

CITY OF SAN DIEGO
USE AND OCCUPANCY PERMIT

Otay Water Treatment Plant (Site Code #W003WW)

SD County Parks & Recreation Sanitary System Improvements @ Otay Lakes County Park

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"), the **SAN DIEGO COUNTY WATER AUTHORITY ("SDCWA")**, and **THE COUNTY OF SAN DIEGO**, a California municipal corporation ("PERMITTEE"), to be effective when signed by CITY and PERMITTEE (collectively, the "Parties"), and approved by the San Diego City Attorney (the "Effective Date").

RECITALS

- A. CITY is the owner of that certain real property in San Diego County, California commonly identified by the APNs identified in Recital B, below (collectively the "Properties").
- B. PERMITTEE has requested permission from CITY to enter upon and temporarily occupy portions of the Properties, identified as Assessor Parcel Numbers 644-100-06, 644-080-08, and 644-100-20. These parcels are a portion of City Site Code #W003WW, commonly known as the Otay Water Treatment Plant.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, and in consideration of the foregoing facts and circumstances, 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 the area encompassing the proposed pothole locations, six (6) total located on the Properties, as approximately identified as red dots in Exhibit A.
 - 1.2 **"Permit Use"** shall mean the non-exclusive use of the Properties to access the Permit Area and perform potholing utility locating activities ("Work"). The potholing activities will range in depth from about 3 feet to approximately 20 feet to determine the actual vertical and horizontal locations of buried dry and wet utilities. When complete, PERMITTEE shall backfill the resulting pothole excavations and restore pavement areas using cold patch repair. PERMITTEE will take a maximum of five (5) days to perform the pothole utility locating work and approximately two (2) days to complete pavement restoration. Any Work that occurs in proximity to the City's Multiple Species Conservation Program (MSCP) Multi-Habitat Planning Area (MHPA) lands shall comply with the City's MSCP MHPA Land Use Adjacency Guidelines, which can be found at:

<https://www.sandiego.gov/sites/default/files/legacy/planning/programs/mscp/pdf/subareafullversion.pdf>.

Upon PERMITTEE's completion of the Work, the Permit Area will be generally

restored by PERMITTEE. All restoration activities undertaken within the Permit Area shall comply with all applicable environmental regulations and documents and Section 12 of this Permit.

- 1.3 "PERMITTEE" shall mean the County of San Diego, which shall include its agents, employees, contractors, and subcontractors. PERMITTEE shall be responsible for all of PERMITTEE's agents, employees, contractors, and subcontractors and ensure that they adhere to all conditions as stated in this Permit.

- 1.4 "PERMITTEE's Address for Notices" shall be:
SAN DIEGO COUNTY PARKS & RECREATION
Attn: David Norgard
5500 Overland Ave.
Suite 410
San Diego, CA 92123

- 1.5 "Term" shall commence upon the Effective Date of this Permit and expire on October 15, 2020.

2. Occupancy. Subject to the terms and conditions of this Permit, CITY hereby grant permission to PERMITTEE and its officers, employees, agents, and contractors to enter upon and occupy the Permit Area solely for the Permit Use.

3. Use of Permit Area. PERMITTEE may use the Permit Area solely for the Permit Use and for no other purpose whatsoever, without CITY's prior written consent in each instance. No permanent structures shall be constructed in the Permit Area.

- 3.1 Notification. PERMITTEE shall provide written notification to CITY of a start date and expected duration for the Work at least 48 hours before entering the Properties. No Work shall occur prior to 7:00 a.m. or after 7:00 p.m. or on weekends. Notification shall comply with Section 60 of this Permit.

4. 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 occupancy, use, development, maintenance, or restoration of the Permit Area. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.

5. Unauthorized Activities. PERMITTEE shall not engage in any activity on CITY-owned property other than pre-approved aspects of the Work as described in this Permit or using any portion of the Permit Area or the surrounding property as a staging or storage area for machines, personal property, equipment, or construction debris. Any work performed by PERMITTEE that was not previously approved or otherwise authorized by this Permit, shall be removed and the CITY-owned property shall be put back to its condition on the Effective Date at PERMITTEE's sole cost and expense, subject to the satisfaction of the CITY.

6. CITY's Consent and Discretion. CITY's consent or approval under this Permit shall mean the written consent or approval of CITY's Mayor, or his or her designee ("Mayor"), unless otherwise expressly provided herein or required by law. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided for herein or required by law.
7. Term. The Term may be extended by written agreement of the Parties; however, the Term shall not exceed three (3) years unless authorized by the CITY's City Council.
8. Revocable License. This Permit is not a lease. It is a non-exclusive license to use CITY property, and may be revoked at will by CITY, in its sole discretion, (a) immediately upon written notice delivered to PERMITTEE if PERMITTEE breaches or defaults any of PERMITTEE's obligations under this Permit, or in case of an emergency; or (b) immediately upon an order of a court of competent jurisdiction, or any other legal order which restricts the CITY's ability to allow PERMITTEE to perform under this Permit; or (c) upon thirty (30) business days prior written notice delivered to PERMITTEE if for CITY's convenience. 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.
9. Termination. PERMITTEE or CITY may terminate this Permit for any reason upon sixty (60) days prior written notice delivered to either party; however, in the event of a default or emergency during which the CITY in its sole discretion determines it necessary to terminate the Permit, termination may occur upon 24 hours prior written notice.
10. PERMITTEE's Waiver. PERMITTEE expressly waives any claim against the CITY and its elected officials, officers, employees, representatives, and agents for any burden, expense, or loss which PERMITTEE incurs because of CITY's revocation or termination of this Permit.
11. No 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. If PERMITTEE continues to use or occupy the Permit Area after the expiration or earlier termination of this Permit, CITY may demand and receive from PERMITTEE rent for the Permit Area, calculated on a per diem basis, using up to two (2) times the fair market rental rate that could be charged for the use of the Permit Area, said rate to be determined, as of the date of the expiration or earlier termination of this Permit, by a qualified CITY employee, the selection of whom shall be in CITY's sole discretion. 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.
12. Restoration of Permit Area. PERMITTEE shall be responsible for any damages and/or negative impacts directly associated with PERMITTEE's use of the Permit Area. Except as otherwise prohibited in this Permit, prior to the expiration or as soon as practicable after termination of this Permit, PERMITTEE shall mitigate any such damages and/or negative impacts and restore the Permit Area to its condition as of the Effective Date of this Permit. The time to restore the Permit Area shall not exceed 45 days.

13. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, leases, 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, including CITY lessees, 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.
14. Permit Fee. The Permit Fee is being waived because of the public benefit. The purpose of this Permit is for PERMITTEE to perform potholing to assist in identifying existing utility locations as part of the County sanitary sewer project, which will also benefit the City and its residents.
15. Rent. Except as otherwise provided in this Permit, PERMITTEE shall not pay any rent to CITY for this Permit because of the short-term use of the Permit Area and the public benefit identified in Section 14 herein.
16. Maintenance of Permit Area. As it relates to PERMITTEE's Permit Use and activities, 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 during the term of this Permit. CITY shall not be required to make any improvements or repairs to the Permit Area. PERMITTEE and its officers, employees, agents, and contractors shall not deposit any rubbish, debris, litter, or other item that is not necessary for the approved Permit Use, at any time on the Permit Area. PERMITTEE shall immediately notify CITY of any rubbish, debris, litter, or any other condition which affects the safety, health, or sanitation of the Permit Area.
17. Entry and Inspection. CITY, upon reasonable notice to PERMITTEE, may enter upon the Permit Area to inspect and maintain the Permit Area as CITY deems necessary.
18. Utilities. PERMITTEE shall order, obtain and pay for all utilities and service charges in connection with its use of the Permit Area.
19. Improvements and Alterations. Except as specifically authorized by 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 in its proprietary capacity and without obtaining all other applicable governmental approvals. PERMITTEE may install temporary construction fencing around the perimeter of the Permit Area. Installation of any temporary fencing and access to the Permit Areas are conditioned on compliance with Sections 12 and 13 of this Permit. 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.

20. Personal Property.

20.1 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 termination, but in no event later than ten (10) days after the expiration or earlier termination of this Permit. Any such items which PERMITTEE fails to so remove shall be removed by CITY 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.

20.2 Late Removal. Notwithstanding any provision of this Permit to the contrary, PERMITTEE shall pay rent to CITY, utilizing the methodology set forth above in Section 11 "No Holdover", for any period of time after the expiration or earlier termination of this Permit needed to remove PERMITTEE's personal property, or restore the Permit Area, as required by this Permit, whether the removal and/or restoration work is actually performed by CITY or PERMITTEE.

20.3 CITY's Right to Acquire Personal Property. If PERMITTEE wants to dispose of any of its personal property used in its operations on the Permit Area upon expiration or termination of this Permit, CITY shall have the first right to acquire such personal property.

21. Insurance. PERMITTEE shall not begin operating under the Permit until it has: (i) obtained, and provided to CITY, insurance certificates reflecting evidence of all insurance as required in Section 21.2; however, CITY reserves the right to request, and PERMITTEE shall submit, copies of any policy upon reasonable request by CITY; (ii) obtained CITY approval of each company or companies as required in Section 21.4; and (iii) confirmed that all policies contain the specific provisions and endorsements as required in this Section.

21.1 PERMITTEE's liabilities, including but not limited to PERMITTEE's indemnity obligations, under the Permit, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of the Permit and PERMITTEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of the Permit may be treated as a material breach of contract by CITY. Further, PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the term of the Permit.

21.2 Types of Insurance. At all times during the Term, the PERMITTEE shall maintain insurance coverage and shall require PERMITTEE's contractors and subcontractors conducting work on the Permit Area to maintain insurance coverage as follows:

- 21.2.1 Commercial General Liability. Commercial General Liability (CGL) Insurance 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 or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. 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.
- 21.2.2 Commercial Automobile Liability. For all of PERMITTEE's automobiles including owned, hired, and non-owned automobiles, PERMITTEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
- 21.2.3 Workers' Compensation. For all of PERMITTEE's employees who are subject to the Permit and to the extent required by the applicable state or federal law, PERMITTEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and PERMITTEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives.
- 21.3 Deductibles. All deductibles on any policy shall be the responsibility of PERMITTEE and shall be disclosed to CITY at the time the evidence of insurance is provided.
- 21.4 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by the 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 will 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 (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 21.5 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.

- 21.6 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, photographs and/or video, if any, and other pertinent information.
- 21.7 Severability of Interest. Each policy shall 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.
- 21.8 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and obtain replacement insurance as soon as possible.
- 21.9 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any operations are initiated under the Permit.

21.9.1 Commercial General Liability Insurance Endorsements

21.9.1.1 ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of (i) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf, (ii) PERMITTEE's products, (iii) PERMITTEE's work, including but not limited to PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf, or (iv) premises owned, leased, controlled, or used by PERMITTEE.

21.9.1.2 PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the CITY of San Diego and its elected officials, officers, employees, agents, and representatives as respects operations of the Named Insured. Any

insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of PERMITTEE's insurance and shall not contribute to it.

21.9.2 Automobile Liability Insurance Endorsements

21.9.2.1 ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of automobile owned, leased, hired, or borrowed by or on behalf of PERMITTEE.

21.9.3 Worker's Compensation Insurance Endorsements

21.9.3.1 Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for CITY.

- 21.10 Self-Insurance. PERMITTEE shall have the right to self-insure with respect to any of the insurance required in this Section. PERMITTEE shall provide to CITY evidence of self-insurance satisfying the requirements in this Section and indicating PERMITTEE's self-insured status. Insurance or equivalent risk management coverage provided by a joint powers insurance authority may also satisfy the provisions of this Section.
22. Subcontractors' Insurance and Indemnification of CITY. Unless PERMITTEE's insurance covers work performed by all of PERMITTEE's subcontractors performing any Work or working in the Permit Area, PERMITTEE shall require PERMITTEE's subcontractors to indemnify the CITY and to maintain insurance coverage to the same extent that PERMITTEE is required to indemnify the CITY and maintain insurance coverage pursuant to the Insurance Section of this Permit, including all obligations to provide documentation and all of the endorsements, including naming the City of San Diego and its respective elected officials, officers, employees, agents and representatives as an Additional Insured in each insurance policy.
23. Indemnification and 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 PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, and all expenses of investigating and defending against same, including

without limitation attorney fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not apply to the extent any established liability arises from the active negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, PERMITTEE shall pay all the costs related thereto, including reasonable attorney's fees and costs.

24. Liability for Loss, Injury, or Damage. In addition to any other assumption of liability set forth herein, and excluding any loss or damage to the extent resulting from the CITY's negligence or willful misconduct, PERMITTEE agrees that it assumes the sole risk and responsibility for any damage, destruction, or theft of PERMITTEE's equipment, materials, or personal property placed on the Permit Area and for any injury to persons which occurs on the Permit Area as a result of the Permit Use.
25. 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.
26. 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.
 - 26.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by PERMITTEE as a result of CITY's disclosure or non-disclosure of this Permit or PERMITTEE information requested pursuant to the CPRA. 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 DISCLOSURE OF NON-DISCLOSURES OF THIS PERMIT OR ANY PERMITTEE INFORMATION REQUESTED PURSUANT TO THE CPRA.
27. No Discrimination. PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, gender expression, gender identity, sexual orientation, 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.
28. Permits & Approvals. PERMITTEE, at PERMITTEE's sole cost and expense, shall obtain all required permits, licenses, and approvals from the applicable local, state, and federal authorities, including without limitation from CITY, as well as any easement holders on the

Properties that are impacted by the Work in the Permit Area prior to the approval of this Permit.

29. Equal Pay Ordinance. Unless an exception applies, PERMITTEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Permit, PERMITTEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
 - 29.1 PERMITTEE Requirement. The Equal Pay Ordinance applies to any subcontractor to the same extent as it would apply to PERMITTEE. PERMITTEE shall require subcontractors to certify compliance with the Equal Pay Ordinance in their subcontracts.
 - 29.2 Notice Requirement. PERMITTEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.
30. 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 of 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.
31. 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.
32. Disabled Access Compliance. PERMITTEE will, as applicable to the Permit Area and PERMITTEE's possession, use, and occupancy of the Permit Area, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, PERMITTEE will follow the most restrictive accessibility

requirement (i.e., that which provides the most access). PERMITTEE's compliance shall include without limitation the following:

- 32.1 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;
 - 32.2 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;
 - 32.3 PERMITTEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
 - 32.4 Where required by law, PERMITTEE shall, at PERMITTEE's sole cost and in conformance with all applicable building codes, comply with applicable disabled-access requirements by making accessible any areas of the Permit Area which deny access to disabled persons;
 - 32.5 PERMITTEE shall include language in each subcontractor agreement, if any, indicating the subcontractors' agreement to abide by the foregoing provisions; and
 - 32.6 PERMITTEE and each of its subcontractors, if any, 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.
33. 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.
34. 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.
35. 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 the surrounding area or that violates CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).

36. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's written consent in each instance. Approval of any such proposed assignment may be withheld at the sole and absolute discretion of the CITY. Any assignment by operation of law shall automatically terminate this Permit.
37. 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.
38. 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 the California Civil Code.
39. Taxes. If applicable, PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE, including the land and 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.
40. 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 commercially reasonable 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.
41. Security and Safety of Permit Area. PERMITTEE shall bear sole responsibility for the security and safety of the Permit Area during the Term relating to any Work performed as authorized by this Permit or under the direction of PERMITTEE. PERMITTEE shall be responsible for the maintenance, cleanup, and securing of the Permit Area, as appropriate, immediately following each day's work to ensure security and safety. 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. CITY has no obligation to provide oversight of the Work or staffing or resources for the maintenance of the Permit Area during the Term.

42. 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.
- 42.1 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 a hazardous substance.
- 42.2 Hazardous Substance. 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.
- 42.3 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.
- 42.4 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.

- 42.5 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.
- 42.6 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.
- 42.7 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.
43. Storm Water Best Management Practices. PERMITTEE shall, at its own cost and expense, comply with Part 2 of the current City of San Diego Storm Water Standards Manual, Section

1000 and 1001 of the City Supplement to Standard Specifications for Public Works Construction (The WHITEBOOK), and any and all applicable Minimum Best Management Practice requirements, as defined in the CITY's Jurisdictional Runoff Management Plan, in performing or delivering services at CITY owned, leased, or managed property, or in performance of services and activities on behalf of CITY, regardless of location.

- 43.1 PERMITTEE shall comply with the current CITY's Jurisdictional Runoff Management Plan encompassing city-wide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries.
- 43.2 PERMITTEE shall comply with each CITY facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment. PERMITTEE shall remove any dry-weather controls put in place prior to a rain event to minimize the possibility of clogging the storm drain system. After a rain event, all controls must be reinstalled, refreshed, and maintained by the PERMITTEE if necessary.
- 43.3 Accept ultimate responsibility to prevent pollutant discharges to the storm drain system by identifying and implementing any additional BMPs that may be required to prevent the discharge of pollutants to the storm drain system.
- 44. Prevailing Wages. PERMITTEE acknowledges that PERMITTEE is the awarding body pursuant to California Labor Code section 1722, for any contracts related to PERMITTEE's use of the Permit Area that may require the payment of prevailing wages pursuant to State law and/or San Diego Municipal Code section 22.3019. PERMITTEE agrees to comply with all laws related to the payment of prevailing wages on public works contracts, including without limitation the requirements contained in California Labor Code sections 1720-1861. PERMITTEE shall deliver to City, upon request, evidence of compliance with the State prevailing wage laws in form and content reasonably satisfactory to CITY.
- 45. Performance and Payment Bonds. If PERMITTEE constructs any type of improvements or alterations on the Permit Area, CITY may require PERMITTEE to provide CITY with a performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed and payment bond in the amount of one hundred percent (100%) of the total amount payable under the contract for construction of the improvement/alteration. The bonds shall be corporate surety bonds or other security satisfactory to CITY. The bonds shall insure that the construction be completed in accordance with this Permit and all applicable laws and regulations. At the option of CITY, in the event the construction is not completed in full satisfaction of the CITY and this Permit, CITY may use the performance bond to remove the uncompleted improvements/alterations and restore the Permit Area to a condition satisfactory to CITY. The bond shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.

46. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Permit Area has not been inspected by a Certified Access Specialist (CAsp).
47. Vehicular Traffic. All vehicular traffic shall be confined to concrete, asphalt, or decomposed aggregate surfaces unless otherwise approved in writing by CITY Contact prior to the commencement of the Work.
48. Grading and Barriers. PERMITTEE shall not change the surface grade or construct any permanent barriers within the Permit Area. Any violations shall be corrected by PERMITTEE at its sole expense to the satisfaction of CITY and are grounds, at CITY's option, for immediate termination of this Permit.
49. Repair. PERMITTEE shall be responsible, at its sole cost and expense, for the repair or replacement of any damage to the Permit Area caused directly or indirectly by PERMITTEE's use of the Permit Area, including items that CITY staff has determined to be damaged. PERMITTEE shall comply with the direction of CITY's Real Estate Assets Department with respect to the method of any repairs or replacement arising under this Permit.
50. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
51. 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.
52. 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.
53. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
54. 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.

55. 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.
56. Charter Section 225. Pursuant to San Diego City Charter section 225, PERMITTEE shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved or interested in this Permit, and in any subcontract or assignment, and the precise nature of all interests of all such persons. Every person or entity proposed to have an interest in this Permit must be reviewed and approved by CITY, in its sole discretion.
57. Exhibits. All exhibits referenced in this Permit are incorporated into this Permit by this reference. In the event of a conflict between this Permit and any exhibit to this Permit, the terms, conditions, and obligations of this Permit shall control.
58. 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.
59. 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.
60. 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, Public Utilities Department
9192 Topaz Way, MS-904A
San Diego, CA 92123

61. 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.
62. 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 therefor.

63. Standard of Conduct. PERMITTEE and its employees shall at all times conduct themselves and the operations on the Permit Area in a creditable manner, as determined by CITY in its sole reasonable discretion.
64. Controlling Law and Venue. This Permit and all Permit documents shall be deemed to be made under and shall be construed in accordance with and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. The venue for any suit or proceeding concerning this Permit, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California.

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

THE CITY OF SAN DIEGO,
a California municipal corporation

By: [Signature]

Printed Name: Kristin Geitz

Interim
Title: Director, Real Estate Assets Dept.

Date: 9/24/2020

THE COUNTY OF SAN DIEGO a
California municipal corporation

By: [Signature]

Printed Name: Brian Albright

Title: Director, Parks and Recreation

Date: 8-10-20

Approved as to form this 22nd day of September 2020.

MARA W. ELLIOTT, City Attorney

By: [Signature]

Printed Name: Kathy Steinman

Title: Deputy City Attorney

EXHIBIT "A"







