

FIRST AMENDMENT TO LICENSE AGREEMENT

[OTAY RANCH VILLAGE 2, APN 644-313-09]

THIS FIRST AMENDMENT TO LICENSE AGREEMENT ("Amendment") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and OTAY PROJECT L.P., a California limited partnership ("LICENSEE"), to be effective as of **May 1, 2013** (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. CITY, as licensor, and LICENSEE, as licensee, are parties to that certain LICENSE AGREEMENT dated May 2, 2012 (the "License Agreement"), whereby CITY allows LICENSEE to occupy and use certain CITY-owned property to maintain, repair and replace Santa Diana Street across the property.
- B. CITY and LICENSEE want to extend the term of the License Agreement and amend the License Agreement.

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

- 0. Processing Fee. LICENSEE shall pay CITY a non-refundable permit-processing fee in the amount of Seven Hundred Twenty Seven Dollars (\$727).
- 1. Term. The term of the License Agreement shall be extended by an additional twelve (12) months, as provided in License Agreement section 2.01, Term.
- 2. Amendment. License Agreement section 2.03, Licensee's Obligations at Expiration or Termination, is hereby deleted in its entirety.
- 3. No Prior Assignments. CITY and LICENSEE each represents and warrants that it has not previously assigned, transferred, or purported to have assigned or transferred, in any manner, any right or obligation under the License Agreement.

3.1 No Assignment. Neither CITY nor LICENSEE shall assign or transfer, in any manner, any right or obligation under the License Agreement without the express written consent of the other party.

3.2 Indemnification. Each party shall protect, defend, indemnify and hold the other party harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the indemnifying party's officers, employees, agents or contractors, which arise out of or are in any manner directly or indirectly connected with any person or legal entity claiming to hold any right under the License Agreement, and all expenses of investigating and defending against same, including without limitation attorney fees and costs.

4. Governing Law. This Amendment shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of California.
5. Entire Agreement. The parties agree this Amendment affects only those paragraphs referred to, and all other terms and conditions of the License Agreement remain in full force and effect.
6. Authority to Contract. Each individual executing this Amendment on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Amendment 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 Amendment is binding upon such person or entity in accordance with its terms. Each person executing this Amendment 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.

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

OTAY PROJECT L.P., a California limited
partnership

BY: 

Name: BRIAN CANALIS

Title: SECRETARY

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: 

MAYOR BOB FILNER

Approved as to form and legality:

JAN I. GOLDSMITH, City Attorney

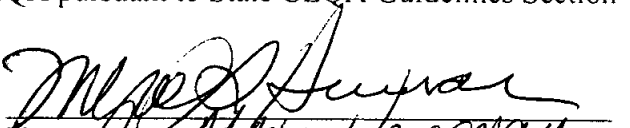
BY: 

Name: Jan I. Goldsmith

Title: Deputy City Attorney

Environmental Analysis Section Environmental Clearance:

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

BY: 

Name: Michael J. Szymanski

Title: Senior Planner