



County of San Diego

DONALD W. TURKO
DIRECTOR

DEPARTMENT OF HUMAN RESOURCES
RISK MANAGEMENT
5530 OVERLAND AVENUE, SUITE 210, SAN DIEGO, CALIFORNIA 92123

(858) 694-3800
FAX (858) 694-3834

STATEMENT OF COVERAGE

It is hereby certified that the County of San Diego is self-insured for Commercial General Liability, Commercial Auto Liability and Workers' Compensation. Claims are processed and administered in accordance with the California Government Code, California Vehicle Code and California Labor Code.

This Statement is issued at the request of the person or organization named below as a matter of information only and confers no rights upon the holder of this Statement. This Statement does not amend, extend or alter the self-insured program of the County of San Diego.

City of San Diego – Real Estate Assets Department
Attn: Heide E. Farst, CSM | Property Agent
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101

This statement is issued as respects:

Agreement between the City of San Diego and County of San Diego for placement of Near-Road NO2 Monitoring Trailer at 11403 Rancho Carmel Road, San Diego, California

This Statement is not valid unless signed by an authorized representative of the County of San Diego.

October 28, 2013
Date

Susan Eldridge
Senior Risk & Insurance Analyst

For information regarding above, please contact the Risk Management Division at (858) 694-3748.

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 **SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT**, a county air pollution control district continued in existence pursuant to Health and Safety Code Section 40000 et seq. ("PERMITTEE"), to be effective as of January 6, 2014 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

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

1. **Definitions.** As used in this Permit, the following terms shall be defined as follows:
 - 1.1 **"Permit Area"** shall mean a certain area at the City of San Diego Public Utilities Department Pump Station located at 11403 Rancho Carmel Drive, San Diego, California 92128, to accommodate an 8 foot by 10 foot trailer located inside a 6 foot high, 20 foot by 20 foot security fence and more particularly described in **Exhibit A: Permit Area**, attached hereto.
 - 1.2 **"Permit Fee"** shall mean a one-time, non-refundable permit processing fee in the amount of Seven Hundred Twenty-Seven Dollars (\$727).
 - 1.3 **"Permit Use"** shall mean the nonexclusive use of the Permit Area solely for a Near Road NO2 Monitoring Station ("Station"), to be provided and maintained by PERMITTEE at PERMITTEE's sole cost and expense. The Permit Area shall be restricted to use by PERMITTEE and its designated representatives and subject to entry by CITY pursuant to Section 16 below. Access to any other persons shall be denied without permission of both PERMITTEE and CITY. The Station shall consist of instruments which passively sample ambient air and environmental conditions.
 - 1.3.1 PERMITTEE shall not allow any person to clean vehicles or perform any mechanical work on any vehicles within the Permit Area.
 - 1.3.2 PERMITTEE shall install and maintain, at PERMITTEE's sole cost and expense, a non-permanent perimeter fence around the Permit Area in good repair and condition. Any damage to the fence shall be promptly repaired by PERMITTEE, at PERMITTEE's sole cost and expense, to CITY's reasonable satisfaction.

1.4 **"PERMITTEE's Address for Notices"** shall be:

The San Diego County Air Pollution Control District
Attention: Robert J. Kard, Air Pollution Control Officer
10124 Old Grove Road
San Diego, CA 92131

1.5 **"Term"** shall mean three (3) years, commencing on the Effective Date.

2. Occupancy. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE and its officers, employees, agents and contractors to enter upon and occupy the Permit Area solely for the Permit Use.
3. Use of Permit Area. PERMITTEE may use the Permit Area solely for the Permit Use and for no other purpose whatsoever without CITY's written consent in each instance. PERMITTEE shall continuously occupy and use the Permit Area throughout the Term.
4. 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.
5. CITY's Consent, Discretion. CITY's consent or approval under this Permit shall mean the written consent or approval of CITY's Mayor, or his or her designee ("Mayor"), unless otherwise expressly provided herein or required by law. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided herein or required by law.
6. Term. The Term may be extended by agreement of the parties; however, the Term shall not exceed three (3) years unless authorized by the San Diego City Council.
7. Revocable License. This Permit is not a lease. It is a non-exclusive license to use CITY property, and may be revoked at will by CITY, in its sole discretion, upon thirty (30) days prior written notice delivered to PERMITTEE. 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.
- 7.1 PERMITTEE's Waiver. PERMITTEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which PERMITTEE incurs as a result of CITY's revocation or termination of this Permit.

8. No Holdover. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area.
9. Termination. PERMITTEE may terminate this Permit for any reason upon thirty (30) days prior written notice delivered to CITY.
10. Restoration of Permit Area. Except as otherwise provided in this Permit, prior to the expiration or as soon as practicable after termination of this Permit, PERMITTEE shall restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted.
11. 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 Permit Area, whether or not of record. PERMITTEE shall obtain all licenses, permits and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area, relative to any such superior interest. If PERMITTEE's use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
12. Permit Fee. PERMITTEE shall pay the Permit Fee to CITY upon execution of this Permit.
13. Rent. There is no rent due from PERMITTEE to CITY under this Use and Occupancy Permit.
14. Place of Payment. All payments to be paid by PERMITTEE under this Permit shall be made payable to "City Treasurer" and be mailed to:

The City of San Diego
Real Estate Assets Department
Attention: Heide E. Farst, CSM
1200 Third Avenue, 17th Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to PERMITTEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

15. Maintenance of the Permit Area. PERMITTEE shall, at PERMITTEE's sole cost and expense and to CITY's satisfaction, maintain the Permit Area in good order and repair and in a safe, healthy and sanitary condition at all times during the Term. CITY shall not be required to make any improvements or repairs to the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris and litter at all times. PERMITTEE shall

keep the Permit Area free and clear of weeds and brush as reasonably directed by CITY and to CITY's reasonable satisfaction.

16. Inspection. CITY may at all times enter and inspect the Permit Area.
17. Utilities. PERMITTEE shall order, obtain and pay for all utilities and service and installation charges in connection with its use of the Permit Area.
18. Improvements/Alterations. Except as described in the 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. 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.
19. Improvements and Personal Property.
 - 19.1 Improvements. Upon expiration or termination of this Permit, PERMITTEE shall remove any and all improvements, fixtures, structures and installations or additions to the Permit Area that were constructed or installed on the Permit Area by PERMITTEE ("PERMITTEE Improvements"). PERMITTEE shall, at PERMITTEE's sole cost and expense, remove PERMITTEE Improvements as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Permit. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of PERMITTEE Improvements as required by this Permit. If PERMITTEE fails to remove PERMITTEE Improvements as required, CITY may, at its option, remove them at PERMITTEE's sole cost and expense.
 - 19.2 Personal Property. PERMITTEE shall remove from the Permit Area all PERMITTEE-owned fencing, machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Permit. Any such items which PERMITTEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at PERMITTEE's sole cost and expense. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Permit Area.
 - 19.3 Post-Permit License. CITY grants permission to PERMITTEE to enter upon and occupy the Permit Area after the expiration or earlier termination of this Permit solely for the purpose of promptly removing PERMITTEE Improvements and PERMITTEE's personal property as provided by this Permit. This provision shall survive the expiration or earlier termination of this Permit.

20. Insurance. PERMITTEE represents and warrants to CITY that it is self-insured in accordance with applicable law, and shall pay all claims related to this Permit or PERMITTEE'S use of the Permit Area that would be covered by a third-party insurance company in the usual course of business as shown below. PERMITTEE shall deliver to CITY upon request evidence of PERMITTEE'S ability to self-insure, in form and content reasonably satisfactory to CITY.
- 20.1 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.
21. Indemnification and Hold Harmless. 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 established liability arising from the gross negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives and agents.
22. Compliance with Laws. PERMITTEE shall at all times in its use and occupancy of the Permit Area comply with all applicable laws, rules and regulations and direction by competent governmental authorities, and all at PERMITTEE'S sole cost and expense. 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 inspection of PERMITTEE'S fire-suppression equipment in the Permit Area).
23. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided by PERMITTEE pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). PERMITTEE shall hold CITY and its elected officials, officers and employees harmless for CITY'S disclosure of any such information in response to a request for information under the CPRA.
24. No Discrimination. PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status or disability in PERMITTEE'S use of the Permit Area, including without limitation the provision of goods, services, facilities, privileges, advantages and accommodations, and the hiring and retention of employees and contractors.

25. 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.
26. 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.
27. Disabled Access Compliance. PERMITTEE shall comply with Title 24 of the California Code of Regulations (i.e., the "Building Code", as defined in Title 24 of the California Health and Safety Code); the Americans with Disabilities Act of 1990 ("ADA"); and any other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. PERMITTEE's compliance shall include without limitation the following:
- a. PERMITTEE shall not discriminate against qualified persons 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;
 - b. 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;
 - c. PERMITTEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
 - d. Where required by law, PERMITTEE shall, at PERMITTEE's sole cost and in conformance with all applicable building codes, comply with applicable disabled-access requirements by making accessible any areas of the Permit Area which deny access to disabled persons; and

- e. PERMITTEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.

PERMITTEE and each of its sublicensees shall be individually responsible for their own ADA compliance program. PERMITTEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Permit.

28. 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 San Diego City Council related to the selection of PERMITTEE for this Permit. It is not the intent of this policy that these provisions apply to members of the City Council.
29. 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.
30. 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 any damages to the improvements on, under or in the vicinity of the Permit Area resulting directly or indirectly thereby subject to the limitations in Section 21 above.
31. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
32. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's written consent in each instance. Any assignment by operation of law shall automatically terminate this Permit.
33. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at PERMITTEE's cost.
34. Encumbrances. PERMITTEE shall keep the Permit Area and the property of which it is a part (the "Property") free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with PERMITTEE'S use or

occupancy 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 Property, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to lien or encumber the Property pursuant to the California Civil Code.

35. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon PERMITTEE or the Permit Area during the Term, 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 PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, including without limitation licensing and permitting costs and fees. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE's payment for such taxes, fees and assessments shall not reduce any payment due CITY.
36. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of 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.
- 36.1 Release. 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.
- 36.2 Hazardous Substance. "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.
- 36.3 Remediation. If PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area ("PERMITTEE's Operations") 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.

- 36.4 Removal. If PERMITTEE or PERMITTEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Permit Area, PERMITTEE and/or PERMITTEE's contractor or 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.
- 36.5 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 Operations, 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.
- 36.6 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.
- 36.7 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's Operations 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 Operations on, in, from or under 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 therefor.

- 36.8 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 the City of San Diego's precious water resources. PERMITTEE shall 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 Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"). PERMITTEE shall, at minimum, implement and comply with the BMPs adopted under San Diego Municipal Code Section 43.0307(a). PERMITTEE shall be responsible for preventing pollutant discharges to the storm drain system. Therefore, PERMITTEE shall identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.
37. Waiver. The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of PERMITTEE's obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in 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 acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.

38. 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.
39. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
40. 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.
41. 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.
42. Entire Agreement. This Permit represents the entire agreement between the parties for PERMITTEE's use and occupancy of the Permit Area, and supersedes all prior negotiations, representations or agreements concerning same, either oral or written. Each party represents and warrants that this Permit is binding upon such party in accordance with its terms.
43. 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.
44. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE at PERMITTEE's Address for Notices, and to CITY as follows:

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

45. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are 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. Each party which is not a natural person represents and warrants that it is a valid government agency, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that it is qualified to do business in California.

46. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Use. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition. PERMITTEE acknowledges and agrees that unless set forth in this Permit, CITY has no obligation to improve, modify, repair, replace, alter 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, including without limitation PERMITTEE's employees, from any defects in the Permit Area, and shall be solely responsible therefor, subject to the limitations in Section 21 above.

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

SAN DIEGO COUNTY AIR POLLUTION
CONTROL DISTRICT, a county air pollution control
district continued in existence pursuant to Health and
Safety Code Section 40000 et seq.

Date: Nov 27, 2013

BY: _____

Name: Robert J. Kard

Title: Air Pollution Control Officer

THE CITY OF SAN DIEGO, a California municipal
corporation

Date: 12/2/13

BY: _____

Name: James F. Barwick, CCIM

Title: Director, Real Estate Assets

[Additional signatures on following page.]

Approved As To Form And Legality
JAN I. GOLDSMITH

BY: _____

DATE 1/6/14

NAME: Jeremy Fonseca

TITLE: Deputy City Attorney

Page 12

APPROVED AS TO FORM AND LEGALITY
COUNTY CLERK

BY: _____

SEAL OF THE COUNTY

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 515301, 15306, 15311

Date: 12/26/13

BY:

Name:

Title:

Approved as to form and legality this _____ of
_____, 20____:

JAN I. GOLDSMITH, City Attorney

BY: _____

Name: _____

Title: _____

Exhibit A: Permit Area

I:\Support Staff Group\WPO\2013\FARST\SD County Air Pollution Control District Permit1.docx

[The remainder of this page intentionally left blank]

Exhibit A: Permit Area



Exhibit A
Permit Area

APN 313-020-35



SGIS

Map Date: 05/17/11
Aerial Image Date: 2011
REALM