

CITY OF SAN DIEGO
USE AND OCCUPANCY PERMIT

[OTAY RANCH VILLAGE 2 - SANTA DIANA ROAD]

THIS CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT ("Permit") is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation ("CITY"), and **OTAY PROJECT L.P.**, a California limited partnership ("PERMITEE"), to be effective as of **May 1, 2014** (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

RECITALS

WHEREAS, CITY holds an easement of that certain real property as more specifically described in the document recorded with the San Diego County Assessor on July 14, 1923 in Book 937, Pages 460 and 463 of Deeds (the "Easement Property") and is the legal owner of that certain real property currently designated as San Diego County Assessor's Parcel No. 644-313-09 located in the City of Chula Vista, California, and more particularly described below (the "Fee Property"), collectively referred to as "City Property";

WHEREAS, the City Property contains a 40" pipeline and tunnel that is owned and maintained by CITY for the purpose of transporting water from Lower Otay Reservoir to domestic, commercial and industrial users ("Otay Second Pipeline"), and the City Property contains an abandoned 30" pipeline owned by CITY; and

WHEREAS, the CITY Water Department signed backbone improvement plans for Santa Diana Street and Santa Victoria Street (Drawing No's 06036-05 and 06036-08, respectively) on December 20, 2006, and the CITY Development Services Department signed a rough grading plan for Otay Ranch - Village 2, Phase 1 (Drawing No. 05191-4D) on July 14, 2006; and

WHEREAS, PERMITEE has constructed Santa Diana Street and is proposing to construct Santa Victoria Road with crossings over the City Property (collectively the "Crossings"); and

WHEREAS, the Parties' dispute whether PERMITEE has obtained all required permits from San Diego to construct the Crossings; and

WHEREAS, the Parties dispute whether PERMITEE has the right to use, occupy or possess the City Property from CITY for purposes of constructing and using the Crossings and use of the Crossings as a public road; and

WHEREAS, the Parties have previously entered into a License Agreement dated May 2, 2012, as amended by the First Amendment to License Agreement dated May 1, 2013 (collectively the "License Agreement"), which allows PERMITEE to use and occupy the Crossings on the terms and conditions contained therein; and

WHEREAS, the License Agreement is scheduled to expire on April 30, 2014.

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

1. Definitions. As used in this Permit, the following terms shall be defined as follows:

- 1.1 **“City Property”** shall mean the approximately 9.14 acre Easement Property and the 11.32 acre Fee Property, improved with water main pipelines and located south of Olympic Parkway and northwest of La Media Road in Chula Vista, California, portions of which are more particularly described in **Exhibit A**, attached hereto.
- 1.2 **“Monthly Rent”** shall mean monetary consideration to CITY in the amount of One Hundred Eight Dollars (\$108), except as set forth below in Section 1.4.
- 1.3 **“Permit Area”** shall mean approximately 0.0724 acres of the City Fee Property occupied by that certain road currently named “Santa Diana Road,” as depicted in **Exhibit A**, attached hereto. PERMITTEE constructed Santa Diana Street and is proposing to construct Santa Victoria Road over the CITY Property.
 - 1.3.1 Upon PERMITTEE’s written notice to CITY requesting the use of Permit Area 2 (defined below in Section 1.4) for the development, maintenance, repair and replacement of Santa Victoria Road, Permit Area 2 shall be added to and be a part of the Permit Area as of the date of PERMITTEE’s written notice, and the term “Permit Area,” as used in this Permit, shall then mean approximately 0.1678 acres of the City Property, as depicted in **Exhibit A**.
- 1.4 **“Permit Area 2”** shall mean approximately 0.0954 acres of the City Fee Property proposed to be occupied by Santa Victoria Road. Upon PERMITTEE’s thirty (30) day written notice to CITY requesting the use of Permit Area 2 for the development, maintenance, repair and replacement of a new road currently to be named “Santa Victoria Road,” as depicted in **Exhibit A**, attached hereto, the Monthly Rent shall be increased by One Hundred Forty Three Dollars (\$143) as rent for Permit Area 2, and the Monthly Rent as of the date of PERMITTEE’s notice shall be Two Hundred Fifty One Dollars (\$251).
- 1.5 **“Permit Processing Fee”** shall mean a one-time, non-refundable permit processing fee in the amount of Seven Hundred Twenty-Seven Dollars (\$727).
- 1.6 **“Permit Use”** shall mean the non-exclusive use of the Permit Area for the purpose of maintaining, operating, using, repairing and replacing Santa Diana Street on, over, across and through the City Property. Upon PERMITTEE’s written notice to CITY requesting the use of Permit Area 2 for the development, maintenance, repair and replacement of Santa Victoria Road, the Permit Use shall additionally mean the non-exclusive use of Permit Area 2 for the purpose of developing, maintaining, operating, using, repairing and replacing Santa Victoria Road on, over, across and through the City Property. The Permit Use expressly includes the right of the general public to use the Permit Area as a public street.

- 1.7 **“PERMITTEE’s Address for Notices”** shall be: BALDWIN & SONS, LLC
Attn: Stephen M. Haase
610 West Ash Suite 1500
San Diego, CA 92101

With a copy by First Class Mail to: BALDWIN & SONS, LLC
Attn: Cheryl Hill
280 Newport Center Drive, Suite 240
Newport Beach, CA 92660

- 1.8 **“Term”** shall mean month-to-month, commencing on the Effective Date and not to exceed three (3) years without the prior authorization of the San Diego City Council.
2. **Occupancy.** Subject to the terms and conditions of this Permit, CITY hereby grants 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. PERMITTEE shall continuously occupy and use the Permit Area throughout the Term.
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. **CITY’s Consent, Discretion.** CITY’s consent or approval under this Permit shall mean the written consent or approval of the Mayor of San Diego, or his or her designee (“Mayor”), unless otherwise required by law or expressly provided herein, and shall be made in the Mayor’s discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.
6. **Revocable Permit.** This Permit is not a lease. It is a license to use the Permit Area, and may be revoked at will by CITY, in its sole discretion by written notice as provided in Section 8 below. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by PERMITTEE as a result of the revocation or termination of this Permit.
- 6.1 **PERMITTEE’s Waiver.** PERMITTEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which PERMITTEE incurs as a result of the revocation or termination of this Permit.

7. No Holdover. If PERMITTEE and CITY fail to enter into an agreement for the use of Crossings over the City Property and 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.
8. Termination. Either party may terminate this Permit for any reason upon ninety (90) days prior written notice delivered to the other party.
9. PERMITTEE's Obligations. PERMITTEE shall establish an interest bearing escrow account with Chicago Title Company ("Escrow Account") on or before June 15, 2014 and deposit Two Hundred Eighty Six Thousand Three Hundred Ninety Five Dollars (\$286,395) solely for the benefit of the CITY. If PERMITTEE has not purchased the Fee Property with reservation to CITY of an easement for the Otay Second Pipeline prior to the expiration or earlier termination of this Permit in accordance with the Real Estate Purchase and Sale Agreement between CITY and Baldwin & Sons, LLC, on file with the San Diego City Clerk as Document No. RR-308334, as may be amended with City Council approval, the money in the Escrow Account will be paid in full to the CITY.
10. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements and rights-of-way pertaining to the Permit Area, whether or not of record. PERMITTEE shall obtain all licenses, permits and agreements from such third parties as may be or become necessary or 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.
11. Permit Processing Fee. PERMITTEE shall pay the Permit Processing Fee to CITY immediately upon execution of this Permit.
12. Rent. PERMITTEE shall pay the Monthly Rent in advance on the first day of each month during the Term. If the Effective Date is not the first day of a calendar month, then the Monthly Rent payable for the partial month at the beginning of the Term shall be prorated on a per diem basis.
13. Invoicing Courtesy. CITY may invoice PERMITTEE for amounts payable under this Permit. However, any such invoicing shall be deemed a courtesy only; PERMITTEE shall make all payments under this Permit on or before each applicable due date, regardless of being invoiced. No grace period shall apply to any amount payable under this Permit.
14. Place of Payment. All payments to be paid by PERMITTEE under this Permit shall be made payable to "City Treasurer" and be mailed to:

San Diego City Treasurer

P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to PERMITTEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

15. Delinquent Payments. If PERMITTEE fails to make any payment under this Permit when due, PERMITTEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, PERMITTEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Permit may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. PERMITTEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, PERMITTEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.
16. Maintenance of the Permit Area. PERMITTEE shall maintain the Permit Area and all improvements, fixtures, structures or installations thereon (other than the Otay Second Pipeline, which shall remain the responsibility of the CITY) in a clean, decent, safe, healthy and sanitary condition satisfactory to CITY. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris, litter, weeds and brush to CITY's satisfaction. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures or installations on the Permit Area.
17. CITY's Entry. CITY reserves the right to enter upon the Permit Area at all times and to inspect and maintain the Permit Area, in the CITY's sole discretion.
18. Utilities. PERMITTEE shall order, obtain and pay for all utilities and all utility service and installation charges in connection with its use of the Permit Area. All newly-installed

utilities shall be subject to CITY's prior approval and, at CITY's option, installed underground.

19. Except as otherwise set forth in this Permit, PERMITTEE shall not construct any improvements, structures or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.
20. Improvements/Alterations.
 - 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 thirty (30) days after the expiration or earlier termination of this Permit. Any such items which PERMITTEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at PERMITTEE's sole cost and expense. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Permit Area.
 - 20.2 Post-Permit License. CITY grants permission to PERMITTEE to enter upon and occupy the Permit Area, under the same terms and conditions of this Permit, after the expiration or earlier termination of this Permit solely for the purpose of removing PERMITTEE's personal property as provided by this Permit. This provision shall survive the expiration or earlier termination of this Permit.
 - 20.3 Late Removal. Notwithstanding any provision of this Permit to the contrary, PERMITTEE shall pay rent to CITY for any period of time after the expiration or termination of this Permit needed to remove PERMITTEE's personal property as required by this Permit, whether by CITY or PERMITTEE. Such rent shall be calculated on a per diem basis using the rental rate in effect just prior to the expiration or termination of this Permit.
 - 20.4 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 obtain and maintain throughout the term of this Permit, at its sole cost and expense, all insurance required by this Permit. PERMITTEE's liabilities under this Permit, including without limitation PERMITTEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. PERMITTEE's maintenance of the required insurance coverage is a material consideration for this Permit. Notwithstanding any provision of this Permit to the contrary, if

PERMITTEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, PERMITTEE shall be in default of this Permit. PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. PERMITTEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for (and subject to CITY's written approval of same):

- (a) Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- (b) Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit.
- (c) Workers' Compensation Insurance, as required by applicable laws, for all of PERMITTEE's employees who are subject to this Permit, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against the City of San Diego and its elected officials, officers, employees, representatives and agents.

21.1 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf; (b) PERMITTEE's products; (c) PERMITTEE's work, including without limitation PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf; or (d) the Premises.

21.2 Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, representatives and

agents shall be in excess of PERMITTEE's insurance and shall not contribute to it.

- 21.3 Severability of Interest. Each policy must be endorsed to provide that PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- 21.4 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.
- 21.5 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 21.6 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- 21.7 Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use, CITY 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 re-evaluation of risk levels related to the Permit Use.

- 21.8 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Permit Use. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 21.9 Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE's insurable property related to the Permit Use of the Premises under this Permit or the Premises in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.
22. Indemnification & Hold Harmless. PERMITTEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including directly or indirectly arising from or connected with a failure, damage or rupture of the Otay Second Pipeline or the 30' pipeline that results in injury, death or damage to person or property within the surface area of the Permit Area, and including injury to the general public and PERMITTEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit, the general public's use of the Permit Area, or 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 include any established liability arising from the gross negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all costs related thereto, including without limitation attorney fees and costs.
23. Compliance with Laws. PERMITTEE shall at all times in its use, occupancy, and maintenance of the Permit Area comply with all applicable laws, rules, regulations and directives of competent governmental authorities, and at PERMITTEE's sole cost and expense. At least annually, PERMITTEE shall deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to PERMITTEE (e.g., validation of periodic inspections, if applicable).
24. Permits & Approvals. PERMITTEE, at PERMITTEE's sole cost and expense, shall obtain all required permits and approvals from the applicable local, state and federal authorities, including without limitation from CITY.

25. California Public Records Act. CITY shall determine, in its sole discretion, whether this Permit or information provided to CITY 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, 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. Upon CITY's request, PERMITTEE shall provide CITY with specific and detailed legal grounds, including any applicable case law, upon which CITY may rely, in CITY's sole discretion, for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by PERMITTEE, PERMITTEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at PERMITTEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation attorney fees and costs.
- 25.1 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 OR NON-DISCLOSURE OF THIS PERMIT OR ANY PERMITTEE INFORMATION REQUESTED PURSUANT TO THE CPRA.
26. No Discrimination. PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, sexual orientation, medical status, national origin, ethnicity, 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.
27. 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.

28. 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.
29. Disabled Access Compliance. PERMITTEE shall comply with Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Americans with Disabilities Act of 1990 ("ADA"); and any other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. PERMITTEE's compliance shall include without limitation the following:
 - a. 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;
 - b. 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;
 - c. PERMITTEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
 - d. Where required by law, PERMITTEE shall, at PERMITTEE's sole cost and in conformance with all applicable building codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the Permit Area which deny access to disabled persons; and
 - e. PERMITTEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.

PERMITTEE and each of its sublicensees shall be individually responsible for their own ADA compliance program. PERMITTEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Permit.

30. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote

employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Permit and to the extent legally possible, PERMITTEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. PERMITTEE shall use its best efforts to hire qualified local residents and firms whenever practicable.

31. 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.
32. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
33. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's prior written consent in each instance. Any assignment by operation of law shall automatically terminate this Permit.
34. 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.
35. Encumbrances. PERMITTEE shall keep the Permit Area and the property of which it is a part (the "Property") 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 Property in connection with such encumbrances and/or liens, 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 Property pursuant to the California Civil Code.
36. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon PERMITTEE or the Permit Area during the Term, including the land 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.

37. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance 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.
- 38.1 Release. 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.
- 38.2 Hazardous Substance. "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.
- 38.3 Remediation. If PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area 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.
- 38.4 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 or hazardous wastes to the Permit Area, PERMITTEE and/or PERMITTEE's contractor or agent shall remove all Hazardous Substances and hazardous wastes 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. Upon CITY's request, PERMITTEE shall deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, 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.
- 38.5 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 occupancy, use, development, maintenance or restoration of the Permit Area, 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.

- 38.6 Notice of Release. If PERMITTEE knows or has 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 in compliance with California Code of Regulations Title 19 and all 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 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.
- 38.7 Environmental Assessment. Upon cause to believe that PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area ("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, 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 law and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

38. Water Quality Assurances. PERMITTEE shall, at its sole cost and expense, comply with all laws, rules, regulations and direction of competent governmental authority (including the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management. PERMITTEE acknowledges and agrees that such legal requirements may change at any time and from time to time.

38.1NPDES. PERMITTEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Effective Date of this Permit (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.

38.2Stormwater Management. PERMITTEE shall comply with all applicable requirements of the San Diego Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices," as that term is defined by the Stormwater Code, and as approved by the City of San Diego, in its governmental capacity, under its Stormwater Management Program.

39. No 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.
40. 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.
41. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
42. 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.
43. 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.

44. 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 and PERMITTEE's occupancy, use, development, maintenance and restoration of the Permit Area. Any modification, alteration or amendment of this Permit shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Permit is binding upon such party in accordance with its terms.
45. 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.
46. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE at PERMITTEE's Address for Notices, and to CITY as follows:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

47. 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. Each party which is not a natural person represents and warrants that it is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that it is qualified to do business in California.
48. CITY Approval. Whenever required under this Permit, CITY's consent or approval shall mean the written consent or approval of the San Diego Mayor, or his or her designee ("Mayor"), unless otherwise expressly provided, without need for further resolution by the City Council. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.

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49. 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 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.

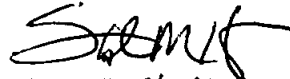
IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

OTAY PROJECT L.P., a California limited partnership

BY:

Name:

Title:



Stephen M. Haase

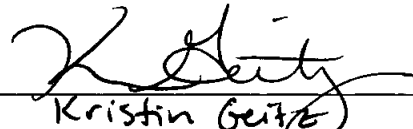
Senior Vice President

THE CITY OF SAN DIEGO, a California municipal corporation

BY:

Name:

Title:



Kristin Geitz

Interim Director Real Estate Assets

Environmental Analysis Section Environmental Clearance:

This activity is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

Date:

5/5/14

BY:

Name:

Title:



Myra Hermann

Senior Planner

Exhibit A

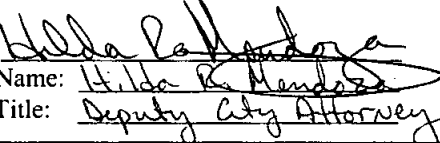
Approved as to form and legality this 5th day of May, 2014:

JAN I. GOLDSMITH, City Attorney

BY:

Name:

Title:

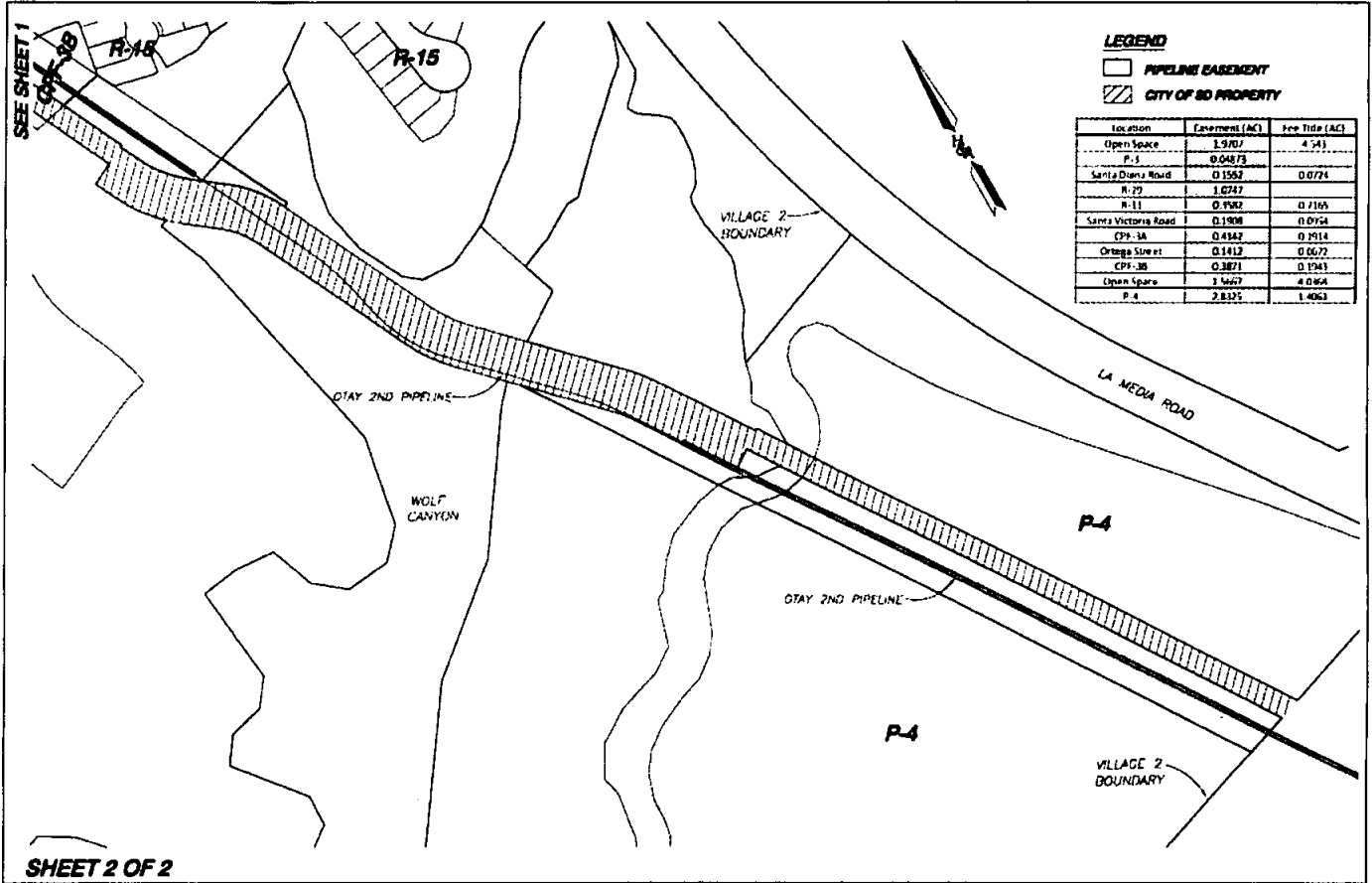


Hilda R. Hernandez

Deputy City Attorney

Exhibit A
Page 2 of 2

OTAY RANCH VILLAGE 2 PIPELINE AREAS





THE CITY OF SAN DIEGO

Date of Notice: April 9, 2014

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

DEVELOPMENT SERVICES DEPARTMENT

Internal Order or WBS No. 21000022

PROJECT NAME/NUMBER: USE AND OCCUPANCY PERMIT - OTAY LAND LP (PERMITTEE)

COMMUNITY PLAN AREA: N/A - Not in City of San Diego

COUNCIL DISTRICT: N/A - Not in City of San Diego

LOCATION: Certain real property owned by the City of San Diego (i.e., Assessor's Parcel Number 644-313-09), consisting of approximately 11.32 acres of land improved with water main pipelines and located south of Olympic Parkway and northwest of La Media Road in Chula Vista, California.

PROJECT DESCRIPTION: USE AND OCCUPANCY PERMIT for the use of approximately 0.0724 acre of the City Property occupied by that certain road currently named "Santa Diana Road," for the purpose of maintaining, repairing and replacing Santa Diana Street on, over, across and through the City Property. Upon PERMITTEE's written notice to the City requesting the use of approximately 0.0954 acre of the City Property proposed to be occupied by Santa Victoria Road (Permit Area 2) for the development, maintenance, repair and replacement of Santa Victoria Road, the Permit Use shall additionally mean the use of Permit Area 2 for the purpose of maintaining, repairing and replacing Santa Victoria Road on, over, across and through the City Property. Permit Area 2 shall be added to and be a part of the Permit Area as of the date of PERMITTEE's notice, and the Permit Area shall then mean approximately 0.1678 acre of the City Property.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego MAYOR-APPOINTED DESIGNEE

ENVIRONMENTAL DETERMINATION: This activity is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section §15301 (Existing Facilities).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION: CEQA Section 15301 allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use. This Use and Occupancy Permit will allow use of a limited area where no environmental impacts would result; and where none of the exceptions listed in CEQA Guidelines Section 15003.2 would apply

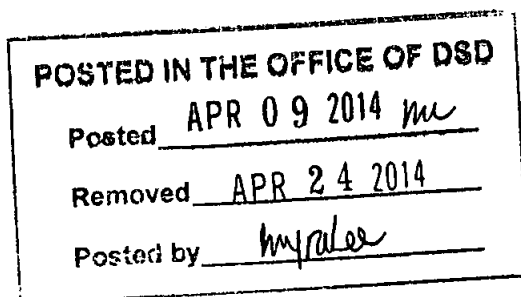
SUPERVISING PROPERTY AGENT:
MAILING ADDRESS:
PHONE NUMBER:

Mary Carlson
1200 Third Ave, #1700, San Diego, CA 92101
619-236-6079

On April 4, 2014 the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Development Project Manager listed above.

Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (April 23, 2014). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.



2014 APR 31 10:00 AM
CITY OF SAN DIEGO