

CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and HELIX ENVIRONMENTAL CONSTRUCTION GROUP, a California corporation ("PERMITTEE"), to be effective (the "Effective Date") upon execution by the parties and approval by the San Diego City Attorney, as follows:

RECITALS

- A. CITY is the owner of certain real property (APN 383-08-003) in the County of San Diego (City Property), depicted in Exhibit A, attached hereto and incorporated herein by this reference (Permit Area) has been identified as a potential wetland mitigation site.
- B. The CITY'S Engineering and Capital Projects Department SR-163/Friars Road Site Reconnaissance – Project No. 174731 requires wetland mitigation area.
- C. CITY desires to allow PERMITTEE to enter upon the Permit Area to conduct trenching to investigate groundwater levels to determine the feasibility of this property as a wetland mitigation site.

NOW, THEREFORE, for valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its employees, agents, and contractors to enter upon the Permit Area to conduct trenching to investigate groundwater levels provided: a) all trenching and/or boring locations are restored to its previous conditions; and b) a qualified Archaeological monitor and Native American monitor are onsite during all trenching activities (Permit Use) and for no other purpose whatsoever.
- 2. Use of Permit Area. PERMITTEE may use the Permit Area, on a non-exclusive basis, solely for the purposes of the Permit Use. PERMITTEE shall obtain all related permits and comply with all applicable environmental laws, rules, and regulations related to the Permit Use.
- 3. Permit Fee. PERMITTEE is performing a service on CITY Water Department watershed property that CITY would ordinarily perform, and thus, no permit fee shall be charged to PERMITTEE.
- 4. Term. The term of this Permit (Term) shall commence on the Effective Date and shall expire on March 31, 2010.
- 5. Revocable License. This Permit is not a lease. It is a non-exclusive license to enter upon and use the Permit Area on the City Property, and may be revoked by CITY at will, at any time, and at CITY'S sole discretion. CITY shall not be obligated for any loss, financial or otherwise,

which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit. CITY may, at all times, enter upon the Permit Area.

6. CITY'S Consent and Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his designee [Mayor], unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
7. Governmental Approvals. By entering into this Permit, neither CITY nor its City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Permit Area or PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the PERMITTEE'S use of the Permit Area.
8. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area or City Property. PERMITTEE and PERMITTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area or City Property without CITY'S prior written consent. For the purposes of this provision, a "release" shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency [EPA] in regularly released reports, and any other substances incorporated into the State of California's list of hazardous substances. A copy of the current EPA and the State lists is on file in the Office of the City Clerk as Document No. 769704, and by this reference, is incorporated into this Permit.
 - 8.1 Remediation. If PERMITTEE'S occupancy, use, development, or maintenance of the Permit Area and/or City Property [PERMITTEE'S Operations] results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance, in accordance with all applicable laws, rules, and regulations of applicable governmental authorities.
 - 8.2 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S Operations, including, but not limited to, costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
 - 8.3 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released in, on, under, or from the Permit Area or City Property, PERMITTEE shall immediately notify CITY, and deliver a written report thereof to CITY within three days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall immediately take all actions

necessary to minimize or eliminate the danger. PERMITTEE shall immediately notify CITY of any notice of violation, initiation of environmental actions, and/or private suits related to the Permit Area or City Property.

- 8.4 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S Operations resulted in any hazardous substance being released on or beneath the Permit Area or City Property, CITY may cause an environmental assessment of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE'S Operations in, on, under, or above the Permit Area or City Property, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws, statutes, ordinances, and/or regulations, and include estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment, such that compliance with all applicable environmental laws is achieved, and PERMITTEE shall pay all costs and expenses therefor.
9. Noninterference. PERMITTEE shall not materially interfere with CITY'S use, operations, and activities on the City Property, and PERMITTEE shall use such routes and follow such procedures on the City Property as shall result in the least damage and inconvenience to CITY and other users of the City Property.
10. Property Damage. PERMITTEE shall pay for all damage to the City Property, CITY'S personal property on the City Property, and the personal property of third parties on the City Property resulting from PERMITTEE'S exercise of the rights granted under this Permit, including without limitation, soil erosion, subsidence, and/or damage resulting thereby. PERMITTEE shall promptly repair and restore to its original condition all such property.
11. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S Operations, and all expenses of investigating and defending against same, including without limitation, attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If CITY chooses, at its own election, to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without

limitation reasonable attorney fees and costs.

12. Taxes. PERMITTEE, alone, shall pay any and all taxes, charges, and use fees levied by any governmental agency against PERMITTEE or against any portion of the City Property as a result of PERMITTEE'S Operations.
13. Encumbrances. PERMITTEE shall keep the City Property free from all encumbrances and liens of any nature, which arise out of, or are in any manner directly or indirectly connected with, this Permit or PERMITTEE'S use of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation, all attorney fees and costs, relating to or charged against the City Property, including without limitation, PERMITTEE'S failure (or the failure of any contractor or subcontractor hired by PERMITTEE) to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
14. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S use of the City Property, including but not limited to, the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
15. PERMITTEE'S Risk. PERMITTEE shall bear all risk and liability arising out of, or in any manner directly or indirectly connected with, PERMITTEE'S use of the City Property, and any damages to the improvements on, under, or in the vicinity of the City Property resulting directly or indirectly thereby.
16. Insurance. On or before the Effective Date, PERMITTEE shall deliver to CITY a current certificate of insurance for:
 - (a) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least \$2,000,000 per occurrence, subject to an annual aggregate of at least \$4,000,000;
 - (b) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least \$1,000,000 per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the City Property. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage; and
 - (c) Workers' Compensation Insurance, as required by the laws of the State of California for all of PERMITTEE'S contractor's employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least \$1,000,000.
- 16.1. Additional Insureds. Pursuant to a separate endorsement, CG2010 (11/85), or equivalent form, "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

- 16.2. Primary & Non-Contributory Coverage. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term, and any extended use. The certificate(s) of insurance and associated endorsement(s) shall be provided to CITY, upon PERMITTEE'S execution of this Permit.
- 16.3. Qualified Insurer(s). All insurance required under this Permit must be provided by insurers licensed to do business in the State of California, which are rated at least "A-, VI" by the current AM Best Ratings Guide, and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted, provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list), and otherwise meet CITY requirements.
- 16.4. Deductibles and Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE, and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 16.5. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force upon the commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty days prior to the expiration of each insurance policy, PERMITTEE shall provide CITY any renewal certificate(s) and associated endorsement(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- 16.6. Modification. To assure protection from and against the kind and extent of risk existing on the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Permit.
- 16.7. Accident Reports. PERMITTEE shall report to CITY any accident causing property damage or injury to persons on the City Property. 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.
- 16.8. Failure to Comply. If PERMITTEE fails or refuses to obtain and maintain the insurance required under this Permit, or fails to provide proof of coverage, CITY may obtain such insurance. PERMITTEE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY will notify PERMITTEE of such payment of premiums stating the amount paid, the name(s) of the insurer(s), and the rate of interest. PERMITTEE shall pay CITY such reimbursement and interest within thirty days following CITY'S notice. Notwithstanding any other provision of this Permit, if PERMITTEE fails or refuses to obtain or maintain the insurance required under this Permit, or fails to provide proof of such insurance, CITY may terminate this Permit immediately upon such breach.

- 16.9. All-Risk Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, All-Risk Property insurance on all insurable property on the Permit Area in an amount to cover one hundred percent (100%) of the replacement cost. PERMITTEE shall deliver to CITY'S Real Estate Asset Department a certificate of such insurance.
17. Compliance with Law. PERMITTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect, or which may hereafter be in effect, which pertain to the Permit Area and PERMITTEE'S Operations.
18. Signs. No signs may be displayed on the Permit Area or City Property without CITY'S prior written consent.
19. Maintenance. Throughout the Term of this Permit, PERMITTEE shall maintain the Permit Area in a decent, safe, healthy, and sanitary condition, all at PERMITTEE'S sole cost and expense and to the satisfaction of CITY.
20. Grading. PERMITTEE represents and warrants that any grading and compaction operations in the Permit Area shall be done in such a manner that will not disrupt the existing surface drainage pattern on the City Property and surrounding properties, and that the final grades will not interfere with the existing flow pattern on the City Property and surrounding properties.
21. Inspection. CITY may, at any and all times, enter and inspect the Permit Area.
22. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is publicly-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit, or to take prompt action to require the cure of any such breach, shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
23. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
24. Entire Permit. This Permit contains the entire agreement between the Parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Permit shall be valid unless in writing and signed by the party to be charged.
25. Legal Proceedings. In the event of any controversy, claim, or dispute relating to this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation, attorney fees and costs.
26. Notices. Any notice, documentation, request, payment, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight service, or delivery by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the Parties as follows:

CITY: THE CITY OF SAN DIEGO
Real Estate Assets Department
Attn: Department Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, CA 92101

With a copy by First Class mail to:

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

PERMITTEE: HELIX ENVIRONMENTAL CONSTRUCTION GROUP
7578 El Cajon Blvd.
La Mesa, CA 91941

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

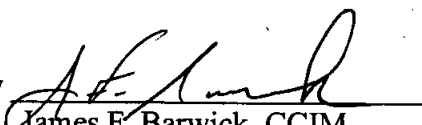
IN WITNESS WHEREOF, this Permit is executed by CITY and PERMITTEE, to be effective as of the Effective Date.

Dated this 7th day of April, 2009

Dated this 2nd day of April, 2009

THE CITY OF SAN DIEGO

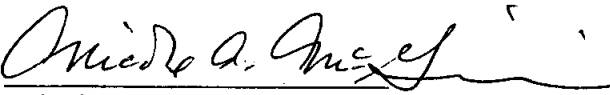
HELIX ENVIRONMENTAL
CONSTRUCTION GROUP

By 
James F. Barwick, CCIM
Director, Real Estate Assets Department

By 
Justin Fischbeck
President

Environmental Clearance:

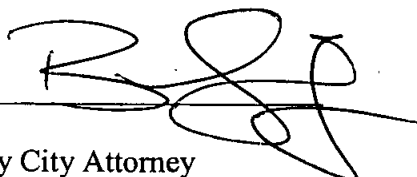
This activity is categorically exempt from CEQA, pursuant to State CEQA Guidelines section 15304.

By 
Nicole A. McGinnis
Senior Planner

Approved as to Form and Legality

Dated this 24TH day of APRIL, 2009

JAN I. GOLDSMITH
City Attorney

By 
Deputy City Attorney
BROCK LADEWIG

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- A qualified Archaeological monitor and Native American monitor shall be on-site during all trenching activities.
- Trenching depths vary, depending on discovery depth of groundwater.
- All trenched materials shall be returned to their respective trench and compacted.

APPROVED
EXHIBIT HA

App. Date: 12/16/09
IT No. 174-731

38308003

Mission Gorge Road

LEGEND

- Parcel Boundary
- Proposed Trench Location (Approximate)
2m Length
1m Width



100 50 0 100 Feet

Job No: DOK-02 Date: 02/05/09

Proposed Wetland Mitigation Site Exploratory Trench Locations

SR 163/FRIARS ROAD INTERCHANGE PROJECT

HELIX