

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 **FLATIRON WEST INC.**, a Delaware Corporation, ("PERMITTEE"), to be effective as of January 17, 2018, following the execution by the parties and approval by the City Attorney ("Effective Date").

- A. New development in Mission Valley has increased traffic congestion in the area.
- B. PERMITTEE and the State of California Department of Transportation ("CALTRANS") are working together to ease traffic congestion by reconstructing the State Route 163/Friars Road Interchange and widen the overcrossing and approaches at State Route 163/Friars Road ("Project").
- C. On October 14, 2003, CITY and CALTRANS entered into a Cooperative Agreement, on file in the Office of the City Clerk as Resolution No. R-298491, for the design modifications to the Project.
- D. In 2013, CITY authorized the Second Amendment to the Cooperative Agreement, on file in the Office of the City Clerk as Ordinance No. O-20288, to provide CALTRANS funds necessary for "Reimbursed Work" which was not part of the original Cooperative Agreement.
- E. In 2015, CITY authorized the Third Amendment to the Cooperative Agreement, on file in the Office of the City Clerk as Ordinance No. O-20521, to compensate CALTRANS for additional "Reimbursed Work" to include the award of the approved construction contract for the Project.

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 that certain portion of CITY-owned right-of-way, consisting of approximately 24,573 square feet (0.56 acres) of unimproved land located between 2365 and 2655 Camino Del Rio North, San Diego, CA, as more particularly depicted on **Exhibit A: Permit Area** (defined below).
 - 1.2 **"Monitoring Wells"** shall mean four monitoring wells including a 12-foot radius around each well located within the Permit Area identified as CalTrans MW-9, CalTrans MW-10, CalTrans MW-11, and CalTrans MW-12 on Exhibit A.
 - 1.3 **"City Contact"** shall mean CITY's Public Utilities Department staff member, Sandra Carlson, who can be contacted at (619) 533-4235.

1.4 **“Permit Administrative Fee”** is hereby waived because the use benefits the Project, which is a public transportation endeavor, and is a benefit to CITY.

1.5 **“Monthly Rent”** is hereby waived because the use benefits the Project, which is a public transportation endeavor, and is a benefit to CITY.

1.6 **“Permit Use”** shall mean the exclusive use by the PERMITTEE of the Permit Area, twenty-four (24) hours a day, seven (7) days a week, during the Term, which shall be used solely for one (1) office trailer, storage for consumable materials and small equipment in connection with PERMITTEE’S work on the Project, and subject to the following restrictions:

1.6.1 PERMITTEE shall not allow any person to park or store vehicles, clean vehicles, perform any mechanical work on any vehicles, or fuel or refuel any vehicles within the Permit Area.

1.6.2 PERMITTEE shall install and maintain a perimeter fence in good repair and condition. Any damage to the fence shall be promptly repaired by PERMITTEE, at PERMITTEE’S sole cost and expense, to CITY’S reasonable satisfaction, except to the extent such damage is caused by CITY or its employees, representatives or agents during any inspection or entrance onto the Permit Area. At the expiration or early termination of this Permit, the perimeter fencing and gate shall become CITY’S property if PERMITTEE owns the fencing or in the alternative, if PERMITTEE has elected to rent the fence, PERMITTEE shall provide the name of the rental company, including contact information for the company, and the rental rate that PERMITTEE is then paying, at least 30 days prior to the expiration, or immediately upon earlier termination of the Permit. CITY shall notify PERMITTEE no later than 15 days prior to the expiration or within five (5) days of receiving the information upon earlier termination whether PERMITTEE shall cause the removal of the fence, or if CITY has elected to contract directly with the rental company. CITY may elect at any time prior to the expiration, or upon the earlier termination, of this Permit to notify PERMITTEE that it will not assume ownership of all or part of the PERMITTEE-installed perimeter fencing and/or gate, in which case PERMITTEE shall remove such item(s) as soon as practicable thereafter.

1.6.3 PERMITTEE will provide and install a daisy chain lock system at the entrance gate of the perimeter fence to the Permit Area.

1.6.4 PERMITTEE shall remove all vegetation, trash, rubbish, or other items currently located on the Permit Area, and shall install and continuously maintain a rock substrate of decomposed granite over the entire Permit Area to CITY’S reasonable satisfaction during the Term of the Permit.

1.6.5 PERMITTEE shall ensure all vegetation located within the Permit Area and

near the edge of the Permit Area are neatly trimmed with visible clearance beneath any trees and bushes, and not protruding through the fence.

1.6.6 No permanent structures shall be constructed in the Permit Area.

1.7 **"PERMITTEE's Address for Notices"** shall be:

Flatiron West Inc.
1770 La Costa Meadows Drive
San Marcos, CA 92078
(760) 916-9100
lgardino@flatironcorp.com

1.8 **"Term"** shall mean three (3) years, commencing on the Effective Date.

2. Revocable License. This Permit is not a lease. It is a license to use CITY property, and may be revoked at will by CITY, in its sole discretion: (a) if for PERMITTEE's breach or default of any of PERMITTEE's obligations under this Permit or in case of an emergency, immediately upon written notice delivered to PERMITTEE; and (b) if for CITY's convenience, upon thirty (30) days prior written notice delivered to PERMITTEE. 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.

2.1. 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.

3. Holdover. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area. The occupancy of the Permit Area after the expiration or earlier termination of this Permit shall constitute a month-to-month agreement at will, subject to all terms and conditions of this Permit which shall continue in full force and effect, except that the CITY may increase the monthly rental rate, at the City's sole discretion, up to two times the then current monthly Rent, calculated on a per diem basis. 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.
4. Monitoring Wells. PERMITTEE shall at all times maintain a twelve foot (12') wide radius around each Monitoring Well that is clearly marked, and remains free and clear of all materials and debris. PERMITTEE shall, at all times, maintain a twelve foot (12') access route which is clearly marked or easily identifiable as an access route to each Monitoring Well for CITY's access that is free and clear of all materials and debris. Other than with respect to PERMITTEE's obligations to maintain the above-referenced radii and access routes PERMITTEE shall not use any of the area within the 12' radius and shall not access the Monitoring Wells in anyway.

- 4.1. Damage to the Monitoring Wells: PERMITTEE shall immediately notify the CITY Contact if PERMITTEE causes any damage to the Monitoring Wells or any damage to the Monitoring Wells occurs as a result of the Permit Use. Unless otherwise authorized by the CITY Contact, PERMITTEE is prohibited from making any repairs to any damages to the Monitoring Wells caused by PERMITTEE or arising from the Permit Use.
- 4.2. Reimbursement for Damages to Monitoring Wells: PERMITTEE is responsible for reimbursing the CITY for the cost to repair any damage to the Monitoring Wells caused by PERMITTEE or arising from the Permit Use, including any items that CITY staff has reasonably determined to be damaged by PERMITTEE or the Permit Use.
- 4.3. Indemnity for Damage to Monitoring Wells: PERMITTEE shall protect, defend, indemnify and hold the CITY harmless for any and all claims, costs and expenses related to liabilities that arise from PERMITTEE's damage to the Monitoring Wells or damages to the Monitoring Wells that result from the Permit Use, including without limitation: (i) costs to repair the Monitoring Wells, (ii) costs of regulatory oversight of the repairs to the Monitoring Wells, (iii) any necessary CITY response costs, (iv) all fines, penalties or fees assessed by any regulatory agency, (v) damages for injury to natural resources, PERMITTEE's officers, employees, invitees, agents, guests or contractors, or to the public; and (vi) all reasonable or required tests and assessments of the Monitoring Wells, including any water monitoring system to which the Monitoring Well are a part.
5. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit. Any assignment by operation of law shall automatically terminate this Permit.
6. Unauthorized Activities. PERMITTEE shall not engage in any activity on the Permit Area, or any adjacent CITY-owned property, other than as pre-approved by this Permit. Any work performed/activities conducted by PERMITTEE on the Permit Area that were not previously approved or otherwise authorized by this Permit, shall be considered a default of this Permit and shall subject this Permit to immediate termination by CITY, at CITY's sole discretion.
7. Maintenance of the Permit Area. PERMITTEE shall, at PERMITTEE's sole cost and expense, and to CITY's satisfaction, maintain the Permit Area in good order and repair and in a safe, healthy and sanitary condition at all times during the Term, subject to normal and ordinary wear and tear resulting from PERMITTEE's authorized use of the Permit Area. CITY shall at no time during the Term of this Permit be required to make any improvements or repairs to the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris and litter at all times. PERMITTEE shall keep the Permit Area free and clear of weeds, including preventing any growth of *Arundo donax* (giant cane), and brush as reasonably directed by CITY and to CITY's reasonable satisfaction.

8. Security and Safety of Permit Area. PERMITTEE shall bear sole responsibility for the security and safety of its activities and property kept at the Permit Area. PERMITTEE shall be responsible for the routine maintenance, cleanup, and securing of the Permit Area, as appropriate, to ensure security and safety of the Permit Area. PERMITTEE shall comply with all applicable laws, rules, regulations and directives of competent governmental authorities, at PERMITTEE's sole cost and expense, with respect to maintaining the Permit Area in a safe and secure manner during the Term.
9. Inspection of Permit Area. CITY may at all times enter and inspect the Permit Area; however, CITY is not obligated to do so.
10. Utilities. Upon prior written approval by CITY in all instances, PERMITTEE shall order, obtain, and pay for all utilities and service and installation charges in connection with its use of the Permit Area. All newly-installed utilities shall be subject to CITY's prior approval and, at CITY's option, installed underground.
11. Improvements/Alterations. Except for the Permit Use as set forth in 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. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.
12. Improvements and Personal Property.
 - 12.1. Improvements. Any and all improvements, fixtures, structures and installations or additions to the Permit Area constructed or installed on the Permit Area by PERMITTEE ("PERMITTEE Improvements") must be approved by the City's Development Services Department. Upon expiration or termination of this Permit, PERMITTEE shall remove PERMITTEE Improvements; this requirement to remove said PERMITTEE Improvements shall apply to PERMITTEE whether PERMITTEE constructed or installed said PERMITTEE Improvements during the current Term. PERMITTEE shall, at PERMITTEE's sole cost and expense, remove PERMITTEE Improvements as soon as practicable, but in no event later than (60) calendar days after the expiration or earlier termination of this Permit. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such PERMITTEE Improvements as required by this Permit. If PERMITTEE fails to remove PERMITTEE Improvements as required, CITY may, at its option, remove the same at PERMITTEE's sole cost and expense. Notwithstanding the foregoing, CITY may, upon notice to PERMITTEE at termination or at any time prior to the expiration of the Term, elect to assume ownership of all or any PERMITTEE Improvements as of the expiration or earlier termination of this Permit, at no cost to CITY. If CITY elects to assume ownership of all or any PERMITTEE Improvements, PERMITTEE shall honor such assumption and execute and deliver all necessary and appropriate documents, materials and other items reasonably needed to affect such transfer of ownership to CITY.

- 12.2. 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 earlier termination, but in no event later than ten (10) calendar days after the expiration or earlier termination of this Permit. Any such items which PERMITTEE fails to remove shall be deemed abandoned and, subject to applicable law, become CITY's property free of all claims and liens, or CITY may, at its option, remove such items 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 resulting from the removal of its personal property from the Permit Area.
- 12.3. Post-Permit License. CITY grants permission to PERMITTEE to enter upon and occupy the Permit Area after the expiration or earlier termination of this Permit solely for the purpose of removing PERMITTEE Improvements and PERMITTEE's personal property as provided by this Permit. This provision shall survive the expiration or earlier termination of this Permit for the limited time periods stated above.
- 12.4. Late Removal. Notwithstanding any provision of this Permit to the contrary, PERMITTEE shall pay Rent to CITY for any period of time after the expiration or earlier termination of this Permit needed to remove PERMITTEE Improvements or personal property as required by this Permit, whether by CITY or PERMITTEE. Such Rent shall be calculated on a per diem basis using the market value of the Property as appraised by an independent fee appraiser or City staff.
13. 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, PERMITTEE shall be in default of this Permit. PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. PERMITTEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for the following insurance, which shall be subject to CITY's written approval thereof:
- 13.1. Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, 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.

- 13.2. Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit.
- 13.3. Workers' Compensation Insurance, as required by applicable laws, 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 an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
- 13.4. Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as insureds "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf; (b) PERMITTEE's products; (c) PERMITTEE's work, including without limitation PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf; or (d) the Permit Area.
- 13.5. Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of PERMITTEE's insurance and shall not contribute to it.
- 13.6. Severability of Interest. Each policy must be endorsed to 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.
- 13.7. Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). 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.

- 13.8. 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.
- 13.9. 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 and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- 13.10. Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time 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.
- 13.11. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Permit Area or otherwise related to the Permit Use. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 13.12. Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE's insurable property related to the Permit Use of the Permit Area under this Permit or the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.
14. Indemnification & Hold Harmless. PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE's exercising of the rights granted to PERMITTEE herein, and all expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any established

liability arising from the sole negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

15. Termination. PERMITTEE may terminate this Permit for any reason upon thirty (30) days prior written notice delivered to CITY at CITY's address for notices as set forth herein, below.
16. Restore and Vacate. Subject to the exception set forth in Section 12 Improvements and Personal Property above, prior to the expiration of this Permit or upon earlier termination of this Permit, PERMITTEE shall immediately cease all operation on the Permit Area, restore the Permit Area to the same or similar condition that existed on the Effective Date, normal wear and tear excepted for authorized Permit Uses, and upon such expiration or earlier termination immediately vacate the Permit Area.
17. 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, whether or not of record. 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 preexisting, 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.
18. 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 use of the Permit Area. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.
19. CITY's Consent, Discretion. CITY's consent or approval under this Permit shall mean the written consent or approval of the Mayor of San Diego, or his designee ("Mayor"), unless otherwise required by law or expressly provided herein. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided or required by law.
20. Compliance with Laws. PERMITTEE shall at all times in its use, occupancy, and maintenance of the Permit Area comply with all applicable laws, rules and regulations and direction by competent governmental authorities, and all at PERMITTEE's sole cost and expense. At least annually, PERMITTEE shall deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to PERMITTEE (e.g.,

validation of periodic inspection of PERMITTEE's fire-suppression equipment used for/in conjunction with PERMITTEE's use of the Permit Area).

21. 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.
22. No Discrimination. PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, sexual orientation, gender identity, gender expression, 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.
23. Equal Opportunity. PERMITTEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. PERMITTEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. PERMITTEE shall cause the foregoing provisions to be inserted in all PERMITTEE's contracts for work related to this Permit so that such provisions will be binding upon each of PERMITTEE's contractors. PERMITTEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY's Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request PERMITTEE shall submit a current Workforce Report. PERMITTEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Permit and debarment from participating in CITY contracts for a period of not less than one (1) year.
24. 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.
25. 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 shall include without limitation the following:
 - 25.1. PERMITTEE shall not discriminate against qualified persons 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;

- 25.2. 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;
 - 25.3. PERMITTEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
 - 25.4. Where required by law, PERMITTEE shall, at PERMITTEE's sole cost in conformance with all applicable codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the Permit Area which deny access to disabled persons; and,
 - 25.5. PERMITTEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.
 - 25.6. PERMITTEE and each of its sublicensees shall be individually responsible for their own ADA compliance program. PERMITTEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Permit.
26. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Permit if PERMITTEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of PERMITTEE for this Permit. It is not the intent of this policy that these provisions apply to members of the City Council.
 27. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Permit and to the extent legally possible, PERMITTEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. PERMITTEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
 28. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE's use or occupancy of the Permit Area and any damages to the improvements on, under or in the vicinity of the Permit Area resulting directly or indirectly thereby.
 29. 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.

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 shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at PERMITTEE's cost.
31. Encumbrances. PERMITTEE shall keep the Permit Area 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. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Permit Area, 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 Permit Area pursuant to 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, 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 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 Hazardous Substances.
- 33.2. Hazardous Substances. 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, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 33.4. Removal. If PERMITTEE or PERMITTEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous 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 materials, 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 as 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.
- 33.6. Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from, or beneath the Permit Area, 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 therefor.
34. Water Quality – Best Management Practices. The CITY and PERMITTEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the 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 Section 43.0301 to 43.0312).

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

It is ultimately the PERMITTEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the 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. 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. CITY'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 CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law or in equity. The

exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY'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 CITY may at any and all times require the cure of the default.

36. Cumulative Remedies. CITY's rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY'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. 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

41. 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. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
42. 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.
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. 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 therefore.

[The remainder of this page is intentionally left blank.]

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

Date: _____

FLATIRON WEST INC., a Delaware corporation

BY: _____

Name: _____

Title: _____

Date: 1/9/18

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____

Cybele L. Thompson

Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to CEQA State Guidelines Section 15301 (Existing Facilities) and Section 15304(e) (Minor Alterations to Land).

Date: _____

BY: _____

Alyssa Muto

Deputy Director, Environmental & Policy Analysis
Planning Department

Approved as to form this 17th day of
January, 2018.

MARA W. ELLIOTT, San Diego City Attorney

BY: _____

Name: _____

Title: _____

Melissa Ales
Melissa Ales
Deputy City Attorney

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

Date: _____

FLATIRON WEST INC., a Delaware corporation

BY: _____

Name: _____

Title: _____

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____

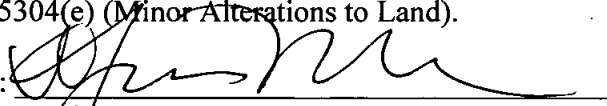
Cybele L. Thompson

Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to CEQA State Guidelines Section 15301 (Existing Facilities) and Section 15304(e) (Minor Alterations to Land).

Date: 1/5/18

BY: 

Alyssa Muto

Deputy Director, Environmental & Policy Analysis
Planning Department

Approved as to form this _____ day of _____, 2018.

MARA W. ELLIOTT, San Diego City Attorney

BY: _____

Name: _____

Title: _____

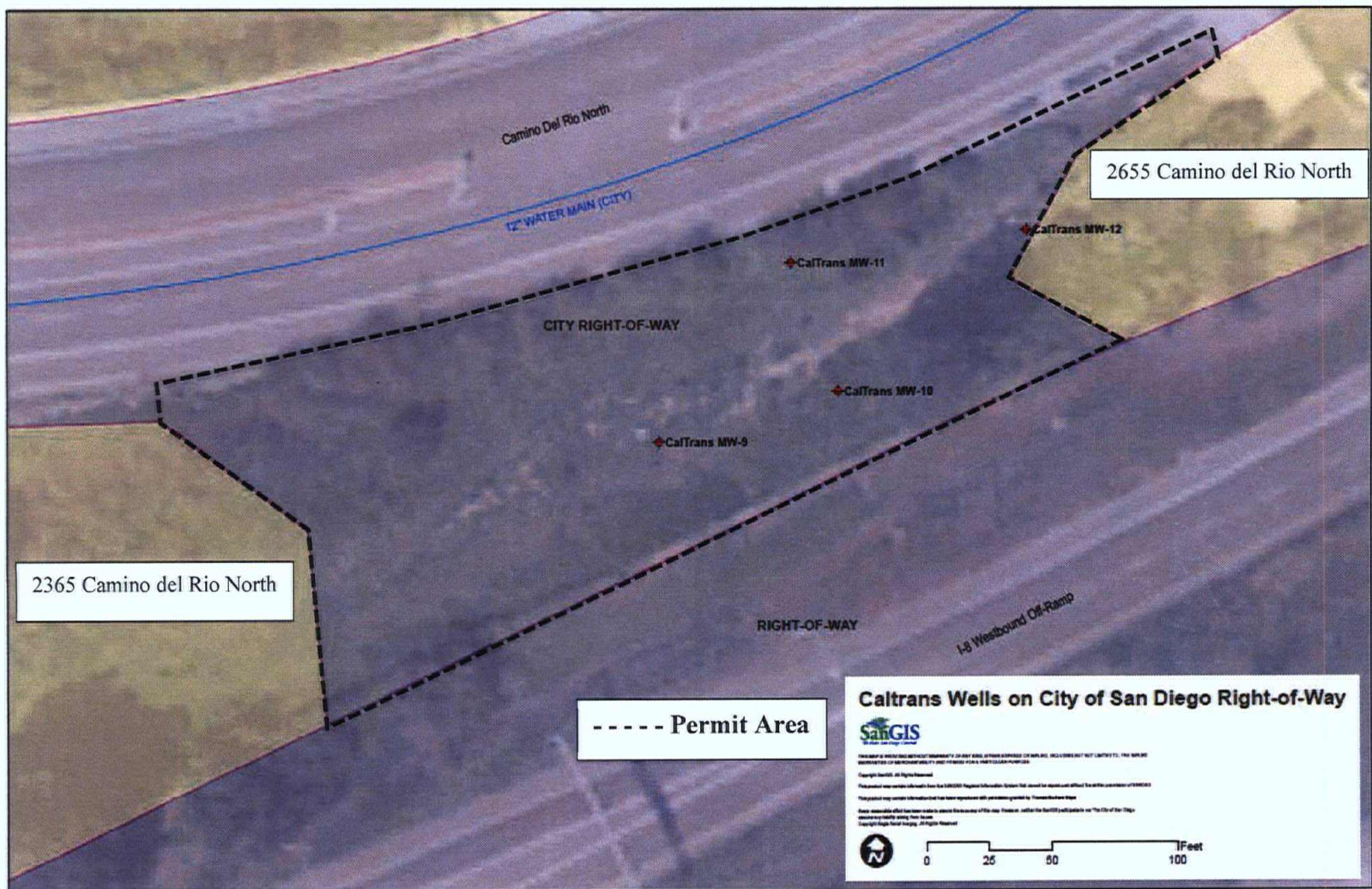


Exhibit A: Permit Area