SD. County flood Control District
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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 FLOOD CONTROL DISTRICT**, a flood control district formed and operating pursuant to Water Code App. § 105-1 et seq. ("DISTRICT"), to be effective as of July 30, 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 an area consisting of a thirty-five foot (35') wide easement that CITY reserved on property now owned by the United States of America ("USA"), recorded April 2, 1986 as Instrument No. 86-126556 in the Official Records of San Diego County. The Permit Area shall include, upon the condition that the County of San Diego consents, in form and content acceptable to USA, to the assignment of said real property to CITY and such assignment in fact occurs, an adjacent 973 square-foot easement area described in a Grant of Easement recorded August 3, 2011 as Instrument No. 2011-0395239 in the Official Records of San Diego County which USA intends to grant to CITY by way of modifying Instrument No. 2011-0395239 to replace DISTRICT with CITY as the grantee thereof. The Permit Area is more particularly depicted by the bold and crosshatched areas 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 the construction and installation of water pipelines and appurtenant facilities that are being relocated from adjacent property to accommodate DISTRICT's Woodside Avenue Flood Control project.

   1.4 **"DISTRICT's Address for Notices"** shall be: Department of General Services
   5560 Overland Ave, Suite 410
   San Diego, CA 92123
   Attn: April F. Heinze, P.E., Director

   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 DISTRICT 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. DISTRICT 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. Notwithstanding the foregoing, "Permit Use" shall not include any stockpiling or storage of material/soil or vehicle parking.

4. No Rent. No rent shall be charged for the Permit Use on the Permit Area; DISTRICT's performance of the Permit Use shall be sufficient compensation in lieu of rent.

5. Governmental Approvals. By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to DISTRICT or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to DISTRICT'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.

6. CITY's Consent, Approval. CITY's consent or approval under this Permit shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided, and shall be made in the Mayor's discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.

7. Revocable License. This Permit is not a lease. It is a license to use CITY property, and may be revoked at will by CITY, in its sole discretion: (a) if for DISTRICT's breach or default of any of DISTRICT's obligations under this Permit or in case of an emergency, immediately upon written notice delivered to DISTRICT; and (b) if for CITY's convenience, upon thirty (30) days prior written notice pursuant to Section 9 delivered to DISTRICT. Notwithstanding the foregoing or anything else to the contrary in this Permit, this license shall not be revocable for convenience following DISTRICT's award of a contract for the Permit Use. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by DISTRICT as a result of such revocation or the termination of this Permit.

   7.1 DISTRICT's Waiver. DISTRICT expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which DISTRICT incurs as a result of CITY's revocation or termination of this Permit and/or the license granted hereby.

8. No Holdover. Subject to any temporary holdover rights for removal of personal property as otherwise provided herein, if DISTRICT 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 DISTRICT any rights in or to the Permit Area. If DISTRICT continues to occupy the Permit Area after the expiration or earlier termination of this Permit, CITY may demand and receive from DISTRICT rent for the Permit Area calculated on a per diem basis using up to two (2) times the fair market rental

rate for similar parcels in the CITY to be determined as of the date of the expiration or termination of this Permit by competent CITY staff. CITY's acceptance of such rent shall neither constitute a renewal or extension of the license, nor give DISTRICT any rights in or to the Permit Area. If DISTRICT continues to occupy the Permit Area after the expiration or earlier termination of this Permit, all other terms and conditions of this Permit shall otherwise remain in effect.

9. Termination. As conditioned by Section 7, DISTRICT may terminate this Permit for any reason upon thirty (30) days prior written notice delivered to CITY. This Permit shall automatically terminate upon DISTRICT's notice to CITY of completion of improvement work pursuant to the Permit Use and acceptance by the CITY. CITY shall not unreasonably condition, delay inspection or refuse acceptance of any work completed by DISTRICT as part of the Permit Use.

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, DISTRICT shall restore the surface of the Permit Area substantially to its condition on the Effective Date and to CITY's and/or USA's reasonable satisfaction.

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. DISTRICT 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 DISTRICT's use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, DISTRICT shall take such actions and pay all reasonable costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

    a. DISTRICT acknowledges that the Permit Area consists of certain easements over and upon real property owned by USA. DISTRICT shall not unreasonably burden, interfere with, or otherwise do or allow any activity that is incompatible with the conditions and covenants appurtenant to the Permit Area, or with the interests and rights of USA or any successive owner of the real property over and upon which the Permit Area exists.

12. Permit Fee. DISTRICT shall pay the Permit Fee to CITY upon execution of this Permit.

13. Place of Payment. All payments to be paid by DISTRICT under this Permit shall be made payable to "City Treasurer" and be delivered to:

    City of San Diego
    1200 Third Avenue, 17th Floor
    San Diego, California 92101
    Attn: Mary Carlson

14. Maintenance of the Permit Area. Until the termination of this Permit, DISTRICT shall; 1) maintain the Permit Area and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy and sanitary condition satisfactory to CITY; and 2) keep the Permit Area free and clear of rubbish, debris, litter, weeds and brush to CITY's satisfaction. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures or installations on the Permit Area.

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

16. Improvements/Alterations. DISTRICT shall not construct any improvements, structures or installations on the Permit Area, except in accordance with the Permit Use, and shall not alter the Permit Area in a manner inconsistent with the Permit Use without the express written consent of CITY's Public Utilities Department ("PUD"), which consent shall not be unreasonably conditioned or delayed. DISTRICT acknowledges that CITY maintains certain water pipes and conduit improvements in the Permit Area. DISTRICT shall at all times safeguard City's subterranean pipeline and its appurtenances, and shall assume full and complete responsibility for its repair if damaged during the use of subject property. DISTRICT shall submit Public Improvement Drawings (D-Drawings) to City of San Diego Development Services Department and obtain approval from PUD for all activity in the Permit Area, including the Permit Use. Except as required by law or until completion and acceptance of improvements, CITY shall not be obligated to make any repair or assume any expense for any improvements installed in or any alterations to the Permit Area.

17. Personal Property.

17.1 Personal Property. DISTRICT shall remove from the Permit Area all DISTRICT-owned 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 DISTRICT 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 DISTRICT's sole cost and expense. DISTRICT, 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.

17.2 Post-Permit License. CITY grants permission to DISTRICT to enter upon and occupy the Permit Area, under the same terms and conditions of this Permit, after the expiration or earlier termination of this Permit solely for the purpose of removing DISTRICT's personal property. This provision shall survive the expiration or earlier termination of this Permit.

17.3 Late Removal. Notwithstanding any provision of this Permit to the contrary, DISTRICT shall pay rent to CITY for any period of time after the expiration or termination of this Permit needed to remove DISTRICT personal property as required by this Permit, whether by CITY or DISTRICT. Such rent shall be calculated on a

per diem basis in accordance with Section 8 of this Permit.

17.4 CITY's Right to Acquire Personal Property. If DISTRICT wants to dispose of any of its personal property used in its operations on the Permit Area upon expiration or termination of this Permit, CITY shall have the first right to acquire such personal property.

18. Insurance. DISTRICT shall obtain and maintain throughout the term of this Permit, at its sole cost and expense, all insurance required by this Permit. DISTRICT may satisfy this requirement by requiring insurance consistent with this Section from a contractor retained to construct improvements as part of the Permit Use. DISTRICT's liabilities under this Permit, including without limitation DISTRICT's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. DISTRICT's maintenance of the required insurance coverage is a material consideration for this Permit. Notwithstanding any provision of this Permit to the contrary, if DISTRICT fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, DISTRICT shall be in default of this Permit. DISTRICT shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. Upon the Effective Date hereof, DISTRICT shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for (and subject to CITY's written approval of same):

a. Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, 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). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. uninsured claims or contractual liability. All defense costs shall be outside the limits of the policy.

b. Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single 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.

c. Workers' Compensation Insurance, as required by applicable laws, for all of DISTRICT's employees or contractor's employees performing work in the Permit Area who are subject to this Permit, with employers' liability coverage with a limit of at least One Million Dollars ($1,000,000), and an endorsement that the insurer waives the right of subrogation against the City of San Diego and its elected officials, officers, employees, representatives and agents.

18.1 Additional Insureds. To the fullest extent allowed by law, including

without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by DISTRICT or on DISTRICT's behalf; (b) DISTRICT's products; (c) DISTRICT's work, including without limitation DISTRICT's completed operations performed by DISTRICT or on DISTRICT's behalf; or (d) the Permit Area.

18.2 Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of DISTRICT's insurance and shall not contribute to it.

18.3 Severability of Interest. Each policy must be endorsed to provide that DISTRICT's insurance shall apply separately to each insured against whom claim is made or suit is bought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

18.4 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.

18.5 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of DISTRICT and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.

18.6 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, DISTRICT shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. DISTRICT shall provide proof of continuing insurance at least annually during the Term and

otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, DISTRICT shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.

18.7 Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving DISTRICT thirty (30) days prior written notice. DISTRICT 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.

18.8 Accident Reports. DISTRICT shall immediately report to CITY any accident causing property damage or injury to persons on the Permit Area or otherwise related to the Permit Use. 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.

18.9 Causes of Loss - Special Form Property Insurance. DISTRICT shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of DISTRICT's insurable property related to the Permit Use of the Permit Area under this Permit or the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. DISTRICT shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

19. Indemnification & Hold Harmless. DISTRICT 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 DISTRICT'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 DISTRICT'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 DISTRICT'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. 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, DISTRICT shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

20. Compliance with Laws. DISTRICT shall at all times in its use and occupancy of the Permit Area comply with all applicable laws, rules, regulations and directives of competent governmental authorities, and at DISTRICT's sole cost and expense. At least annually, DISTRICT shall deliver to CITY copies of all documentary evidence of such compliance

received by or otherwise available to DISTRICT (e.g., validation of periodic inspections, if applicable).

21. Permits & Approvals. DISTRICT, at DISTRICT's sole cost and expense, shall obtain all required permits and approvals from the applicable local, state and federal authorities, including without limitation, from CITY, for all Permit Use.

22. DISTRICT's Risk. DISTRICT shall bear all risks and liability arising out of or in any manner directly or indirectly connected with DISTRICT'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.

23. Assignment and Sublicense. DISTRICT shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's prior written consent in each instance. Any assignment by operation of law shall automatically terminate this Permit.

24. Encumbrances. DISTRICT 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 DISTRICT'S use or occupancy of the Permit Area. DISTRICT 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 in connection with such encumbrances and/or liens, including without limitation DISTRICT'S failure or the failure of any contractor or subcontractor hired by DISTRICT to pay any person or persons entitled to lien or encumber the Permit Area pursuant to the California Civil Code.

25. Taxes. DISTRICT shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon DISTRICT 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 DISTRICT, by reason of DISTRICT's occupancy, use, development, maintenance or restoration of the Permit Area, including without limitation licensing and permitting costs and fees. DISTRICT acknowledges that this Permit may create a possessory interest subject to property taxation, and that DISTRICT may be subject to the payment of taxes levied on that interest. DISTRICT shall pay all such possessory interest taxes. DISTRICT's payment for such taxes, fees and assessments shall not reduce any payment due CITY.
25. Hazardous Substances. DISTRICT shall not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Permit Area. DISTRICT and DISTRICT'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. DISTRICT 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.

25.1 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.

25.2 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.

25.3 Remediation. If DISTRICT's occupancy, use, development, maintenance or restoration of the Permit Area results in a release of a Hazardous Substance, DISTRICT shall pay all costs of remediation and removal to CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules and regulations of governmental authorities.

25.4 Removal. If DISTRICT or DISTRICT's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances or hazardous wastes to the Permit Area, DISTRICT and/or DISTRICT'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. Upon CITY's request, DISTRICT shall deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Permit Area. DISTRICT 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.

25.5 Indemnity. DISTRICT shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from DISTRICT's occupancy, use, development, maintenance or restoration of the Permit Area, 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, DISTRICT's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

25.6 Notice of Release. If DISTRICT 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, DISTRICT shall immediately notify CITY and any appropriate regulatory or reporting agency per California Code of Regulations Title 19 and any other applicable laws or regulations. DISTRICT 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 DISTRICT 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, DISTRICT shall take all actions necessary to alleviate the danger. DISTRICT 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.

25.7 Environmental Assessment. Upon reasonable cause to believe that DISTRICT's occupancy, use, development, maintenance or restoration of the Permit Area ("DISTRICT'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 DISTRICT's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by DISTRICT'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. DISTRICT shall cause, or if DISTRICT 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 DISTRICT shall pay all costs and expenses therefor.

26. Water Quality Assurances. DISTRICT shall, at its sole cost and expense, comply with all laws, rules, regulations and direction of competent governmental authority (such as the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management. DISTRICT acknowledges and agrees that such legal requirements may change at any time and from time to time.

26.1 NPDES. DISTRICT shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Effective Date of this Permit (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.

26.2 Stormwater Management. DISTRICT shall comply with all applicable requirements of the San Diego Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices," as that term is defined by the Stormwater Code, and as approved by the City of San Diego, in its governmental capacity, under its Stormwater Management Program.

27. Waiver. The property constituting the Permit Area is publicly owned and held in trust for

the benefit of CITY's citizens. CITY's or DISTRICT's failure to insist upon the strict performance of any of CITY's or DISTRICT'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 or DISTRICT'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 the waiving entity to constitute a valid and binding waiver. CITY's or DISTRICT'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 or DISTRICT'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 or DISTRICT may at any and all times require the cure of the default.

28. Cumulative Remedies. CITY's and DISTRICT's rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY's or DISTRICT's rights or remedies at law or in equity.

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

30. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and DISTRICT or between CITY and any other entity or party, or cause CITY or DISTRICT to be responsible in any way for the debts or obligations of any other party or entity.

31. 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 DISTRICT's occupancy, use, development, maintenance and restoration of the Permit Area. Any modification, alteration or amendment of this Permit shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Permit is binding upon such party in accordance with its terms.

32. 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.

33. 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 DISTRICT at DISTRICT'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

34. 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, 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.

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35. Acceptance of Permit Area. By signing this Permit, DISTRICT 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. DISTRICT 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 DISTRICT is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. DISTRICT accepts the Permit Area in its current condition. DISTRICT 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. DISTRICT shall not hold CITY responsible for any defects in the Permit Area. DISTRICT accepts and assumes all risk of harm to all persons and property, including without limitation DISTRICT's employees, from any defects in the Permit Area, and shall be solely responsible therefor.

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

SAN DIEGO FLOOD CONTROL DISTRICT

BY: _____
APRIL F. HEINZE, P.E.
Director, Department of General Services

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____

City of San Diego Environmental Analysis Section Environmental Clearance: This activity is adequately addressed in an MND prepared/ approved by the County of San Diego in March 2009 for the Woodside Avenue Flood Control Project; and Final Environmental Assessment prepared by FEMA (September 2013) and is part of a series of subsequent discretionary actions and not a separate project per CEQA Section §15378(c). Pursuant to CEQA Section 15162, there is no change in circumstance, additional information or project changes to warrant additional environmental review.

BY: _____
Name: Mike Hermann
Title: Senior Plan

UNITED STATES OF AMERICA,
Acting through the Department of the Navy,
Represented by Naval Facilities Engineering Command, Southwest, acknowledges the rights and responsibilities as granted in this permit.
BY:
Name: _____
Title: Real Estate Contracting Officer

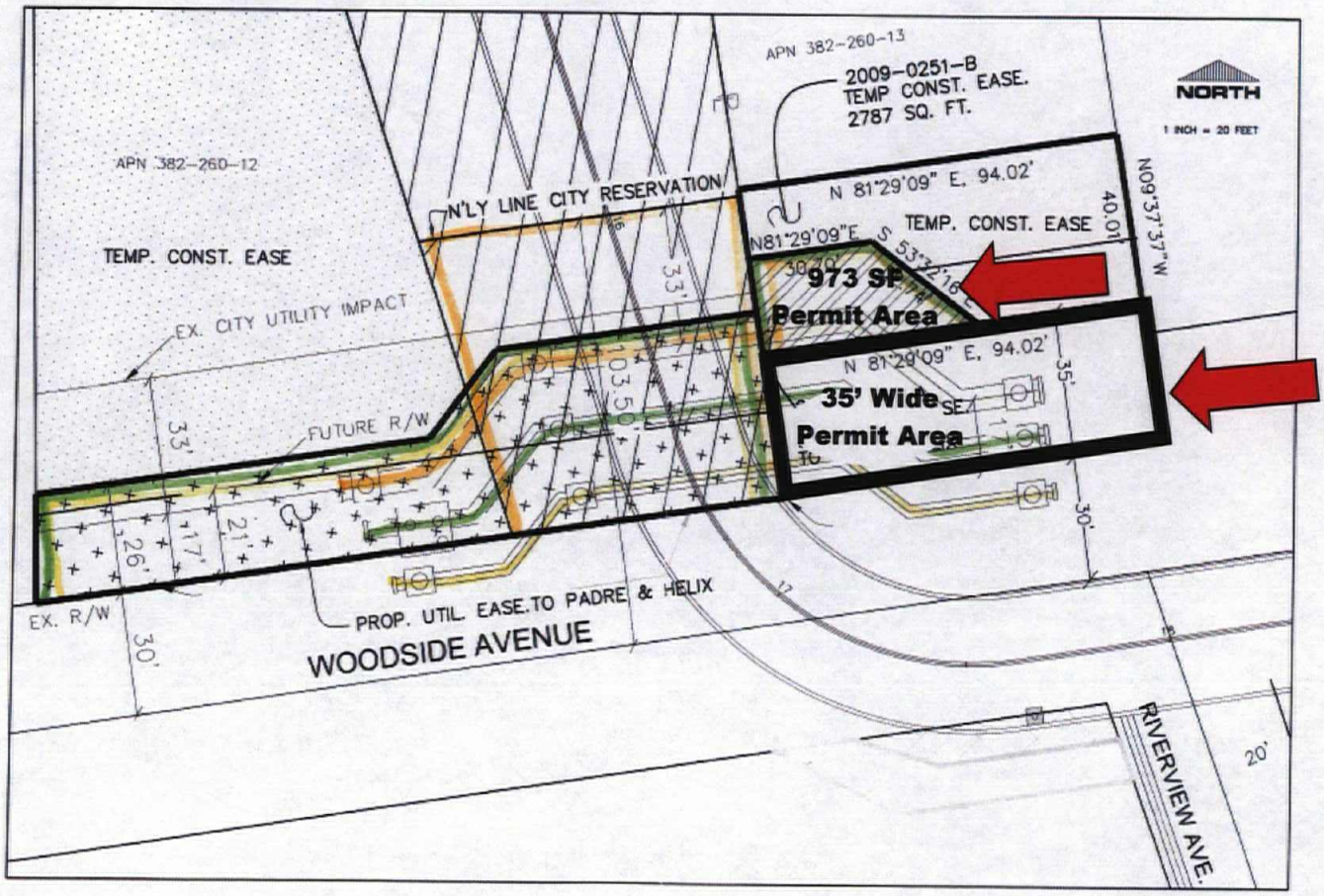
Approved as to form and legality this 30th day of July, 2014.

JAN I. GOLDSMITH, City Attorney

BY: _____
Name: Jeremy Fonseca
Title: Deputy City Attorney

APPROVED AS TO FORM AND LEGALITY

By: Thomas L. Bosworth
Thomas L. Bosworth, Sr. deputy County Counsel
San Diego County Flood Control District

Exhibit A: Permit Area

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