

CITY OF SAN DIEGO
USE AND OCCUPANCY PERMIT

THIS CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT ("Permit") is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation ("CITY"), and **SAN DIEGO GAS & ELECTRIC COMPANY** ("PERMITTEE"), to be effective as of June 12, 2019 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney as follows:

RECITALS

- A. CITY owns property known as Balboa Park. On May 26, 1868, the City Council ("Council") set aside, a "1400 acres Park" dedicated for public use forever. On February 4, 1870, the State Legislature ratified the action of the Council in Record Book 1, Page 26.
- B. PERMITTEE is in the business of transmitting and distributing gas and electricity within the City of San Diego and County of San Diego.
- C. CITY has Lessees within existing buildings on the park property. One Lessee, Mingei Museum ("MINGEI"), is improving the existing building which requires relocation of an existing underground electric facility.
- D. PERMITTEE has provided an underground electric relocation job packet to MINGEI and PERMITTEE has received payment from MINGEI for this underground electric relocation.
- E. PERMITTEE has various electric and gas installations throughout Balboa Park allowing PERMITTEE to keep, maintain and operate facilities for the transmission and distribution of gas and electricity within Balboa Park.

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

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

- 1. Definitions. As used in this Permit, the following terms shall be defined as follows:
 - 1.1 "Permit Area" shall mean a portion of City Property located on Balboa Park, just south of El Prado and west of Pan American Park Roads APN 534-450-08, and as more particularly described and depicted in Exhibits A & B: Permit Area, attached hereto.
 - 1.2 "Permit Fee" shall mean a one-time, non-refundable permit processing fee in the amount of Nine Hundred Eighty Dollars (\$980.00).

- 1.3 "Permit Use" shall mean the non-exclusive use of the Permit Area solely for the purpose of installing and maintaining underground electric, vault, and transformer in the Permit Area as set forth in the underground electric relocation job packet PERMITTEE provided to MINGEI, but including maintenance modifications necessary for PERMITTEE's ongoing operation of such equipment (collectively referred to hereinafter as "PERMITTEE's Facilities"); provided, such modifications do not expand the Permit Area, except temporarily if necessary in the event of an Emergency (as defined below).
- 1.4 "PERMITTEE" shall mean San Diego Gas & Electric Company, which shall include its agents, employees, contractors, and subcontractors. PERMITTEE shall be responsible for all of PERMITTEE's agents, employees, contractors, and subcontractors and ensure that they adhere to all conditions as stated in this Permit.
- 1.5 "PERMITTEE's Address for Notices" shall be:
San Diego Gas & Electric
ATTN: Lida Jimenez
P.O. Box 129831, SD1179
San Diego, CA 92112
- 1.6 "Term" of this Permit shall be for six years, commencing on the date of execution June 2, 2019 and expiring on June 2, 2025. At the expiration date, unless otherwise terminated, this Permit shall be automatically renewed for an additional six-year term provided that any area open to the public for recreation or memorial purposes within the originally dedicated area requires electrical service.
2. Occupancy. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE and its officers, employees, agents, and contractors to enter upon and occupy the Permit Area solely for the Permit Use.
3. Use of Permit Area. Subject to the terms and conditions of this Permit, PERMITTEE may use the Permit Area on a non-exclusive basis solely for the Permit Use and for no other purpose whatsoever without CITY's prior written consent in each instance.
4. Commencement of Work and Pre-Construction Activities:
- 4.1 Work Schedule: Except in the case of an actual or threatened outage, damage and/or restoration ("Emergency"), PERMITTEE shall contact Balboa Park Program Manager Jeff Van Deerlin or Balboa Park District Manager for Operations Mario Llanos (CITY Contact) prior to the start date of any work. At that time, PERMITTEE shall submit a work schedule to CITY Contact that includes a description of the work to be performed, the specific location of such work within the Permit Area, and the dates and times of such work. PERMITTEE shall not conduct any activities in the Permit Area before 7:00 a.m. or after 7:00 p.m., Monday through Friday, and shall not conduct any activities in the Permit Area

during the weekend, except in the case of an emergency. CITY reserves the right to impose other reasonable restrictions and scheduling conditions for any activities related to work being completed in the Permit Area; provided, PERMITTEE shall not be responsible for failure to comply with such additional restrictions and scheduling conditions if PERMITTEE has not received prior written notice thereof, and no work shall commence pursuant to this Permit without the prior verbal approval of the CITY Contact.

- 4.2 Public Access Approval: Notwithstanding the time periods set forth in subsection 4.1, PERMITTEE shall notify CITY Contact a minimum of ten (10) working days prior to the start of any work in the Permit Area that may affect the use of any public access to the Permit Area, Balboa Park or any portion thereof.
- 4.3 Pre-Construction Meeting: Prior to commencement of any work, except in the case of an Emergency, PERMITTEE shall invite CITY Contact to a pre-construction meeting. This meeting shall establish points of contact, define means and methods of the work, and coordinate the PERMITTEE's work schedule with scheduled activities and Park and Recreation Department operations in and adjacent to the Permit Area.
5. Unauthorized Activities: PERMITTEE shall not engage in any activity on CITY-owned property other than pre-approved aspects of the work as described in **Exhibit B**, including placing aerial markers on the power lines attached to the pole or using any portion of the Permit Area or the surrounding property as a staging or storage area for machines, personal property, equipment, or construction debris. Any work performed by PERMITTEE that was not previously approved or otherwise authorized by this Permit, shall be removed and the CITY-owned property shall be put back to its condition on the Effective Date at the PERMITTEE's sole cost and expense.
6. Governmental Approvals. By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to PERMITTEE or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
7. CITY's Consent, Discretion. CITY's consent or approval under this Permit 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 and shall be made in the Mayor's discretion, subject to all laws, rules, regulations, and directives of competent governmental authorities.
8. Revocable License. This Permit is not a lease. It is a non-exclusive license to use CITY property, and may be revoked by CITY, in its sole discretion, (a) with 30 days' prior written notice delivered to PERMITTEE if PERMITTEE breaches or defaults any of PERMITTEE's obligations under this Permit, 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 PERMITTEE to perform under this Permit; or (c) upon thirty (30) days prior written notice delivered to PERMITTEE; provided, CITY acknowledges that PERMITTEE shall have additional time, not to exceed 120 days, to remove PERMITTEE's Facilities. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit except if arising from CITY's active negligent or willful acts or omissions.

8.1 PERMITTEE's Waiver. PERMITTEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives, and agents for any burden, expense, or loss which PERMITTEE incurs as a result of CITY's revocation or termination of this Permit for cause.

9. Holdover. If PERMITTEE continues to use and/or occupy the Permit Area after the expiration or earlier termination of this Permit, such use/occupancy shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area. If PERMITTEE continues to use/occupy the Permit Area after the expiration or earlier termination of this Permit, CITY may demand and receive from PERMITTEE rent for the Permit Area, calculated on a per diem basis, using up to one (1) times the fair market rental rate that could be charged for the use of the Permit Area, said rate to be determined, as of the date of the expiration or earlier termination of this Permit, 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 Permit, nor give PERMITTEE any rights in or to the Permit Area except that PERMITTEE shall have up to 120 days access to remove PERMITTEE's Facilities from the Permit Area.

10. Restore and Vacate. Except as may otherwise be provided as part of this Permit, prior to the expiration of this Permit, PERMITTEE shall restore the Permit Area to its condition as of the Effective Date, subject to the reasonable satisfaction of the CITY Contact, provided, however normal wear and tear and casualty not caused by PERMITTEE are excepted. Upon CITY's early termination of this Permit, PERMITTEE shall immediately cease all operations on the Permit Area and as soon as practicable thereafter (but in no case, longer than thirty (30) days later) restore the Permit Area to its condition as of the Effective Date and vacate the Permit Area. All restoration work must receive final acceptance by the CITY's Parks and Recreation Department ("P&R"), such acceptance not to be unreasonably withheld or delayed. PERMITTEE shall be responsible for contacting P&R and securing P&R's final acceptance of all restoration work. P&R's point of contact and contact information is as follows:

Jeff Van Deerlin
Balboa Park Program Manager
619-235-1189

or

Mario Llanos
Balboa Park District Manager for Operations
619-235-1124

11. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Permit Area, of record or of which Licensee has been made aware (each, a "Superior Interest"). PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area, relative to any such Superior Interest. If PERMITTEE's use of the Permit Area is or becomes inconsistent or incompatible with a Superior Interest, PERMITTEE 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.
12. Permit Fee. PERMITTEE shall pay the Permit Fee to CITY upon execution of this Permit.
13. Place of Payment. All payments to be paid by PERMITTEE under this Permit shall be made payable to "City Treasurer" and be mailed to:

The City of San Diego
Real Estate Assets Dept - c/o Brenda Chilvers
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to PERMITTEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

14. Delinquent Payments. If PERMITTEE fails to make the one-time Permit Fee payment under this Permit when due; and provided the obligation to make such payment is not in dispute, then PERMITTEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be an additional Permit Fee. If any amount of such payment remains unpaid after fifteen (15) days past due, PERMITTEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be an additional Permit Fee. Notwithstanding the foregoing, in no event shall the charge for late payment of the Permit Fee be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Permit may be referred to the San Diego City Treasurer for collection and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. PERMITTEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as

may then be charged by the CITY's City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, PERMITTEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

15. Maintenance of the Permit Area. PERMITTEE shall, at PERMITTEE's sole cost and expense and to CITY's reasonable satisfaction, maintain the Permit Area, and PERMITTEE's Facilities and/or personal property placed in the Permit Area, in good order and repair and sanitary condition at all times during the Term, subject to normal wear and tear resulting from the use of the Permit Area. At no time during the Term shall CITY make any improvements or repairs to PERMITTEE's Facilities in the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris, and litter at all times.
16. Inspection. CITY reserves the right to enter upon the Permit Area at all times and to inspect and maintain the Permit Area as CITY deems necessary, except that CITY shall not make any improvements or repairs to PERMITTEE's Facilities in the Permit Area.
17. Improvements/Alterations. Except as otherwise authorized by this Permit, PERMITTEE shall not construct any improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY, which consent shall be given in CITY's sole discretion. Except as required by law, CITY shall not make any repair or assume any expense for any improvements or alterations to PERMITTEE's Facilities in the Permit Area.
18. Personal Property.
 - 18.1 Personal Property. PERMITTEE shall remove from the Permit Area all PERMITTEE-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 one-hundred twenty (120) days after the expiration or earlier termination of this Permit. Any such items which PERMITTEE fails to so remove shall be removed by CITY at PERMITTEE's sole cost and expense. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage caused by PERMITTEE, and/or PERMITTEE's contractors or invitees resulting from the removal of its personal property from the Permit Area.
19. Insurance. PERMITTEE shall obtain and maintain throughout the Term of this Permit, at its sole cost and expense, all insurance required by this Permit. PERMITTEE'S liabilities under this Permit, including without limitation PERMITTEE'S indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. PERMITTEE'S maintenance of the required insurance coverage is a material

consideration for this Permit. Notwithstanding any provision of this Permit to the contrary, if PERMITTEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY upon CITY's request, PERMITTEE shall be in default of this Permit. PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. Subject to Section 21.8 below, PERMITTEE shall deliver to CITY's Real Estate Assets Department a current certificate of insurance and all relevant endorsements for each of the following:

- (1) Commercial General Liability Insurance ("CGL"), providing coverage on the Permit Area for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). 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;
- (2) Automobile Liability Insurance, providing coverage on the Permit Area for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired and non-owned vehicles) operated in performing any and all work pursuant to this Permit. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and
- (3) Workers' Compensation Insurance, as required by the laws of the State of California for all of PERMITTEE's employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000), including a waiver of the right of subrogation against the City of San Diego and its elected officials, officers, employees, agents, and representatives.

19.1 Severability of Interest. Each policy (except Workers' Compensation and Employers Liability) shall provide that PERMITTEE'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.

19.2 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by the terms of this Permit must be provided by insurers that are authorized by the California Insurance Commissioner 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. All policies of insurance carried by non-admitted carriers shall be subject to all of the

requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.

- 19.3 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 19.4 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and obtain replacement insurance as soon as possible.
- 19.5 Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use or the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance reasonably required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Permit Use or the Permit Area.
- 19.6 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the Permit Use or the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 19.7 Self-Insurance. Notwithstanding anything to the contrary above, PERMITTEE shall have the right to self-insure any or all risks and liabilities required 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.
20. Indemnification & Hold Harmless. PERMITTEE shall protect, defend, indemnify, and hold harmless the CITY, its elected officials, agents, officers, representatives, and employees from and against any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the CITY or its elected officials, agents, officers, representatives, or employees, arising from PERMITTEE's occupancy, use, development,

maintenance, or restoration of the Permit Area pursuant to this Permit, including, but not limited to, any action to attack, stay, restrain, set aside, void, challenge, or annul approval of this Permit, approval of any applicable development permit(s) arising from the Permit Use, or any environmental document, determination, or decision; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any liability arising 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, in the event of a conflict with PERMITTEE, obtain independent legal counsel in defense of any claim pursuant to this Indemnification and Hold Harmless provision. In the event of such election, PERMITTEE shall pay all of the reasonable costs related thereto, including without limitation reasonable attorney's fees and costs; provided, that such independent legal counsel and external consultants shall be mutually agreed upon by CITY and PERMITTEE in advance of fees and costs being incurred. In the event of a disagreement between CITY and PERMITTEE regarding litigation issues, CITY shall have the authority to control the litigation and make litigation related decisions on issues of CITY's sole interest, including, but not limited to, settlement or other disposition of the matter.

21. Subcontractors. As between CITY and PERMITTEE, PERMITTEE shall be responsible for the work of its subcontractors and suppliers working on the Project or in the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold harmless the CITY, its elected officials, agents, officers, representatives and employees from and against any and all claims, actions, proceedings, damages, judgements or costs, including attorneys' fees, against the CITY or its elected officials, agents, officers, representatives, or employees' arising from PERMITTEE's subcontractors' occupancy, use, development, maintenance, or restoration of the Permit Area pursuant to this Permit.
22. Compliance with Laws. PERMITTEE shall at all times in its use, occupancy, maintenance, and restoration of the Permit Area comply with all applicable laws, rules and regulations and directives of competent governmental authorities, and all at PERMITTEE's sole cost and expense.
23. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided by PERMITTEE pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act (CPRA). PERMITTEE 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.
24. No Discrimination. PERMITTEE 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 disability in PERMITTEE'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.
25. Equal Benefits. PERMITTEE 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. PERMITTEE shall certify that it will maintain such equal benefits throughout the term of this Permit. PERMITTEE's failure to maintain equal benefits shall be a material breach of this Permit.

26. Disabled Access Compliance. PERMITTEE shall comply with Title 24 of the California Code of Regulations (i.e., the "Building Code"); the Americans with Disabilities Act of 1990 ("ADA"); and any other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. PERMITTEE's compliance will include without limitation the following:
- 26.1 PERMITTEE will not discriminate against qualified individuals 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 as required by applicable law.
 - 26.2 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 PERMITTEE as required by applicable law.
 - 26.3 PERMITTEE will include language in each sublicense which indicates the sublicensee's agreement to abide by the provisions of this section 26.
 - 26.4 PERMITTEE and each of its sublicensees will be individually responsible for their own ADA employment programs.
 - 26.5 PERMITTEE will post a statement addressing the requirements of the ADA in a prominent place at the work site.
 - 26.6 PERMITTEE's failure to comply with the accessibility requirements of this section 26 or knowingly submitting false information in response to these accessibility requirements, or both, will be a default of this Permit.
27. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly arising from PERMITTEE's use or occupancy of the Permit Area and for any and all damages to the Permit Area and/or damages to the improvements on, under or in the vicinity of the Permit Area, resulting directly or indirectly thereby; provided, however, that PERMITTEE shall not be liable for damages established to have resulted from the active negligence or intentional misconduct of CITY, and its elected officials, officers, employees, representatives, and agents, or any environmental conditions not caused by PERMITTEE, even if discovered by PERMITTEE.
28. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to 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).

29. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit 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 Permit.
30. Signs. PERMITTEE 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 Permit Area, PERMITTEE agrees to immediately remove the item, at its expense within twenty-four (24) hours, after notice by CITY, or CITY may thereafter remove the item at PERMITTEE's cost.
31. Encumbrances. PERMITTEE shall keep the Permit Area and the property of which it is a part (the "Property"), free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with PERMITTEE's use or occupancy of the Permit Area; provided, PERMITTEE shall have the right for sixty (60) days after receiving notice of such encumbrances and liens to contest or cause such lien to be release and/or discharged. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens that shall continue beyond the aforementioned sixty (60) day period and from and against any claim, liability, cost or expense, including without limitation all reasonable attorney fees and costs, relating to or charged against the Property therefrom, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to lien or encumber the Property pursuant to the California Civil Code.
32. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area during the Term, including the land and any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE, or levied by reason of PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area, including without limitation licensing and permitting costs and fees. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE's payment for such taxes, fees, and assessments shall not reduce any payment due CITY.
33. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale, or release of Hazardous Substance or otherwise regulated substances in, on, under or from the Permit Area. PERMITTEE and PERMITTEE's officers, employees, invitees, guests, agents and contractors shall not install, store, utilize, generate, or sell any Hazardous Substance on the Permit Area without CITY's prior written consent. PERMITTEE 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.

- 33.1 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.
- 33.2 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.
- 33.3 Remediation. If PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area ("PERMITTEE's Operations") results in a release of a Hazardous Substance, that, individually or in the aggregate, triggers a clean-up obligation under applicable laws, rules, or regulations, which was caused by PERMITTEE, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction to restore the Permit Area to the same conditions as existed on the Effective Date, and in accordance with all applicable laws, rules, and regulations of governmental authorities. PERMITTEE shall not be responsible for any remediation and/or removal of any Hazardous Substance that PERMITTEE did not bring onto the Permit Area, even if such Hazardous Substance was discovered by PERMITTEE.
- 33.4 Removal. If PERMITTEE or PERMITTEE's officers, employees, invitees, guests, contractors, or agents has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances to the Permit Area, PERMITTEE and/or PERMITTEE's contractor or 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 Substances hazardous wastes or other containers, equipment, or devices from the Permit Area. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal brought on by PERMITTEE, its officers, employees, invitees, guests, contractors, or agents required by this provision.
- 33.5 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 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, PERMITTEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies, provided, however, PERMITTEE shall not be responsible for any adverse environmental condition existing on or at the Permit Area and the property prior to the date of this Permit.

- 33.6 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Permit Area resulting from PERMITTEE's Operations, and PERMITTEE's, employees, officers, contractors, subcontractors and invitees' use of the Permit Area as allowed in this Permit, PERMITTEE 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. PERMITTEE 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 PERMITTEE 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, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE 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.
- 33.7 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's Operations resulted in any Hazardous Substance being released on, from, or beneath the Permit Area, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by PERMITTEE's Operations on, in, from, or under the Permit Area, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Permit Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE 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 PERMITTEE shall pay all costs and expenses, incurred to the extent necessary to remediate the Permit Area to the condition that existed on the Effective Date, such remediation is only required for Hazardous Substance that were released or caused by PERMITTEE.

34. Water Quality – Best Management Practices. CITY and PERMITTEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Permit Area in a manner which aids in the protection of City's precious water resources. It is PERMITTEE's responsibility to identify and implement an effective combination of BMPs 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, PERMITTEE will, 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). PERMITTEE shall comply with the CITY's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries as adopted by the City Council on January 1, 2015, via Resolution No. 309791, as may be amended.

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

35. 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 instance, 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 a writing executed by the waiving Party 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. Either Party'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 such Party may at any and all times require the cure of the default.
36. 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.
37. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.

38. Joint and Several Liability. If PERMITTEE 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 PERMITTEE under this Permit.
39. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
40. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Permit and PERMITTEE's occupancy, use, maintenance, and restoration of the Permit Area. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Permit is binding upon such party in accordance with its terms.
41. Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
42. 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 PERMITTEE at PERMITTEE's Address for Notices, and to CITY as follows:

THE CITY OF SAN DIEGO

Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

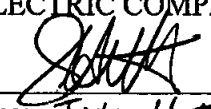
43. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, 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 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.
44. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Use. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Permit Area or its

suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations, and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition. PERMITTEE acknowledges and agrees that unless set forth in this Permit, CITY has no obligation to improve, modify, repair, replace, alter, secure, or otherwise develop the Permit Area at any time either prior to, on, or after the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area, except in the case of the active negligence or willful misconduct of the City. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation PERMITTEE's employees, from any defects in the Permit Area, and shall be solely responsible therefor, except in the case of the active negligence or willful misconduct of the City.

45. Security and Safety of Permit Area: PERMITTEE shall bear sole responsibility for the security and safety of the Permit Area during the Term relating to any work performed as authorized by this Permit or under the direction of PERMITTEE. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of the Permit Area, as appropriate, immediately following each day's work to ensure security and safety. CITY has no obligation to provide oversight of the Project or staffing or resources for the maintenance of the Permit Area during the Term.
46. 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 Project.
47. Grading and Barriers: PERMITTEE shall not change the surface grade or construct any permanent barriers within the Permit Area. Any violations shall be corrected by PERMITTEE at its sole expense to the satisfaction of CITY and are grounds, at CITY's option, for immediate termination of this Permit.
48. Exhibits. All exhibits referenced in this Permit are incorporated into this Permit by this reference. In the event of a conflict between this Permit and any exhibit to this Permit, the terms, conditions, and obligations of this Permit shall control.
49. No Precedent. The parties hereby agree that this mutually negotiated Permit shall have no bearing or set any precedent for any current or future agreement, permit, license, easement or other document as between the parties.

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

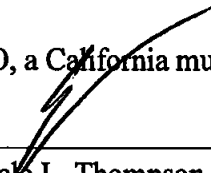
SAN DIEGO GAS AND ELECTRIC COMPANY

BY: 

Name: John Hutter

Title: Right-of-way Supervisor

THE CITY OF SAN DIEGO, a California municipal corporation

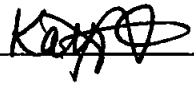
BY: 

Cybele L. Thompson

Director, Real Estate Assets Department

Approved as to form this 12th day of
June, 2019.

MARA W. ELLIOTT, City Attorney

BY: 

Name: Kathy J. Steinman

Title: Deputy City Attorney

EXHIBIT "A"

All that portion of that certain Tract of Land designated "City Park Reservation" on Miscellaneous Map No. 36 of the Pueblo Lands, prepared by James Pascoe and filed in the Office of the County Recorder of the County of San Diego on November 14, 1921, in the City of San Diego, County of San Diego, State of California, described as follows:

PARCEL A

A 16.00 foot wide strip of land Commencing at Station "167 Roosevelt" as shown on Record of Survey No. 14492, filed in the Office of the County Recorder of said County on March 31, 1994, from which Station "173 Muni", shown on said Record of Survey, bears South 22°37'28" East, 6888.57 feet; thence leaving said Station "167 Roosevelt" South 14°10'08" West, 3788.44 feet to the True Point of Beginning; thence South, 19.50 feet to a point herein designated and hereafter referred to as Point A.

The sidelines of said 16.00 foot wide strip of land lay 8.00 feet each side of, measured at right angles, and parallel with said centerline.

PARCEL B

A 10.00 foot wide strip of land Beginning at Point "A" described in Parcel A above, thence South, 13.18 feet to the beginning of a tangent 25.00 foot radius curve concave Northwesterly; thence Southerly, Southwesterly and Westerly along the arc of said curve through a central angle of 90°51' 05" a distance of 39.64 feet; thence tangent to said curve, North 89°08'55" West, 52.26 feet to the beginning of a tangent 246.50 foot radius curve concave Northerly; thence Westerly along the arc of said curve through a central angle of 11°23'21" a distance of 49.00 feet; thence tangent to said curve, North 77°45'33" West, 53.25 feet to the beginning of a tangent 25.00 foot radius curve concave Northeasterly; thence Northwesterly along the arc of said curve through a central angle of 29°27'13" a distance of 12.85 feet to a point in the arc of said curve to which a radial line bears South 41°41'40" West, said point herein designated and hereafter referred to as Point B and the terminus of the herein described Parcel B.

The sidelines of said 10.00 foot wide strip of land lay 5.00 feet each side of, measured at right angles, and parallel with said centerline. The sidelines are to be lengthened or shortened to begin in a line drawn East through Point A and terminate in the sidelines of the hereinafter described Parcel C.

PARCEL C

Beginning at Point B described in Parcel B above, thence South 00°35'34" East, 3.06 feet; thence South 89°24'26" West 9.50 feet; thence North 00°35'34" West, 16.25 feet; thence North 89°24'26" East, 9.50 feet; thence South 00°35'34" East, 13.19 feet to the Point of Beginning.

Said Easements contain a Gross Area of 2658 square feet more or less.

This legal description entitled Exhibit "B" and the Plat attached hereto designated Exhibit "C" were prepared by me or under my direct supervision.

Francis W. Fitzpatrick

Francis W. Fitzpatrick, PLS 4539, License. Exp. 9/30/2020

March 15, 2019

Date:

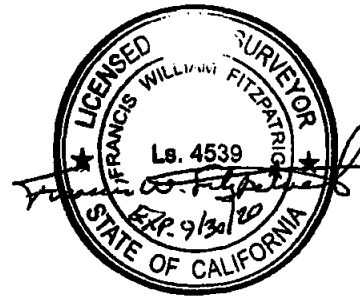
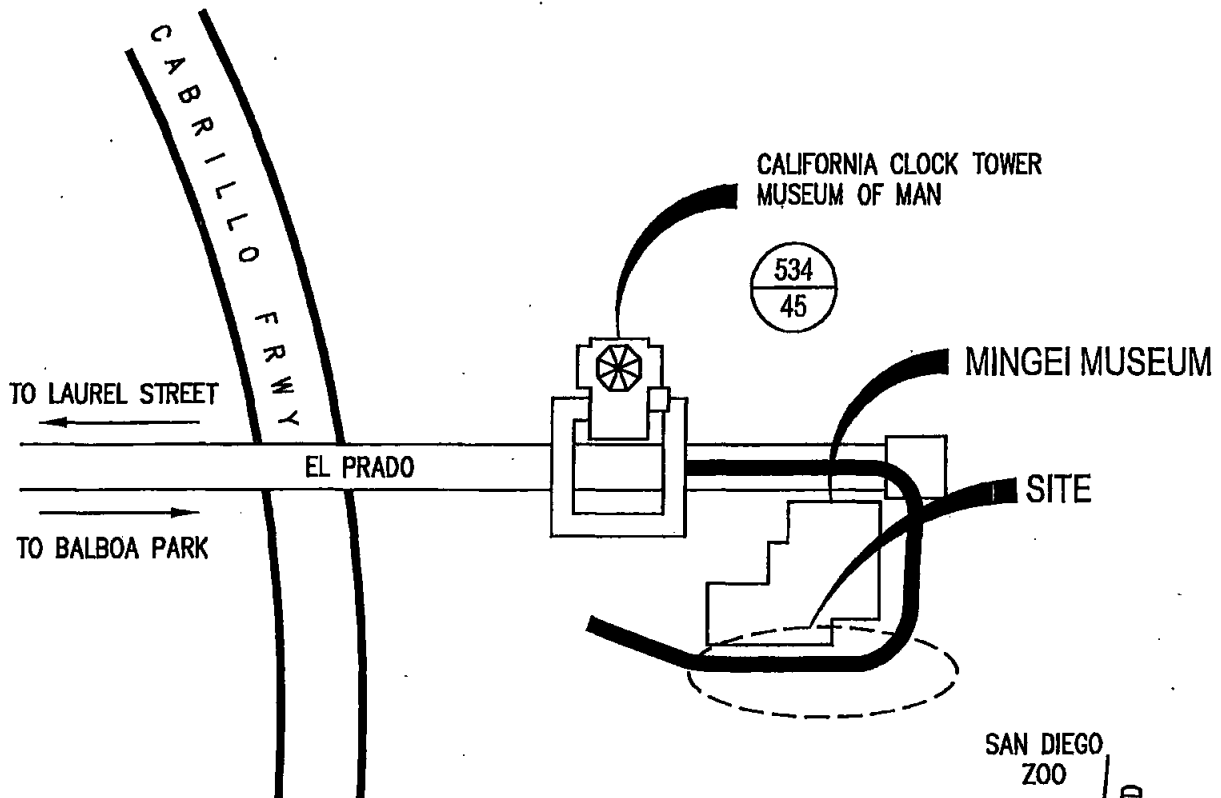
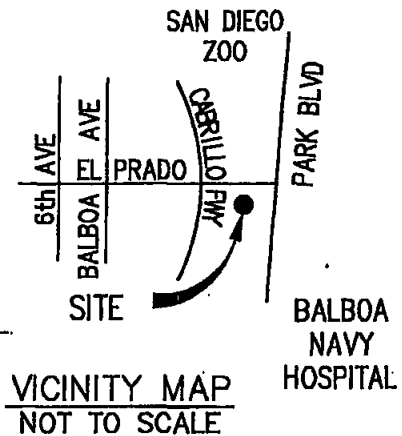
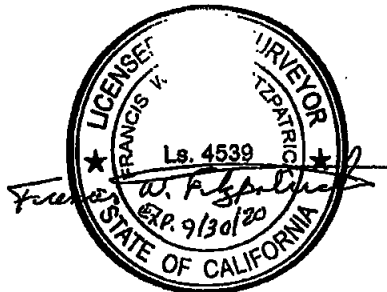


EXHIBIT "B"



THIS PLAT WAS PREPARED BY ME
OR UNDER MY DIRECTION IN
CONFORMANCE WITH THE LAND
SURVEYOR'S ACT ON JANUARY 13,
2019.

Francis W. Fitzpatrick
FRANCIS W. FITZPATRICK
LS4539

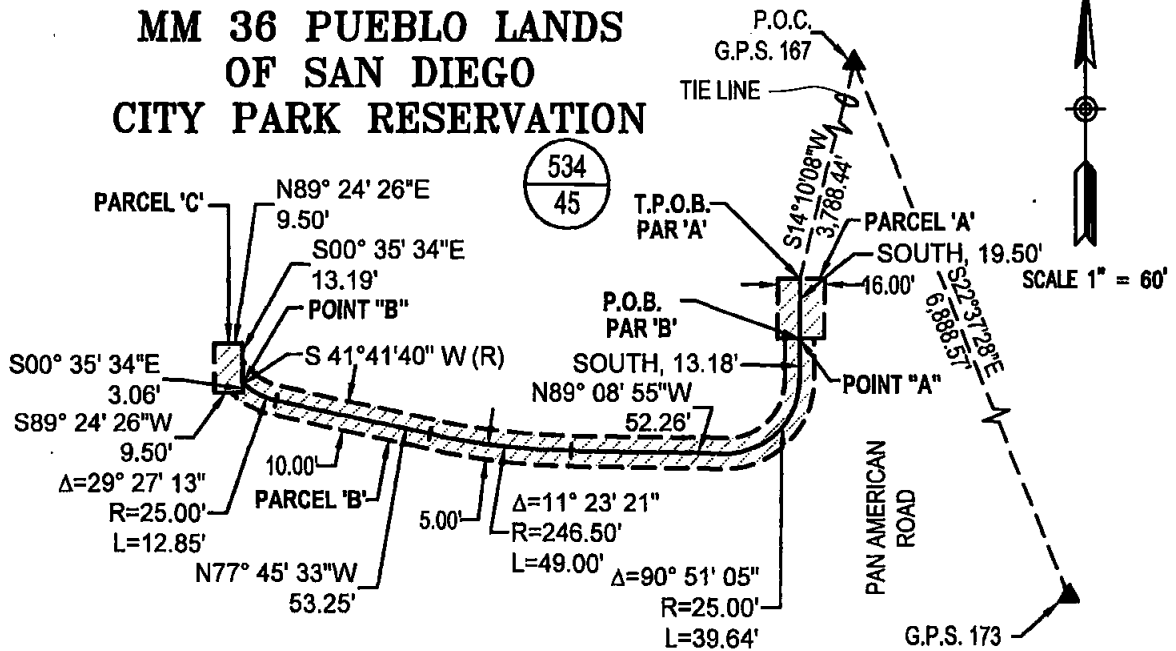


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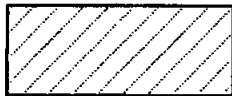
SHEET 1 of 2

SAN DIEGO GAS & ELECTRIC SAN DIEGO, CALIFORNIA		ORIGINATOR: LIDA JIMENEZ	OK TO INSTALL:	PROJECT NO. 851778-010
MINGEI MUSEUM UG RELOCATION BALBOA PARK - PAN AMERICAN RD. SAN DIEGO CA		SURVEYED BY: WHP\FWF	R/W OK:	CONST. NO. 2162480
		DRAWN BY: WHP\JJP	DATE:	DRAWING NO. M-16758
		DATE: 03/15/2019	THOS. BROS.	
		SCALE: AS NOTED		
NO.	SUPPLEMENTS	DATE:	BY	APP'D

MM 36 PUEBLO LANDS OF SAN DIEGO CITY PARK RESERVATION



LEGEND:



ELECTRIC EASEMENT
AREA = 2,677± SQ. FT.

T.P.O.B. TRUE POINT OF BEGINNING

P.O.C. POINT OF COMMENCEMENT

▲ G.P.S. MONUMENT 167 & 173; SEE BELOW

EASEMENT AREA'S	
PARCEL	AREA
'A'	312.00 SF
'B'	2,210.25 SF
'C'	154.38 SF
TOTAL	2,676.63 SF

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS SURVEY IS GRID NORTH (NAD83, ZONE VI) AS DEFINED BY THE LINE BETWEEN GPS STATIONS 167 AND 173 PER R of S No. 14492. N22°37'28"W.

167 - "ROOSEVELT" FOUND LEAD & DISC MARKED "CITY OF SAN DIEGO" IN CONCRETE WALK

173 - "MUNI" FOUND 3-1/2" CITY BRASS DISC IN CONCRETE MONUMENT.

REFERENCES

RECORD OF SURVEY No.14492, RECORDED 3/31/1994; MISCELLANEOUS MAP No. 36 RECORDED 11/14/1921
A.P.N. 534-450-08

FILE:2019-0314_692-MIM-SDGE PLAT REV ALIGN.dwg
SDG&E JOB: 412878 / 16763

SHEET 2 of 2

SAN DIEGO GAS & ELECTRIC SAN DIEGO, CALIFORNIA		ORIGINATOR: LIDA JIMENEZ	OK TO INSTALL:	PROJECT NO. 851778-010
		SURVEYED BY: WHP\FWF	R/W OK:	CONST. NO. 2162480
MINGEI MUSEUM UG RELOCATION BALBOA PARK - PAN AMERICAN RD. SAN DIEGO CA		DRAWN BY: WHP\JJP	DATE:	DRAWING NO. M-16758
		DATE: 03/05/2019	THOS. BROS.	
		SCALE: AS NOTED		
NO.	SUPPLEMENTS	DATE:	BY	APP'D