



Real Estate Assets Department
SDC003

EAST COUNTY ADVANCED WATER PURIFICATION JPA

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Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



CITY OF SAN DIEGO
LICENSE AGREEMENT FOR RIGHT OF ENTRY AND USE

This CITY OF SAN DIEGO LICENSE AGREEMENT FOR RIGHT OF ENTRY AND USE ("License") is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation ("CITY"), and **EAST COUNTY ADVANCED WATER PURIFICATION JOINT POWERS AUTHORITY**, a California Joint Powers Agency ("LICENSEE"), to be effective when signed by CITY and LICENSEE (collectively, the "Parties"), and approved by the San Diego City Attorney (the "Effective Date").

RECITALS

- A. CITY is the owner of that certain real property in San Diego County, California, identified by San Diego County Assessor Parcel Number ("APN") 383-080-05 and a portion of APNs 383-080-03 and 383-080-04, and commonly known as the East Mission Gorge Pump Station ("Property").
- B. The East County Advanced Water Purification Joint Powers Authority was created on November 5, 2019 as the governing body for the East County Advanced Water Purification Project ("ECAWP Project"). The purpose of the Project is to recycle wastewater and to create a new, safe, local, sustainable, and drought proof potable water supply for East San Diego County. Participating member agencies are City of El Cajon, County of San Diego, and Padre Dam Municipal Water District.
- C. LICENSEE has expressed an interest in acquiring the Property and subsurface easements under and through real property that is adjacent to the Property for the ECAWP Project, and CITY and LICENSEE are negotiating a separate Purchase & Sale Agreement related to those acquisitions.
- D. LICENSEE has requested permission from CITY to enter upon and temporarily occupy a portion of the Property for the License Use in order to maintain LICENSEE's schedule for the ECAWP Project facilities.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, and in consideration of the foregoing facts and circumstances, the Parties agree as follows:

- 1. **Definitions.** As used in this License, the following terms shall be defined as follows:
 - 1.1 "**Commencement Date**" shall mean November 7, 2022.
 - 1.2 "**License Area**" shall mean that portion of the Property, as depicted in **Exhibit A**, attached hereto.
 - 1.3 "**License Use**" shall mean the non-exclusive use of the Property to access the License

Area solely for contractor mobilization including staging of materials and equipment related to the LICENSEE's Horizontal Directional Drilling operation for the East County Advanced Water Purification Water Recycling Facility Force main and Advanced Water Purification Pipeline, the excavation of drill pits (6'x24'), and if LICENSEE is granted easements authorizing the installation of pipelines through the City's adjacent parcels (APNs 383-080-03 and 383-080-04), installation of casings (including necessary drilling therefor) ("Work"). LICENSEE shall not drill holes further or perform any additional work related to the installation of pipeline under this License unless LICENSEE has been granted such easements. After the granting of such easements, the License Use shall also include use of the License Area for drilling holes, reaming operations, and pulling/installing pipelines.

- 1.4 **"LICENSEE"** shall mean East County Advanced Water Purification Joint Powers Authority, which shall include its agents, employees, contractors, and subcontractors. LICENSEE shall be responsible for all of LICENSEE's agents, employees, contractors, and subcontractors and ensure that they adhere to all conditions as stated in this License.

- 1.5 **"LICENSEE's Address for Notices"** shall be:

EAST COUNTY ADVANCED WATER PURIFICATION
JOINT POWERS AUTHORITY
Attn: Rebecca Abbott
PO Box 719003
Santee, CA 92072
Email: Rabbott@padre.org

- 1.6 **"Term"** shall mean a period commencing on the Commencement Date and expiring in one (1) year or upon the close of escrow for the sale of the Property transferring the fee interest in the Property to LICENSEE, whichever is sooner.

2. Occupancy. Subject to the terms and conditions of this License, CITY hereby grants permission to LICENSEE and its officers, employees, agents, and contractors to enter upon and occupy the License Area solely for the License Use.
3. Use of License Area. LICENSEE may use the License Area solely for the License Use and for no other purpose whatsoever, without CITY's prior written consent in each instance. LICENSEE's use of the License Area shall not interfere with CITY's operation of the East Mission Gorge Pump Station, including that LICENSEE shall not prevent access to the East Mission Gorge Pump Station by chemical delivery trucks, City staff, and San Diego Gas and Electric Company.

- 3.1 Notification. LICENSEE shall provide written notification to Pump Station Supervisor, Raymond Burns, 619-980-5617 email: rburns@sandiego.gov (collectively, "Public Utilities Department Personnel"), at least 48 hours prior to LICENSEE's entry onto the License Area. Notification shall comply with Section

60 herein. Public Utilities Department Personnel shall coordinate with LICENSEE to provide initial access onto the License Area and may, but shall have no obligation to, oversee LICENSEE's entry onto the License Area.

3.2 Work Hours. No Work shall begin prior to 7:00 a.m. or after 7:00 p.m. or on weekends or Holidays.

3.3 Cal/OSHA. LICENSEE and its employees, agents, contractors, and invitees shall comply at all times with the health and safety requirements Title 8 of the California Code of Regulations, as such regulations are enforced by the State of California Division of Occupational Safety and Health (also known as Cal/OSHA).

3.4 Proximity to MHPA. Any Work that occurs in proximity to the City's Multiple Species Conservation Program (MSCP) Multi-Habitat Planning Area (MHPA) lands shall comply with the City's MSCP MHPA Land Use Adjacency Guidelines, which can be found at <https://www.sandiego.gov/sites/default/files/legacy//planning/programs/mscp/pdf/subareafullversion.pdf>. Upon LICENSEE's completion of the Work, the License Area will be generally restored by LICENSEE. All restoration activities undertaken within the License Area shall comply with all applicable environmental regulations and documents and Section 12 herein.

4. Governmental Approvals. By entering into this License, neither CITY nor CITY's City Council is obligating itself to LICENSEE or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LICENSEE's occupancy, use, development, maintenance, or restoration of the License Area. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
5. Unauthorized Activities. LICENSEE shall not engage in any activity on CITY-owned property other than pre-approved aspects of the Work as described in this License or using any portion of the License Area or the surrounding property as a staging or storage area for machines, personal property, equipment, or construction debris. Any work performed by LICENSEE that was not previously approved or otherwise authorized by this License, shall be removed and LICENSEE shall restore CITY-owned property to its condition on the Commencement Date at LICENSEE's sole cost and expense, subject to the satisfaction of the CITY.
6. CITY's Consent and Discretion. CITY's consent or approval under this License shall mean the written consent or approval of CITY's Mayor, or his or her designee ("Mayor"), unless otherwise expressly provided herein or required by law. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided for herein or required by law.
7. Term. At the request of the LICENSEE, the Term may be extended by the CITY, in writing, in its sole discretion.

8. Revocable License. This License 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, (a) immediately upon written notice delivered to LICENSEE if LICENSEE breaches or defaults any of LICENSEE's obligations under this License, or in case of an emergency; or (b) immediately upon an order of a court of competent jurisdiction, or any other legal order which restricts the CITY's ability to allow LICENSEE to perform under this License; or (c) upon thirty (30) business days prior written notice delivered to LICENSEE if for CITY's convenience. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by LICENSEE as a result of such revocation or the termination of this License.
9. Termination. LICENSEE or CITY may terminate this License for any reason upon thirty (30) business days prior written notice delivered to either party; however, in the event of a default or emergency during which the CITY in its sole discretion determines it necessary to terminate the License, termination may occur upon 24 hours prior written notice. If LICENSEE or any member agency of LICENSEE, as described in Recital B, acquires the Property from CITY in fee before the end of the Term, then this License shall terminate immediately without further action by either party.
10. LICENSEE's Waiver. LICENSEE expressly waives any claim against the CITY and its elected officials, officers, employees, representatives, and agents for any burden, expense, or loss which LICENSEE incurs because of CITY's revocation or the termination of this License.
11. No Holdover. If City still owns the fee interest in the Property, and the LICENSEE continues to occupy the License Area after the expiration or earlier termination of this License, such occupancy shall neither constitute a renewal or extension of this License, nor give LICENSEE any rights in or to the License Area. If LICENSEE continues to use or occupy the License Area after the expiration or earlier termination of this License, CITY may demand and receive from LICENSEE rent for the License Area, calculated on a per diem basis, using up to two (2) times the fair market rental rate that could be charged for the use of the License Area, said rate to be determined, as of the date of the expiration or earlier termination of this License, by a qualified CITY employee, the selection of whom shall be in CITY's sole discretion. CITY's acceptance of such rent shall neither constitute a renewal or extension of this License, nor give LICENSEE any rights in or to the License Area.
12. Restoration of License Area. LICENSEE shall be responsible for any damages and/or negative impacts directly associated with LICENSEE's use of the License Area unless the LICENSEE is granted fee title interest in the subject property. If the City remains the owner of the fee interests at the time of expiration or termination of this License, LICENSEE shall mitigate any such damages and/or negative impacts and restore the License Area to its condition as of the Commencement Date of this License and in accordance with the Mitigation, Monitoring, and Reporting Program contained in LICENSEE's Final Subsequent Initial Study/Mitigated Negative Declaration for the East County Advanced Water Purification Project (SCH# 2022040551), adopted by LICENSEE's Board of Directors in

Resolution 2022-15 on July 21, 2022. The time to restore the License Area shall not exceed 45 days.

13. Superior Interests. This License is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, leases, and rights-of-way pertaining to the License Area, whether or not of record. LICENSEE shall obtain all licenses, permits, and agreements from such third parties, including CITY lessees, as may be or become necessary or reasonably advisable to allow its use of the License Area, relative to any such superior interest. If LICENSEE's use of the License Area is or becomes inconsistent or incompatible with a preexisting, superior interest, LICENSEE 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.
14. License Fee. The Permit Fee is Nine Hundred Eighty Dollars (\$980).
15. Reserved.
16. Rent. Rent shall be in the amount of \$ 1,292.00 per month.
17. Maintenance of License Area. As it relates to LICENSEE's License Use and activities, LICENSEE shall, at LICENSEE's sole cost and expense and to CITY's satisfaction, maintain the License Area in good order and repair and in a safe, healthy, and sanitary condition during the Term. CITY shall not be required to make any improvements or repairs to the License Area. LICENSEE and its officers, employees, agents, and contractors shall not deposit any rubbish, debris, litter, or other item that is not necessary for the approved License Use, at any time on the License Area. LICENSEE shall immediately notify CITY of any rubbish, debris, litter, or any other condition which affects the safety, health, or sanitation of the License Area.
18. Entry and Inspection. CITY, upon reasonable notice to LICENSEE, may enter upon the License Area to inspect and maintain the License Area as CITY deems necessary.
19. Utilities. LICENSEE shall order, obtain, and pay for all utilities and service charges in connection with its use of the License Area.
20. Improvements and Alterations. Except as specifically authorized by this License, LICENSEE shall not construct any improvements, structures, or installations on the License Area, and shall not alter the License Area without the express written consent of CITY in its proprietary capacity and without obtaining all other applicable governmental approvals. LICENSEE may install temporary construction fencing around the perimeter of the License Area. Installation of any temporary fencing and access to the License Areas are conditioned on compliance with Sections 12 and 13. 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 License Area.
21. Personal Property. If the City still owns the fee interest of the Property at the time that this License is terminated or expires, the following provisions shall apply:

- 21.1 Personal Property. LICENSEE shall remove from the License Area all LICENSEE-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 ten (10) days after the expiration or earlier termination of this License. Any such items which LICENSEE fails to so remove shall be removed by CITY at LICENSEE's sole cost and expense. LICENSEE, 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 License Area.
- 21.2 Late Removal. Notwithstanding any provision of this License to the contrary, LICENSEE shall pay rent to CITY, in the amount of \$970.00 per month, for any period of time after the expiration or earlier termination of this License needed to remove LICENSEE's personal property, or restore the License Area, as required by this License, whether the removal and/or restoration work is actually performed by CITY or LICENSEE.
- 21.3 CITY's Right to Acquire Personal Property. If LICENSEE wants to dispose of any of its personal property used in its operations on the License Area upon expiration or termination of this License, CITY shall have the first right to acquire such personal property.
22. Insurance. LICENSEE shall not begin operating under the License until it has: (i) obtained, and provided to CITY, insurance certificates reflecting evidence of all insurance as required in Section 22.2 herein; however, CITY reserves the right to request, and LICENSEE shall submit, copies of any policy upon reasonable request by CITY; (ii) obtained CITY approval of each company or companies as required in Section 22.4 herein; and (iii) confirmed that all policies contain the specific provisions and endorsements as required in this Section.
- 22.1 LICENSEE's liabilities, including but not limited to LICENSEE's indemnity obligations, under the Permit, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of the License and LICENSEE's failure to maintain or renew coverage or to provide evidence of renewal during the Term may be treated as a material breach of contract by CITY. Further, LICENSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the Term.
- 22.2 Types of Insurance. At all times during the Term, the LICENSEE shall maintain insurance coverage and shall require LICENSEE's contractors and subcontractors conducting work on the License Area to maintain insurance coverage as follows:
- 22.2.1 Commercial General Liability. Commercial General Liability (CGL) Insurance 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 or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

22.2.2 Commercial Automobile Liability. For all of LICENSEE's automobiles including owned, hired, and non-owned automobiles, LICENSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

22.2.3 Workers' Compensation. For all of LICENSEE's employees who are subject to the License and to the extent required by the applicable state or federal law, LICENSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and LICENSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives.

22.3 Deductibles. All deductibles on any policy shall be the responsibility of LICENSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.

22.4 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by the License 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 will 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 (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

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

22.6 Accident Reports. LICENSEE shall immediately report to CITY any accident causing property damage or injury to persons on the License Area or otherwise related to the License 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, photographs and/or video, if any, and other pertinent information.

- 22.7 Severability of Interest. Each policy shall provide that LICENSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- 22.8 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, LICENSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this License. LICENSEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, LICENSEE shall immediately notify CITY and obtain replacement insurance as soon as possible.
- 22.9 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any operations are initiated under the License.

22.9.1 Commercial General Liability Insurance Endorsements

22.9.1.1 ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of (i) ongoing operations performed by LICENSEE or on LICENSEE's behalf, (ii) LICENSEE's products, (iii) LICENSEE's work, including but not limited to LICENSEE's completed operations performed by LICENSEE or on LICENSEE's behalf, or (iv) premises owned, leased, controlled, or used by LICENSEE.

22.9.1.2 PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents, and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of LICENSEE's insurance and shall not contribute to it.

22.9.2 Automobile Liability Insurance Endorsements

22.9.2.1 ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of automobile owned, leased, hired, or borrowed by or on behalf of LICENSEE.

22.9.3 Worker's Compensation Insurance Endorsements

22.9.3.1 Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for CITY.

- 22.10 Self-Insurance. LICENSEE shall have the right to self-insure with respect to any of the insurance required in this Section. LICENSEE shall provide to CITY evidence of self-insurance satisfying the requirements in this Section and indicating LICENSEE's self-insured status. Insurance or equivalent risk management coverage provided by a joint powers' insurance authority may also satisfy the provisions of this Section.
23. Subcontractors' Insurance and Indemnification of CITY. Unless LICENSEE's insurance covers work performed by all of LICENSEE's contractors and subcontractors performing any Work or in the License Area, LICENSEE shall require LICENSEE's contractors and subcontractors to indemnify the CITY and to maintain insurance coverage to the same extent that LICENSEE is required to indemnify the CITY and maintain insurance coverage pursuant to the Insurance Section of this License, including all obligations to provide documentation and all of the endorsements, including naming the City of San Diego and its respective elected officials, officers, employees, agents, and representatives as an Additional Insured in each insurance policy.
24. Indemnification and Hold Harmless. LICENSEE 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 LICENSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with LICENSEE's occupancy, use, development, maintenance, or restoration of the License Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LICENSEE's duty to indemnify and hold harmless shall not apply to the extent any established liability arises from the active negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this

indemnification. In the event of such election, LICENSEE shall pay all the costs related thereto, including reasonable attorney's fees and costs.

25. Liability for Loss, Injury, or Damage. In addition to any other assumption of liability set forth herein, and excluding any loss or damage to the extent resulting from the CITY's negligence or willful misconduct, LICENSEE agrees that it assumes the sole risk and responsibility for any damage, destruction, or theft of LICENSEE's equipment, materials, or personal property placed on the License Area and for any injury to persons which occurs on the License Area as a result of the License Use.
26. Compliance with Laws. LICENSEE shall at all times in its use, occupancy, and maintenance of the License Area comply with all applicable laws, rules, permits, regulations and direction by competent governmental authorities, and all at LICENSEE's sole cost and expense. At least annually, LICENSEE shall deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LICENSEE.
27. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided by LICENSEE pursuant to this License is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). LICENSEE shall hold CITY and its elected officials, officers, and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
 - 27.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LICENSEE as a result of CITY's disclosure or non-disclosure of this License or LICENSEE information requested pursuant to the CPRA. LICENSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FOR ANY BURDEN, EXPENSE, OR LOSS WHICH LICENSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OF NON-DISCLOSURES OF THIS LICENSE OR ANY LICENSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.
28. No Discrimination. LICENSEE shall not discriminate in any manner against any person on account of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, age, marital status, or disability in LICENSEE's use of the Permit Area, including without limitation the provision of goods, services, facilities, privileges, advantages, and accommodations, and the hiring and retention of employees and contractors.
29. Permits & Approvals. LICENSEE, at LICENSEE's sole cost and expense, shall obtain all required permits, licenses, and approvals from the applicable local, state, and federal authorities, including without limitation from CITY ("Governmental Entitlements"). All Work shall be done in compliance with the terms and conditions of any required Governmental Entitlements.
30. Equal Pay Ordinance. Unless an exception applies, LICENSEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By

signing this License, LICENSEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.

- 30.1 LICENSEE Requirement. The Equal Pay Ordinance applies to any subcontractor to the same extent as it would apply to LICENSEE. LICENSEE shall require subcontractors to certify compliance with the Equal Pay Ordinance in their subcontracts.
- 30.2 Notice Requirement. LICENSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.
31. Equal Opportunity. LICENSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. LICENSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth. LICENSEE shall cause the foregoing provisions to be inserted in all of LICENSEE's contracts for work related to this License so that such provisions will be binding upon each of LICENSEE's contractors. LICENSEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY's Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request LICENSEE shall submit a current Workforce Report. LICENSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this License and debarment from participating in CITY contracts for a period of not less than one (1) year.
32. Equal Benefits. LICENSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require applicable parties to offer the same employment benefits to employees with spouses and employees with domestic partners. LICENSEE shall certify that it will maintain such equal benefits throughout the Term. LICENSEE's failure to maintain equal benefits shall be a material breach of this License.
33. Disabled Access Compliance. LICENSEE will, as applicable to the License Area and LICENSEE's possession, use, and occupancy of the License Area, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, LICENSEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). LICENSEE's compliance shall include without limitation the following:
- 33.1 LICENSEE 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;

- 33.2 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 LICENSEE;
 - 33.3 LICENSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
 - 33.4 Where required by law, LICENSEE shall, at LICENSEE's sole cost and in conformance with all applicable building codes, comply with applicable disabled-access requirements by making accessible any areas of the License Area which deny access to disabled persons;
 - 33.5 LICENSEE shall include language in each subcontractor agreement, if any, indicating the subcontractors' agreement to abide by the foregoing provisions; and
 - 33.6 LICENSEE and each of its subcontractors, if any, shall be individually responsible for their own ADA compliance program. LICENSEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this License.
- 34. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this License if LICENSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego CITY Council related to the selection of LICENSEE for this License. It is not the intent of this policy that these provisions apply to members of the CITY Council.
 - 35. LICENSEE's Risk. LICENSEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with LICENSEE's use or occupancy of the License Area and any damages to the improvements on, under, or in the vicinity of the License Area resulting directly or indirectly thereby.
 - 36. No Nuisance. LICENSEE shall not use the License Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in the surrounding area or that violates CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).
 - 37. Assignment and Sublicense. LICENSEE shall not assign or sublicense any rights granted by this License or any interest in this License without CITY's written consent in each instance. Approval of any such proposed assignment may be withheld at the sole and absolute discretion of the CITY. Any assignment by operation of law shall automatically terminate this License.

38. Signs. LICENSEE 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 License Area, LICENSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at LICENSEE's cost.
39. Encumbrances. LICENSEE shall keep the License Area free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with LICENSEE's use or occupancy of the License Area. LICENSEE 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 License Area, including without limitation LICENSEE's failure or the failure of any contractor or subcontractor hired by LICENSEE to pay any person or persons entitled to lien or encumber the License Area pursuant to the California Civil Code.
40. Taxes. If applicable, LICENSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LICENSEE, including the land and any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LICENSEE, or levied by reason of LICENSEE's occupancy, use, development, maintenance, or restoration of the License Area, including without limitation licensing and permitting costs and fees. LICENSEE acknowledges that this License may create a possessory interest subject to property taxation, and that LICENSEE may be subject to the payment of taxes levied on that interest. LICENSEE shall pay all such possessory interest taxes. LICENSEE's payment for such taxes, fees and assessments shall not reduce any payment due CITY.
41. Local Business and Employment. LICENSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this License and to the extent legally possible, LICENSEE shall use commercially reasonable efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LICENSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
42. Security and Safety of License Area. LICENSEE shall bear sole responsibility for the security and safety of the License Area during the Term relating to any Work performed as authorized by this License or under the direction of LICENSEE. LICENSEE shall be responsible for the maintenance, cleanup, and securing of the License Area, as appropriate, immediately following each day's work to ensure security and safety. LICENSEE shall comply with all applicable laws, rules, regulations, and directives of competent governmental authorities, at LICENSEE's sole cost and expense, with respect to maintaining the License Area in a safe and secure manner during the Term. CITY has no obligation to provide oversight of the Work or staffing or resources for the maintenance of the License Area during the Term.
43. Hazardous Substances. LICENSEE shall not allow the illegal installation, storage,

utilization, generation, sale, or release of "Hazardous Substance", as defined below, or otherwise regulated substances in, on, under or from the License Area. LICENSEE and LICENSEE's agents and contractors shall not install, store, utilize, generate, or sell any Hazardous Substance on the License Area without CITY's prior written consent. LICENSEE 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.

- 43.1 Release. For all purposes of this License, 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.
- 43.2 Hazardous Substance. For all purposes of this License, "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.
- 43.3 Remediation. If LICENSEE's occupancy, use, development, maintenance, or restoration of the License Area ("LICENSEE's Operations") results in a release of a Hazardous Substance, LICENSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the License Area, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 43.4 Removal. If LICENSEE or LICENSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances to the License Area, LICENSEE and/or LICENSEE's contractor or agent shall remove all Hazardous Substances in any type of container, equipment, or device from the License Area immediately upon or prior to the expiration or earlier termination of this License. CITY reserves the right to conduct inspections of the License 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 License Area. LICENSEE 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.
- 43.5 Indemnity. LICENSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LICENSEE's Operations, 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,

LICENSEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

- 43.6 Notice of Release. If LICENSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from, or beneath the License Area, LICENSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LICENSEE 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 LICENSEE 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, LICENSEE shall take all actions necessary to alleviate the danger. LICENSEE 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 License Area.
- 43.7 Environmental Assessment. Upon reasonable cause to believe that LICENSEE's Operations resulted in any Hazardous Substance being released on, from, or beneath the License 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 LICENSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LICENSEE's Operations on, in, from or under the License 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 License 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. LICENSEE shall cause, or if LICENSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the License Area and compliance with environmental laws and regulations are achieved, and LICENSEE shall pay all costs and expenses therefor.
44. Storm Water Best Management Practices. LICENSEE shall, at its own cost and expense, comply with Part 2 of the current City of San Diego Storm Water Standards Manual, Section 1000 and 1001 of the City Supplement to Standard Specifications for Public Works Construction (The WHITEBOOK), and any and all applicable Minimum Best Management Practice requirements, as defined in the CITY's Jurisdictional Runoff Management Plan, in performing or delivering services at CITY owned, leased, or managed property, or in performance of services and activities on behalf of CITY, regardless of location.

- 43.1 LICENSEE shall comply with the current CITY's Jurisdictional Runoff Management Plan encompassing city-wide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries.
- 43.2 LICENSEE shall comply with each CITY facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment. LICENSEE shall remove any dry-weather controls put in place prior to a rain event to minimize the possibility of clogging the storm drain system. After a rain event, all controls must be reinstalled, refreshed, and maintained by the LICENSEE if necessary.
- 43.3 LICENSEE shall accept ultimate responsibility to prevent pollutant discharges to the storm drain system by identifying and implementing any additional BMPs that may be required to prevent the discharge of pollutants to the storm drain system.
45. Prevailing Wages. LICENSEE acknowledges that LICENSEE is the awarding body pursuant to California Labor Code section 1722, for any contracts related to LICENSEE's use of the License Area that may require the payment of prevailing wages pursuant to State law and/or San Diego Municipal Code section 22.3019. LICENSEE agrees to comply with all laws related to the payment of prevailing wages on public works contracts, including without limitation the requirements contained in California Labor Code sections 1720-1861. LICENSEE shall deliver to City, upon request, evidence of compliance with the State prevailing wage laws in form and content reasonably satisfactory to CITY.
46. Performance and Payment Bonds. If LICENSEE constructs any type of improvements or alterations on the License Area, CITY may require LICENSEE to provide CITY with a performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed and payment bond in the amount of one hundred percent (100%) of the total amount payable under the contract for construction of the improvement/alteration. The bonds shall be corporate surety bonds or other security satisfactory to CITY. The bonds shall insure that the construction be completed in accordance with this License and all applicable laws and regulations. At the option of CITY, in the event the construction is not completed in full satisfaction of the CITY and this License, CITY may use the performance bond to remove the uncompleted improvements/alterations and restore the License Area to a condition satisfactory to CITY. The bond shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
47. Vehicular Traffic. All vehicular traffic shall be confined to concrete, asphalt, or decomposed aggregate surfaces unless otherwise approved in writing by CITY Contact prior to the commencement of the Work. Vehicular traffic shall not block access to, nor interfere with CITY's ability to access and operate the East Mission Gorge Pump Station.
48. Grading and Barriers. Except as authorized by this License, LICENSEE shall not change the surface grade or construct any permanent barriers within the License Area. If CITY remains the owner of the fee interest at the expiration or termination of this License,

LICENSEE shall at its sole expense, and to the satisfaction of CITY restore the surface grade of the License Area and if requested, remove any barriers erected by LICENSEE as part of the License Use.

49. Repair. LICENSEE shall be responsible, at its sole cost and expense, for the repair or replacement of any damage to the License Area caused directly or indirectly by LICENSEE's use of the License Area, including items that CITY staff has determined to be damaged. LICENSEE shall comply with the direction of CITY's Department of Real Estate and Airport Management with respect to the method of any repairs or replacement arising under this License.
50. Partial Invalidity. If any term, covenant, condition, or provision of this License is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
51. Waiver. The property constituting the License 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 LICENSEE's obligations under this License, 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 default shall not be a waiver of any other default. Any waiver of a default 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 License, 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 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 may at any and all times require the cure of the default.
52. Cumulative Remedies. CITY's rights and remedies under this License are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
53. Survival. Any obligation which accrues under this License prior to its expiration or termination shall survive such expiration or termination.
54. Joint and Several Liability. If LICENSEE 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 LICENSEE under this License.
55. No Affiliation. Nothing contained in this License shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and LICENSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LICENSEE or any other party or entity.
56. Charter Section 225. Pursuant to City Charter Section 225, LICENSEE shall disclose the names and identities of all natural persons who will receive more than 10% of the contracted

amount or who own more than 10% of the entity contracting with the City.

57. Exhibits. All exhibits referenced in this License are incorporated into this License by this reference. In the event of a conflict between this License and any exhibit to this License, the terms, conditions, and obligations of this License shall control.
58. Entire Agreement. This License constitutes the entire agreement between the Parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this License. Any modification, alteration, or amendment of this License shall be in writing and signed by all the Parties hereto.
59. Counterparts. This License 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.
60. Notices. Any notice required or permitted to be given under this License shall be in writing and may be served personally or delivered by United States mail, postage prepaid, or by electronic transmission, including email (which will be followed by a hard copy delivered by US mail, unless the hard copy is waived by reply email from a named recipient representing the recipient party in response to a notice email) and addressed to LICENSEE at LICENSEE's Address for Notices, and to CITY as follows:

CITY:

THE CITY OF SAN DIEGO
Attention: Director, Public Utilities Department
9192 Topaz Way, MS-904A
San Diego, CA 92123

With a copy to:
Department of Real Estate and Airport Management
Director
1200 Third Ave, Suite 1700
San Diego, CA 92101
Email: pmaus@sandiego.gov

61. Authority to Contract. Each individual executing this License on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this License 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 License is binding upon such person or entity in accordance with its terms. Each person executing this License 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.
62. Acceptance of License Area. By signing this License, LICENSEE represents and warrants

that it has independently inspected the License Area and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the License Area and its suitability for the License Use. LICENSEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the License Area or its suitability for the License Use, and that LICENSEE is relying solely on its own and independent inspections, tests, investigations, and observations of the License Area in entering into this License. LICENSEE accepts the License Area in its current condition. LICENSEE acknowledges and agrees that unless set forth in this License, CITY has no obligation to improve, modify, repair, replace, alter, secure, or otherwise develop the License Area at any time either prior to, on or after the Effective Date. LICENSEE shall not hold CITY responsible for any defects in the License Area. LICENSEE accepts and assumes all risk of harm to all persons and property, including without limitation LICENSEE's employees, from any defects in the License Area, and shall be solely responsible therefor.

63. Standard of Conduct. LICENSEE and its employees shall at all times conduct themselves and the operations on the License Area in a creditable manner, as determined by CITY in its sole reasonable discretion.
64. Controlling Law and Venue. This License and all License documents shall be deemed to be made under and shall be construed in accordance with and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. The venue for any suit or proceeding concerning this License, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California.

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

THE CITY OF SAN DIEGO,
a California municipal corporation

**EAST COUNTY ADVANCED WATER
PURIFICATION JOINT POWERS
AUTHORITY,** a California Joint Powers
Agency

By: Penny Maus
Penny Maus (Nov 3, 2022 13:04 PDT)
Penny Maus
Director, Department of Real Estate
and Airport
Management

By: Kyle Swanson
Printed Name: Kyle Swanson
Title: CEO/General Manager

Date: Nov 3, 2022

Date: Nov 3, 2022

Approved as to form this _____ day of <u>Nov 3, 2022</u> , 2022. MARA W. ELLIOTT, City Attorney By: <u>Melissa Ables</u> Melissa Ables (Nov 3, 2022 18:14 PDT) Melissa Ables Deputy City Attorney

UOP 11 01 22

EXHIBIT A: LICENSE AREA

