

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 **CONSTRUCTION & LAND ENTERPRISE MANAGEMENT, INC. dba SOUTHERN CROSS PROPERTY CONSULTANTS**, a California Corporation (PERMITTEE), to be effective as of the commencement date of the Term as set forth in paragraph 4 of this Permit (Effective Date) after execution by CITY, when signed by the parties and approved by the San Diego City Attorney as follows:

RECITALS

- A. CITY is the owner of certain real property (City Property) known as Chollas Parkway Park (APN: 477-240-11), a portion of which is located adjacent to property owned by the New Creation Church (CHURCH) located at 3115 Altadena Avenue, San Diego, CA 92105 (Church's Property).
- B. PERMITTEE is CHURCH's contractor. PERMITTEE is requesting permission to remove an exterior electrical sub-panel with pole and base, and replace it with a new metal halide pole light on a concrete base. This is part of a larger project to replace the outside lighting for the CHURCH's parking lot, most of which are located on the Church's Property, except this one pole that encroaches on the City's Property. CHURCH and CITY are currently under negotiations to correct encroachment by CHURCH on the City Property.
- C. PERMITTEE will enter City Property for purposes of removing the electrical sub-panel, trenching to run electrical conduit, and installing the new pole light.
- D. Under the applicable terms and conditions of this Permit, CITY shall allow PERMITTEE access to the Permit Area (See attached Exhibit A) for the sole purpose of removing and replacing the pole light on City Property, and taking any and all necessary action to restore the City Property to its condition prior to such use.

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

- 1. **Permit Area.** The Permit Area consists of an approximate 6,191 square foot area, which is a portion of Chollas Parkway Park, bordered by a CHURCH'S property at 3115 Altadena Avenue, San Diego, CA 92105, and more particularly described in the attached **Exhibit A: Permit Area.**
- 2. **Permit Use.** PERMITTEE may use the Permit Area on a non-exclusive basis solely for the purpose of removing and replacing an existing light pole. The scope of work includes removing an exterior electrical sub-panel and base, digging a 12" wide by 28" deep trench that is approximately 90 feet in length, running electrical conduit to the light pole,

and installing a double headed metal halide pole light on a 36" wide concrete base. The trench will then be backfilled and new asphalt will be installed to match existing asphalt. The Permit Use shall be for no other purpose whatsoever. This Permit does not grant CHURCH any right or any authority to commence or continue with any existing or future encroachment on the City Property. PERMITTEE shall at its sole cost and expense restore the Permit Area to its original condition to the satisfaction of CITY, in its sole discretion. PERMITTEE shall obtain any and all related permits and comply with any and all applicable environmental laws, rules and regulations related to the Permit Use.

3. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its employees, agents, contractors, and invitees to enter upon the Permit Area solely for the purpose of the Permit Use.
4. Term. The term of this Permit (Term) shall be effective as of the date (the "Effective Date") when signed by the parties and approved by the San Diego City Attorney, and shall expire on September 30, 2013.
5. Permit Fee. "Permit Fee" shall mean a one-time, non-refundable permit processing fee in the amount of Seven Hundred Twenty-Seven Dollars (\$727.00).
6. Revocable License. This Permit is not a lease. It is a non-exclusive license to use the Permit Area, and may be revoked at will by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY's termination of this Permit. CITY may at all times enter upon the Permit Area subject to the terms and conditions of the Permit.
7. CITY's Consent, Discretion. Whenever required under this Permit, CITY's consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee (Mayor), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
8. Governmental Approvals. By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Permit Area or PERMITTEE's use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the PERMITTEE's use of the Permit Area.
9. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area or the City Property. PERMITTEE and PERMITTEE's agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area or the City Property without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging,

injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document No. 769704 and by this reference is incorporated into this Lease.

- 9.1 Remediation. If PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 9.2 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- 9.3 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area or the City Property, PERMITTEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area or the City Property.
- 9.4 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property (PERMITTEE's Operations), resulted in any hazardous substance being released on or beneath the Permit Area or the City Property, CITY may cause an environmental assessment of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE's Operations on, in, or under the Permit Area or the City Property, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with

recommendations for remediation and removal necessary to effect compliance with those laws 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, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor.

10. Noninterference. PERMITTEE shall not interfere with the use, operations, and activities by CITY on the City Property, and PERMITTEE shall use such routes and follow such procedures on the City Property as shall result in the least damage and inconvenience to CITY, LESSEE, and other users of the City Property.
11. Property Damage. PERMITTEE shall pay, at its sole cost and expense, for any and all damage to the City Property and the personal property of CITY on the City Property, and the personal property of third parties on the City Property resulting from PERMITTEE'S exercise of the rights granted by this Permit. PERMITTEE shall promptly repair and restore to its original condition all such property.
12. Signs. No signs may be displayed on the Permit Area without CITY'S prior written approval.
13. Maintenance of the Permit Area. PERMITTEE shall maintain the Permit Area, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, in a decent, safe, healthy and sanitary condition.
14. Inspection. CITY may, at any and all times, enter and inspect the Permit Area.
15. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, agents, contractors, and invitees, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

16. Taxes. PERMITTEE shall pay at its sole cost and expense any and all taxes, charges, and use fees levied by any governmental agency against PERMITTEE or against any of the City Property as a result of PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area.
17. Encumbrances. PERMITTEE shall keep the City Property free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S use of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY and LESSEE harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the City Property, including without limitation PERMITTEE's failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 9100 of the California Civil Code or other applicable sections thereof.
18. PERMITTEE'S Risk. PERMITTEE shall bear any and all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE's use of the Permit Area and any damages to the improvements on, under, or in the vicinity of the City Property resulting directly or indirectly thereby.
19. Insurance. PERMITTEE shall deliver to CITY'S Real Estate Assets Department a current certificate of insurance and relevant endorsements for:
 - (1) Commercial General Liability Insurance, 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);
 - (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).
- 19.1 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

- 19.2 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.
- 19.3 Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 19.4 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.
- 19.5 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force 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.
- 19.6 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 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.
- 19.7 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.
20. Compliance with Law. PERMITTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area and PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property.

21. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE's use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
22. Waiver. CITY's failure to insist upon the strict performance of any of PERMITTEE's obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is publicly-owned and held in trust for the benefit of CITY's citizens. CITY's failure to discover a breach of any obligation of this Permit or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
23. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
24. Entire Agreement. This Permit contains the entire agreement between the parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Permit shall be valid unless in writing and signed by the party to be charged.
25. Water Quality Assurances: PERMITTEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System (NPDES) Permit No. R9-2007-0001 in force when this Permit takes effect, and with any NPDES permit which succeeds R9-2007-0001. PERMITTEE shall comply with San Diego Municipal Code Chapter 4, Article 3, Division 3 (Stormwater Management and Discharge Control), Chapter 14, Article 2, Division 1 (Grading Regulations), and Chapter 14, Article 2, Division 2 (Storm Water Runoff and Drainage Regulations), as amended from time to time. Compliance shall include implementing "Best Management Practices" to control and prevent discharge of "Pollutants," including waste, debris, and sediment, into "Storm Water Conveyance System" to the "Maximum Extent Practicable," as those terms are defined in the San Diego Municipal Code.
26. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight service with receipt signature required, or delivery by United States mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

CITY: THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: James F. Barwick, Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

PERMITTEE: CONSTRUCTION & LAND ENTERPRISE MANAGEMENT, INC.
dba Southern Cross Property Consultants
814 Morena Blvd., Suite 210
San Diego, CA 92110

27. Authority. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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

Date: April 25, 2013

CONSTRUCTION & LAND ENTERPRISE
MANAGEMENT, INC., dba Southern Cross Properties,
a California corporation

By: [Signature]
Matthew Boomhower, President

Date: 24 APR 13

THE CITY OF SAN DIEGO, a California municipal
corporation

By: [Signature]
Name: SCOTT CHADWICK
Title: INTERIM CDD

ENVIRONMENTAL CLEARANCE:

THIS ACTIVITY IS CATEGORICALLY EXEMPT FROM CEQA PURSUANT TO STATE
CEQA GUIDELINES, SECTIONS 15301 & 15302.

By: [Signature]
Name: Maria Herrmann
Title: Scholar

APPROVED AS TO FORM AND LEGALITY:

Date: May 13, 2013

JAN I. GOLDSMITH, City Attorney

By: [Signature]
Deputy City Attorney

EXHIBIT "A"



Approximate location of Permit Area and light pole