

**CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT**

THIS RIGHT OF ENTRY PERMIT ("Permit") is executed by and between the CITY OF SAN DIEGO, a municipal corporation ("City") and the United States of America ("Permittee"), by and through the Army Corps of Engineers.

1. Right to Enter. City hereby grants permission to Permittee, its employees, officers, agents and contractors to enter upon City-owned real property known as Tract 104, located in the County of San Diego, State of California, and as specifically set forth on the attached Exhibit "A" ("Permit Area"), incorporated by this reference. Permission to enter the Permit Area is conditioned upon the terms set forth below.

2. Use of Permit Area. Permittee shall have exclusive use of the Permit Area for a construction staging area and for no other purpose whatsoever.

3. Authorized Contractor. Prior to entry onto the Permit Area, Permittee shall provide City written confirmation of the following:

- a. Name of Authorized Contractor;
- b. Evidence of Authorized Contractor's insurance, pursuant to Section 6(i) of this Permit;
and;
- c. Authorized Contractor's acceptance of the terms and conditions of this Permit.

4. Consideration. Consideration to City for granting this Permit shall be Thirty Three Thousand Six Hundred Dollars (\$33,600) as a one-time fee for a period not to exceed twelve (12) months, commencing on the Effective Date, as defined below. Permit fees should be made by check payable to the City Treasurer and mailed to the Office of the City Treasurer, P.O. Box 122289, San Diego, CA 92112-4165 or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, CA 92101.

5. Effective Date/Term. This Permit shall be in effect upon execution by City and Permittee and as of the approval date of the City Attorney ("Effective Date") and shall expire one (1) year following the Effective Date.

6. Insurance.

i. Prior to entry onto the Permit Area, Permittee's Authorized Contractor shall deliver to City a certificate of insurance for commercial general liability and property damage in which, by separate endorsement, "The City of San Diego, its elected officials, officers, representatives, agents and employees" are named as additional insureds, in an amount of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit liability with an occurrence claims form. The policy shall be kept in force for the duration of this Permit. The certificate of insurance shall be filed with City's Real Estate Assets Department upon execution of this Permit.

ii. If the death of or injury to any person, or loss of or damage to any property, is caused by the Permittee in the course of its use of the Permit Area; the liability, if any, of the Permittee therefore shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (62 Stat. 869-982; 28 U.S.C., 2671-2680).

7. No Discrimination. Permittee shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Permittee's use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

8. Permittee's Risk. If any action of the Permittee's employees or agents in the exercise of this Permit results in damage to the Permit Area, the Permittee shall, in its sole discretion, either repair such damage or make an appropriate settlement with City. In no event shall such repair or settlement exceed the fair market value of the fee title to the real property at the time immediately preceding such damage. The Permittee's liability under this clause is subject to the availability of appropriations for such payment, and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet any deficiencies. The provisions of this section are without prejudice to any rights City may have to make a claim under applicable laws, including the Federal Tort Claims Act, for any damages other than those provided herein.

9. Nuisance. Permittee shall not use the Permit Area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.

10. Compliance with Laws. Permittee shall at its sole cost and expense comply with all the requirements of all applicable municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area. Pursuant to Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. Law 104-208, as amended by Section 102 of the REAL ID ACT of 2005, Pub. Law 109-13 (May 11, 2005) the Secretary of Homeland Security has waived all federal, state or other environmental laws, regulations and legal requirements deriving from, or related to eight environmental laws and regulations, including, but not limited to, the National Environmental Policy Act, Pub. Law 91-190 (Jan 1, 1970) and the Endangered Species Act, Pub. Law 93-205 (December 28, 1973) for the Border Infrastructure System project near San Diego, which includes the Permit Area.

11. No Assignment. Permittee shall not assign any rights granted by this Permit nor any interest therein without the prior written approval of the City Manager. Approval of any such proposed assignment may be withheld in the sole and absolute discretion of the City Manager. Any assignment by operation of law shall automatically terminate this Permit.

12. Signs. No signs shall be displayed on the Permit Area without the prior written consent of the City Manager.

13. Maintenance of the Permit Area. Permittee shall be solely responsible for maintaining the Permit Area in a decent, safe, healthy and sanitary condition at all times during the entire term of this Permit to the satisfaction of the City Manager.

14. Waiver. The failure of City to insist upon strict performance by Permittee of any condition of this Permit, in one or more instances, shall not be construed as a waiver of any such condition, and the same shall remain in full force and effect.

15. Oral Representations. This Permit contains the complete expression of the agreement between the parties, and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as set forth herein. The conditions hereof cannot be changed in any respect except by written agreement between the parties.

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

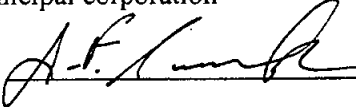
17. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Permit and all subsequent amendments thereto shall be deemed to refer to "Mayor". This section shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.

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

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THE CITY OF SAN DIEGO, a California
municipal corporation

Date: 5/22/09

By: 

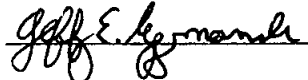
Name: James F. Barwick, CCIM
Director, Real Estate Assets

Title: _____

This activity is categorically exempt from CEQA
pursuant to State CEQA Guidelines, Section
15301

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

Date: 5/26/09

By: 

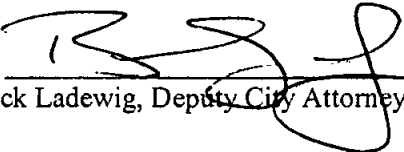
Name: JEFFERY E. SZYMANSKI

Title: ASSOCIATE PLANNER

APPROVED AS TO FORM AND LEGALITY:

JAN I GOLDSMITH, City Attorney

Date: JUNE 1, 2009

By: 
Brock Ladewig, Deputy City Attorney

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UNITED STATES OF AMERICA
BY: CUSTOMS AND BORDER PROTECTION

Date: 2 Jun 09

By:  _____

Name: Gregory L. Giddens

Title: Executive Director

Facilities Management and Engineering

EXHIBIT A

SAN DIEGO BORDER INFRASTRUCTURE

City of San Diego

Tract 104

Temporary Easement (Staging Area)

A tract of land situated within the Southeast $\frac{1}{4}$ of Section 3, Township 19 South, Range 2 West of the San Bernadino Meridian, County San Diego, State of California, more particularly described as follows:

Beginning at the intersection common to Section 2, 3, 10 and 11, T19S, R2W, (having a survey coordinate value of N 136800.95 and E 1748538.20).

Thence, N 89°37'09" W, a distance of 483.33 feet to a point.

Thence, N 21°02'49" E, a distance of 368.74 feet to a point.

Thence, S 69°07'01" E, a distance of 173.35 feet to a point. Said point being the Southerly Right-of-Way of monument road.

Thence, S 73°58'04" E, a distance of 198.60 feet to a point. Said point being the Southerly Right-of-Way of monument road.

Thence, S 08°28'56" W, a distance of 230.72 feet to the Point-of-Beginning.

Said tract of land containing an area of 2.80 acres, more or less.

