

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 SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation ("SDG&E") to be effective as of the date of execution by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

Under the terms and conditions of this Permit, CITY will allow SDG&E to use the Permit Area solely as provided herein.

RECITALS

- A. CITY is the owner of certain improvements affixed to the real property located at 4077 N Harbor Dr., San Diego, CA 92101, specifically Sewage Pump Station # 2 ("City Property").
- B. CITY affixed the City Property to the real property pursuant to the Grant of Easement from the United States of America through the Department of the Navy to the City made on September 8, 1961. SDG&E represents that its use of the Permit Area is needed to monitor and improve reliability and service for the City Property.
- C. CITY and SDG&E desire to enter into this Permit to allow SDG&E to use the City Property solely as provided herein.

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

1. DEFINITIONS

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

- 1.1 **"CITY Contact"** – the CITY's designee for purposes of this Permit.
- 1.2 **"Permit Area"** – an approximate 8 square foot area located on the southwest corner of the rooftop of the City Property as more particularly depicted in Exhibit A.
- 1.3 **"SDG&E's Facility"** – a communication facility operated by SDG&E specifically, an outdoor, roof top antenna mounted on side of lower roof top parapet to be operated at the frequency band of 5.8 GHz, drawing 15.8 watts of power, with the approximate following dimensions: H 14.8' x W 14.8' x D3.6" and a weight of 7 lbs.
- 1.4 **"Permitted Use"** – the non-exclusive use of the Permit Area for the purposes of SDG&E'S Operations (defined below).

- 1.5 **"Permit Fee"** – a one-time long-term permit fee in the amount of four thousand nine hundred twenty dollars (\$4920.00) was paid on September 20, 2018.
- 1.6 **"Rent"** – rent under this Permit will be waived because the installation, operation and maintenance of the SDG&E's Facility benefits the City Property and will increase the reliability of this communication system, which also benefits the public generally.
- 1.7 **"SDG&E'S Operations"** – SDG&E'S installation, construction, occupancy, use, and maintenance of SDG&E's Facility in the Permit Area.
- 1.8 **"Term"** – the term of this Permit ("Term") shall be ten (10) years commencing on the Effective Date. This Permit may be terminated by either party for any reason upon thirty (30) days prior written notice.

2. **RIGHT TO ENTER**

Subject to the terms and conditions of this Permit, CITY hereby grants permission to SDG&E, its employees, agents, and contractors to enter upon the Permit Area.

3. **USE OF PERMIT AREA**

SDG&E may use the Permit Area on a non-exclusive basis for the sole purpose of the Permitted Use, and for no other purpose whatsoever without CITY'S prior written consent in each instance.

- 3.1 **Time of Use.** SDG&E may operate and access the Permit Area twenty-four (24) hours a day, seven (7) days a week. Except in case of an emergency, all visits to the Permit Area should be scheduled through Plant Operations at Pump Station Control Room: (619) 692- 4925. Proper identification is required to enter the City Property.
- 3.2 **No Nuisance.** SDG&E shall not use the Permit Area in any manner which, in CITY'S reasonable opinion, creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in the surrounding area.
- 3.3 **Limitation of Rights Conveyed.** This Permit does not grant any rights to SDG&E to use the real property on which the City Property is located, except for access to the Permit Area. The real property is owned by the United States Government, and permission to use or access the real property is subject to the sole discretion of the United States Government through the Department of the Navy. SDG&E agrees that it will not access any of the real property or use the City Property for any purpose other than the Permitted Uses without first obtaining the consent of the United States Government.

4. **HOLDOVER**

Any holding over by SDG&E after the expiration or earlier termination of this Permit shall not be considered a renewal or extension of this Permit. The occupancy of the Permit Area

after the expiration or earlier termination of this Permit shall constitute a month-to-month tenancy at will and all other terms and conditions of this Permit shall continue in full force and effect.

5. **REVOCABLE LICENSE**

This Permit is not a lease. It is a non-exclusive license to use the Permit Area, and may be revoked by CITY, in its sole discretion, with 30 days' prior written notice to SDG&E. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by SDG&E as a result of such revocation or the termination of this Permit. SDG&E expressly waives any claim for expense or loss which SDG&E might incur as a result of CITY'S termination of this Permit. CITY may at all times enter upon the Permit Area.

6. **RESTORATION**

Within 30 days following the expiration or earlier termination of this Permit, SDG&E shall promptly remove any and all improvements it installed in, on, under, or above the Permit Area and restore the Permit Area to its original condition, all at SDG&E'S sole cost and expense. SDG&E shall comply with any and all applicable laws.

7. **INSURANCE**

7.1 SDG&E shall obtain and maintain throughout the term of this Permit, at its sole cost and expense, all insurance required by this Permit. SDG&E'S liabilities under this Permit, including without limitation SDG&E'S indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. SDG&E'S maintenance of the required insurance coverage is a material consideration for this Permit. Notwithstanding any provision of this Permit to the contrary, if SDG&E fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, upon CITY'S request, SDG&E shall be in default of this Permit. SDG&E shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. Upon the Effective Date, SDG&E 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 reasonable 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 bodily injury, including death, and property damage with limits of at least **Two Million Dollars (\$2,000,000) per occurrence and general aggregate of 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. insured claims or contractual liability.
- (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 SDG&E'S employees who are subject to this Permit, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), including a waiver of the right of subrogation against The City of San Diego and its elected officials, officers, employees, and representatives.

7.1.1 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. Within thirty (30) days after the expiration of each insurance policy, SDG&E shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. SDG&E 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, SDG&E shall immediately obtain replacement insurance as soon as possible.

7.1.2 Modification. To assure protection from and against the kind and extent of risk existing with the Permitted Use, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving SDG&E thirty (30) days prior written notice. SDG&E shall also obtain any additional insurance reasonably required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Permitted Use.

7.1.3 Accident Reports. SDG&E shall immediately, or as soon as practicable and not more than 48 hours after SDG&E becomes aware of such accident, report to CITY any accident causing property damage or injury to persons on the Permit Area or otherwise related to the Permitted 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.

7.1.4 Self Insurance. SDG&E shall have the right to self-insure with respect to any of the insurance required to be carried by SDG&E under this agreement and shall provide to CITY a letter of self-insurance, as evidence of such coverage in lieu of certificates of insurance. This letter shall be provided to CITY within thirty (30) days after this Permit is

fully executed. Such self-insurance shall be deemed to have satisfied all of the insurance obligations required under this Permit.

8. **SDG&E'S RISK**

SDG&E shall bear all risks and liability arising out of or in any manner directly or indirectly resulting from SDG&E'S Operations and any damages to the improvements on, under, or in the Permit Area resulting directly or indirectly thereby, except where caused by the sole or active negligence or willful misconduct of the CITY.

9. **ACCEPTANCE OF PERMIT AREA**

By signing this Permit, SDG&E 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 Permitted Use. SDG&E further represents and warrants that SDG&E is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permitted Use, and that SDG&E is relying solely on its own and independent inspections, tests, investigations, and observations of the Permit Area in entering into this Permit. SDG&E accepts the Permit Area in its current condition and acknowledges and agrees that CITY has fulfilled all obligations CITY may have had to improve, modify, repair, replace, alter, or otherwise develop the Permit Area prior to the Effective Date. SDG&E shall not hold CITY responsible for any defects within the Permit Area, except in the case of the sole or active negligence or willful misconduct of the City. SDG&E accepts and assumes all risk of harm to all persons and property, including without limitation SDG&E's employees, from any defects in the Permit Area caused by SDG&E, and shall be solely responsible therefor, except in the case of the sole or active negligence or willful misconduct of the City.

10. **IMPROVEMENTS AND ALTERATIONS**

SDG&E shall not construct any improvements, structures, or installations within the Permit Area, and shall not alter the Permit Area or the Ocean Current Monitoring Station ("HF Radar") within the Permit Area without the express written consent of CITY, which consent shall be in CITY's sole discretion. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.

11. **COMPLIANCE WITH LAWS AND POLICIES**

11.1 **General.** SDG&E shall, at its sole cost and expense, comply with the requirements of all rules, regulations, ordinances, laws, and directives of governing authorities now in effect or which may hereafter be in effect, which pertain to SDG&E'S Operations.

11.2 **No Discrimination.** SDG&E shall not discriminate in any manner against any person on account of race, color, religion, gender, gender identity, gender expression, sexual orientation, medical status, national origin, age, marital status, or physical disability in SDG&E'S Operations, including, without limitation, the provision of goods,

services, facilities, privileges, advantages, and accommodations, and the hiring of employees and contractors.

12. **TELECOMMUNICATIONS PROVISIONS**

12.1 **Radio Frequency Radiation.** SDG&E shall maintain any radio frequency ("RF") radiation associated with the HF Radar within the levels allowed by federal regulations set forth in Section 1.1310 of CFR 47 and OET Bulletin 65. Any area within one thousand (1,000) feet of any RF transmitting antenna on the HF Radar, casually accessible by the general public or by any worker at ground level, shall be maintained below limits stated for General Population/Uncontrolled Exposure. SDG&E shall report to CITY any areas discovered by SDG&E to exceed such federally mandated limits. SDG&E shall not hold CITY responsible for its radiation levels found to exceed such limits. SDG&E shall indemnify, defend and hold the CITY harmless for any liabilities, fines, or other penalties claimed or imposed against the CITY resulting from the existence of levels of radiation that exceed such federally mandated limits, to the extent caused or contributed to, by SDG&E'S Operations; provided, however, that the duty to indemnify shall not extend to any liabilities, fines, or other penalties claimed or imposed against the CITY arising from the CITY's sole or active negligence or willful misconduct. Hazardous RF radiation levels may be encountered when climbing on antenna structures (refer to FCC OET Bulletin 65). Protection of employees performing service on buildings, roofs, air-conditioning equipment, water tanks, communications equipment, or any other maintenance work is of primary concern. Any areas in which such employees may be subjected to radiation levels that exceed the General Population/Uncontrolled Exposure limits must be clearly identified as required by CAL-OSHA.

12.2 **Radio Frequency Interference.** SDG&E shall comply with all requirements set forth in **Exhibit B** which may be updated from time to time in CITY'S sole discretion within thirty (30) calendar days of being provided any updated reasonable requirements in writing. SDG&E warrants that SDG&E'S Operations shall not result in degraded performance or RF interference with any CITY-authorized uses on City property.

12.3 **Industry Standards.** SDG&E shall perform SDG&E'S Operations in adherence to industry standards set by the "Standards and Guidelines for Communications Sites"

Motorola R56© Manual, located at <http://www.repeater-builder.com/antenna/site-stuff/are-fifty-six-man-2005.pdf> or any succeeding regulations or standards. In addition to the requirements of the Motorola R56© publication, SDG&E shall comply with the following supplemental requirement.

12.3.1 All transmitters shall have all necessary protection, such as cavity filtering and transmitter isolators, to eliminate any RF degradation of the receive signal to other users on City Property and

12.4 Other Facilities. SDG&E shall not access any other wireless communication facility or CITY-owned communications equipment (including any towers) on City Property without CITY'S prior consent.

12.5 Interference with CITY Operations or Public Use. SDG&E'S Operations shall not interfere with CITY operations or public use of any CITY-owned property; provided, if SDG&E's Operations are found to interfere SDG&E shall have a right to cure such interference as soon as practicable, but no later than within thirty (30) calendar days.

13. **WATER QUALITY – BEST MANAGEMENT PRACTICES**

The CITY and SDG&E are committed to the implementation of controls (best management practices, or BMPs) to manage SDG&E'S Operations on the Permit Area in a manner which aids in the protection of the City of San Diego's precious water resources. It is SDG&E's responsibility to identify and implement an effective combination of BMPs with respect to SDG&E'S Operations so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, SDG&E shall at a minimum, implement and comply, as applicable with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately SDG&E's responsibility to prevent the pollutant discharges to the storm drain system. Therefore, SDG&E will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

14. **WASTE, DAMAGE, OR DESTRUCTION**

SDG&E shall immediately give notice to CITY of any fire or any other damage that occurs within the Permit Area. SDG&E shall not commit, or allow any of its contractors, subcontractors or employees to commit, any waste or injury, or any public or private nuisance, in connection with SDG&E'S Operations. If the Permit Area is damaged by SDG&E in a way that puts the Permit Area into a condition which is not decent, safe, healthy, and/or sanitary, SDG&E shall make, or cause to be made, full repair of the damage and restore the Permit Area to the condition which existed prior to the damage; or, at CITY'S option, SDG&E shall clear and remove from the Permit Area all debris resulting from the damage and restore the Permit Area in accordance with plans and specifications previously submitted to and approved by CITY, in writing, in order to replace in kind and scope the operation which existed prior to the damage. SDG&E shall commence preliminary steps toward performing repairs and/or restoration of the Permit Area as soon as practicable, but no later than thirty (30) calendar days after the occurrence of the fire or damage and shall complete the required repairs and/or restoration of the Permit Area within one hundred eighty (180) calendar days after such occurrence; provided, SDG&E shall have more time as is reasonably necessary to complete such repairs and/or restoration if SDG&E has commenced and is diligently pursuing such repairs and/or restoration.

15. HAZARDOUS SUBSTANCES

SDG&E shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Permit Area without CITY's prior written consent. SDG&E 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.

- 15.1 Release. For all purposes of this Permit, 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.
- 15.2 Hazardous Substance. For all purposes of this Permit, "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.
- 15.3 Remediation. If SDG&E's occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a Hazardous Substance, SDG&E shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 15.4 Removal. If SDG&E or SDG&E's agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Permit Area, SDG&E or SDG&E's agent shall remove all Hazardous Substances in any type of container, equipment or device from the Permit Area immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Permit Area and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Permit Area. SDG&E shall be responsible for reasonable costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- 15.5 Indemnity. SDG&E shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities to the extent resulting from SDG&E's Operations 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, SDG&E's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

15.6 Notice of Release. If SDG&E knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Permit Area, SDG&E 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. SDG&E 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 SDG&E 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, SDG&E shall take all actions necessary to alleviate the danger. SDG&E 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.

15.7 Environmental Assessment. Upon reasonable cause to believe that SDG&E's Operations in or restoration of the Permit Area 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 SDG&E's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by SDG&E's Operations in or restoration of 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. SDG&E shall cause, or if SDG&E 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 Permit Area and compliance with environmental laws and regulations are achieved, and SDG&E shall pay all costs and expenses therefore.

16. SIGNS

SDG&E shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising in the Permit Area without CITY'S prior written consent. If any such unauthorized item is found within the Permit Area, SDG&E shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at SDG&E's cost and expense.

16.1 Company Logos. SDG&E shall not display any company logo or advertising of any kind on the HF Radar.

17. **MAINTENANCE OF THE PERMIT AREA**

SDG&E shall, at SDG&E's sole cost and expense and to CITY's reasonable satisfaction, maintain the Permit Area in good order and repair, and in a safe, healthy, and sanitary condition at all times during the Term, subject to normal and ordinary wear and tear resulting from the use of the Permit Area. At no time during the Term shall CITY be required to make any improvements or repairs to the Permit Area. SDG&E shall, at all times, keep the Permit Area free and clear of rubbish, debris, and litter. At all times while SDG&E is doing tower work, the work shall be done in compliance with OSHA standards.

17.1 Emergency Maintenance Procedures. The parties shall comply with the emergency maintenance procedures set forth in **Exhibit D**, including the requirement to notify the other party, in writing, of any changes to its emergency contacts and telephone numbers.

18. **REPAIR**

SDG&E shall be responsible, at its sole cost and expense, for the repair or replacement of any damage to the Permit Area caused by SDG&E or by SDG&E'S Operations on the Permit Area, including items or property that CITY staff and SDG&E have determined to be damaged by SDG&E or SDG&E'S Operations. SDG&E shall comply with the direction of CITY Contact or other competent CITY staff with respect to the method of any repairs or replacement arising under this Permit. If SDG&E believes that the direction of CITY contact or other competent CITY staff would require SDG&E to be out of compliance with any California Public Utilities Commission regulation, SDG&E shall notify the CITY Contact or CITY staff giving such direction, and the Parties agree to work towards a method of repair or replacement which meets both the CITY objectives and complies with all CPUC regulations; provided, such method of repair or replacement shall be of no more than comparable condition than previously existed.

19. **ENTRY AND INSPECTION**

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

20. **UTILITIES**

Utilities necessary for SDG&E's Operations shall be provided and paid by SDG&E.

21. **TAXES**

If applicable SDG&E shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon SDG&E or the Permit Area, including the land, any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by SDG&E, or levied by reason of SDG&E's

Operations, including any licenses or permits. SDG&E acknowledges that this Permit may create a possessory interest subject to property taxation, and that SDG&E may be subject to the payment of taxes levied on that interest. SDG&E shall pay all such possessory interest taxes. SDG&E'S payment for such taxes, assessments, and/or fees shall not reduce any payment due CITY.

22. SUPERIOR INTERESTS

This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits, licenses, easements, and rights-of-way ("Superior Interest(s)") pertaining to the Permit Area, whether or not of record. SDG&E shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow SDG&E's use of the Permit Area, relative to any such Superior Interest. If SDG&E's use of the Permit Area is or becomes inconsistent or incompatible with a preexisting Superior Interest, SDG&E 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. Failure to comply with any Superior Interests not of record and previously unknown to SDG&E, shall not be a breach of this Permit; provided that SDG&E promptly takes such action to remove any inconsistency or incompatibility to the reasonable satisfaction of the holder of the Superior Interest.

23. ENCUMBRANCES

SDG&E shall keep the Permit Area, and any CITY-owned property of which the Permit Area is a part, free from all encumbrances and liens of any nature which arise out of, or are in any manner directly or indirectly connected with, this Permit or SDG&E's Operations. SDG&E shall protect, defend, indemnify, and hold CITY harmless from and against 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 as a result of such encumbrances and/or liens, including, without limitation, SDG&E's failure, or the failure of any contractor or subcontractor hired by SDG&E, to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

24. ASSIGNMENT AND SUBLICENSE

SDG&E shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's prior written consent, which may be withheld or delayed in CITY's sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.

25. INDEMNIFICATION

SDG&E 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 for damages or injuries to any person or property, including injury to SDG&E's

officers, employees, invitees, guests, agents, or contractors, which arise out of SDG&E's Operations pursuant to this Permit, and all expenses of investigating and defending against same, including, without limitation, reasonable attorney fees and costs; provided, however, that SDG&E's duty to indemnify and hold harmless shall not include any claims or liability arising from the sole or active negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense on issues of CITY's sole interest 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 or participate in its own defense, SDG&E shall pay reasonable costs related thereto, including, without limitation, reasonable attorney fees and costs. In the event of a conflict with SDG&E, CITY may obtain independent legal counsel in defense of any claim related to this Indemnification; provided, that any independent legal counsel and external consultants shall be mutually agreed to between CITY and SDG&E in advance of fees and costs being incurred.

26. **OTHER GOVERNMENTAL ACTIONS**

By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to SDG&E or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to SDG&E's Operations. Discretionary action includes, without limitation, re-zonings, variances, environmental clearances, and all other required governmental approvals.

27. **REVOCATION AND TERMINATION**

27.1 **Revocation or Termination by CITY.** This Permit may be revoked or terminated upon thirty (30) days prior written notice by CITY, in CITY's sole discretion. Upon CITY's revocation or termination of this Permit, SDG&E shall immediately cease all operations within the Permit Area, and as soon as practicable thereafter, restore the Permit Area to the condition it was on the Effective Date, normal wear and tear excepted, and vacate the Permit Area. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by SDG&E as a result of such revocation or termination of this Permit. SDG&E expressly waives any claim for expense or loss which SDG&E might incur as a result of CITY's revocation or termination of this Permit.

27.2 **Revocation or Termination by SDG&E.** This Permit may be revoked or terminated upon thirty (30) days prior written notice by SDG&E. Upon SDG&E's revocation or termination of this Permit, SDG&E shall immediately cease all operations within the Permit Area, and as soon as practicable thereafter, but in no event later than seven (7) calendar days after the expiration or earlier termination of this Permit, restore the Permit Area to the condition it was on the Effective Date, normal wear and tear excepted, and vacate the Permit Area. Revocation or termination of this Permit by SDG&E shall not release SDG&E from any obligation or liability incurred/accrued, excepting monthly rent payments for time periods after which SDG&E has removed itself from, and restored, the Permit Area.

27.3 Cumulative Remedies. Each party's rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of such party's rights or remedies at law or in equity.

27.4 Waiver. The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY's citizens. Either party's failure to insist upon the strict performance of the other party's obligations under this Permit, in one or more instances, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. Either party's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in writing and executed by both parties to constitute a valid and binding waiver. Either party'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. Either party's failure to discover a default shall not result in an equitable estoppel, but such party may, at any and all times, require the cure of the default.

28. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY

28.1 Personal Property. SDG&E shall remove SDG&E-owned machines, appliances, equipment, and other items of personal property upon the expiration of this Permit, or as soon as practicable after termination, but in no event later than seven (7) business days after the expiration or earlier termination of this Permit. If any removal of such personal property by SDG&E results in damage to the Permit Area, SDG&E shall repair all such damage at SDG&E's sole cost and expense. If SDG&E fails to remove any such items more than thirty (30) calendar days after the expiration or earlier termination of this Permit, CITY may, at its option, remove such items at SDG&E's sole cost and expense.

28.2 Late Removal. SDG&E shall pay Rent to CITY, calculated on a per diem basis, at the market rate as of the date of the expiration or earlier termination of the Permit, for any period of time needed to remove any improvements or personal property from the Permit Area, whether by CITY or SDG&E, after the expiration or earlier termination of this Permit.

29. 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 SDG&E at SDG&E'S Address for Notices, and to CITY as follows:

If to SDG&E:

San Diego Gas & Electric Company
Attn: Corporate Real Estate
CP 1-2A
8335 Century Park Court
San Diego, CA, 92123-1569

If to CITY:

City of San Diego
Real Estate Assets Department
Attention: Real Estate Assets Director
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101-4155

30. **MISCELLANEOUS PROVISIONS**

- 30.1 **Governing Law.** This Permit shall be governed, construed, and enforced in accordance with the laws of the State of California.
- 30.2 **Entire Understanding.** This Permit constitutes the entire understanding between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Permit and SDG&E's Operations.
- 30.3 **No Affiliation.** Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture, or other affiliation between the Parties, or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of SDG&E or any other party or entity.
- 30.4 **Joint and Several Liability.** If SDG&E 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 SDG&E under this Permit.
- 30.5 **CITY'S Consent or Approval.** Whenever required under this Permit, CITY's consent or approval shall mean the written consent or approval of the San Diego City Mayor, or his designee, unless otherwise expressly provided, without need for further resolution by the City Council. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
- 30.6 **Permit Modifications.** Any modification, alteration, or amendment of this Permit shall be in writing and signed by the Parties.
- 30.7 **Survival.** Any obligation under this Permit that requires a party's performance of that obligation after the expiration or earlier termination of this Permit shall survive such expiration or termination.

- 30.8 Legal Proceedings. If, as a result of an action brought by or against PERMITTEE in connection with this Permit, CITY intervenes therein, becomes a party, or is made a party thereto, PERMITTEE shall pay CITY's reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs.
- 30.9 Number and Gender. In this Permit, words in the singular number shall include the plural, and *vice versa*, as appropriate to the context. Words of either gender shall include the other gender.
- 30.10 California Public Records Act. CITY shall determine in its sole discretion, whether information provided to CITY by SDG&E pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). SDG&E shall hold CITY, 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.
- 30.11 Authority to Execute and Deliver Permit. 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 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 the State of California.
- 30.12 Exhibits Incorporated. All exhibits referenced in this Permit are incorporated into the Permit by this reference.

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

Date: 10/15/19

THE CITY OF SAN DIEGO, a California
municipal corporation

By: [Signature]
Cybele L. Thompson
Director, Real Estate Assets

Date: 9/26/19

SAN DIEGO GAS & ELECTRIC
COMPANY, a California corporation

By: [Signature]
Adam Smith
Real Estate Portfolio Manager

ENVIRONMENTAL ANALYSIS SECTION:

This activity is categorically exempt from CEQA pursuant to CEQA State Guidelines Section 15301 (Existing Facilities).

Date: 10/11/19

BY: [Signature]
for Name: Alyssa M. Muto
Title: Deputy Director, Environmental and
Policy Analysis

Approved as to form

This 16th day of October, 2019
MARA W. ELLIOTT, CITY ATTORNEY

By: [Signature]
Melissa Ables
Deputy City Attorney

Exhibit A

Permit Area

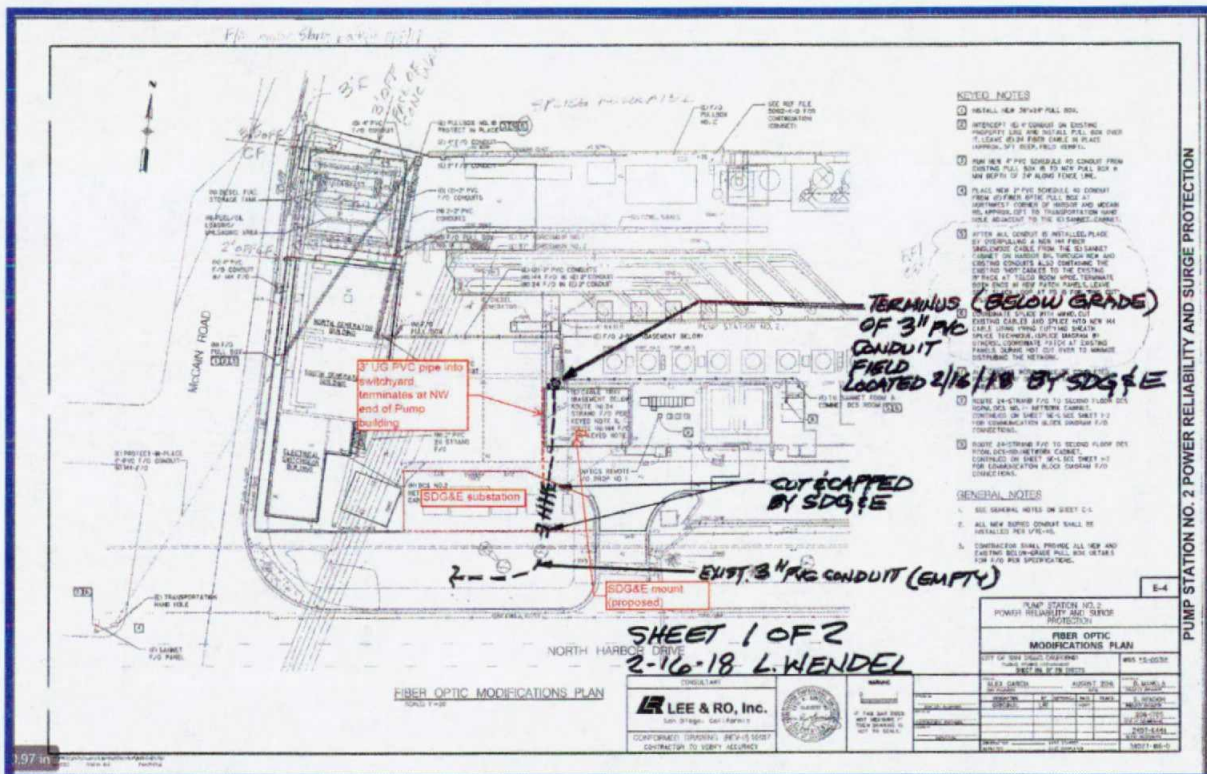


Exhibit B
Interference Protection Requirements

- a. **Interference.** Prior to the Effective Date or at any time during the Term of this Permit, SDG&E may be required to provide an intermodulation report ("Report") to CITY. This Report shall include the calculation parameters used to compile the Report, all intermodulation "hits," a brief description of the results of the intermodulation calculations; a list of possible interference situations that may result from SDG&E's Operations; transmission frequencies that are currently being operated on City Property and similar or other relevant data from other permittees/lessees/users operating on-site. The information required to compile the Report, including intermodulation parameters and currently known transmission frequencies on City Property may be obtained from CITY's General Services Department, Communications Division. CITY is not responsible for any omitted data provided for the purpose of creating the Report. The Report shall be provided to CITY's General Services Department, Communications Division ("GSDCD"), Attention: Senior Communications Engineer.
- b. **City of San Diego Land Radio/Electronic Use "ON THE AIR" Test Instructions and Procedures.** For the purpose of confirming interference situations calculated by the Report and for the discovery of any other actual interference situations, on-premises, pre-installation or pre-use tests may be required. The tests will determine whether or not radio frequency interference or degraded performance will result to any existing authorized radio/electronic type uses on City Property.
 - (1) SDG&E shall notify all permittees/lessees/users at the City Property of the tests and details of the tests, at least fourteen (14) calendar days in advance of the test. A listing of all permittees/lessees/users operating on the property may be obtained from CITY and used to compile a notification list.
 - (a) The notification shall be in the form of a letter to each listed permittee/lessee/user giving a technical data summary of the test and shall specify the date and hour the test will start. The letter of notification shall request the permittees/lessees/users to have a qualified representative present for the test to observe for possible interference problems and with authority to sign an interference or noninterference certification on behalf of the permittee/lessee/user. Technical Data Summary and Test Results Certification sheets are included below.
 - (b) A copy of these instructions, "City of San Diego Radio/Electronic Land Use On-The-Air Test Instructions and Procedures" shall be attached to each notification and it shall be noted in the notification letter.
 - (c) Notification to permittees/lessees/users shall be sent via U.S. Mail, pre-paid First-Class postage, certified return receipt requested or hand delivered.

- (d) The notification letter to the GSDCD Senior Communications Engineer shall include a list of all permittees/lessees/users notified.
- (2) Following the completion of the tests, SDG&E shall provide a letter to the GSDCD Senior Communications Engineer stating the test results obtained from each permittee/lessee/user participating in the test and a list of those permittees/lessees/users who did not respond.
- (3) If a notified permittee/lessee/user fails to send a qualified representative to observe and participate in the tests, it will be assumed by CITY that the permittee/lessee/user has assured itself that their operations will not be affected.
- (4) It shall be the responsibility of SDG&E to make complete arrangements and conduct all tests in accordance with applicable Federal/FCC Rules and Regulations.

c. On-The-Air Tests - Technical Details

Pre-installation or pre-use on-the-air tests shall be conducted by the SDG&E under the following technical conditions:

- (1) The SDG&E's transmitting and/or receiving equipment shall be of the type planned for final use on City Property.
 - (a) The transmitted RF power shall be the maximum to be used and authorized on City Property.
 - (b) On-the-air transmitter tests shall include the use of full allowable modulation.
 - (c) Antenna height(s), location(s) and type(s) shall be the same or comparable to the final installation plan.
- (2) Tests shall include on-the-air operation of all participating transmitter(s) and receiver(s) in all possible combinations with the SDG&E's electronic equipment.
- (3) All tests shall include testing with all frequencies planned for use by the SDG&E on City Property.

d. Radio Frequency Interference to City Radio Equipment

The radio equipment use proposed by SDG&E shall not directly or indirectly result in degraded technical performance of the CITY's existing radio equipment installed on City Property or used in the general area. Resulting degraded technical performance in this instance will include, but is not limited to:

- (1) Detectable or measurable received intermodulation;

(2) Audio distortion or noise; and

(3) Receiver desensitization in excess of 3.0 dB with respect to 12dB SINAD test.

e. Modifications to Equipment

SDG&E shall notify CITY prior to modifications to transmitting equipment that will change effective radiated power, transmitter frequency, transmitter modulation, or transmitter spurious and harmonic emissions. These modifications may require retest using this "ON THE AIR" testing procedure and the newly proposed equipment.

f. Resulting Interference

Should an interference problem occur on City Property or in the nearby surrounding area as a result of SDG&E's Operations, SDG&E shall initiate mutually agreeable actions among the affected parties to mitigate or resolve the interference problem. CITY may recognize the right of prior authorized permittees/lessees/users and withhold approval or disallow use of a new, retuned, or modified installation pending settlement of the interference problems between SDG&E and other authorized users. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by SDG&E as a result of CITY withholding approval and SDG&E waives any claim for expense or loss which SDG&E might incur as a result of CITY withholding approval.

TECHNICAL DATA SUMMARY

SDG&E is proposing to add a 1' panel antenna pointed towards their repeater on Point Loma. The dish will mount on a non-penetrating pedestal, on the western rooftop of the generator building. To get from the dish down to the new communications cabinet in the City Property will require that a 2" PVC pipe route be added on the side of the building to access an existing underground (UG) conduit that leads into the yard of the City Property (the existing UG PVC conduit still needs verification).

The backhaul radio proposed is an **unlicensed frequency band** using RAD Airmux400 radios. A summary of the radio specs is as follows:

1. Frequency Band: 5.8 GHz
2. ERP: 15.8 Watts (42 dBm)
3. Integrated antenna dimensions (HxWxD): 14.8"x14.8"x3.6")
4. Dish weight: 7 Lbs.
5. Cable type (that needs to route between dish and cabinet): CAT5e

TEST RESULTS CERTIFICATION

Please confirm if test result required.

Top section is to be completed and supplied to all permittees/lessees/users operating on the property Bottom section is to be completed by each existing permittee/lessee/user after testing is finished.

SUBJECT: "ON THE AIR" interference testing

SITE LOCATION _____

FREQUENCY _____

DATE OF TEST _____

TIME OF TEST _____

PROPOSED TRANSMITTER OWNED BY _____

TEST PERFORMED BY _____

SDG&E/Lessee/User:

"On-the-air" interference testing has been completed at the above-stated site location. A qualified representative was present for the test to observe for possible interference problems.

With regard to the above test, this is to certify that objectionable radio frequency interference did ☐ did not ☐ result during this test.

Details of interference: (if applicable)

Proposed technical resolution: (if applicable)

(Tenant)

(Tenant's Representative)

(Date)

Exhibit C

Installation Standards

- a. All waveguide and coaxial cable runs shall be installed and supported on building. All waveguide and coaxial cable shall be installed in a neat manner with sweeping bends and straight runs on the tower cable ladder and ice bridges.
- b. All drawings submitted for installation approval shall clearly show the following items:
 - (1) A plot plan of the site to include the building and tower location with the proposed equipment shown in its proposed location has been provided.
 - (2) A tower drawing clearly showing the location of the proposed antenna and the routing of the waveguide or coax cable specifying grounding locations.
 - (3) If equipment is to be located inside the building, a drawing shall be provided showing the rack location of the equipment, an elevation drawing of the rack, and a plot plan of the equipment installed in the rack.
 - (4) A list of all equipment to be installed shall be provided has been provided. This list shall include the type and manufacturer of equipment, RF frequency, RF power, modulation type, RF filtering, antenna type, antenna model, antenna gain and azimuth, waveguide and/or coax cable length and AC power requirement including any HVAC.
- c. All cabinets and racks shall be grounded to the site grounding system.
- d. Should CITY determine that a tower loading analysis is required, the requesting user shall have the tower analysis done at its expense and provide CITY with information on how the additional load to the tower will affect tower structural integrity.
- e. Tower Climbing: All tower climbing shall be done in compliance with all CAL-OSHA requirements.
- f. SDG&E shall provide CITY with shutdown procedures and 24-hour contact names and telephone numbers. In addition, should changes be made to the contact names and telephone numbers, the CITY shall be notified at least ten (10) calendar days before the change.
- g. Access: For access to the site, contact the GSDCD Fixed Maintenance Supervisor at (619) 525-8650. Keys will be issued as required. **DO NOT DUPLICATE KEYS.**
- h. Security: All sites are alarmed with silent alarms and monitored twenty-four (24) hours per day by the Public Service Dispatch Center. When entering or leaving a building, call (619) 527-7660 or use the order wire dial #13 and identify yourself. Police respond to all unanswered alarms.

- i. **Cleanup:** All trash and debris shall be removed from the site at the end of each work day and upon completion of the project.

Exhibit D

Emergency Maintenance Procedures

If SDG&E discovers that any of the antennas, or related equipment is damaged, SDG&E shall immediately notify **CITY's Station 38 at (619) 527-7660**.

If CITY discovers that any of the antennas or related equipment is damaged, CITY shall immediately notify **SDG&E's Call Center at 858-613-3000**

If SDG&E'S Operations cause any interference to CITY'S telecommunication equipment and/or system, CITY may require the equipment to be moved to another location on City Property.

SDG&E shall not unreasonably interfere with pedestrian or vehicle traffic in conducting SDG&E'S Operations.

If a party changes its emergency contact telephone information, that party shall immediately notify the other party of the new contact information at the telephone number provided above, and, within ten (10) calendar days, provide the other party with written notice of the new contact information, in accordance with this Permit.



Date of Notice: September 23, 2019

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Right of Entry Permit for SDG&E

COMMUNITY PLAN AREA: Midway District

COUNCIL DISTRICT: 2

LOCATION: 4077 North Harbor Drive, San Diego, CA 92101

PROJECT DESCRIPTION: Authorize the Mayor or his designee to sign a Right of Entry Permit between the City of San Diego, a California municipal corporation and San Diego Gas and Electric (SDG&E), a California corporation to operate a communication facility on a non-exclusive basis on an approximately 8 square foot area located on the southwest corner of the rooftop of the City Property, also known as Sewage Pump Station #2. This SDG&E operated facility is an outdoor, roof top antenna mounted on the side of the lower roof top parapet, with the approximate dimensions: H 14.8' x W 14.8' x D 3.6" and a weight of 7 lbs.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: Categorically Exempt from CEQA pursuant to CEQA Guidelines Section 15301 (Existing Facilities).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

The City of San Diego conducted an environmental review and determined the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities), which allows the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The exceptions to the exemptions listed in CEQA Guidelines Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the action; and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

CITY CONTACT: Roswitha Sanchez, SR/WA
Supervising Property Agent, Real Estate Assets Department

MAILING ADDRESS: 1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101

PHONE NUMBER: (619) 236-6721

On September 23, 2019, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Contact listed above.

Applications to appeal CEQA determination to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (**October 7, 2019**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: September 23, 2019

REMOVED: October 8, 2019

POSTED: J. Moore