

**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 ASSOCIATION OF GOVERNMENTS** ("PERMITTEE"), a California public agency, to be effective as of **June 15, 2012** (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. The San Diego Metropolitan Transit System ("MTS") requires a location for a Traction Power Substation which will allow for increased power to service the trolley. PERMITTEE is the regional agency responsible for major transit design and construction projects and is tasked with the project to renovate the MTS light rail system including this work.
- B. CITY owns property located at **2501 Imperial Ave, San Diego, CA 92102** ("Property"), a portion of which may or may not be suitable as a location for the MTS Traction Power Substation. To determine the feasibility of locating a Traction Power Substation on the Property, PERMITTEE has requested CITY's permission to perform testing on the Property.

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

- 1. **Permit Area.** The Permit Area shall mean an approximate 1,930 square foot area on the Property, located at **2501 Imperial Ave, San Diego, CA 92102**, more particularly described in the attached **Exhibit A: Permit Area.**
- 2. **Permit Use.** Subject to the terms and conditions of this Permit, PERMITTEE may use the Permit Area, on a non-exclusive basis, solely to conduct surveying, testing, and other non-invasive field investigations (hereinafter referred to as the "Permit Use"), and which are more particularly described as follows:
 - a) **Geotechnical Investigation:** Includes subsurface exploration consisting of a maximum of two borings, penetration testing, geophysical testing, and/or field resistivity testing within the area described on Exhibit A.
 - b) **Topographic survey of the site:** This includes field survey to locate existing features on the site including but not limited to curb, pavement grades, poles, drainage structures, walls, fences, limits of landscape areas, and overhead facilities, if any.
 - c) **Conduct site visit to observe and verify site features and survey measurements, and to supplement the review of any as-built plans, existing soils reports, and aerial photos of the Property within the Permit Area.**
 - d) **Maintain and restore the Permit Area as required by this Permit.**

PERMITTEE shall obtain all required permits for the Permit Use. PERMITTEE shall promptly repair any and all damage resulting from the Permit Use and restore the Permit Area to CITY's reasonable satisfaction.

3. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE and its contractor(s) to enter upon the Property to access the Permit Area and to enter upon the Permit Area for the Permit use.
4. Permit Fee. Consideration to CITY for granting the license under this Permit shall be the completion of the Permit Use and delivery to CITY of copies of all reports and other data and documentation related to and resulting from the Permit Use.
5. Term. The term of this Permit ("Term") shall be six (6) months, commencing on the Effective Date. Notwithstanding the foregoing, CITY may terminate this Permit at will, in its sole discretion.
6. 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.
7. Insurance. PERMITTEE shall deliver to CITY's Real Estate Assets Department a current certificate of insurance for:
 - (a) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000);
 - (b) Automobile Liability Insurance, providing coverage 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;
 - (c) 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); and
 - (d) For use of the Property involving any contact with hazardous substances, the insurance coverage specified in that certain "Standard Specifications for Public Works Construction (The WHITEBOOK, 2010 Edition)," and subject to all related terms and conditions therein related to PERMITTEE's use of the Property.

- 7.1. 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.
- 7.2. 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.
- 7.3. 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.
- 7.4. 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.
- 7.5. 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.
- 7.6. Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use or the Property, 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 Property.
- 7.7. 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 Property. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

8. Hold Harmless. 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 employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with the Permit Use, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any claims or liability arising from the gross negligence, recklessness, or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. The rights and obligations under this section shall survive the expiration or termination of this Permit. Notwithstanding anything to the contrary in this Permit, this paragraph 7 shall have no application to conditions on the Property that preexist the Permit Use and are not exacerbated by the Permit Use, including without limitation the preexistence of hazard substances on the Property.
9. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with the Permit Use and any damages to the improvements on, under, or in the vicinity of the Property resulting directly or indirectly thereby.
10. Revocable License. This Permit is not a lease. It is a non-exclusive license to use CITY property, and may be revoked at will by CITY, in its sole discretion. 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.
11. 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 Use.
12. No Assignment. PERMITTEE shall not assign any rights granted by this Permit or any interest therein without CITY's prior written consent.
13. Encumbrances. PERMITTEE shall keep 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 the Permit Use. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense with respect to the Permit Use, including without limitation all attorneys' fees and costs, related thereto, including without limitation PERMITTEE's failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

14. Performance of Permit Use. PERMITTEE shall, to CITY's reasonable satisfaction, conduct the Permit Use in a decent, safe, healthy and sanitary manner. PERMITTEE shall conduct the Permit Use in a manner that does not unreasonably interfere with any other person's legal use and occupancy of the Property.
15. Inspection. Subject to the terms and conditions of the Lease, CITY may, at any and all times, enter and inspect the Property and/or the Permit Use.
16. Hazardous Substances. If the Permit Use causes the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Property, PERMITTEE shall be responsible for therefor. PERMITTEE and PERMITTEE's employees, agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Property without CITY's prior written consent. PERMITTEE shall, prior to commencing the Permit Use, 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.
- 16.1 No liability for Preexisting Conditions. Notwithstanding anything to the contrary in this Permit, PERMITTEE shall not be responsible or liable for hazardous substances and conditions on the Property that preexist the Permit Use and are not exacerbated by the Permit Use.
- 16.2 Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.
- 16.3 Remediation. If the Permit Use results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Property, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 16.4 Removal. If PERMITTEE or PERMITTEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes on the Property for the Permit Use, PERMITTEE and/or PERMITTEE's contractor or agent shall remove all hazardous

substances and hazardous wastes in any type of container, equipment, or device related to the Permit Use from the Property immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Property and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Property. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device related to the Permit Use and requiring disposal or removal as required by this provision.

- 16.5 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities caused by the Permit Use, 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.
- 16.6 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on, from, or beneath the Property and caused by the Permit Use, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code 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 a release of a hazardous substance caused by the Permit Use is imminent or that a hazardous substance on the Property caused by the Permit Use presents 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 Use.
- 16.7 Environmental Assessment. Upon reasonable cause to believe that the Permit Use resulted in any hazardous substance being released on, from or beneath the Property, 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 the Permit Use, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by municipal, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Property, 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, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Property and compliance with environmental law and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

17. 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 Property is CITY-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 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.
18. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
19. Entire Agreement. This Permit constitutes the entire agreement between the parties relating to the Permit Use and supersedes any and all prior understandings, representations, warranties and agreements between the parties. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
20. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or by United States mail, postage prepaid, and addressed to CITY or PERMITTEE, respectively, 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

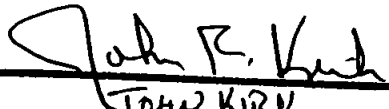
SAN DIEGO ASSOCIATION OF GOVERNMENTS
Attention: Chip Finch
401 B Street, Suite 800
San Diego, CA 92101
(619) 699-5617

21. 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 Use. 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 Permit Use.
22. Authority to Contract. 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.

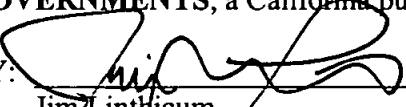
IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

**Approved as to form
by Office of General Counsel**



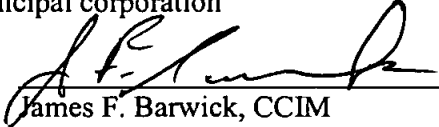
John R. Kirk
General Counsel

**SAN DIEGO ASSOCIATION OF
GOVERNMENTS**, a California public agency

BY: 

Jim Linthicum
Department Director, Mobility Management
and Project Implementation

THE CITY OF SAN DIEGO, a California
municipal corporation

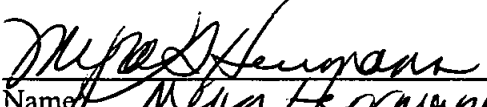
BY: 

James F. Barwick, CCIM
Director Real Estate Assets

Environmental Analysis Section Environmental Clearance:

This activity is Statutorily Exempt from CEQA pursuant to State CEQA Guidelines Sections §15262 (Planning and Feasibility Studies).

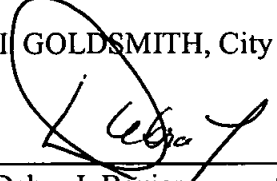
Date: 7/13/12

BY: 

Name: Myra Herrmann
Title: Senior Planner

Approved as to form and legality:

JAN I GOLDSMITH, City Attorney

BY: 

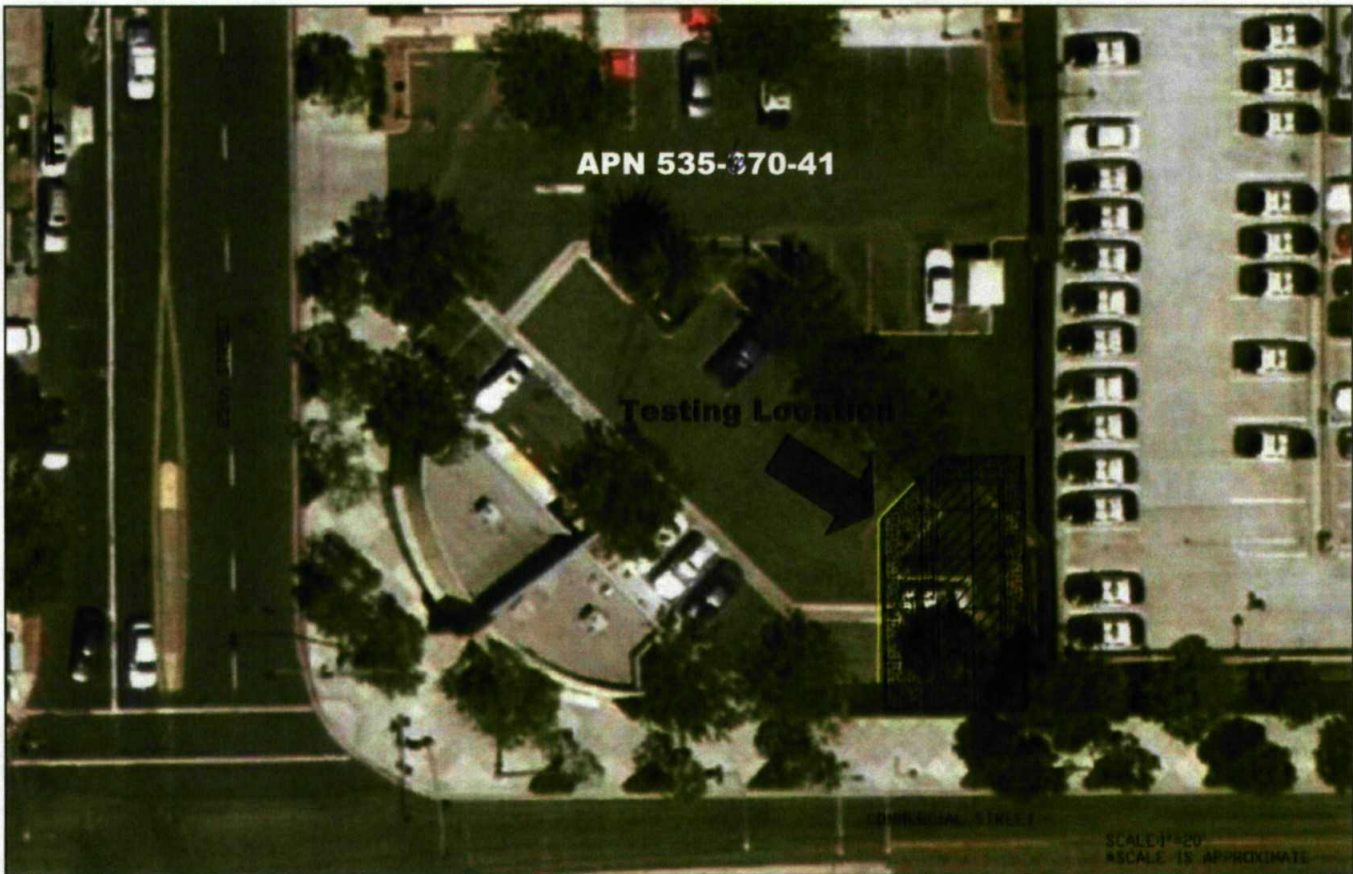
Debra J. Bevier
Deputy City Attorney

7/24/12

Exhibit A: Permit Area

2501
1201 Imperial Ave, San Diego, CA 92102

935-670-41



ALTERNATIVE 1

LOSS OF 2 PARKING STALLS
DISTURBED AREA = 1930 FT²