

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 EMMERSON CONSTRUCTION COMPANY (PERMITTEE), to be effective May 21, 2010 (Effective Date), provided the Permit is signed by the parties and approved by the San Diego City Attorney on or before said date, as follows:

RECITALS

- A. CITY is the owner of certain real property (City Property) located in the County of San Diego, APN 382-260-12, consisting of an area of approximately 7.74 acres, commonly referred to as the "Marilla Wedge".
- B. PERMITTEE is Emmerson Construction Company, located at 5993 Avenida Encinas, Suite 101, Carlsbad, CA 92008
- C. PERMITTEE desires to use approximately 1.95 acres of the City Property, as shown on EXHIBIT A (Permit Area) attached hereto, for the sole purpose of temporary lumber storage and employee parking during the stated term of this Permit.

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

- 1. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its employees, agents, and contractors to enter upon the City Property solely for the purpose of temporary lumber storage and employee parking, (Permit Use), and for no other purpose whatsoever.
- 2. Use of Permit Area. PERMITTEE may use the Permit Area on a non-exclusive basis solely for the purposes of the Permit Use. PERMITTEE shall obtain all related permits and comply with all applicable environmental laws, rules, and regulations related to the Permit Use.
- 3. Rent. The total rent of \$6,000.00 shall be paid at the commencement of this permit. This total rent amount represents \$1,800.00 per month, or portion thereof, for the period of the Permit Term.
- 4. Term. The term of this Permit (Term) shall commence on the Effective Date, and shall expire on August 31, 2010. Nothing in this Permit implies an intention by CITY, or any obligation of CITY, to enter into any further agreement with PERMITTEE to continue the Permitted Use after the Term of this Permit expires.
- 5. Permit Termination. Upon termination of this Permit, the PERMITTEE shall immediately remove from the Permit Area all construction materials and employee or company vehicles.

6. Revocable Permit. This Permit is not a lease. It is a non-exclusive license to use CITY property, and may be revoked immediately upon any breach of any provision herein, or otherwise upon 30 days written notice by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit. CITY may at all times enter upon the Permit Area.
7. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee (Mayor), unless otherwise expressly provided.
8. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Permit Area or PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the PERMITTEE'S use of the Permit Area.
9. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area or the City Property. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area or the City Property without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. 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 Lease.
 - 9.1. Remediation. If PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.
 - 9.2. Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

- 9.3 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area or the City Property, PERMITTEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area or the City Property.
- 9.4 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property ("PERMITTEE'S Operations"), resulted in any hazardous substance being released on or beneath the Permit Area or the City Property, CITY may cause an environmental assessment of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE'S Operations on, in, or under the Permit Area or the City Property, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor.
10. Noninterference. PERMITTEE shall not materially interfere with CITY'S use, operations, or activities on the City Property, and PERMITTEE shall use such routes and follow such procedures on the City Property as shall result in the least damage and inconvenience to CITY and other users of the City Property.
11. Property Damage. PERMITTEE shall pay for all damage to the City Property, CITY'S personal property on the City Property, and the personal property of third parties on the City Property resulting from PERMITTEE'S exercise of the rights granted by this Permit.
12. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance or restoration of the Permit Area, and all expenses of investigating and defending against same, including

without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

13. Taxes. PERMITTEE, alone, shall pay any and all taxes, charges, and use fees levied by any governmental agency against PERMITTEE or against any of the City Property as a result of PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property.
14. Encumbrances. PERMITTEE shall keep the City Property free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S use of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the City Property.
15. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color; religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S use of the City Property, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
16. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S use of the City Property and any damages to the improvements on, under, or in the vicinity of the City Property resulting directly or indirectly thereby.
17. Insurance. PERMITTEE shall deliver to CITY'S Real Estate Assets Department a current certificate of insurance for:
 - i. Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000);
 - ii. Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit.

Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and

- iii. 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).
- 17.1. Additional Insured. 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 insured in all policies.
- 17.2. 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.
- 17.3. 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.
- 17.4. 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.
- 17.5. 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.
- 17.6. 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.

- 17.7. 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.
- 17.8. Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE'S insurable property related to the Permit Use or the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver to CITY a certificate of such insurance.
18. Compliance with Law. PERMITTEE shall, at his sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area and PERMITTEE'S Operations on the Permit Area.
19. Competent Management. For the Term of this Permit, PERMITTEE shall provide competent management of the Permit Area to the satisfaction of the Mayor. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of pasture grazing cattle lands, using sustainable agricultural and best management practices whenever possible, and related activities in a fiscally responsible manner.
20. Signs. No signs shall be allowed on the Permit Area unless approved in writing by the Mayor.
21. Maintenance of the Permit Area. PERMITTEE shall maintain the Permit Area, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, in a decent, safe, healthy and sanitary condition. PERMITTEE is responsible for excluding unauthorized and unwanted activities from the Permit Area.
22. Inspection. CITY may, at any and all times, enter and inspect the Permit Area.
23. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is publicly-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
24. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
25. Entire Permit. This Permit contains the entire agreement between the parties relating to the

rights granted hereby and the obligations assumed herein. No modification of this Permit shall be valid unless in writing and signed by the party to be charged.

26. Legal Proceedings. In the event of any controversy, claim, or dispute relating to this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation attorney fees and costs.
27. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight service, or delivery by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

CITY:

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

PERMITTEE:

Charles Schmidt
Emmerson Construction Company
5993 Avenida Encinas, Ste. 101
Carlsbad, CA 92008

28. Authority. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms.

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

Date: 5/26/10

THE CITY OF SAN DIEGO, a California municipal corporation

BY: David Sandoval

Name: David A. Sandoval, CCIM

Title: Deputy Director, Real Estate Asset

Date: 5/21/10

EMMERSON CONSTRUCTION COMPANY

BY: Charles Schmidt

Name: Charles Schmidt

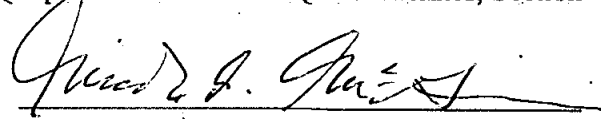
Title: Executive V.P.

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

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

Date: 5/25/10

BY:



Name: NICOLE A. MCGINNIS

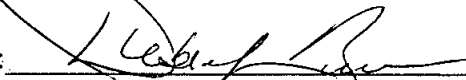
Title: SENIOR PLANNER

APPROVED AS TO FORM AND LEGALITY

this 26th day of May, 2010.

JAN I. GOLDSMITH, City Attorney

BY:



Debra J. Bevier, Deputy City Attorney

DCM/cb

5-21-10

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EXHIBIT "A"
APN 382-260-12

PERMIT AREA
APPROX 1.95 ACRES

WOODSIDE

WOODSIDE

WILSON

WILSON

WILSON