

CITY OF SAN DIEGO

RIGHT OF ENTRY PERMIT

THIS RIGHT OF ENTRY PERMIT ("Permit") is executed by and between the CITY OF SAN DIEGO, a municipal corporation ("City"), and Otay Water District, a municipal water district ("Permittee").

1. Grant. City hereby grants permission to Permittee to enter upon City-owned property located at 1500 Wueste Road, Chula Vista, CA 91910 consisting of an access road approximately 2,200 linear feet in length, and as specifically set forth on the attached Exhibit "B" ("Permit Area"), incorporated by this reference. Permission to enter the Permit Area is conditioned upon the terms set forth below.
2. Use of Permit Area. Permittee shall have non-exclusive use of the Permit Area as an access road leading to Permittee's property, APN 644-080-12 where Permittee will build the Lower Otay Pump Station (LOPS). Permittee's contractor shall provide a security guard at the East Gate of the City's Otay Water Treatment Plant (OWTP) during all construction hours to monitor permittee's construction traffic entering and exiting the permit area. Construction deliveries shall be coordinated with the OWTP Supervisor at least 24 hours in advance and should be limited to normal work hours.

The Permittee will be constructing a 30-inch temporary pipeline over the top of the City's 54-inch Otay III Pipeline in the location shown on Exhibit B. Whenever the City needs to remove the 30-inch temporary pipeline in order to access and work on the Otay III Pipeline for any reason, the cost of removal and replacement of the Permittee's 30-inch temporary pipeline shall be borne by the Permittee.

3. Permit Fee. Consideration to City for granting this Permit shall be a Six Hundred Dollar (\$600) non-refundable processing fee payable to the City Treasurer.
4. Effective Date. This Permit shall be in effect upon execution by City and Permittee and as of the approval date of the City Attorney ("Effective Date") and shall expire on June 30, 2008. This permit may be cancelled by either party on 30 days written notice.
5. Insurance. Prior to approval of this Permit by City, Permittee shall deliver to City a certificate of insurance for public liability and property damage in which "The City of San Diego, its elected officials, officers, representatives, agents and employees" are named as additional insureds, in an amount of not less than Two Million Dollars (\$2,000,000) combined single limit liability with an occurrence claims form. The policy shall be kept in force for the duration of this Permit. The certificate of insurance shall be filed with City's Real Estate Assets Department upon execution of this Permit.

6. Hold Harmless. Permittee agrees to defend, indemnify, protect, 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 officers, which arise out of or are in any manner directly or indirectly connected with the grant of this Permit to the Permittee, the development or operation of the Permit Area or the work and operations to be performed under this Permit, and all expenses of investigating and defending against same; provided, however, that Permittee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of City, its elected officials, officers, representatives, agents and employees.
7. No Discrimination. Permittee shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Permittee's use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
8. Permittee's Risk. All risks in connection with Permittee's use of the Permit Area and any damages to the improvements thereon, thereunder, or in the vicinity thereof which result from Permittee's use, shall be borne in full by Permittee.
9. Nuisance. Permittee shall not use the Permit Area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
10. Revocable Permit. This Permit is not a lease. It is a license to use City property, revocable at any time by City. It is mutually agreed that City shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of this Permit, and, further, that Permittee expressly waives any claim for expense or loss which Permittee might incur as a result of termination of this Permit. City shall have and maintain the right at all times to enter upon the Permit Area in City's sole discretion.
11. Possessory Interest Tax. Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Such tax payment shall not reduce any fee paid City under this Permit. Permittee shall pay any tax or assessment before it becomes delinquent.
12. Compliance with Laws. Permittee shall at its sole cost and expense comply with all 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.
13. Deposit. Permittee shall file with City's Real Estate Assets Department a Three Thousand

13. Deposit. Permittee shall file with City's Real Estate Assets Department a Three Thousand Dollar (\$3,000.00) cash performance deposit to assure that, upon expiration or earlier termination of this Permit, Permittee shall at its sole cost remove all materials and repair and/or restore the Permit Area to its original condition, including any hazardous or toxic waste remediation, to the satisfaction of the City Manager.
14. Hazardous/Toxic Waste. City will not allow the installation or release of hazardous substances in, on, under or from the premises. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping or otherwise disposing of hazardous substance. "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's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's office as City Clerk Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance which is caused by Permittee's activities, Permittee shall be responsible for all costs of remediation and removal of such substances in accordance with applicable rules and regulations of governmental authorities.

Permittee agrees to assume the defense of, indemnify and hold City harmless from any and all claims, costs and expenses related to environmental liabilities resulting from Permittee's operations on the premises, including, but not limited to costs of environmental assessments, cost of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If Permittee knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, Permittee shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however if Permittee knows, or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety. Permittee shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all acts necessary to alleviate such danger. Permittee will notify the City Manager immediately of any notice of violation received or initiation of environmental action or private suits relative to the premises. In addition, Permittee and Permittee's sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of City.

At any time within the twelve (12) months before the expiration or earlier termination of this lease, Permittee at City's sole option, shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole

cost and expense of Permittee and shall establish what, if any hazardous substances exist on, in or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by City, county, state or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. Permittee shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

15. No Assignment. Permittee shall not assign any rights granted by this Permit nor any interest therein without the prior written approval of the City Manager. Approval of any such proposed assignment may be withheld in the sole and absolute discretion of the City Manager. Any assignment by operation of law shall automatically terminate this Permit.
16. Signs. No signs shall be displayed on the Permit Area without the prior written consent of the City Manager.
17. Encumbrances. Permittee shall keep the Permit Area free from all encumbrances and liens of any nature during the term of this Permit. Permittee shall defend, hold harmless and indemnify City from and against any and all such encumbrances and/or liens and from and against any claim, liability, cost or expense (including all costs and attorneys' fees), which may be filed or instituted 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 referred to in Section 3181 of the California Civil Code or other applicable sections.
18. Maintenance of the Permit Area. Permittee shall be solely responsible for maintaining the Permit Area in a decent, safe, healthy and sanitary condition at all times during the entire term of this Permit to the satisfaction of the City Manager or designee.
19. Waiver. The failure of City to insist upon strict performance by Permittee of any condition of this Permit, in one or more instances, shall not be construed as a waiver of any such condition, and the same shall remain in full force and effect.
20. Oral Representations. This Permit contains the complete expression of the agreement between the parties, and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as set forth herein. The conditions hereof cannot be changed in any respect except by written agreement between the parties.
21. Inspection. City may enter and inspect the operations permitted under this Permit at any time.

Permittee agrees to pay all legal costs in connection therewith, including reasonable attorneys' fees.

23. Notices.

Notices to City shall be mailed to:

City of San Diego
Real Estate Assets Department
Attention: Deputy Director, Asset Management and Marketing Division
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, CA 92101

Notices to Permittee shall be mailed to:

Mr. Ron Ripperger, P.E.
Engineering Design Manager
Otay Water District
2554 Sweetwater Springs Blvd.
Spring Valley, CA 91978-2096

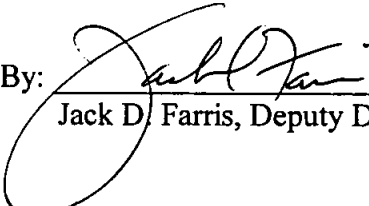
or notices may be delivered to Permittee.

25. Governmental Approvals. By the granting of this Permit, neither City nor the Council of City is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Permit Area. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Permit Area.

IN WITNESS WHEREOF, this Right of Entry Permit is executed by City, acting by and through its City Manager, and by Permittee, acting by and through its lawfully authorized officers.

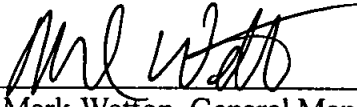
THE CITY OF SAN DIEGO

Date: 7/1/05

By: 
Jack D. Farris, Deputy Director

OTAY WATER DISTRICT

Date: 6-27-05

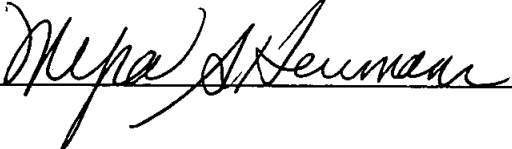
By: 
Mark Watton, General Manager.

This activity is
Section 15301 "Existing Facilities."

: exempt from State CEQA Guidelines pursuant to

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

Date: 7/5/05

By: 

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date: July 8, 2005

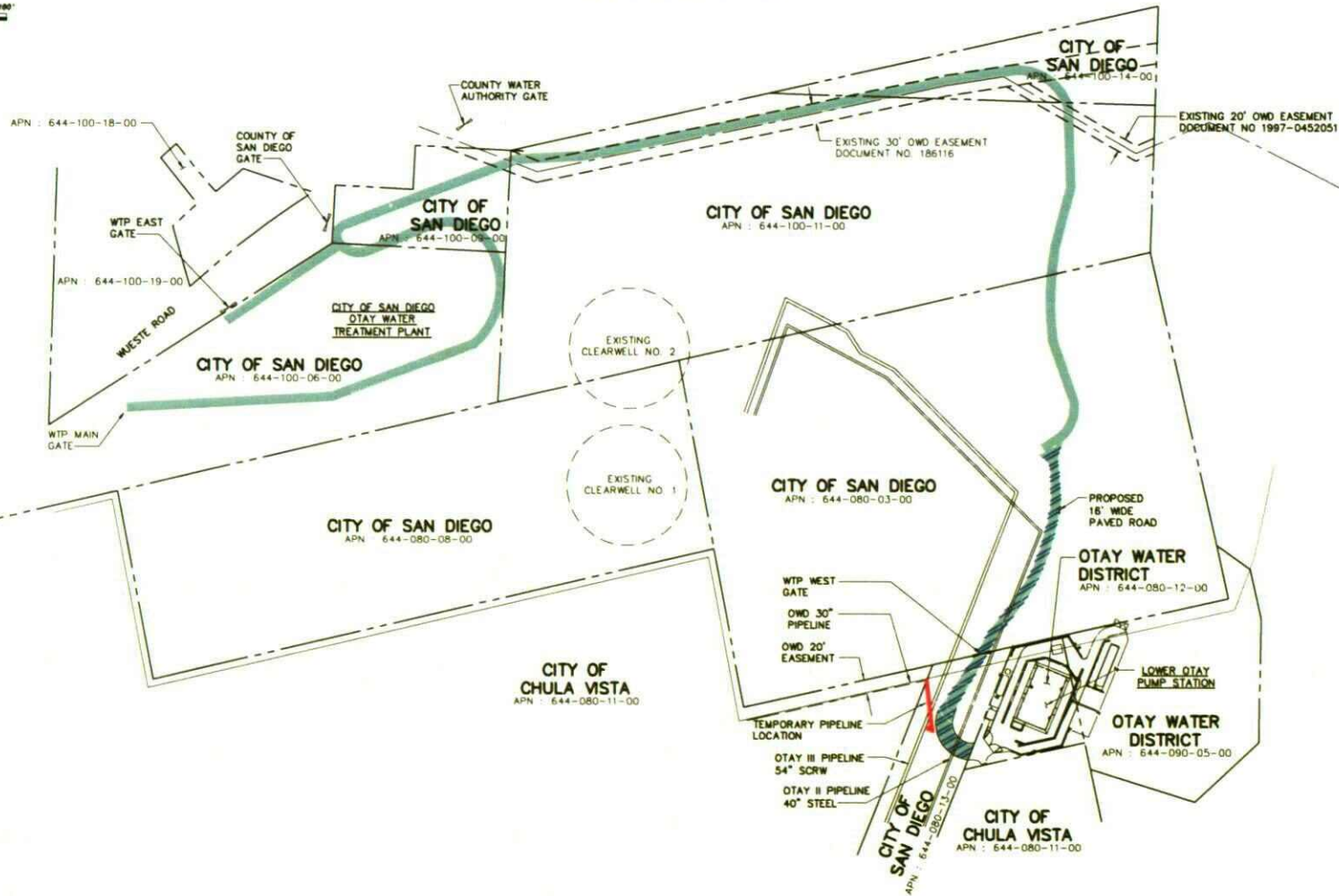
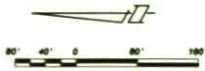
By: 
Deputy City Attorney

JAB/cj
5/10/05

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EXHIBIT "B" - PERMIT AREA

EXHIBIT B



LEGEND

- PROPOSED ACCESS ROUTE
54,220.50 FT *INCLUDES
PROPOSED PAVED ROAD
- *16' WIDE PROPOSED PAVED ROAD

--- EXISTING EASEMENT LINE

--- PROPOSED OWD EASEMENT



TEMPORARY PIPE



OTAY WATER DISTRICT

2554 SWEETWATER SPRINGS BOULEVARD
SPRING VALLEY, CA 91778-2096

618 • 670-2000

LOWER OTAY PUMP STATION

PERMANENT
ACCESS PLAN