



Real Estate Assets Department
SDC003

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



**CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT**

THIS RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SAN DIEGO COUNTY WATER AUTHORITY, a public agency ("PERMITTEE"), upon execution by the parties and approval by the San Diego City Attorney (the "Effective Date"), as follows:

1. Right to Enter. CITY hereby grants permission to PERMITTEE to enter upon CITY-owned land adjacent to San Vicente Reservoir, consisting of approximately 30.4 acres, and as specifically set forth on the attached Exhibit A (the "Permit Area"), incorporated by this reference. Permission to enter the Permit Area is conditioned upon the terms set forth below.
2. Use of Permit Area. PERMITTEE shall have exclusive use of the Permit Area for storage and stockpile of dirt and materials resulting from the Emergency Storage Project at San Vicente Reservoir, and for overnight storage of construction-related materials, equipment and vehicles, and for no other purpose whatsoever. The days and hours of operation and use of the Permit Area will be unrestricted. Permittee must observe the rules of San Vicente Marina regarding access to the Permit Area. Permittee shall be responsible for obtaining all permits for the maintenance and use of the Permit Area.
3. Permit Fee. Pursuant to the Agreement between the San Diego County Water Authority and the City of San Diego, dated May 26, 1998, specifically Article IV, Section 4.1.1 and 4.1.2 (Exhibit B), there shall be no cost to the PERMITTEE. The standard Permit Processing Fee of \$600.00 is hereby waived. No Permit Rent shall be required.
4. Term. The term of this Permit ("Term") shall commence on the Effective Date, and shall expire on the earlier to occur of October 15, 2009, or upon completion of Permittee's project. Notwithstanding the foregoing, CITY may terminate this Permit at will, in its sole discretion.
5. 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 designee ("Mayor"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
6. Insurance. On or before the Effective Date, PERMITTEE shall deliver to CITY a current certificate of insurance for: (1) 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 two million dollars (\$2,000,000); AND (2) fire, extended coverage, and vandalism insurance on all insurable property on the Premises in an amount to cover 100 percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and PERMITTEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the Leasehold, the

proceeds may be paid to the approved mortgagee or beneficiary, provided adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.

- a. 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.
- b. Primary and Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Lease.
- c. Qualified Insurer(s). All insurance required by the terms of this Lease 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 rent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- d. 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.
- e. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. 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 Lease.
- f. Modification. To assure protection from and against the kind of extent of risk existing on the Premises, CITY, at its discretion, may require the revision of amounts and coverages 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, in order to meet the requirements of this Lease.
- g. Accident Reports. PERMITTEE shall report to CITY any accident causing more than five thousand dollars (\$5,000.00) worth of property damage or any serious injury to persons on the Premises. Such report shall be delivered to CITY within five (5) days of such accident and 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.

- h. Failure to Comply. If PERMITTEE fails or refuses to obtain and maintain the required insurance or fails to provide proof of coverage, CITY may obtain the insurance. PERMITTEE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify PERMITTEE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. PERMITTEE shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice. If PERMITTEE fails or refuses to obtain and maintain or pay for insurance as required by this Lease or fails to provide proof of insurance, CITY may without further notice declare PERMITTEE in default, and CITY may enforce all of its rights and remedies under this Lease.
7. Hold Harmless. PERMITTEE shall protect, defend, indemnify, 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 officers, employees, invitees, guests, agents, or contractors which arise out of or are in any manner directly or indirectly connected with this Permit, the Permit Project, or PERMITTEE'S use of or 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 active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. 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. The rights and obligations under this section shall survive the expiration or termination of this Permit.
8. 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.
9. 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 Permit Area and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
10. 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. 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.

11. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which, in the opinion of CITY, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
12. Compliance with Law. PERMITTEE shall, at its 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 the Permit Project.
13. No Assignment. PERMITTEE shall not assign any rights granted by this Permit or any interest therein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.
14. Signs. No signs may be displayed on the Permit Area without CITY'S prior written consent.
15. Encumbrances. PERMITTEE shall keep the Property and the Permit Area 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, the Permit Project, 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 Property or 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 thereof.
16. Maintenance of the Permit Area. PERMITTEE shall, to CITY'S satisfaction, maintain the Permit Area in a decent, safe, healthy and sanitary condition at all times during the Term.
17. Inspection. CITY may, at any and all times, enter and inspect the Permit Area and/or the Permit Project.
18. Hazardous Substances.
 - a. PERMITTEE shall not allow the installation or 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 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. A copy of the presently effective EPA and the State lists is on

file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.

- b. If any release of a hazardous substance occurs, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
 - c. 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 use or maintenance 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.
 - d. If PERMITTEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Permit Area, PERMITTEE shall give written notice 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 notify CITY immediately upon receipt of such knowledge or belief and 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. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area without CITY'S prior written consent.
19. Drug-free Workplace. PERMITTEE shall comply with the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances is prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition;
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. PERMITTEE'S policy of maintaining a drug-free workplace;
 - iii. any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv. penalties that may be imposed upon employees for drug abuse violations; AND

- c. Include in each sublease agreement language indicating the subpermittee's agreement to abide by these provisions for a drug-free workplace.

PERMITTEE and its subpermittees shall each be responsible for their own drug-free workplace program.

- 20. 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 CITY-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 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.
- 21. 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 CITY'S disabled access requirements by making accessible any areas of the Premises which deny access to disabled persons; and
 - e. PERMITTEE shall include language in each sublease agreement indicating the subpermittee's agreement to abide by the foregoing provisions.

PERMITTEE and each of its subpermittees 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 Lease.

22. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
23. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between the parties. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
24. Legal Proceedings. If CITY commences legal proceedings to enforce any right or obligation under this Permit, PERMITTEE shall pay all costs in connection therewith, including reasonable attorney fees and costs.
25. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or by United States mail, postage prepaid, and addressed to CITY or PERMITTEE, respectively, as follows:

City Of San Diego
Real Estate Assets Department
Attention: Real Estate Assets Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, CA 92101
(619) 236-6311; Fax (619) 533-4522

William J. Rose, Director of Right of Way
San Diego County Water Authority
4677 Overland Avenue
San Diego CA 92123-1233

26. 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 Project 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 Permit Project or PERMITTEE'S use of the Permit Area.
27. Authority to Contract. 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.

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

Date: 11/1/06

THE CITY OF SAN DIEGO, a California municipal corporation

By: [Signature]
Name: J.F. BADWICK
Title: DIRECTOR: READ

Date: 10/26/06

San Diego County Water Authority, a public agency

By: Thaddeus D. Brierley
Name: THADDEUS D. BRIERLEY
Title: ACTING DIRECTOR OF RIGHT OF WAY

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

The City of San Diego as Responsible Lead Agency under CEQA has reviewed and considered an EIR prepared by Lead Agency, San Diego County Water Authority (SCH No. 93011028) dated February 2005, covering this activity.

Date: 11/2/06

By: [Signature]
Name: Nicole McGinnis
Title: SENIOR PLANNER

APPROVED AS TO FORM AND LEGALITY:

Effective Date: 11-2-06

MICHAEL J. AGUIRRE, City Attorney

By: [Signature]
Deputy City Attorney

Site Nos. 1001

ACG/

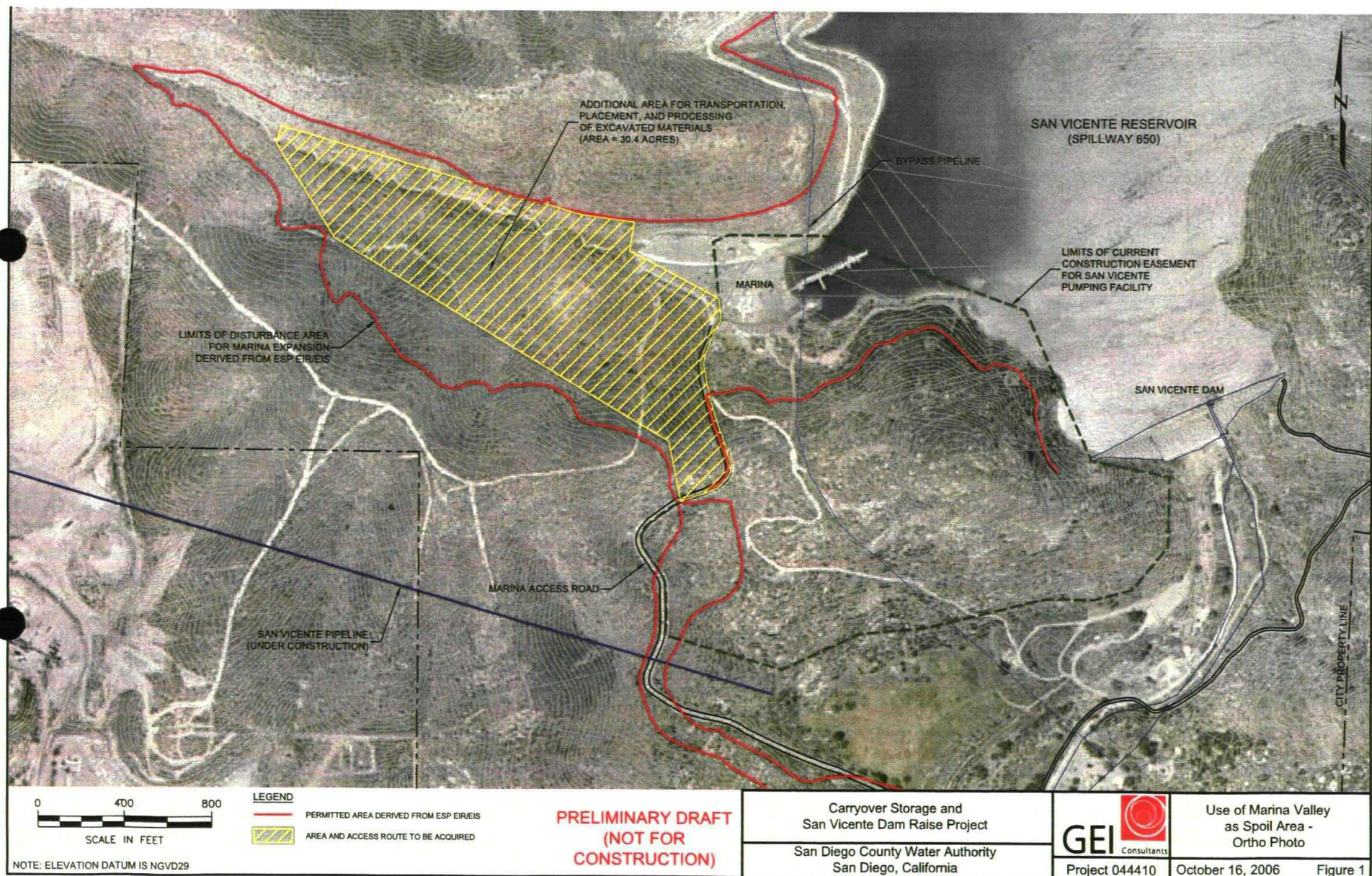


EXHIBIT A

COPY EXHIBIT B

**AGREEMENT
BETWEEN
THE SAN DIEGO COUNTY WATER AUTHORITY
AND
THE CITY OF SAN DIEGO
FOR
THE EMERGENCY STORAGE PROJECT
(EXPANSION OF SAN VICENTE RESERVOIR)**

4/3/98

DOCUMENT NO. 00-18521-1

FILED MAY 26 1998
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

EXHIBIT B

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subject to review and resolution pursuant to the procedures set forth in paragraph (8) of Exhibit F which may culminate with the filing of an action in the superior court to review any applicable arbitration decision.

ARTICLE IV - ACQUISITION OF LANDS

Section 4.1 City Grant of Certain Lands

4.1.1 The City shall convey to the Authority, without cost to the Authority, those interests in lands which are owned by the City as of the date of execution of this Agreement and which are in the vicinity of the San Vicente Project or the components thereof and which are necessary for the construction of the City Components with the exception of the raised San Vicente Dam including suitable borrow and excess material disposal areas, contractor staging areas, and stockpile areas, or otherwise determined by the Authority to be necessary for the construction of such City Components. Those lands within the vicinity of the San Vicente Project or the components thereof which the Authority has determined are necessary for the construction of such City Components are identified in Appendix C, attached hereto and by this reference made a part hereof.

4.1.2 The interests conveyed by the City to the Authority which are necessary only for the construction of the City Components with the exception of the raised San Vicente Dam will be temporary in nature and shall be in the form of a right of entry or the equivalent thereof.

4.1.3 The Authority shall, within two (2) years from the date of execution of this Agreement, purchase from the City fee title to any City lands which the Authority determines will be necessary for the construction and subsequent operation and maintenance of the Authority Components and for the construction of the raised San Vicente Dam. Those lands within the vicinity of the San Vicente Project or the components thereof which the Authority has determined will be necessary for the construction and subsequent maintenance and operation of the Authority Components and for the construction of the San Vicente Dam are estimated to include approximately eighty (80) acres and are identified in Appendix C, attached hereto and by this reference made a part hereof. The purchase price for the acquisition of any such City lands shall be determined pursuant to the provisions of Section 4.2. The conveyance to the Authority from the City of the fee title to the land necessary for the pipeline from San Vicente to the Authority's Second Aqueduct pipeline shall provide that the City shall have the right of first refusal to purchase such pipeline and land from the Authority should the Authority decide to abandon such pipeline. Such fee title for the other lands which will be necessary for the operation and maintenance of the Authority Components may, at the request of the City, contain a reversionary interest pursuant to which such interest shall revert to the City if the Authority shall permanently cease to operate, permanently abandon, sell or otherwise convey the Authority Components and upon payment by the City to the Authority of the purchase price paid by the Authority for such lands.

Upon the completion of the construction of the Authority Components and the raised San Vicente Dam, the Authority shall reconvey and the City shall purchase from the Authority those lands, estimated to be approximately forty-five (45) acres, which will not be necessary for the operation and maintenance of the Authority Components. The purchase price to be paid by the City for such lands shall be the same price paid by the Authority to acquire such lands from the City.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its City Manager, pursuant to Ordinance No. 0-1852 and by the General Manager of the San Diego County Water Authority, and shall become effective upon the date it is signed.

SAN DIEGO COUNTY WATER AUTHORITY

By: [Signature]

Title: General Manager

CITY OF SAN DIEGO

By: [Signature]

Title: WATER DEPT. MANAGER

Approved as to form and legality this 8th day of June 1998.

CASEY GWINN

City Attorney

By: [Signature]
Kelly J. Salt
Deputy City Attorney

By: [Signature]
General Counsel
San Diego County Water Authority

4/3/98