



Real Estate Assets Department
SDC003

CITY OF CHULA VISTA ~~ENCLOSURE~~
U001WW - 005 - A00 + Copy of SD

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS

13



**CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT**

RES No. 2013-0210-A

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 THE CITY OF CHULA VISTA and COUNTY OF SAN DIEGO ("PERMITTEES," jointly and severably), to be effective as of the date of execution by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY is the owner of certain real property (the "City Property," as more particularly described in **Exhibit A: City Property**, attached hereto) identified as Assessor Parcel Number 598-010-08 located southeast of Proctor Valley Road and north of the Lower Otay Lake in the County of San Diego, California.
- B. PERMITTEES shall have non-exclusive use of the "Permit Area," as shown in **Exhibit B: Permit Area**, attached hereto) to use existing roadways across City property for access to Otay Ranch Preserve properties to the east.
- C. Under the terms and conditions of this Permit, CITY will allow PERMITTEES to use the Permit Area to access the Otay Ranch Preserve property.

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

- 1. **Right to Enter.** Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEES, their employees, agents, contractors, and invitees to enter upon the Permit Area solely for the purpose of accessing Otay Ranch Preserve properties to the east, using existing roadways thereon (the "Permit Use").
- 2. **Use of Permit Area.** PERMITTEES may use the Permit Area on a non-exclusive basis solely for the purposes of the Permit Use. PERMITTEES shall obtain all related permits and comply with all applicable environmental laws, rules and regulations related to the Permit Use.
 - 2.1 **Cal/OSHA.** PERMITTEES and its employees, agents, contractors, and invitees shall comply at all times with the health and safety requirements of Title 8 of the California Code of Regulations, as such regulations are enforced by the State of California Division of Occupational Safety and Health (also known as "Cal/OSHA").
 - 2.2 **Vehicles.** All vehicles used in relation to the Permit Use shall remain on existing roadways or designated access routes at all times.

3. Term. The term of this Permit ("Term") shall be three years, commencing on the Effective Date. This Permit may be terminated by either party for any reason upon thirty (30) days prior written notice.
4. Revocable License. This Permit is not a lease. It is a non-exclusive personal license to use the Permit Area, and may be revoked at will by CITY, in its sole discretion, subject to the provision of 30 day written notice pursuant to Section 3, above. This Permit shall not be transferred, assigned, or conveyed, and any such transfer, assignment, or conveyance shall automatically terminate this Permit. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEES as a result of such revocation or the termination of this Permit. PERMITTEES expressly waive any claim for expense or loss which PERMITTEES might incur as a result of CITY'S termination of this Permit. CITY may at all times enter upon the Permit Area.
5. 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/her designee ("Mayor"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
6. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to PERMITTEES or to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Permit Area or PERMITTEES' 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 PERMITTEES' use of the Permit Area.
7. 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. PERMITTEES 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 PERMITTEES' use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEES 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.
 - 7.1 Access and Security. PERMITTEES shall comply with all access rules and procedures for the City Property as CITY may require from time to time in CITY'S sole discretion.
8. Hazardous Substances. PERMITTEES shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area. PERMITTEES and PERMITTEES' agents and contractors shall not store, utilize, or sell any hazardous substance on the Permit Area 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, leaching, 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 769704 and by this reference is incorporated into this Lease.

- 8.1 Remediation. If PERMITTEES' occupancy, use, development, maintenance, or restoration of the Permit Area (PERMITTEES' Operations) results in a release of a hazardous substance, PERMITTEES shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules and regulations of governmental authorities.
- 8.2 Indemnity. PERMITTEES shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEES' Operations on the Permit Area or the City Property, 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.
- 8.3 Notice of Release. If PERMITTEES know or have reasonable cause to believe that a hazardous substance has been released on, under, or from the Permit Area, PERMITTEES 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 PERMITTEES know or have reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEES shall take all actions necessary to alleviate the danger. PERMITTEES shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area.
- 8.4 Environmental Assessment. Upon reasonable cause to believe that PERMITTEES' 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 Permit Area and/or the City Property 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 PERMITTEES' sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEES' 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. PERMITTEES shall cause, or if PERMITTEES fail 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 PERMITTEES shall pay all costs and expenses therefor.

9. Noninterference. PERMITTEES shall not interfere with CITY'S use, operations, and activities on the Permit Area, and PERMITTEES shall use such routes and follow such procedures on the Permit Area as shall result in the least damage and inconvenience to CITY and other users of the Permit Area.
10. Property Damage. PERMITTEES shall pay for all damage to the Permit Area and CITY'S personal property on the Permit Area, and the personal property of third parties on the Permit Area resulting from PERMITTEES' exercise of the rights granted by this Permit. PERMITTEES shall promptly repair and restore to its original condition all such property.
11. Signs. No signs may be displayed on the Permit Area without CITY'S prior written consent.
12. Maintenance of the Permit Area. PERMITTEES 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. Notwithstanding the foregoing, in the event that damage is caused by the CITY or any employee, volunteer, or invitee of the CITY, which requires repair of the Permit Area, such repair shall be performed at the sole cost of the CITY.
13. Inspection. CITY may, at any and all times, enter and inspect the Permit Area.
14. Restoration. Immediately upon the expiration or earlier termination of this Permit, PERMITTEES shall promptly remove any and all improvements it installed in, on, under, or above the Permit Area and restore the Permit Area to its original condition, all at PERMITTES' sole cost and expense.
15. Indemnification and Mutual Hold Harmless. PERMITTEES and CITY protect, defend, indemnify, release, and hold each other harmless as follows:
 - 15.1 CITY Protected and Released. PERMITTEES 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 PERMITTEES' officers, employees, agents, contractors, and invitees, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEES' Operations on the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs.
 - 15.01.a.1 PERMITTEES' duty to indemnify and hold harmless shall not include any established liability arising from the established gross negligence or willful misconduct of CITY or its elected officials, officers, representatives, agents or employees.
 - 15.01.a.2 PERMITTEES' duty to protect and defend shall apply to all claims or actions against CITY alleging any gross negligence or willful conduct, subject to the right of reimbursement provided in Section 15.4 herein.

- 15.2 PERMITTEES Indemnified. CITY shall protect, indemnify, defend and hold PERMITTEES harmless for damages caused by the acts or omissions of CITY'S officers, employees, or agents occurring in the performance of this Permit. CITY shall be liable only for the cost of repair or replacement of damaged equipment arising from any negligence or willful misconduct of CITY, its employees, agents, or contractors and shall in no event be liable for indirect or consequential damages. CITY'S total liability under this Permit shall be limited to the fair market value of the equipment in its condition at the time of damage.
- 15.3 Joint Defense. Notwithstanding any the provision of this Permit, in cases where PERMITTEES and CITY agree in writing to a joint defense, PERMITTEES and CITY may appoint joint defense counsel to defend the claim, action or proceeding arising out of any concurrent acts or omissions of CITY and PERMITTEES. Any joint defense agreement shall be entirely voluntary and nothing in this Permit shall be deemed to require either party to commit to any such agreement. Joint defense counsel shall be selected by mutual agreement of PERMITTEES and CITY. PERMITTEES and CITY agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in Paragraph "15.4" below. PERMITTEES and CITY further agree that neither party may bind the other to a settlement agreement without the written consent of the respective PERMITTEE and CITY.
- 15.4 Reimbursement and/or Reallocation. Where a judicial order, trial verdict, arbitration award, or settlement allocates or determines the comparative fault of the parties, PERMITTEES and CITY may seek reimbursement and/or reallocation of all defense costs, settlement payments, judgments and awards, consistent with such comparative fault and only to the extent that any such comparative fault is consistent with the express provisions of this Permit and, to wit, the indemnification and release stated herein in Section 15.1.
- 15.5 Waiver of Claims. PERMITTEES waive any and all claims, demands, causes of action, and rights it may assert against CITY on account of any loss, damage, or injury to the Permit Area or any loss or degradation of the Permit Area's operations as a result of any event or occurrence which is beyond the reasonable control of CITY.

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 PERMITTEES 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. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEES shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- 19.6 Modification. To assure protection from and against the kind and extent of risk existing on the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEES thirty (30) days prior written notice. PERMITTEES 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 PERMITTEES' use of the Permit Area.
- 19.7 Accident Reports. PERMITTEES shall report to CITY any accident causing property damage or injury to persons on the Permit Area and related to PERMITTEES' use of the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 19.8 Failure to Comply. Notwithstanding any other provision of this Permit, if PERMITTEES fail or refuse to obtain or maintain insurance as required by this Permit, or fail to provide proof of insurance, CITY may terminate this Permit immediately upon such breach.
- 19.9 All-Risk Property Insurance. PERMITTEES shall obtain and maintain, at its sole cost, All-Risk Property insurance on all insurable property on the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEES shall deliver to CITY a certificate of such insurance.
- 19.10 Self Insurance. THE COUNTY OF SAN DIEGO represents and warrants that it is self-insured and fulfills all the insurance provisions as set forth above. THE CITY OF CHULA VISTA represents and warrants that it is self-insured and carries a \$500,000 Self-Insured retention over which a pooled layer of coverage and several commercial excess layers of liability coverage exists, and thereby fulfills the provision as set forth above.

20. Compliance with Law. PERMITTEES 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 PERMITTEES' Operations on the Permit Area.
21. No Discrimination. PERMITTEES 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 PERMITTEES' 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 PERMITTEES' 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 Permit. 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. 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 courier 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

PERMITTEES: COUNTY OF SAN DIEGO
Department of General Services
Attention: Adam Weinberg, Chief
5500 Overland Avenue, Suite 410
San Diego, CA 92123

THE CITY OF CHULA VISTA
Development Services Department
Attention: Gary Halbert, Assistant City Manager.

276 Fourth Avenue
Chula Vista, CA 91911

26. 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.

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

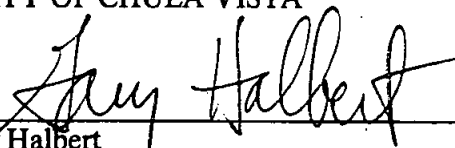
Date: 10-11-13

THE COUNTY OF SAN DIEGO
Department of General Services

BY: 
Adam Weinberg, Chief Real Estate Services Division

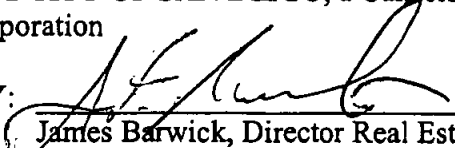
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THE CITY OF CHULA VISTA

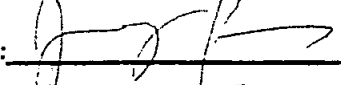
BY: 
Gary Halbert
Assistant City Manager/

Date: 10/29/13

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: 
James Barwick, Director Real Estate Assets

Approved As To Form And Legality
J. I. GOLDSMITH

 DATE 11/7/13
ME: Jeremy Fonseca

LE: Deputy City Attorney

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

SS

On 10 11 13 before me, Thomas G. Harrington, Deputy County Clerk in and for said County and State, personally appeared **Adam S. Weinberg, CCIM, Chief, Real Estate Services Division, Department of General Services**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

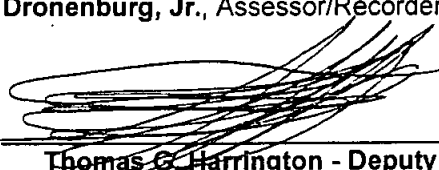
WITNESS my hand and official seal.

(seal)



Ernest J. Dronenburg, Jr., Assessor/Recorder/County Clerk

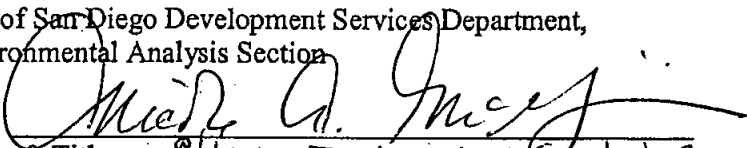
By: _____


Thomas G. Harrington - Deputy

ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301

City of San Diego Development Services Department,
Environmental Analysis Section

BY: 

Name & Title: NICOLE A. MCGINNIS

SENIOR PLANNER

APPROVED AS TO FORM AND LEGALITY:

Date: _____

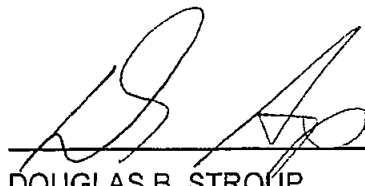
JAN GOLDSMITH, City Attorney

BY: _____

Name & Title: _____

EXHIBIT "A"
LEGAL DESCRIPTION

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE EAST HALF OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 19, TOWNSHIP 17 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.



DOUGLAS B. STROUP

P.L.S. 8553

HUNSAKER & ASSOCIATES SAN DIEGO, INC.

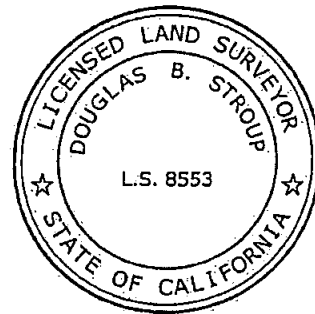


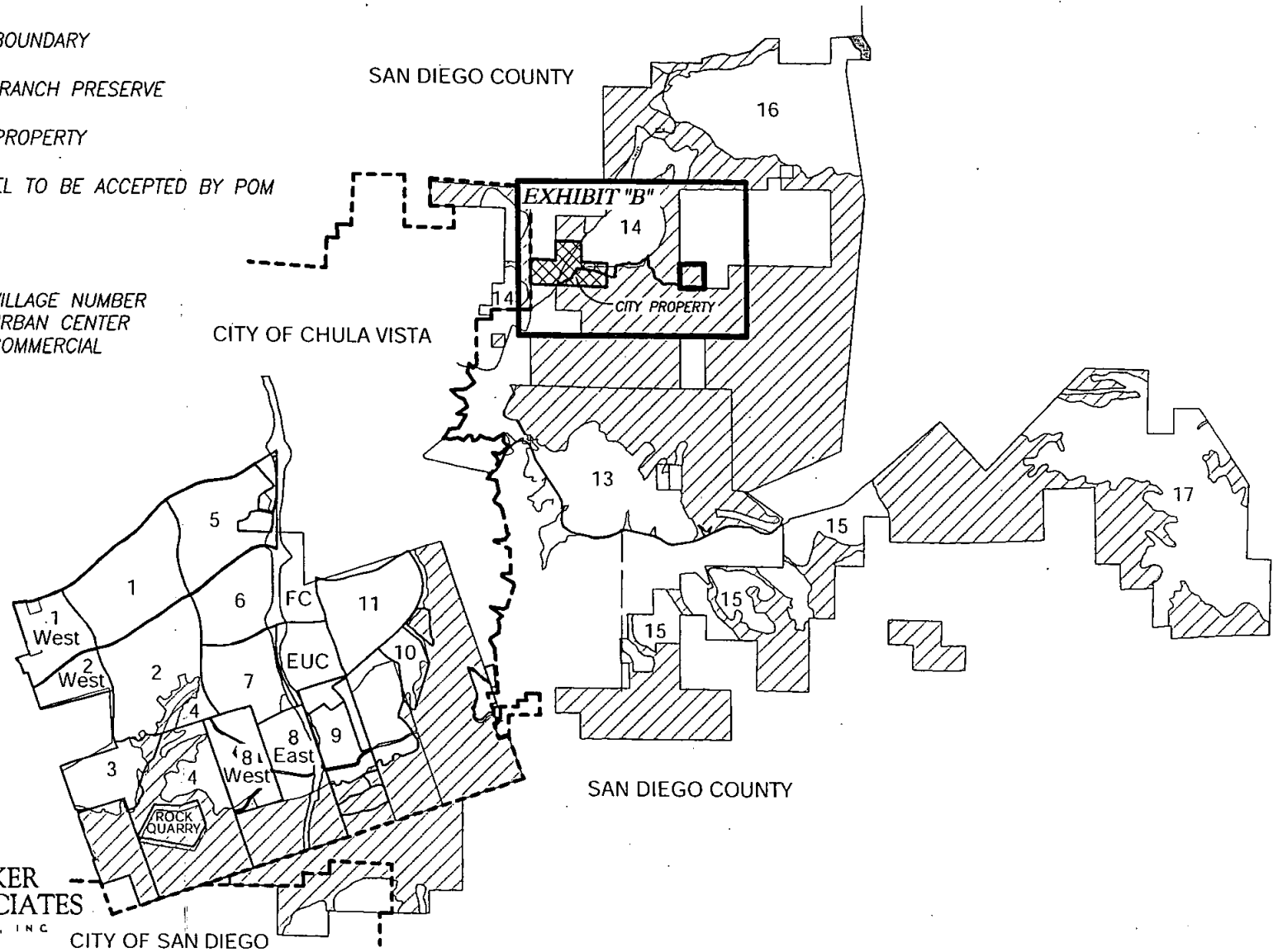
EXHIBIT "A"

LEGEND

- ACCESS ROAD
- - - - CITY BOUNDARY
-  OTAY RANCH PRESERVE
-  CITY PROPERTY
-  PARCEL TO BE ACCEPTED BY POM

ABBREVIATIONS

- 5 - DENOTES VILLAGE NUMBER
- EUC - EASTERN URBAN CENTER
- FC - FREEWAY COMMERCIAL



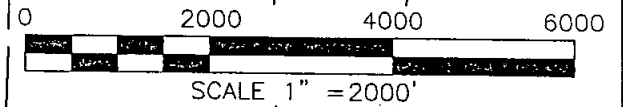
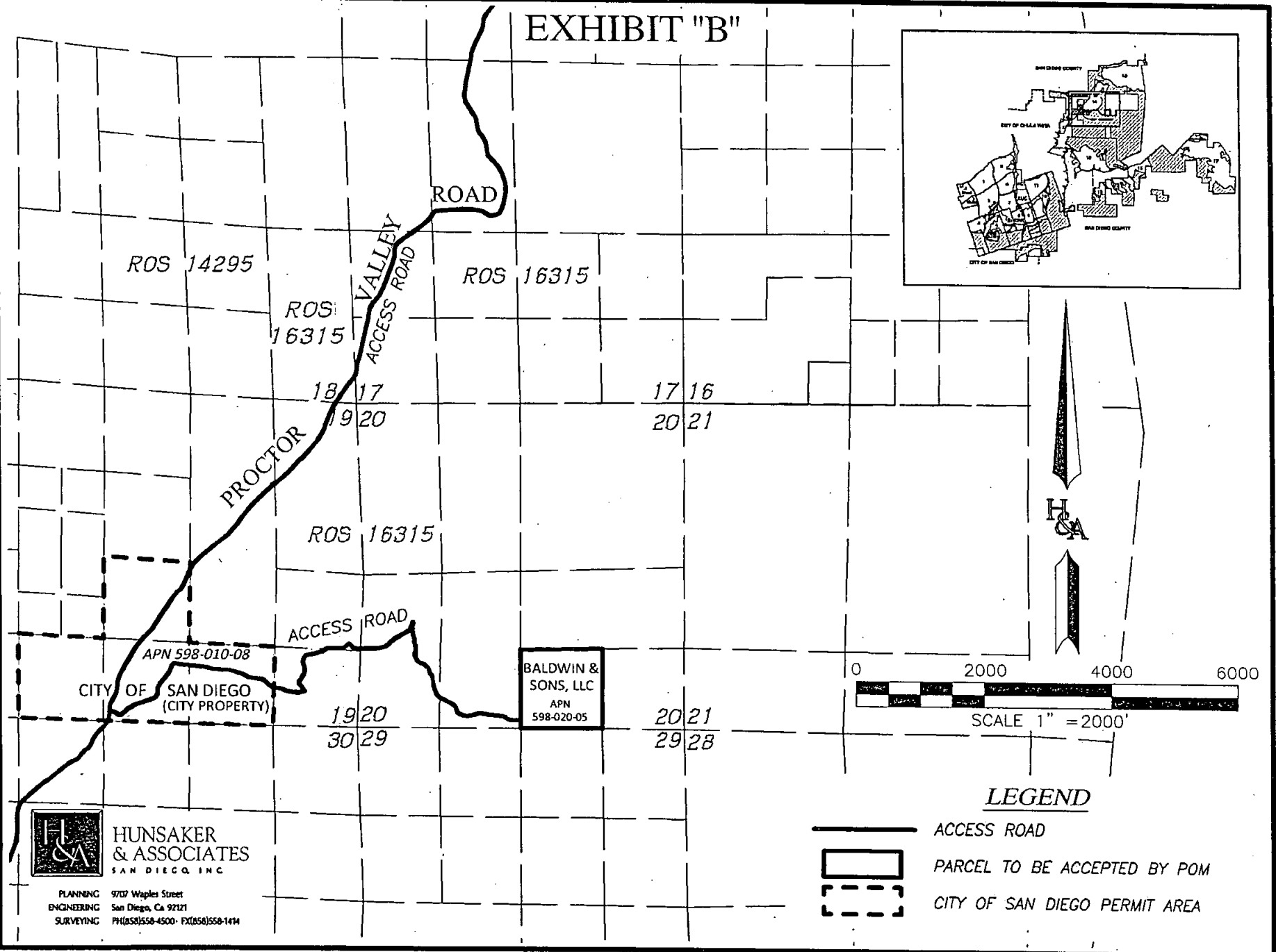
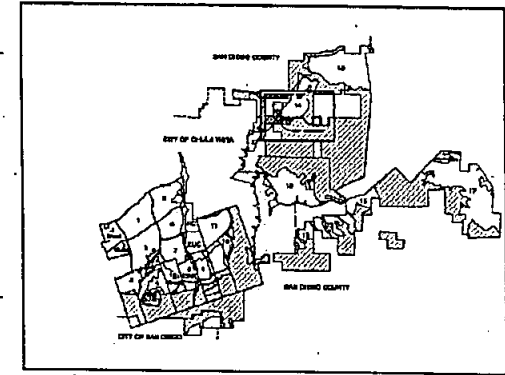
**HUNSAKER
& ASSOCIATES**
SAN DIEGO, INC.

CITY OF SAN DIEGO

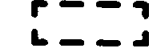
PLANNING 9707 Waples Street
ENGINEERING San Diego, Ca 92121
SURVEYING PH(619)558-4500 FX(619)558-1414

R:\089B\Map\EX ROE City- Section 20 Exhibit A.dwg[Sep-27-2013:11:21

EXHIBIT "B"



LEGEND

-  ACCESS ROAD
-  PARCEL TO BE ACCEPTED BY POM
-  CITY OF SAN DIEGO PERMIT AREA



**HUNSAKER
& ASSOCIATES**
SAN DIEGO, INC.

PLANNING 9707 Waples Street
ENGINEERING San Diego, Ca 92121
SURVEYING PH(658)558-4500 FX(658)558-1414