services to be performed hereunder or the project is completed sooner.

C. Within fifteen (15) days after expiration or revocation of this Permit, Permittee shall cease entry and shall cause all Permittee Parties to cease entry on the City-owned Property, shall remove all equipment, supplies, and personal property and shall leave the City-owned Property in a clean, neat and safe condition. Any supplies, equipment, and personal property which are not removed with the fifteen (15) day period shall become the property of the City without payment by or liability of any kind on the part of the City.

4. Plans. City shall have the right to review and approve all final construction documents and/or plans in its capacity as a party to this Agreement, separate from and in addition to its right as a municipality acting through its Department of Public Works to review and approve those plans.

5. Insurance. As a condition precedent to the effectiveness of this Permit, Permittee shall provide evidence of insurance equal to the following insurance coverage:

(a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than \$1,000,000 per occurrence or \$2,000,000 general aggregate. The coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. The City, its officers, employees and

1 agents shall be named as additional insureds by endorsement (on the City's
2 endorsement form or on an endorsement equivalent in scope to ISO form CG 200 10 11
3 85 or CG 20 26 11 85), and this insurance shall contain no special limitations on the
4 scope of protection given to the City, its officers, employees and agents.

5 (b) Workers' compensation insurance as required by the California
6 Labor Code and employer's liability insurance in an amount not less than \$1,000,000 per
7 accident.

8 (c) Commercial automobile liability insurance (equivalent in scope to
9 ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount not less
10 than \$500,000 combined single limit per accident.

11 Any self-insurance program, self-insured retention, or deductible must be
12 separately approved in writing by City's Risk Manager or designee and shall protect the
13 City, its officials, employees and agents in the same manner and to the same extent as
14 they would have been protected had the policy or policies not contained retention or
15 deductible provisions. Each insurance policy shall be endorsed to state that coverage
16 shall not be reduced, non-renewed, or canceled except after thirty (30) days prior written
17 notice to City, and shall be primary and not contributing to any other insurance or self-
18 insurance maintained by the City. Permittee shall notify the City within five (5) days after
19 any insurance required in this Permit has been voided by the insurer or canceled by
20 Permittee.

21 Permittee shall require that all Permittee Parties maintain insurance in
22 compliance with this Section unless otherwise agreed in writing by City's Risk Manager or
23 designee.

24 Prior to entry on City-owned Property, Permittee shall deliver to City
25 certificates of insurance or self-insurance and required endorsements, including any
26 insurance required by Permittee Parties, for approval as to sufficiency and form. The
27 certificates and endorsements shall contain the original signature of a person authorized
28 by that insurer to bind coverage on its behalf. In addition, Permittee shall at least thirty

1 (30) days prior to expiration of this insurance furnish to the City evidence of renewal of
2 the insurance. City reserves the right to require complete certified copies of all policies of
3 insurance at any time. Permittee and Permittee Parties shall make available to the City,
4 during normal business hours, all books, records and other information relating to the
5 insurance required in this Permit.

6 Any modification or waiver of these insurance requirements shall only be
7 made by the City's Risk Manager or designee, in writing. The procuring or existence of
8 insurance shall not be construed or deemed as a limitation on liability or as full
9 performance with the indemnification provisions of this Permit.

10 Notwithstanding any other provision of this Permit, if Permittee or an
11 Permittee Party fails to comply with this Section, the City may immediately revoke this
12 Permit and the permission granted by this Permit.

13 6. Permittee's Indemnification of City. Permittee shall indemnify,
14 defend and hold the City, its officers and employees harmless from all liability, loss,
15 damage, claims (including claims under Section 6 for which Permittee has agreed that
16 the City is not liable), demands, penalties, fines, proceedings, causes of action, taxes,
17 assessments, costs, and expenses (including attorney's fees and experts' fees) arising
18 from the right to enter granted by this Permit and the activities of Permittee Parties on the
19 City-owned Property under this Permit. This indemnity shall survive the expiration or
20 revocation of this Permit.

21 7. Non-Responsibility of City. City, its officers and employees shall not
22 be responsible or liable for loss or damage by theft, fire, flood, burglary, vandalism or any
23 other cause to the supplies, equipment or other personal property of Permittee Parties in
24 or on the City-owned Property, except to the extent caused by the gross negligence of
25 the City, its officers or employees. By executing this Permit and in consideration for
26 being allowed entry to the City-owned Property, Permittee waives all claims against the
27 City, its officers or employees for such loss or damage.

28 ///

1 8. No Title. Permittee and City acknowledge and agree that, by this
2 Permit, Permittee does not acquire any right, title or interest of any kind in the City-owned
3 Property, including but not limited to any leasehold interest. Permittee shall not allow the
4 City-owned Property to be used by anyone other than a Permittee Party or for any other
5 purpose than stated in this Permit. Notwithstanding any language to the contrary in this
6 Permit, if a court of competent jurisdiction deems this Permit to be a lease, then
7 Permittee waives any right of redemption under any existing or future law in the event
8 that the City removes it from the City-owned Property and agrees that, if the manner or
9 method used by the City in ending any right held by Permittee under this Permit gives to
10 Permittee a cause of action similar to or based on damages that would otherwise arise in
11 connection with unlawful detainer, then the total amount of damages to which Permittee
12 would be entitled in such action shall be One Dollar. Permittee agrees that this Section
13 may be filed in such action and that, when so filed, it shall be a stipulation by Permittee
14 fixing the total damages to which Permittee is entitled in such action.

15 9. No Assignment. Permittee shall not assign this Permit or the
16 permission granted by this Permit. Neither this Permit nor any interest in it shall be
17 subject to transfer by attachment, execution, proceedings in insolvency or bankruptcy, or
18 receivership. Any attempted assignment or other transfer that is not approved by the City
19 Manager shall be void and confer no right of entry on the purported assignee or
20 transferee.

21 10. Condition After Entry. After the entry of any Permittee Party on the
22 City-owned Property, Permittee shall return the City-owned Property in as good condition
23 or better condition as the City-owned Property was in prior to such entry, reasonable
24 wear and tear excepted.

25 11. Notice. Any notice or approval given under this Permit shall be in
26 writing and personally delivered or deposited in the U.S. Postal Service, registered or
27 certified, return receipt, to the City of Long Beach, Department of Parks, Recreation and
28 Marine, 2670 N. Studebaker Road, Long Beach, CA 90815 Attn: Director. Notice shall be

1 deemed given on the date personal delivery is made or on the date shown on the return
2 receipt, whichever first occurs.

3 12. Consideration. This Permit is granted in consideration for
4 Permittee's improvement and maintenance of a park parcel at no cost to the City.

5 13. Improvements. Permittee Parties shall not install, construct, erect or
6 maintain any structure or improvements on the City-owned Property except as described
7 in this Permit. At the expiration or revocation of this Permit, all improvements to City-
8 owned Property made pursuant to this Permit shall become the sole property of the City,
9 at no charge.

10 14. No Limitations on City. The Permit shall not limit the City's right or
11 power to construct, erect, build, demolish, move or otherwise modify any structures,
12 buildings, landscaping or any other type of improvement on, over, in, or under the City-
13 owned Property.

14 15. No Release. The expiration or revocation of this Permit shall not
15 release either party from any liability or obligation which accrued prior to such expiration
16 or revocation.

17 16. Utilities and Security. Permittee shall not use any City utilities at any
18 time during this Permit without prior written authorization from the City Manager or his
19 designee. The City shall not have any obligation to Permittee to provide utilities, clean-up,
20 or security on the City-owned Property with respect to the right of entry granted by this
21 Permit. Permittee shall remove all graffiti, trash, and debris from the site within forty-eight
22 (48) hours.

23 17. Nondiscrimination. In exercising its right of entry and use of the City-
24 owned Property, Permittee shall not discriminate on the basis of race, color, religion,
25 national origin, sex, sexual orientation, age, HIV status, disability or handicap.

26 18. Compliance with Laws. Permittee Parties shall comply with all
27 applicable laws, rules, regulations and ordinances with respect to their activities on the
28 City-owned Property.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

19. Miscellaneous.

A. This Permit shall be governed by and construed in accordance with the laws of the State of California.

B. If any part of this Permit shall be held by a court of competent jurisdiction to be invalid, void or unenforceable, then the remainder of the Permit shall remain in full force and effect and shall not be affected, impaired or invalidated.

C. This Permit may only be amended by a written agreement, signed by the City and Permittee after authorization by City's City Council.

D. This Permit contains the entire understanding of the City and Permittee and supersedes all other agreements, oral or written, with respect to the subject matter of this Permit.

E. On the expiration or revocation of this Permit, Permittee agrees to and shall execute such documents, in recordable form if so requested, as the City deems reasonably necessary to end the Permit and remove the Permit as an encumbrance on the City-owned Property.

F. In any action or proceeding to enforce or interpret or revoke this Permit, the prevailing party shall be entitled to attorney's fees and costs.

G. The failure or delay of the City to insist on strict compliance with the provisions of this Permit shall not be deemed a waiver of any right or remedy that City may have and shall not be deemed a waiver of any subsequent or other failure to comply with any provision of this Permit.

H. This Permit is not intended or entered for the purpose of creating any benefit or right for any person or entity that is not a signatory or an Permittee Party.

///
///
///

1 IN WITNESS WHEREOF, the parties have executed this Permit on the
2 respective dates set forth opposite their signatures.

3
4 EAST ANAHEIM STREET BUSINESS
ALLIANCE

5 10-13-12, 2012

By William E. Lisy

6 Name WILLIAM LISY

7 Title BOARD MEMBER - EASBA

8
9
10 10-16, 2012

By Paul

11 Name ROD WILSON

12 Title PRESIDENT - EASBA

13
14 "Permittee"

15 CITY OF LONG BEACH, a municipal
16 corporation

17 Nov 9, 2012

By [Signature] Assistant City Manager
City Manager

18
19 "City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

20 This Right of Entry Permit is approved as to form on
21 Oct. 25, 2012.

22 ROBERT E. SHANNON, City Attorney

23 By [Signature]
24 Deputy

25
26
27
28
OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

