

Encroachment Permit for Park & Ride Facility #4 to allow Park Use

The purpose for this Encroachment Permit (EP) is to convey immediate access/authorize the City of San Diego (City) to initiate development of a park (Park) on the portion of a parcel (Exhibit A) located immediately east of and adjacent to the improved "Park & Ride Facility #4" (P&R#4), as described in Exhibit B. This EP identifies specific agreements reached between the City of San Diego (CITY) and the State of California, Department of Transportation (STATE) concerning the continued operation of the existing P&R#4, as well as, permitting the development and operation of the Park. This EP action is authorized by the Streets and Highways Code section 670 et seq.

RECITALS:

1. This Encroachment Permit will be issued by STATE to CITY, in reference to CITY Document No. RR-278439, (Cooperative Agreement between CITY the STATE, signed on July 30, 1991) authorizing STATE tenancy of 20 years which will expire on July 29, 2011. This EP will expire at such time as an appropriate permanent replacement agreement between CITY the STATE can be executed, or until July 29, 2011, which-ever occurs first.
2. This EP outlines and clarifies issues that specifically pertain to the construction and operation of a Park. This EP may be amended by the parties in writing.

STATE AGREES:

1. STATE shall allow CITY to construct the Park on the unimproved portion of P&R#4 and shown as "Future Stage II" on Exhibit B. The STATE has no plans to expand the existing P&R#4 to include the unused and unimproved Park portion of the site.
2. STATE shall designate 21 parking spaces in the existing P&R#4 site specifically for Park users.
3. STATE shall continue to operate the existing improved P&R#4 site, except for the duties agreed to be performed by CITY listed in CITY AGREES Section 4.
4. STATE shall notify CITY in a timely manner of any unsafe or hazardous condition which may arise in the P&R#4 as a consequence of Park's operation.
5. STATE will continue to operate the P&R#4 facility, perform periodic site inspections and conduct facility usage inventories.

6. STATE agrees to defend, indemnify, protect, and hold CITY, its officers, 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 STATE's employees, invitees, guests, agents, or officers, which might arise out of or are in any manner directly or indirectly connected with STATE's use of the P&R#4 site. STATE'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 officers, and employees.

CITY AGREES:

1. CITY shall allow STATE to review Park development plans for circulation, compatibility, and accessibility related to the operation of the P&R#4 facility. STATE will not have either Park plan approval or endorsement authority.
2. CITY shall construct a fence to separate P&R#4 from the Park, and will include a pedestrian walkway between the two.
3. CITY shall erect signage in P&R#4 facility designating the 21 specific Park parking spaces; this will include warning signs that prohibit skateboarding within the P&R#4 facility.
4. As part of Park operations, CITY shall accept responsibility and expense of certain duties related to the maintenance of P&R#4 facility, which will include payment for water and electric utility expense, maintenance of surface paving and delineation, lighting, landscape, and trash removal.
5. CITY shall return the Park area to STATE for park & ride purposes in the event the Park is permanently closed.
6. CITY agrees to defend, indemnify, protect, and hold STATE, its officers, 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 CITY's employees, invitees, guests, agents, or officers, which might arise out of or are in any manner directly or indirectly connected with CITY's Park use of the P&R#4 site. CITY'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 STATE, its, and employees.

IT IS MUTUALLY AGREED:

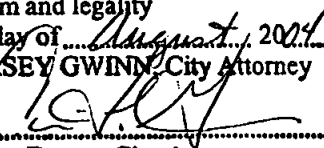
1. CITY and STATE shall work toward producing a permanent agreement document that will extend the Park expiration date to 20 years. This agreement should include all other CITY-owned/STATE-maintained park and ride facilities, including P&R#4.

2. The parties hereto hereby agree to execute such other documents and to take such other action as may be needed or required to effectuate the terms, condition, covenants, and provisions of this EP.
3. Time is expressly declared to be of the essence for terms and conditions of this EP.
4. The parties have entered into this EP in the State of California. This EP shall be interpreted and enforced under California law.
5. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provisions hereof. This EP may be amended only by a written agreement executed by the parties in interest at the time of the modification.
6. If any term, covenant, condition or provision of this EP is held to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect.
7. The parties hereto and each of them, represent and declare that in executing this EP, they rely solely upon their own judgement, belief, and knowledge and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights, claims, or consequences of this EP, and that they have not been influenced to any extent whatsoever in executing the same by any of them.
8. The parties hereto, and each of them, further represent and declare that they have carefully read this EP and they know the contents thereof, and that they signed the same freely and voluntarily.
9. The parties hereby represent that they have not previously assigned, transferred, or purported to have assigned or transferred in any manner, the claim held by it, him or her against the other party. Each party agrees to indemnify and hold harmless the other, and pay the other's attorneys' fees in the event that any individual or entity asserts a purported written assignment of a claim from the party to that individual or entity.
10. Each party acknowledges and agrees that this EP has been prepared by the mutual parties and reviewed by each of them, and therefore shall not be construed against any party because that party's representative drafted the EP or any portion of it.

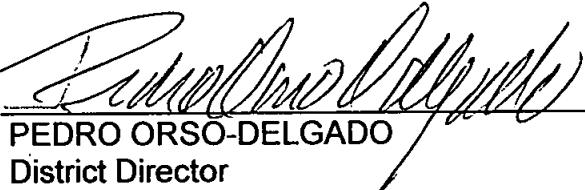
IN WITNESS HEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT AS OF THE DATE AND YEAR SET FORTH BELOW.

THE CITY OF SAN DIEGO

By:  Date: 8/13/04
JACK D. FARRIS, Deputy Director
Assets Management Division

Approved as to form and legality
this 17th day of August, 2004
CASEY GWINN, City Attorney
By: 
Deputy City Attorney

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By:  Date: 7/28/04
PEDRO ORSO-DELGADO
District Director

Attachments: Exhibits A & B

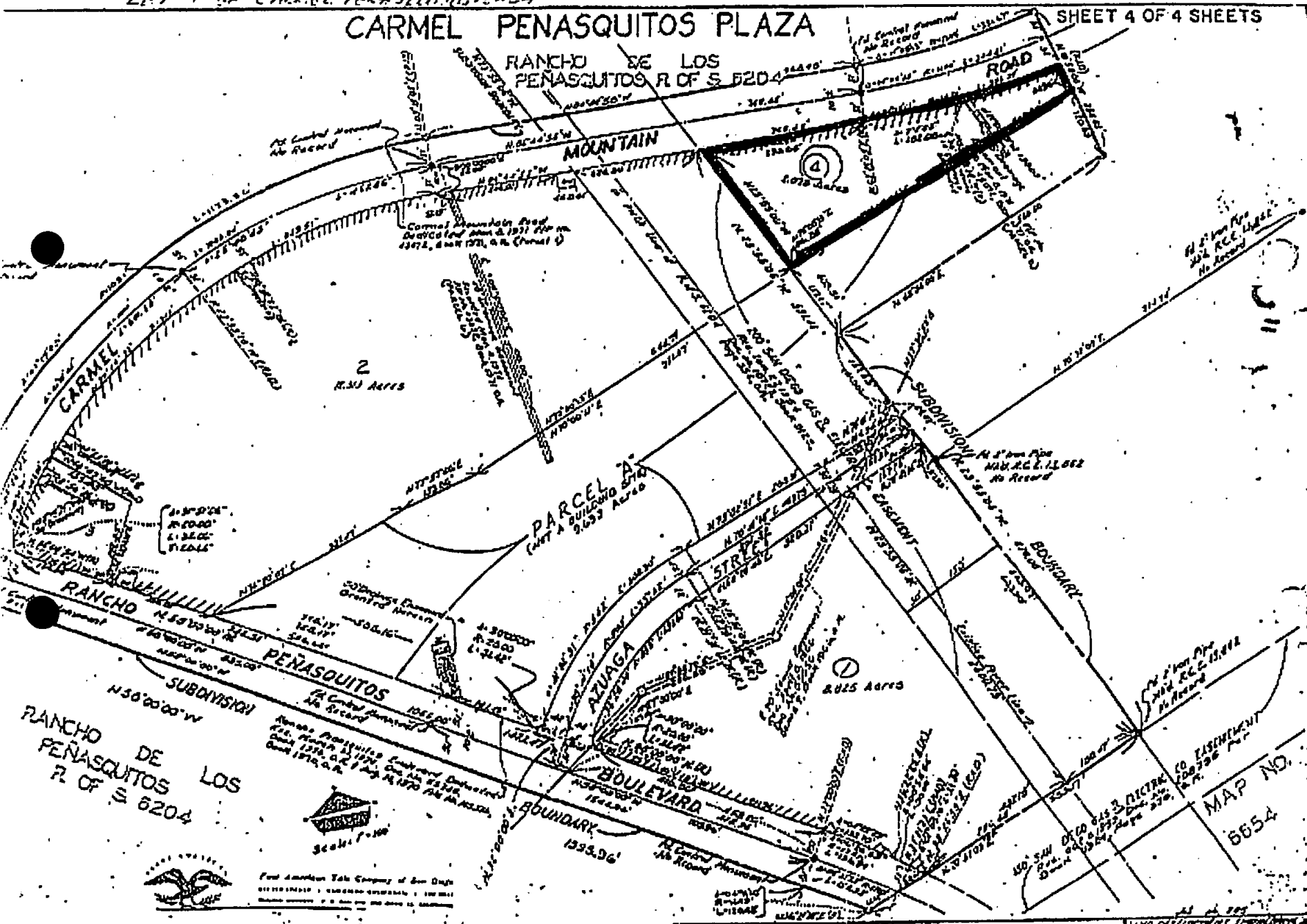
EXHIBIT "A"

MAP NO. 7202

Lot 4 of Carmel Peninsula Tract

CARMEL PENASQUITOS PLAZA

SHEET 4 OF 4 SHEETS



First American Title Company of San Diego
 DISTRICT OF COLUMBIA
 1900-1901
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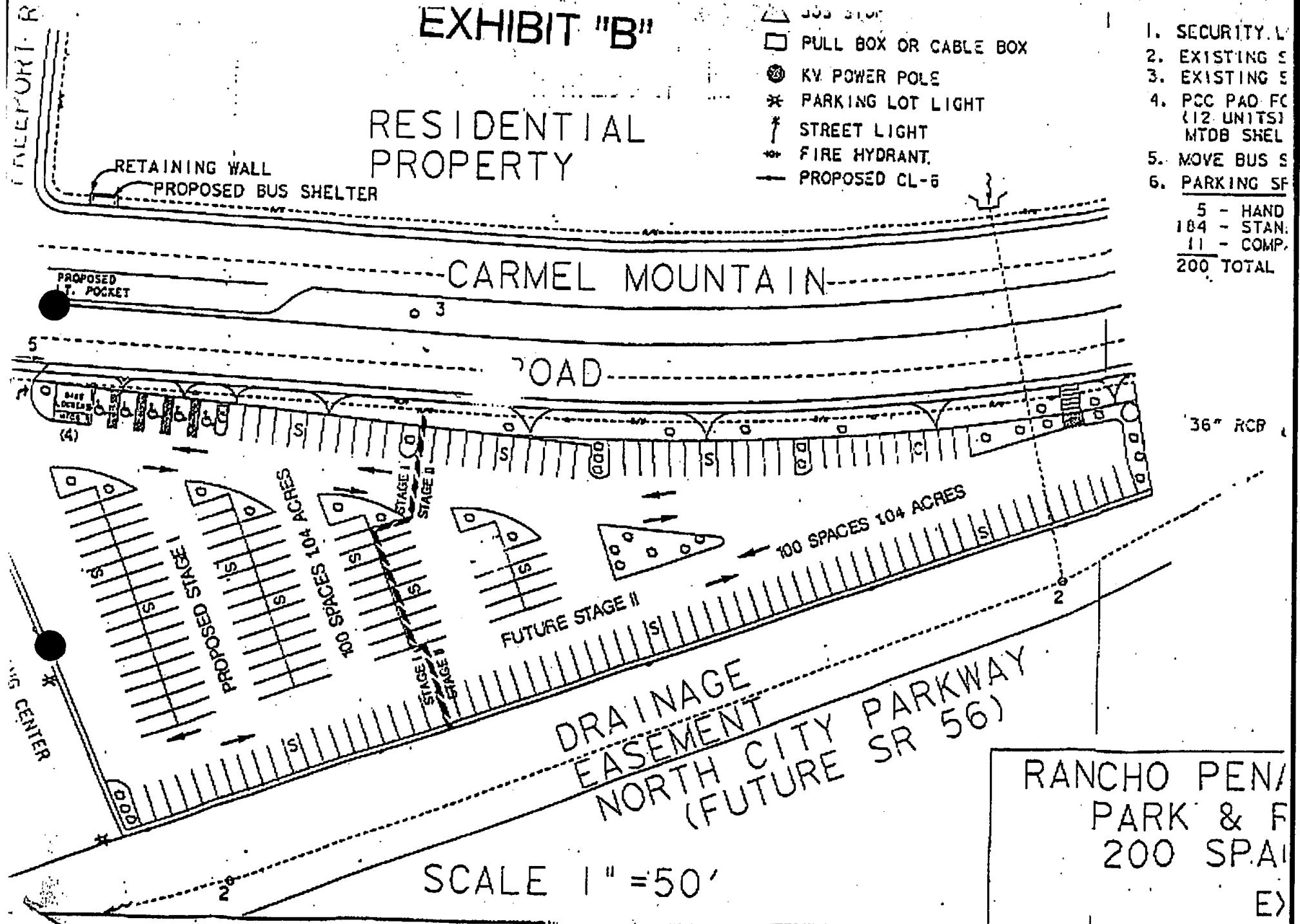
MAP NO. 6654

EXHIBIT "B"

RESIDENTIAL PROPERTY

- △ BUS STOP
- PULL BOX OR CABLE BOX
- ⊙ KY POWER POLE
- * PARKING LOT LIGHT
- ↑ STREET LIGHT
- ⊕ FIRE HYDRANT
- PROPOSED CL-6

1. SECURITY V
 2. EXISTING S
 3. EXISTING S
 4. PCC PAD FC
(12 UNITS)
MTDB SHEL
 5. MOVE BUS S
 6. PARKING SP
- 5 - HAND
184 - STAN.
11 - COMP.
200 TOTAL



RESOLUTION NUMBER R- 299568

ADOPTED ON AUG 10 2004

WHEREAS, on July 30, 1991, the City Council of the City of San Diego adopted Resolution No. R-278439 authorizing the City to enter into a Cooperative Agreement with the State of California, acting by and through its Department of Transportation [CalTrans], for the construction, operation, and maintenance of a Park & Ride on 2.08 acres located at 10029 Carmel Mountain Road in Rancho Peñasquitos [the Site]; and

WHEREAS, the Site was acquired by the City with joint City and State funds through condemnation for use as a Park & Ride facility to be constructed by CalTrans in two phases pursuant to the Cooperative Agreement; and

WHEREAS, CalTrans completed Phase 1 of the construction but has no plans to expand the Park & Ride on the remainder of the Site due to less than projected usage and lack of funds; and

WHEREAS, City desires and CalTrans has agreed to allow City to construct and operate a skate park on the remaining 1.04 acres of the Site; and

WHEREAS, on September 23, 2003, the Council of the City of San Diego adopted Resolution No. R-298425 authorizing construction and operation of a 20,000 square foot skate park at the Site and Resolution No. R-298422 granting Site Development Permit No. 16898 and Planned Development Permit No. 16899 for construction of the skate park [the Permit]; and

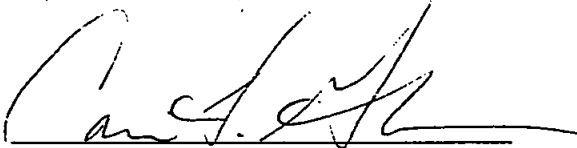
WHEREAS, the Permit requires the identification of 21 off-site parking spaces through a shared parking agreement prior to issuance of the Notice to Proceed or first pre-construction meeting; and

WHEREAS, the proposed Encroachment Permit documents the agreement of CalTrans to use of the Site for construction and operation of the skate park, including the use of 21 parking spaces at the adjacent Park & Ride until at least July 29, 2011; and

WHEREAS, in consideration for the Encroachment Permit, the City agrees to assume responsibility for payment of utilities and maintenance of the adjacent Park & Ride, at an estimated cost of \$11,100 per year; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego that the City Manager, or designee, is authorized to execute the agreement entitled, "Encroachment Permit for Park & Ride Facility #4 to Allow Park Use," on file in the Office of the City Clerk as Document No. RR-
299568, for the City's construction and operation of the Rancho Peñasquitos Skate Park, use of 21 parking spaces, and the City's assumption of maintenance and utility expenses for the Park & Ride.

APPROVED: CASEY GWINN, City Attorney

By 
Carrie L. Gleeson
Deputy City Attorney

CLG:mm
07/29/04
Or.Dept:READ
Job Order No.221545
R-2005-154

Passed and adopted by the Council of San Diego on August 10, 2004, by the following vote:

**YEAS: PETERS, ZUCCHET, ATKINS, MAIENSCHIN, FRYE, MADAFFER,
INZUZNA, MAYOR MURPHY**

NAYS: NONE

NOT PRESENT: NONE

VACANT: DISTRICT FOUR

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Manuel E. Ketcham, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-299568 passed and adopted by the Council of The City of San Diego,
California on August 10, 2004.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Manuel E. Ketcham, Deputy