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 LAKESIDE RIVER PARK CONSERVANCY ("PERMITTEE"), to be effective as of August 1st, 2017 ("Effective Date") when signed by the parties and approved by the San Diego City Attorney, as follows:

DEFINITIONS

As used in this Permit, the following terms shall be defined as follows:

A. **"Permit Area"** shall mean all or part of that certain CITY-owned real property, located in the County of San Diego, and comprised of APN 392-090-33 and 392-081-03 and more particularly described in **Exhibit A: Permit Area**, attached hereto.

B. **"Permit Fee"** Consideration to CITY for granting this Permit shall be the work performed by PERMITTEE pursuant to this Permit.

C. **"Permit Use"** shall mean the non-exclusive use of the Permit Area for the purposes of the following:

-PERMITTEE'S employees, agents, and contractors to enter the Permit Area solely for the purpose of conducting volunteer patrols and restoring the City Property as required by this Permit and for no other purpose whatsoever.
-PERMITTTEE shall obtain all related permits and comply with all applicable environmental laws, rules, and regulations related to the Permit Use.

No other uses area allowed unless specifically authorized in writing by the City.

D. **"PERMITTEE'S Address for Notices"** shall be:

Lakeside River Park Conservancy
Robin Rierdan, Executive Director
12108 Industry Road
Lakeside, CA 92040

E. **"Rent"** Rent under this permit will be waived as the project enhance lands within the ownership of the City's Public Utilities Department.

F. **"Term"** shall mean month-to-month up to three (3) years.

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

1. Occupancy. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its officers, employees, agents, contractors, invitees, and guests to enter upon and occupy the Permit Area solely for the purpose of the Permit Use.

2. Use of Permit Area. PERMITTEE may use the Permit Area solely for the Permit Use and for no other purpose whatsoever without CITY'S prior written consent in each instance.

3. Access. Vehicle access allowed on authorized roads only; no off-road activity permitted without notice. Gates shall remain locked at all times except when accessing or leaving the sites.

4. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE'S use 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. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee ("City Manager"), unless otherwise expressly provided, without need for further resolution by the City Council. CITY'S discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. All references to "City Manager" herein shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of The City Charter of the City of San Diego, California.

6. Term. The Term shall commence on the Effective Date. The Term shall be month to month up to three (3) years.

7. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked at will by CITY with 30 days prior written notice, 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 revocation or termination of this Permit.

8. 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. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this agreement it constitutes a month-month tenancy, and all other terms and conditions of this permit shall continue in full force and effect until either the CITY or the PERMITTEE terminates the agreement.

9. Termination. PERMITTEE or CITY may terminate this Permit at any time, with 30 day written notice, for any reason. Permit to expire 30 days after completion of the project.

10. Restore and Vacate. Prior to the expiration or PERMITTEE'S earlier termination of this Permit, PERMITTEE shall restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and upon such expiration or earlier termination immediately vacate the Permit Area. Upon CITY'S termination of this Permit, PERMIITTEE shall immediately cease all operations on the Permit Area and as soon as practicable therefore restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and vacate the Permit Area.

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. Maintenance of the Permit Area. CITY shall at no time during the Term 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 caused by the Permit Use.

13. Inspection. CITY may at all times enter and inspect the Permit Area.

14. Utilities. PERMITTEE shall order, obtain, and pay for all utilities and service and installation chargers in connection with its use of the Permit Area.

15. Improvements/Alterations. PERMITTEE shall not construct any permanent 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.

16. Insurance. PERMITTEE shall deliver to CITY'S Real Estate Assets Department a current certificate of insurance for:

- 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);

- 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 coverage; and

- 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).

16.1 Additional Insureds. Pursuant to a separate endorsement *[CG2010* (1 1/85) 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.

16.2 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.

16.3 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.

16.4 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.

16.5 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.

16.6 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.

16.7 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.

17. 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 use 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 gross negligence, recklessness, or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents.

18. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability to PERMITTEE arising out of or in any manner directly or indirectly connected with the 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.

Precautionary Note: PERMITTEE shall pay special attention to potentially hazardous weather occurrences such as "Red Flag Warning" events as declared by the National Oceanic and Atmospheric Administration (NOAA) when planning outdoor activities. Prudent re-scheduling may be warranted.

A "Red Flag Warning" means that "critical fire weather conditions are either occurring now, or will shortly. A combination of strong winds, low relative humidity, and warm temperatures will contribute to extreme fire behavior." See: http://www.wrh.noaa.gov/sgx/.

19. 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.

20. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY'S prior written consent.

21. 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.

22. Encumbrances. PERMITTEE shall keep the Permit Area, and any CITY-owned property of which the Permit Area is a part, 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 Permit Area pursuant to and in the manner provided under Paragraph 18.

23. Compliance with Laws. PERMITTEE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to PERMITTEE'S use of the Permit Area.

24. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area by reason of PERMITTEE'S use of the Permit Area, including without limitation licenses and permits. PERMITTEE'S payment for such taxes, fees, and assessments shall not reduce any payment due CITY.

25. Hazardous Substances. PERMITTEE shall not allow the installation, storage, utilization, generation, sale or release of hazardous 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.

25.1 Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents. 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 is hereby incorporated into this Permit.

25.2 Remediation. If PERMITTEE'S use of the Permit Area results in a release of a hazardous substance, or petroleum related substance or its chemical constituents, 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.

25.3 Removal. If PERMITTEE or PERMITTEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Permit Area, PERMITTEE and/or PERMITTEE's contractor or agent shall remove all hazardous substances and hazardous wastes 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.

25.4 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 use of the Permit Area, including without limitation costs of environmental assessments; costs of regulatory remediation oversight; costs of remediation and removal; any necessary CITY response costs; all fines, penalties or fees assessed by any regulatory agency; damages for injury to natural resources, PERMITTEE'S elected officials, officers, employees, invitees, guests, agents, or contractors, or the public; and all costs of any health assessments or health effect studies.

25.5 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Permit Area, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code 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.

25.6 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S use of the Permit Area ("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, 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 law and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

25.7 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 breach shall not be a waiver of any other breach. Any waiver of a breach 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 breach shall not waive the use of any other right or remedy for the same breach or for another or later breach. CITY'S acceptance of any rents shall not be a waiver of any breach preceding the rent payment. CITY'S failure to discover a breach or take prompt action to require the correction of any breach shall not result in an equitable estoppel, but CITY may at any and all times require the correction of the breach.

26. 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.

27. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.

28. 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.

29. 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.

30. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and PERMITTEE'S use of the Permit Area. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.

31. Legal Proceedings. If any party brings an action or proceeding against another party under this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment. If, as a result of an action brought by or against PERMITTEE in connection with this Permit, CITY intervenes therein, becomes a party, or is made a party thereto, PERMITTEE shall pay all of CITY'S costs and expenses thereof, including without limitation reasonable attorney fees and costs.

32. 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: Brent Peterson, Public Utilities Department
Address: 525 B Street (MS 906)
San Diego, California 92101
Phone (619) 533-4101

With a copy by First Class Mail to:

SAN DIEGO CITY ATTORNEY
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

33. 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 Permit, 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 represents and warrants 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.

34. 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 PERMTTEE 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, and acknowledges and agrees that CITY has fulfilled all obligations it may have had to improve, modify, repair, replace, alter, or otherwise develop the Permit Area prior to 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 therefore.

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

Date: July 5, 2017

Entity: LAKESIDE RIVER PARK CONSERVANCY

BY: _____

Name: Robin Rierdan
Title: Executive Director

Date: 7/12/17

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____

Name: Cybele Thompson
Title: Director, Real Estate Assets

Environmental Analysis Section Environmental Clearance:

1) This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

Date: 6/13/17 BY: _____

Name: Nicole McGinnis
Title: Senior Planner, Public Utilities Department

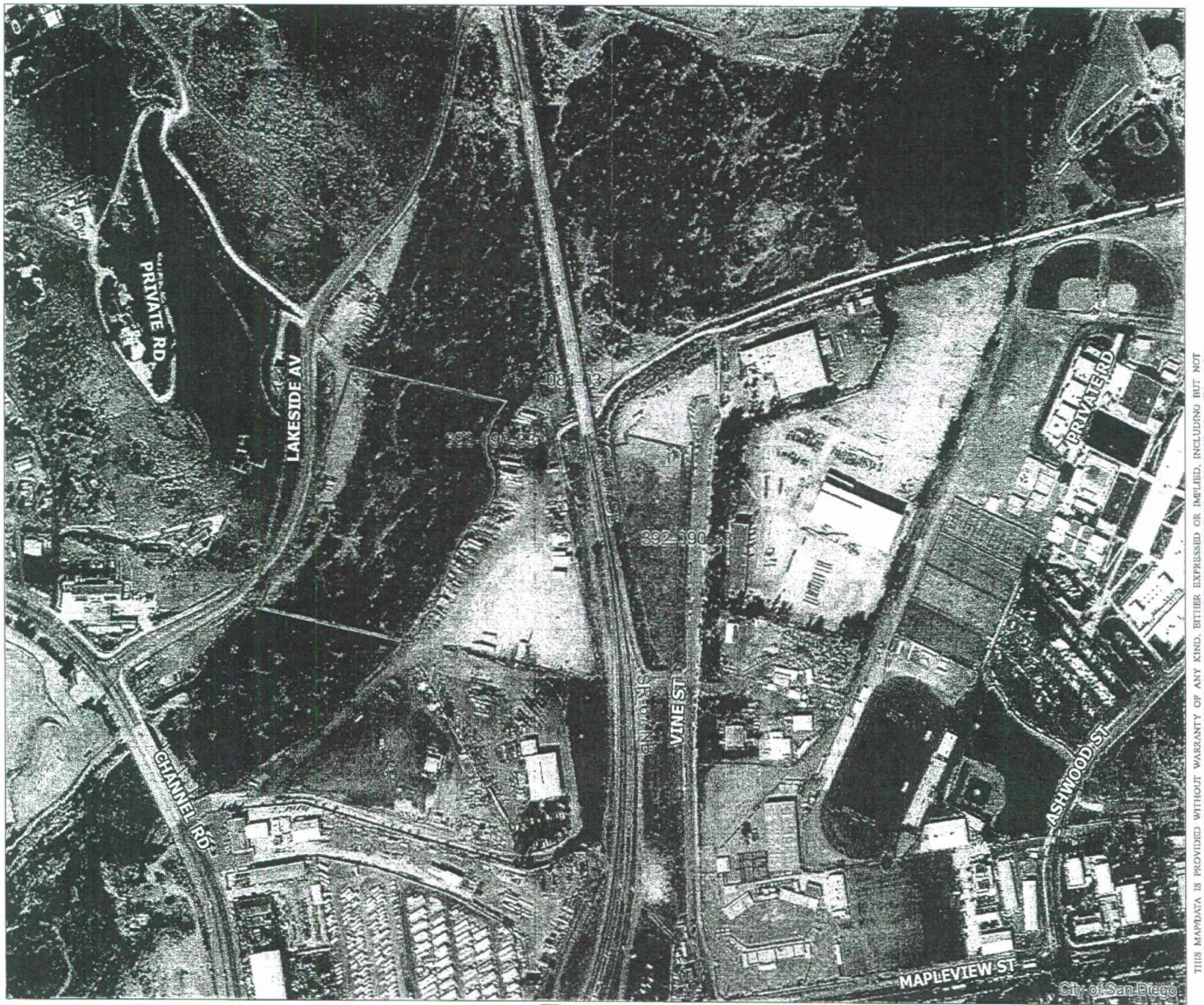
Approved as to Form and Legality:
Mara Elliot, City Attorney

Date: 7/17/17 BY: _____

Name: Ray Palmucci
Title: Deputy City Attorney

Exhibit A

City of San Diego
PUBLIC UTILITIES
Water & Wastewater



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Date Printed: 5/10/2017