

CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and FRANK KONYN ("PERMITTEE"), to be effective May 1, 2013 ("Effective Date") after the Permit has been signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. CITY is the owner of certain real property ("City Property"), located in the City of San Diego, San Pasqual Valley consisting of an area of approximately 141 acres, as shown in EXHIBIT A ("Permit Area"), attached hereto.
- B. Under the terms and conditions of this Permit, CITY will allow PERMITTEE to use the Permit Area for the sole purpose of cultivation of hay for livestock and for other related agricultural activities specifically in support of the cultivation of hay crops.
- C. Nothing in this Permit implies an intention by CITY to enter into a long-term agreement to continue the Permitted Use after the term of this Permit expires.

NOW, THEREFORE, for valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. **Right to Enter.** Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its employees, agents, and contractors to enter upon the City Property solely for the purpose of cultivation of hay and related agricultural activities specifically in support of the cultivation of hay crops, (the "Permit Use"), and for no other purpose whatsoever.
- 2. **Use of Permit Area.** PERMITTEE may use the Permit Area on a non-exclusive basis solely for the purposes of the Permit Use. PERMITTEE shall obtain all related permits and comply with all applicable environmental laws, rules, and regulations related to the Permit Use.
- 3. **Permit Fee.** The annual Permit Fee will be \$21,150.00, or \$150.00 per acre per year, to be paid monthly in advance at \$1,762.50 per month.
- 4. **Late Fee.** If PERMITTEE fails to pay the Permit Fee when due, PERMITTEE will pay, in addition to the unpaid Permit Fee, five percent (5%) of the delinquent Permit Fee. If the Permit Fee is still unpaid at the end of fifteen (15) days, PERMITTEE shall pay an additional ten percent (10%) [being a total of fifteen percent (15%)] of the delinquent Permit Fee.

5. Term. The term of this Permit ("Term") shall commence on the Effective Date, and shall terminate on or before April 30, 2016.
6. Permit Termination. Upon termination of this Permit, PERMITTEE shall remove from the Permit Area any farm related equipment and additional water conveyance systems added as a result of this Permit and shall leave the Permit Area in a natural smooth surface condition.
7. Revocable Permit. This Permit is not a lease. It is a non-exclusive license to use CITY property, and may be revoked with a 180 days written notice by CITY, in its sole discretion. CITY shall not be obligated for any 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 for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit. CITY may at all times enter upon the Permit Area.
8. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided.
9. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Permit Area or PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the PERMITTEE'S use of the Permit Area.
10. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area or the City Property. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area or the City Property without CITY'S prior written consent. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "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 of California's list of hazardous substances.
 - 10.1 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 of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.
 - 10.2 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 but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

- 10.3 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area or the City Property, PERMITTEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area or the City Property.
- 10.4 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property ("PERMITTEE'S Operations"), resulted in any hazardous substance being released on or beneath the Permit Area or the City Property, CITY may cause an environmental assessment 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 Operations on, in, or under the Permit Area or the City Property, 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, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect 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, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor.
11. Noninterference. PERMITTEE shall not materially interfere with CITY'S use, operations, and activities on the City Property, and PERMITTEE shall use such routes and follow such procedures on, over or through the City Property to access the Permit Area as shall result in the least damage and inconvenience to CITY and other users of the City Property.
12. Property Damage. PERMITTEE shall pay for all damage to the City Property, CITY'S personal property on the City Property, and the personal property of third parties on the City Property resulting from PERMITTEE'S exercise of the rights granted by this Permit, including without limitation soil erosion, subsidence, or damage resulting thereby. PERMITTEE shall promptly repair and restore to its original condition all such property.

13. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance or restoration of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole gross negligence or sole willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
14. Taxes. PERMITTEE, alone, shall pay any and all taxes, charges, and use fees levied by any governmental agency against PERMITTEE or against any of the City Property as a result of PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property.
15. Encumbrances. PERMITTEE shall keep the City Property free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S use of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the City Property, 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.
16. 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 City Property, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
17. 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 of the City Property and any damages to the improvements on, under, or in the vicinity of the City Property resulting directly or indirectly thereby.
18. Insurance. PERMITTEE shall deliver to CITY'S Real Estate Assets Department a current certificate of insurance for:

- a. Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000);
 - b. Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and
 - c. Workers' Compensation Insurance, as required by the laws of the State of California for all of PERMITTEE'S employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).
- 18.1. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
- 18.2. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.
- 18.3. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 18.4. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 18.5. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for

any reason, PERMITTEE shall immediately notify CITY and obtain replacement insurance as soon as possible.

- 18.6. Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use or the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term 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 Permit Use or the Permit Area.
- 18.7. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the Permit Use or the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 18.8. 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 Permit Use or the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver to CITY a certificate of such insurance.
19. Compliance with Law. PERMITTEE shall, at his sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area and PERMITTEE'S Operations on the Permit Area.
20. Competent Management. For the Term of this Permit, PERMITTEE shall provide competent management of the Permit Area to the satisfaction of the Mayor. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of pasture lands/cultivation of hay, using sustainable agricultural and best management practices whenever possible, and related activities in a fiscally responsible manner.
21. Water Rights. CITY reserves all of its right, title and interest in and to the water on the Permit Area. There is hereby reserved to CITY, and PERMITTEE herein expressly agrees that CITY shall have the right throughout the Permit Term, the right to divert, impound, store and transport by means of dams, reservoirs, or by pumping any and all water, both surface and underground, which flow over, under or across the Permit Area, together with the right to divert, inject, spread or percolate water in or through the soils beneath the surface of the Permit Area. Nothing in this Permit shall result in the transfer of the CITY'S rights, title or interest in the water on the Permit Area to any other person or entity.
22. Payment for Right to Use Water. It is understood and agreed by CITY and PERMITTEE that the Permit Fee includes and covers PERMITTEE'S right to pump and use water from

any wells servicing the Permit Area, for the uses set forth in Section 1, Right to Enter. All costs associated with water usage shall be the responsibility of the PERMITTEE. However, if in the opinion of the Mayor an additional water charge is deemed warranted for underground water pumped from wells, the CITY shall notice PERMITTEE six months prior to implementation of the additional water charge. The additional water charge shall be a percentage of the cost of untreated water and will be determined solely by the Mayor who shall have the right to periodically adjust the charge upward or downward to reflect changes in the cost of untreated water as determined by the CITY'S Public Utilities Department. The Permit Fee may be adjusted to reflect additional water charge. All costs associated with the use of ground water shall be at PERMITTEE expense.

23. Water Payment Formula. The cost for ground water shall be reviewed and adjusted, if necessary, each year on January 1, unless determined otherwise in compliance with section 21 above. The cost for water will be the San Diego County Water Authority (CWA) raw water cost to the CITY, and take into consideration credit for water pumping cost, infrastructure costs related to the well, water returned to groundwater, and water quality. Pumping cost shall be the utility cost to bring the water to the well head at 40-60 pounds per square inch (PSI). Infrastructure cost is the cost of maintaining the pump and well. Water quality relates to the quality of water, location in the valley, and approved leasehold use.
24. PERMITTEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites. PERMITTEE understands and agrees that, in connection with the establishment of the San Dieguito River Valley Park trail system, sensitive resource sites as well as environmental, historical, and cultural resources may be identified along the proposed trail system or elsewhere on the Permit Area. PERMITTEE agrees that it shall be responsible for protecting such sites and resources to the extent reasonably feasible and, if required by CITY, would include Permit Area boundary fencing. However, if additional measures for protecting the site are required, the installation and maintenance costs involved shall be the sole responsibility of CITY or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park trail system.
25. Signs. No signs other than customary notice signs are allowed unless pre-approved in writing by the Mayor.
26. Maintenance of the Permit Area. PERMITTEE shall maintain the Permit Area, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, in a decent, safe, healthy and sanitary condition. PERMITTEE is responsible for excluding unauthorized and unwanted activities from the Permit Area, including but not limited to off-highway vehicles, trespass, encroachment, and trash dumping. In addition to the Permit Use, the PERMITTEE shall provide appropriate fencing, gates, and monitoring of the CITY property for protection from unauthorized access and unwanted activity.
27. Inspection. CITY may, at any and all times, enter and inspect the Permit Area.

28. 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 publicly-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or to 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.
29. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
30. Entire Permit. This Permit contains the entire agreement between the parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Permit shall be valid unless in writing and signed by all parties.
31. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight service, or delivery by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

CITY:

The City of San Diego
Real Estate Assets Department
Attention: Department Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

PERMITTEE:

Frank Konyn
15777 Old Milky Way
Escondido, California 92027

32. Authority. 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.

Date: 4/23/13

THE CITY OF SAN DIEGO, a California municipal corporation

BY: Bob Filner
Name: BOB FILNER
Title: MAYOR

Date: 4-18-13

FRANK KONYN, an individual

BY: [Signature]
Name: FRANK KONYN
Title: OWNER

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is CATEGORICALLY EXEMPT FROM CEQA
PURSUANT TO CEQA SECTION 15301.

Date: 4/18/13

BY: Nicole A. McGinnis
Name: NICOLE A. MCGINNIS
Title: SENIOR PLANNER

Approved as to form and legality this
13th day of May, 2013.

JAN I. GOLDSMITH, City Attorney

BY: [Signature]
Debra J. Bevier, Deputy City Attorney

Exhibit “A”



EXHIBIT A

141 acres

 Permit Boundary



Map Date: 04/11/13
Aerial Image Date: 2009
READ/sat