

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 SECTOR BORDER PATROL TACTICAL UNIT (BORTAC) (PERMITTEE), to be effective October 1, 2012 ("Effective Date") after the Permit has been signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. CITY is the owner of certain real property, consisting of approximately one acre located on the upper west side of the Lower Otay Reservoir Dam and the Lower Otay Reservoir Dam in San Diego County, California, referred to herein and as shown in **EXHIBIT A** ("Permit Area"), attached hereto.
- B. Under the terms and conditions of this Permit, CITY will allow PERMITTEE to use the Permit Area for the sole purpose of rappelling training on Lower Otay Dam ("Dam"). This rappelling training is part of BORTAC's Mission Essential Task List (METL) mandatory hour requirements.
- C. Nothing in this Permit implies an intention by CITY to enter into a long-term agreement to continue the Permit after the Term of this Permit expires.

NOW, THEREFORE, 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 PERMITTEE to enter upon the Permit Area for the sole purpose of accessing the top of the Dam and conducting rappelling training on the southern face of the Dam ("the Permit Use").
- 2. **Use of Permit Area.** PERMITTEE may use the Permit Area on a non-exclusive basis solely for the purposes of the Permit Use. PERMITTEE shall notify the City's Public Utilities Department one (1) week prior to the use of the Permit Area. PERMITTEE shall obtain all required permits and comply with all applicable laws, rules, and regulations related to the Permit Use. PERMITTEE shall have only one vehicle at a time on the Dam, and the total weight of any such vehicle, including payload and passengers, shall not exceed 6,000 pounds.
- 3. **Permit Fee.** The permit fee is waived as the rappelling training use by law enforcement benefits the public interest and the CITY.
- 4. **Term.** The term of this Permit ("Term") shall commence on the Effective Date of October 1, 2012, and shall terminate on or before September 30, 2015.

5. Permit Termination. Upon termination of this Permit the PERMITTEE shall remove from the Permit Area all personal property. PERMITTEE shall leave the Permit Area clear of debris from the Permit Use.
6. Revocable Permit. This Permit is not a lease. It is a non-exclusive license to PERMITTEE for a specific use of the Permit Area, and may be revoked with a 30 day written notice by CITY in its sole discretion. PERMITTEE may terminate this Permit with a 30 day written notice to CITY. PERMITTEE shall not transfer, assign, or convey this Permit, and this Permit shall automatically terminate upon any such transfer, assignment, or conveyance. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. **PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S termination of this Permit.** CITY may at all times enter upon the Permit Area.
7. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided.
8. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to PERMITTEE or any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Permit Area or PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the PERMITTEE'S use of the Permit Area.
9. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area. PERMITTEE and PERMITTEE'S 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, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.
 - 9.1 Remediation. If PERMITTEE'S occupancy, use, maintenance, or restoration of the Permit Area results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.

- 9.2 Indemnity. In light of and consistent with the federal Anti-Deficiency Act (31 U.S.C. §1341) and applicable federal laws, PERMITTEE shall release and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S occupancy, use, maintenance, or restoration of the Permit Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- 9.3 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area, PERMITTEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area.
- 9.4 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S occupancy, use, maintenance, or restoration of the Permit Area ("PERMITTEE'S Operations"), resulted in any hazardous substance being released on or beneath the Permit Area, CITY may cause an environmental assessment of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE'S Operations on, in, or under the Permit Area, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with all laws, statutes, ordinances, and regulations is achieved, and PERMITTEE shall pay all costs and expenses therefor.
10. Noninterference. PERMITTEE shall not materially interfere with CITY'S use, operations, and activities on the Permit Area, and PERMITTEE shall use such means of ingress and egress and follow such procedures on the Permit Area as shall result in the least damage to the Permit Area and/or inconvenience to CITY and other users of the Permit Area. PERMITTEE hereby acknowledges that the Dam is a vital public work providing benefit to the public. PERMITTEE hereby agrees that PERMITTEE'S

Operations in the Permit Area shall not compromise or otherwise interfere with the integrity or function of the Dam and the Permit Area.

11. Property Damage. PERMITTEE shall pay for all damage to the Permit Area, CITY'S personal property on the Permit Area, and the personal property of third parties on the Permit Area resulting from PERMITTEE'S exercise of the rights granted by this Permit, including without limitation soil erosion, subsidence, or damage resulting thereby. PERMITTEE shall promptly repair and restore to its original condition all such property.
12. Indemnification. PERMITTEE represents and warrants that it is self-insured with respect to liability for property damage, personal injuries, or accidents caused by its employees in the course of official business and its employees are covered by the U.S. Department of Labor's Office of Workers Compensation Programs with respect to any injuries suffered in the course of federal employment. As such, PERMITTEE agrees to release and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers or agents, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, maintenance, or restoration of the Permit Area. However, PERMITTEE'S duty to hold harmless shall not include any claims or liability arising from the established sole gross negligence or willful misconduct of CITY. .
13. 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 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.
14. Taxes. PERMITTEE, alone, shall pay any and all taxes, charges, and use fees levied by any governmental agency against PERMITTEE or against any of the Permit Area as a result of PERMITTEE'S occupancy, use, maintenance, or restoration of the Permit Area.
15. 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 this Permit or PERMITTEE'S use of the Permit Area. PERMITTEE shall release and hold CITY and its elected officials, officers, employees, representatives, and agents 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 encumber or lien the Permit Area pursuant to the California Civil Code.

16. 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 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.
17. Insurance. PERMITTEE represents and warrants that it is a Federal Agency and is self insured. If requested by CITY, PERMITTEE shall deliver to CITY evidence of such insurance in form and content reasonably satisfactory to CITY.
18. Compliance with Law. PERMITTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area and PERMITTEE'S Operations on the Permit Area.
19. Competent Management. For the Term of this Permit, PERMITTEE shall provide competent management of the Permit Use to the satisfaction of the Mayor. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management, supervision, and safety of the Permit Use, including ensuring security at and preventing unauthorized access to the Permit Area.
20. Water Rights. CITY reserves all of its right, title and interest in and to the water on and under the Permit Area. There is hereby reserved to CITY, and PERMITTEE herein expressly agrees, that CITY shall have the right throughout the Term to divert, impound, store and transport by means of dams, reservoirs, or by pumping any and all water, both surface and underground, which flows over, under or across the Permit Area, together with the right to divert, inject, spread or percolate water in or through the soils beneath the surface of the Permit Area. Nothing in this Permit shall result in the transfer of the CITY'S rights, title or interest in the water on the Permit Area to any other person or entity.
21. PERMITTEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites. PERMITTEE understands and agrees that sensitive resource sites as well as environmental, historical, and cultural resources may be identified on the Permit Area. PERMITTEE agrees that it shall be responsible for protecting such sites and resources to the extent reasonably feasible. However, if additional measures for protecting a site or resource are required, the installation and maintenance costs involved shall be the sole responsibility of CITY or another public agency or body charged with maintaining the site or resource within the Permit Area.
22. Signs. Signs are not permitted, unless pre-approved in writing by the Mayor.
23. Maintenance of the Permit Area. PERMITTEE shall maintain the Permit Area, at PERMITTEE'S sole cost and expense to CITY'S satisfaction, in a decent, safe, healthy and sanitary condition.

24. Inspection. CITY may, at any and all times, enter and inspect the Permit Area.
25. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is publicly-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
26. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
27. 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 all parties.
28. Notices. Any notice, request, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight service, or delivery by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

CITY:

The City of San Diego
Real Estate Assets Department
Attention: Department Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

PERMITTEE:

San Diego Sector Border Patrol Tactical Unit
1919 Friendship Drive, Ste. B
El Cajon, California 92020

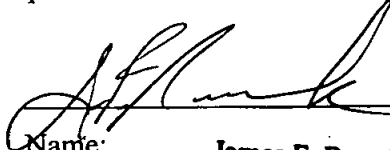
29. Authority. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary 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 government agency, 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 the state of California.

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

Date: 10/11/12

THE CITY OF SAN DIEGO, a California municipal corporation

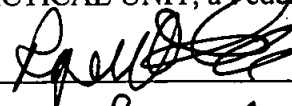
BY: 

Name: James F. Barwick, CCIM

Title: Director, Real Estate Assets

Date: 09/25/2012

SAN DIEGO SECTOR BORDER PATROL
TACTICAL UNIT, a Federal Agency

BY: 

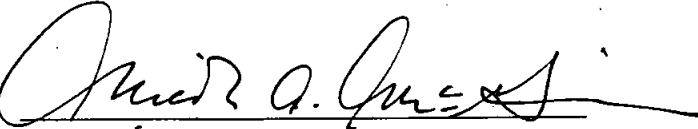
Name: RYAN A. ORPALLO

Title: SUPERVISOR

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301, Class 1, Existing Facilities.

Date: Oct. 1, 2012

BY: 

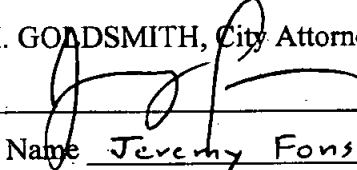
Name: NICOLE A. MCGINNIS

Title: SENIOR PLANNER

Approved as to Form and Legality

This 3rd day of October, 20 12 .:

JAN I. GOADSMITH, City Attorney:

BY: 

Name: Jeremy Fonseca

Title: Deputy City Attorney

DCM/cb

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09-10-12

Exhibit "A" Permit Area

Dry Normal Wet

Exhibit A Permit Area

Lower Otay Dam



Image U.S. Geological Survey

©2012 Google
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Eye alt 2026 ft

32°36.541'N 116°55.632'W elev 503 ft