

CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and the UNITED STATES OF AMERICA, acting through the Army Corps of Engineers ("PERMITTEE"), to be effective as of the date of execution by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY is the owner of that certain real property (**Assessor's Parcel Numbers 650-1600-100 and 650-2000-200**; collectively, the "Permit Area") in the County of San Diego, California, as shown on **Exhibit A: Permit Area**, attached hereto.
- B. PERMITTEE is in the process of improving, within its property, an access road (the "Access Road," as shown in Exhibit A: Permit Area, attached hereto) that passes through the Permit Area. PERMITTEE has requested the right to enter upon the Permit Area to improve the road conditions within the Permit Area so Office of Border Patrol agents, Bureau of Land Management rangers, and California Department of Forestry and Fire Protection firefighters can more effectively, efficiently and safely respond to border area incidents using the Access Road.
- C. Under the terms and conditions of this Permit, CITY will allow PERMITTEE to use the Permit Area to improve the Access Road within the Permit Area.

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

- 1. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its employees, agents, and contractors to enter upon the Permit Area solely for the following purposes (the "Permit Use"), and for no other purpose whatsoever: (a) to improve approximately 2.14 miles of Monument 250 Road conditions; (b) to perform maintenance of the Access Road; and (c) to restore areas damaged or disturbed by illegal traffic.
- 2. Use of Permit Area. PERMITTEE may use the Permit Area on a non-exclusive basis solely for the purposes of the Permit Use. PERMITTEE shall obtain all related permits and comply with all applicable environmental laws, rules, and regulations related to the Permit Area and the Permit Use. Prior to hydro-mulching, PERMITTEE shall provide to CITY a complete list of native seeds and or contents that will be used in hydro-mulching the Permit Area. PERMITTEE shall not perform any hydro-mulching on the Permit Area without CITY'S prior written consent.
- 3. Permit Fee. Consideration to CITY for granting this Permit shall be the work performed by PERMITTEE pursuant to this Permit.

4. Term. This Permit shall expire on March 31, 2010, or upon completion of the work contemplated by this Permit, whichever occurs first.
5. Revocable License. This Permit is not a lease. It is a non-exclusive license to use the Permit Area. CITY may at all times enter upon the Permit Area.
6. Restoration. Immediately upon the expiration or earlier termination of this Permit, PERMITTEE shall promptly restore any part of the Permit Area damaged or disturbed by the Permit Use, all at PERMITTEE'S sole cost and expense, and to CITY'S reasonable satisfaction.
7. Liability. If the Permit Use results in damage to the Permit Area, PERMITTEE shall, at its option, either repair such damage or make an appropriate settlement with CITY. Any damage claims resulting from PERMITTEE'S negligent or wrongful acts may be submitted to the PERMITTEE under the Federal Tort Claims Act, 28 U.S.C. §§ 2671, et seq. The provisions of this clause are without prejudice to any rights CITY may have to make a claim under applicable laws.
8. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
9. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Permit Area or PERMITTEE'S use of the Permit Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for PERMITTEE'S use of the Permit Area.
10. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area by PERMITTEE, its officers, employees, invitees, guests, agents, or contractors ("PERMITTEE Parties"). PERMITTEE Parties shall not store, utilize, or sell any hazardous substance on the Permit Area without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit. If PERMITTEE knows or has reasonable cause to believe that any hazardous substance has been released on or within the Permit Area, PERMITTEE shall give written notice to CITY within three (3) business days after receipt of such knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall notify CITY by the most immediate means available and immediately upon receipt of such knowledge or belief and shall take all actions necessary to minimize the

danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private lawsuits related to the Permit Area.

11. Noninterference. PERMITTEE shall not materially interfere with CITY'S use, operations, and activities on the Permit Area, and PERMITTEE shall use such routes and follow such procedures on the Permit Area as shall result in the least damage and inconvenience to CITY and other users of the Permit Area.
12. Encumbrances. PERMITTEE shall keep the Permit Area free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S use of the Permit Area.
13. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
14. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S use of the Permit Area and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
15. Self-Insured. PERMITTEE represents and warrants that it is self-insured in accordance with applicable law.
16. Compliance with Law. PERMITTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area and PERMITTEE'S use of the Permit Area.
17. Signs. No signs may be displayed on the Permit Area without CITY'S prior written consent.
18. Maintenance of the Permit Area. PERMITTEE shall maintain the Permit Area to CITY'S satisfaction, in a decent, safe, healthy and sanitary condition.
19. Grading. PERMITTEE represents and warrants that any grading and compaction operations shall be done in such a manner that will not disrupt the existing surface drainage pattern and the final grades will not interfere with the existing flow pattern.
20. Inspection. CITY may, at any and all times, enter and inspect the Permit Area.
21. Waiver. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is publicly-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel,

but CITY may at any and all times require the cure of any such breach.

22. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
23. Entire Permit. This Permit contains the entire agreement between the parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Permit shall be valid unless in writing and signed by the party to be charged.
24. Legal Proceedings. If any party brings an action or proceeding against another party under this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
25. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight service, or delivery by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

CITY: THE CITY OF SAN DIEGO
Director, Real Estate Assets Department
Civic Center Plaza Building
1200 Third Avenue, Suite 1700 – MS 51A
San Diego, CA 92101-4155

With a copy by First Class mail to: SAN DIEGO CITY ATTORNEY
Attention: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

PERMITTEE: US ARMY CORPS OF ENGINEERS
John M. Baker, Chief Real Estate Division
Albuquerque District, Corps of Engineers

26. Authority. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation,

limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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

Date: 4-28-08

UNITED STATES OF AMERICA, acting through the
Army Corps of Engineers

BY: [Signature]

John Baker, Chief, Real Estate Division,
Albuquerque District, United States Army Corps of
Engineers

Date: 4/30/08

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: [Signature]

Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This Activity is categorically exempt from CEQA
Pursuant to STATE CEQA Guidelines, Section 15301

Date: 5/7/08

BY: [Signature]

Name: NICOLE A. MCGINLEY
Title: SENIOR PLANNER

APPROVED AS TO FORM AND LEGALITY:

Date: 5/15/08

MICHAEL J. AGUIRRE, City Attorney

BY: [Signature]

Name: BROCK LADWIG
Title: CHIEF DEPUTY CITY ATTORNEY

EXHIBIT A



EAST COUNTY 250 GAP FILLER

150' Width Access

Section 28, 29, 32, and 33
Township 18 South, Range 2 East

SAN DIEGO COUNTY

CALIFORNIA
STATE PLANE
ZONE 6
NAD 83 (feet)

 City of San Diego

 U.S. Government

GRAPHIC SCALE

1" = 650' 0 325' 650' 975' 1300' 1625'

Date: 02/22/07

U.S. ARMY CORPS
OF
ENGINEERS
ALBUQUERQUE DISTRICT

