

# **SAN PASQUAL/LAKE HODGES PLANNING GROUP NOTICE OF PUBLIC MEETING**

DATE: Thursday, August 3, 2006

TIME: 7:00 P.M.

PLACE: San Diego Wild Animal Park Administration Bldg.

## **AGENDA**

- Call to Order and Introduction
  - Public Comments
  - Police Report
- Review and Approval of Minutes

### Old Business

Update on Ysabel Creek Road, progress after Turko Files reports ("because it just aint right")

### New Business

Discussion on proposed lease of land to Eagle Crest Golf for new maintenance facility and club house, making way for 60 new homes in Rancho San Pasqual.

San Dieguito River Park: City Staff report on Creamery Building plans and update on Pedestrian Bridge

Action Item – Lake Hodges Pedestrian Bridge Lease – Committee recommendation in regards to the proposed lease agreement between the City of San Diego and the San Dieguito River Park Joint Powers Authority, including the construction schedule.

Committee Reports

Correspondence

Adjournment

All persons attending the meeting should use the Service Entrance to the Wild Animal Park and check in with the Security Office.

They will direct you to the Board Room in the Administration Building.

05/04/2006 Minutes of the San Pasqual/Lake Hodges Planning Group.

Meeting called to order by Marc Lindshield at 7:03 pm, May 4, 2006.

Members present: Marc Lindshield, Frank Konyn, Matt Witman, Bert Verger, Ben Hillibrecht, Jerry Kiley, Ellen Willis, Doug Read, Mike Smith, Robert McClure, Joe Ferguson, Ernie Klemm

Members Excused: Darlene Hansen, Karen Dowle, Charlie Jancic, Rick McDonald (in Florida on business)

Guests: Brian Schoenfisch, Christine Young, Dave Martens, Eli Klemm, Omar Passons (Sprint / Nextel), Paul Lennon

Police report: We do not have a migrant liaison in the area currently. Boris filtered into patrol, on the day shift, and will be handling patrol issues. The Board requests faster EMS service to accidents in the Valley, along with better communication to the San Pasqual Volunteers dispatch.

Residents Period: None

Review and Approval of Minutes: Motion to approve the April minutes by Matt Witman, seconded by Ben Hillebrecht. Minutes approved as submitted.

Committee / City Staff Reports: Chris Young from Councilmember Mainschien's office was present. The roads department did an excellent job on shoulder cleanup in the Valley, however the Board recommends twice a year maintenance plan to prevent such atrocious overgrowth in the future. The Board also requests better Understandings of Memorandum between City Emergency Medical Services and the San Pasqual Volunteers.

Old Business: In regards to the ongoing wetlands mitigation near the San Pasqual Elementary, there hasn't been expressed any need for continuing discussion. The JPA gives full assurances that adequate insect control will be allowed.

Isabel Creek Road; City Staff reports that there will be a Real Estate Assets Department meeting with the Water Department on May 18. This would be their quarterly meeting, and it is expected that the Water Department will turn it over to the Streets Department. Marc has requested that at minimum the project should be put out to bid. He has a fear that if the road remains closed for five years, that it could be considered abandoned, and we are in our second year. The Board plans to maintain this as an agenda item every other month, until the issue is resolved.

Joe Ferguson brought forward a question about the concept plan of the JPA. The staff recommendation is that the plan be adopted with an addendum that the city acknowledges

the plan of the JPA, however the City's vision plan for San Pasqual Valley, and other community plans will take precedence in areas of conflict.

New Business: Joe Ferguson is soliciting help for maintaining traffic control on the road that connects Lake Drive to the Lake Hodges Boat Dock. We believe the driveway is referred to as Shore Drive. It was suggested that he approach WALK San Diego, or the Traffic Engineering Department. It will also be forwarded the Water Department, as it is their driveway. The board requests that it will be placed on next months agenda, and we respectfully request that somebody from the Water Department, as well as the Traffic Engineering Department, arrive and be prepared to answer questions on who is responsible for this road, and suggestions for traffic control on this road.

Nextel / Sprint: Omar presented a video and photo collage of a planned cell tower site located at Highland Valley Rd on the current Pinery Tree Farm lease. It will be a direct lease with the Water Department. Matt Witman moved to approve as presented. Bob McClure seconded. Motion was approved unanimously.

Matt Witman reported on the San Dieguito Watershed Management Plan. Part of the purpose of the Plan is to assist municipalities with obtaining grants to do future projects in the control area. It is still in the commentary period for another 3 weeks. Matt reports that he has asked for the inclusion of language regarding the allowance of emergency clearing for flood control. He also reports that there doesn't appear to be language detrimental to the agriculture industry in the Valley, beyond what responsible stewards of the land should be doing anyways. Further information can be found at [www.projectcleanwater.org](http://www.projectcleanwater.org).

In regards to the old school house, it is in our Vision Plan that the building should be brought forward to the Historical Department for review. To begin that process, an account needs to be opened, with a deposit, and the application. The estimated cost is between \$1500 and \$3000 for the application fee only.

In regards to the parcel on the south side of Highway 78, just east of Cloverdale Creek: A stop work order has been filed, and the application is being reviewed on how a permit could have been issued for the building of a home. It appears that applicant lied about having a valid septic permit from the County Health Department. Another issue of contention is if the applicant has the necessary brush management clearance area. In further review, it also appears that this is possibly, but not definitely, the only piece of property in the Valley that would lend itself to the building of a home.

The City will no longer mail meeting notices after June 2006. They will still be available by email.

NOTE: for future agenda item, our bylaws still need to be updated and placed in an electronic form within the next year.

A motion to adjourn by Marc Lindshield and seconded by Earnie Klem at 8:09 pm. Approved unanimously.

## **CITY OF SAN DIEGO LEASE AGREEMENT**

This lease agreement (“Lease”) is entered into between THE CITY OF SAN DIEGO, a municipal corporation (“CITY”), and SAN DIEGUITO RIVER VALLEY REGIONAL OPEN SPACE PARK JOINT POWERS AUTHORITY, a Joint Powers Authority composed of public agencies pursuant to California Government Code section 6500, et seq., (“LESSEE”).

### **SECTION 1: USES**

#### **1.1 Leased Premises.**

CITY leases to LESSEE and LESSEE leases from CITY all of that City-owned real property situated in the City of San Diego, County of San Diego, State of California, consisting of approximately 1.337 acres, described in Exhibit A, Legal Description, and Exhibit B, Project Location Map and Lease Parcel Drawing. The real property described in Exhibits A and B is hereinafter called the “Premises.”

#### **1.2 Uses.**

LESSEE shall use the Premises solely and exclusively for a bicycle/pedestrian bridge, caissons and approaches for use by bicyclists, pedestrians, and pedestrians with leashed dogs and for other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever. The Premises are located on City Water Department land, and LESSEE shall not conduct any activities or allow any activities on the Premises that would be detrimental to CITY’S water resources on, under or adjacent to the Premises.

#### **1.3 Related Council Actions.**

By entering into this lease, 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 Premises. 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 Premises. LESSEE shall be solely responsible for processing and being in compliance with all land use, development, and construction approvals, including environmental mitigation as required for the use and occupancy of the Premises. These approvals shall

include any permits from local, state, and federal agencies such as a Site Development Permit from the City of San Diego, and applicable permits from the U.S. Army Corps of Engineers, California Department of Fish and Game, and the Regional Water Quality Control Board. LESSEE shall be responsible for implementation of its own Mitigation, Monitoring, and Reporting Program pursuant to its adopted Mitigated Negative Declaration (SCH No. 20050011085).

LESSEE shall comply with all permit requirements, including CITY'S Domestic Water Supply Permit as issued by the Department of Health Services (System No. 3710020-San Diego, CA), and Site Development Permit No. 193075, and any and all amendments thereto, which are incorporated into this Lease by this reference. LESSEE shall promptly reimburse CITY for all costs associated with requirements of the Domestic Water Supply Permit that are attributable to LESSEE'S uses pursuant to this Lease, regardless of whether the requirements are specifically enumerated herein.

This Lease shall not be interpreted by any decision maker on any CITY-issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.

#### 1.4 Quiet Possession.

Except as provided for in this Lease, LESSEE, paying the rent and performing the covenants and agreements in this Lease, shall at all times during the Term (defined in Section 2.1) peaceably and quietly have, hold, and enjoy the Premises.

If CITY for any reason cannot deliver possession of the Premises to LESSEE on the Commencement Date (defined in Section 2.1), or if during the Term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damage, but there shall be determined and stated in writing by the City Manager a proportionate reduction of the rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises.

#### 1.5 Easements and Reservations.

- a. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable, in its sole discretion, for the public good.
- c. CITY has the right to enter the Premises for the purpose of making repairs to or developing municipal resources and services.

Except as provided for in this Lease, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the Premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the Premises resulting from CITY exercising the rights reserved in this section. The reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.6 Competent Management.

Throughout the Term of this Lease, LESSEE shall provide competent management of the Premises to the satisfaction of the City Manager. For the purposes of this section, "competent management" shall mean demonstrated ability in managing and operating a pedestrian/bicycle bridge and related activities in accordance with all applicable federal, state, and local regulations, and in a fiscally responsible manner.

1.7 Operation of Facilities.

Hours of operation, including lighting, shall be consistent with the Domestic Water Supply Permit and the Site Development Permit, which states that hours of operation will be everyday from 6:00 AM to 9:00 PM. Any changes in this schedule must receive the prior written approval of CITY, which approval shall not be unreasonably withheld. LESSEE shall ensure that gates restricting access to the bridge are shut and locked during the hours that the bridge is not in operation.

1.8 Rates and Charges.

Use of the Premises will be free to the public at all times during all hours of operation.

1.9 City Use.

The Premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs. After every CITY use, the Premises shall be left in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use. CITY staff shall have access for use of the bridge for CITY related activities at all times as required without charge.

1.10 Political Activities.

The Premises shall be used exclusively for the purposes specified in Section 1.2 Uses of this Lease. The Premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. LESSEE shall not be precluded from providing a forum for open public debate by two or more candidates of different political parties, such as occurs at a “candidate forum” and similar events.

1.11 Public Use.

The general public shall not be wholly or permanently excluded from any portion of the Premises. LESSEE may develop reasonable restrictions for security purposes, provided that the restrictions are consistent with the rights of the general public and are designed to allow LESSEE to use the Premises for the purposes specified in this Lease. LESSEE shall at all times during the Term maintain CITY-approved sign(s) identifying the property as CITY-owned and available for public use consistent with the terms of this Lease. Additionally, LESSEE shall implement a CITY-approved sign program that will cover rules of bridge use (such as user groups allowed, leashing dogs, speed, and litter fines, etc.). The signs shall educate trail users about the reservoir water being used as a drinking water source, and the sensitive habitat in the area. All signs shall be installed by LESSEE at locations approved in advance by CITY.

1.12 Monitoring Bridge Use.

LESSEE shall develop and implement a program to monitor the use of the Premises by various user groups. If a conflict between users is identified, LESSEE shall consult with the City Manager regarding measures to address the conflict. LESSEE shall implement mitigation measures to resolve conflicts in a timely manner to the satisfaction of the City Manager.

1.13 Public Health Surveillance.

If required by CITY’S Domestic Water Supply Permit for the operation of the bridge, and if the service is available, CITY will contract with the County of San Diego or other provider to provide public health surveillance/inspection of recreation activities at the reservoir. LESSEE shall reimburse CITY for all costs associated with any such required public health surveillance/inspection.

1.14 Personal Property.

At expiration or earlier termination of this Lease, LESSEE has the right to remove from the Premises those improvements and fixtures as described below:

two trash cans  
six interpretive panels  
two benches, one at each end of bridge  
two benches, one at each belvedere on bridge  
all signs: all regulatory, all grant signs  
one portable restroom, north end of bridge.

1.15 Discontinuance of Bridge Use.

The City Manager reserves the right to restrict access to the Premises and close the bridge to the public if the City Manager determines that security or water quality issues caused by the presence or use of the bridge cannot be eliminated. If practical, the City Manager will consult with LESSEE prior to restricting access to the bridge or closing the bridge to determine if mitigation measures can resolve the issue. The final decision regarding the restriction of access or closing the bridge is at the sole discretion of the City Manager.

**SECTION 2: TERM**

2.1 Term.

The Term of this Lease shall be twenty-five (25) years (“Term”). The Term is effective following execution by the City Manager and approval by the City Attorney (“Commencement Date”). If the Commencement Date is not the first day of a calendar month, then the Term shall include the partial calendar month from and including the Commencement Date through the last day of the full Term, so that the Term shall expire on the last day of the calendar month. “Lease Year” as used in this Lease shall mean the twelve (12)-month period commencing on the first day of the calendar month following the Commencement Date and each succeeding 12-month period thereafter during the Term.

2.2 Holdover.

Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect. CITY shall have the right to apply a reasonable increase in rent and to terminate the holdover tenancy at will.

2.3 Surrender of Premises.

At termination of this Lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and



recordable quitclaim deed covering all of the Premises. The Premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition. If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this lease provision, and the notice will be conclusive evidence of the termination of this Lease and all LESSEE'S rights to the Premises.

2.4 Compliance with CEQA.

Prior to Commencement Date, LESSEE shall cause to be prepared an environmental document that addresses the potential impacts associated with the pedestrian/bicycle bridge and confirms that the project is in compliance with CEQA.

**SECTION 3: RENT**

3.1 Time and Place of Payment.

The Rent described in Section 3.2 is due annually in advance on or before the first day of each Lease Year. All payments required under this Lease must be made payable to the City Treasurer and mailed to:

Office of the City of the City Treasurer  
City of San Diego  
P. O. Box 122289  
San Diego, California 92112-4165

or hand-delivered to:

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

The place of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental 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 paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

- a. Rent Amount. LESSEE shall pay an initial rent of two thousand eight hundred forty-nine dollars and twenty-five cents (\$2,849.25) per Lease Year ("Rent"), payable annually. The rent is subject to annual adjustments based on percentage increases in the Consumer Price Index (CPI) as provided in this Lease.
- b. 1. CPI Adjustments. On the anniversary date of each Lease Year following the commencement date of the Lease, the rent shall be adjusted to reflect the percentage increase in the CPI based on the average of the indices for the third quarter (July, August, September) of the calendar year prior to each adjustment.

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a Rent adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to CPI in any event.

In no event shall the adjusted Rent as established by the CPI be less than the Rent in existence immediately prior to the adjustment date. The failure of CITY to deliver timely notice of any Rent adjustment shall not constitute a waiver by CITY of its rights hereunder.

2. CPI Adjustment Computation. The Rent for each one (1) year period shall be calculated by CITY as follows:

The "adjustment multiplier" shall be established by dividing the "current index" by the "base index" as defined below.

The "base index" denominator for the calculation is 178.5. This is

a fixed number representing the three (3) month average of index figures published by the CPI using the months of July, August and September 2001.

The "current index" numerator for the calculation is a variable number that shall be the three (3) month average of index figures published by the CPI using the months of July, August and September of the calendar year preceding the adjustment date.

The "base figure" for purposes of calculating the annual adjustment shall be a fixed amount of Two Thousand Five Hundred Dollars (\$2,500).

Example Calculation

$$\begin{array}{r} \text{Current Index (Third Quarter 2004)} \quad 193.6667 \\ \text{Base Index (Third Quarter 2001)} \quad 178.5 \\ \hline \text{-----} = 1.0850 \text{ (Adjustment Multiplier)} \end{array}$$

The "base figure" is then multiplied by the adjustment multiplier to determine the new Rent. Using the foregoing example, the adjusted Rent is calculated as follows:

$$\begin{array}{r} \$2,500 \quad \text{(Base Figure)} \\ \times 1.0850 \quad \text{(Adjustment Multiplier)} \\ \hline \$2,712.50 \quad \text{(Adjusted Rent)} \end{array}$$

3.3 Delinquent Rent.

If LESSEE fails to pay the Rent when due, LESSEE shall pay, in addition to the unpaid Rent, five percent (5%) of the delinquent Rent. If the Rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is agreed by CITY and LESSEE to be appropriate to compensate CITY for loss resulting from Rent delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. LESSEE agrees that the late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

3.4 Unauthorized Use Charge.

LESSEE shall pay CITY fifty percent (50%) of the gross receipts for any service or use that is not permitted by this Lease. This payment is subject to the due date provided in this Lease for Rent payments and the provision for delinquent Rents. The existence of the fifty percent (50%) charge in this section and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the Premises.

3.5 Inspection of Records.

LESSEE shall make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine LESSEE'S compliance with this Lease. These records and accounts will be made available by LESSEE within the County of San Diego and will be complete and accurate showing all income and receipts from use of the Premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all records and accounts for a minimum period of five (5) years.

3.6 Annual Budget.

LESSEE shall submit to the City Manager by December 1 of each year copies of documents evidencing the proposed programs and financial status of LESSEE for the fiscal year commencing July 1. Without limiting the generality of the foregoing, the documents shall include (i) a copy of LESSEE'S proposed programs; (ii) a copy of a detailed operating budget showing expected sources of revenue and the nature of all proposed expenditures, including compensation for the director and staff of LESSEE; and (iii) an adequate reserve account, in the reasonable opinion of the City Manager, for maintenance and capital improvements to the Premises.

**SECTION 4: ASSIGNMENT**

4.1 Assignment and Subletting.

LESSEE shall not assign this Lease or any interest in this Lease and shall not sublet the Premises or any part of the Premises, or any right or privilege appurtenant to the Premises, or allow any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part of the Premises, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be

deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any assignment or subletting without consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest in this Lease, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager. "Assignment" for the purposes of this section shall include any transfer of any ownership interest in this Lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals. Approval of any assignment or sublease shall be in CITY'S sole discretion and shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. The City Manager may require, as a condition to approval of any assignment that this Lease be revised to comply with standard CITY lease requirements that are then current. The City Manager may also require, as a condition to approval of any sublease of a commercial nature, that LESSEE pay CITY market rents for uses. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this Lease as a sublessee or assignee.

4.2 Time is of Essence; Provisions Binding on Successors.

Time is of the essence of all of the terms, covenants, and conditions of this Lease, and, except as otherwise provided in this Lease, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

4.3 Defaults and Remedies.

On the occurrence of a default by LESSEE, CITY shall have the right to pursue any one or more of the remedies listed in this section in addition to any other remedies now or later available to CITY in law or equity. These remedies are not exclusive but cumulative.

- a. Defaults. Each of the following shall constitute an event of default under this Lease:
1. LESSEE'S failure to make any payment required under this Lease when due; or
  2. LESSEE defaults in the performance of any covenant or condition required by this Lease, other than those requiring payments to CITY, to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice from CITY; or if any default, other than those not requiring payment to CITY, is not

curable within thirty (30) days, and LESSEE fails to commence to cure the default(s) within thirty (30) days and diligently pursue the cure to completion; or

3. LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law; or
4. LESSEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed by a court of competent jurisdiction within ninety (90) days of filing; or
5. LESSEE is adjudicated a bankrupt; or
6. LESSEE makes a general assignment for the benefit of creditors; or
7. LESSEE uses the Premises for any unauthorized purpose.

b. Remedies

1. For Default Based Upon Nonpayment. Upon default by LESSEE for nonpayment under Section 4.4a (1), CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, written Three-Day Notice to Pay or Quit or CITY may terminate the Lease and all right of LESSEE and of all person claiming right through LESSEE to the Premises or to possession of the Premises, and CITY may enter and take possession of the Premises and may recover the sum set forth below.
2. For Any Other Default. Upon default by LESSEE based upon Section 4.4a (2) - (7) of this Lease, CITY may, at its option, terminate the Lease and all right of LESSEE and of all persons claiming right through LESEEE to the Premises or possession of the Premises, and CITY may enter and recover from LESSEE the sums set forth below. If any default described in Section 4.4a (2) - (7) of this Lease is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues the cure to completion.
3. CITY Recovery Upon LESSEE Default. Upon termination of the Lease due to default, CITY may recover the sum of:

- (a) the worth at the time of award of any unpaid rent that had been due at the time of termination;
- (b) the worth at the time of award of the amount by which (i) the unpaid rent that would have been earned after termination until the time of award minus (ii) the amount of the rent lost, if any, and LESSEE affirmatively proves could have been reasonably avoided;
- (c) the worth at the time of award of the amount by which (i) the unpaid rent for the balance of the Term after the time of the award minus (ii) the amount of rent lost, if any, as LESSEE affirmatively proves could be reasonably avoided;
- (d) any other amount necessary to compensate CITY for the detriment proximately caused by LESSEE'S failure to perform LESSEE'S obligations or that, in the ordinary course of things, would be likely to result; and
- (e) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law. As used in clauses (a) and (b) of this section, the "worth at time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c) of this section, the "worth at the time of award" is computed by discounted that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section the term "rent" shall include any payments required of LESSEE.

- 4. Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Premises, this Lease shall continue in effect for so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies under this Lease, including but not limited to the right to recover the Rents as they become due, plus damages.
- 5. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy

or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any Rent is not a waiver or any default preceding the Rent payment. The property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego. Any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times have the legal right to require the cure of any default when and as the defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after the default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

#### 4.5 Eminent Domain.

If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE will be as follows:

- a. Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. Partial Taking - Remainder Unsuitable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises is unsuitable for the lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. Partial Taking - Remainder Suitable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken.
- d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or damages, to LESSEE'S then-remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.



- e. Transfer. CITY has the right to transfer CITY'S interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain.
- f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

## **SECTION 5: INSURANCE RISK/SECURITY**

### 5.1 Indemnity.

LESSEE shall defend, indemnify, protect, and hold CITY, its elected officials, officer, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this Lease, and all expenses of investigating and defending against damage or injuries. LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents, or employees.

### 5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the Term of this Lease the following insurance at its sole expense:
  - 1. Commercial General Liability Insurance. Commercial general liability coverage with limits of not less than two million dollars (\$2,000,000) per occurrence. This policy shall cover all claims for property damage and/or bodily injury, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the Premises.
  - 2. Fire, Extended Coverage, and Vandalism. Fire, extended coverage and vandalism insurance policies on all insurable property on the Premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a

trust fund to be reinvested in rebuilding or repairing the damaged property.

- b. LESSEE'S responsibility to maintain the insurance also includes the following:
1. Additional Insured. All insurance policies, by separate endorsement, shall name CITY, its elected officials, officers, representatives, agents, and employees as additional insureds, protect CITY against any legal costs in defending claims, and shall not terminate without sixty (60) days prior written notice to CITY.
  2. Insurer Qualifications. All insurance companies must be satisfactory to CITY and licensed to do business in California. The insurer must be rated "A-, VI" or better by the AM Best Rating Guide and must be acceptable to CITY. Non-admitted or "surplus lines" carriers will be accepted if the carrier appears on the current California List of Eligible Surplus Lines Insurers (LESLI) list.
  3. Effective Date of Policy. All policies will be in effect on or before the Commencement Date, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement.
  4. Evidence of Insurance. A copy of the insurance policy or insurance certificate along with any required endorsement shall be furnished to CITY prior to the Commencement Date and shall remain on file with CITY during the entire Term of this Lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Lease. All evidence of insurance shall clearly identify the Premises.
  5. Modification. CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term of this Lease by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. LESSEE shall obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Lease.

6. Accident Reports. LESSEE shall report to CITY any accident causing more than ten thousand dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
7. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. The reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY. If LESSEE fails or refuses to take out or maintain insurance as required in this Lease or fails to provide the proof of insurance, CITY has the right to declare this Lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of a default.

### 5.3 Waste, Damage, or Destruction.

LESSEE shall give notice to CITY of any fire or other damage that may occur on the leased Premises within twenty-four (24) hours of the fire or damage. If the fire or other damage has the potential to affect water quality, LESSEE shall follow the notification procedure in the Emergency Response Plan described in Exhibit D, which may be updated from time to time. This Emergency Response Plan will ensure that, in the unlikely event of a contamination incident involving recreational use of the pedestrian/bicycle bridge at Hodges Reservoir, appropriate steps are taken to limit affects on the public water supply. LESSEE shall not commit or allow to be committed any waste or injury or any public or private nuisance, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises is damaged by any cause, including acts of God, earthquake, or flood, which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall make or cause to be made full repair of the damage and shall restore the Premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE shall clear and remove from the Premises all debris resulting from the damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to the damage. LESSEE shall be solely responsible for all costs associated with such

repairs, restoration, replacement, or removal, and may use for either purpose the insurance proceeds as set forth in Section 5.2 Insurance of this Lease. LESSEE shall commence preliminary steps toward performing repairs, restoration, replacement, or removal of the facility on the Premises within thirty (30) days, and the required repairs, restoration, replacement or removal shall be completed within a reasonable time. CITY may in its sole discretion determine that repairs, restoration, replacement, or removal take place at an earlier time. In that event, CITY may cause such repairs, restoration, replacement, or removal to be performed and LESSEE shall promptly reimburse CITY for all costs incurred by CITY.

## **SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS**

### **6.1 Acceptance of Premises.**

By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. LESSEE acknowledges that the Premises are in the condition called for by this Lease, that CITY has performed all work with respect to the Premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the Premises. It is LESSEE'S responsibility to investigate the Premises for the presence of any hazardous substances. LESSEE shall notify CITY if LESSEE'S investigations indicate the presence of any hazardous substances on the Premises. If LESSEE fails to investigate the Premises for the presence of hazardous or toxic substances, or fails to notify CITY of the presence of hazardous or toxic substances after its investigation, LESSEE waives any claim against CITY which may result from the presence of hazardous substance on the Premises.

### **6.2 Entry and Inspection.**

CITY reserves and shall always have the right, but not the obligation, to enter the Premises for the purpose of viewing and ascertaining the condition of the Premises, or to protect its interests in the Premises, or to inspect the operations conducted on the Premises. If entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, but not the obligation, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE shall pay promptly any and all costs incurred by CITY in having the necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition. If at any time CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may

at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

6.3 Maintenance.

LESSEE shall assume full responsibility and cost for the operation and maintenance of the Premises throughout the Term. LESSEE shall make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the Development Plan described in Section 6.12 Development Plan and with the maintenance, cleaning, and security specifications found in Exhibit C of this Lease and with all applicable laws. All applicable codes and standards of CITY, state and federal agencies shall be observed in all maintenance, repairs, and replacements on the Premises. If at any time during the Term of the lease LESSEE'S annual budget is reduced to less than one million dollars (\$1,000,000), LESSEE shall be required to notify CITY of that fact, and within ninety (90) days of the giving of such notice, LESSEE shall be required to provide security to the City Manager that it can fulfill the maintenance, cleaning, and security obligations for two (2) years if the Lease is terminated. LESSEE'S failure to provide notice in a timely manner shall constitute a default of this Lease.

6.4 Improvements/Alterations.

Except as provided in the Development Plan described in Section 6.12 of this Lease, LESSEE shall not construct any improvements, structures, or installations on the Premises, or make any alterations to the Premises without prior written approval by the City Manager. LESSEE shall not make major structural or architectural design alterations to approved improvements, structures, or installations on the Premises without prior written approval by the City Manager and that approval shall not be unreasonably withheld. LESSEE shall notify City Manager of improvement projects on the Premises and shall inform the permitting authority that the Premises are City-owned property. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

6.5 Utilities.

LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased Premises. All utilities shall be installed underground.

6.6 Bonds.

Whenever there is any construction to be performed on the Premises, LESSEE shall deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.

6.7 Liens.

LESSEE shall at all times hold CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of the filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.8 Taxes.

LESSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the Premises, including any licenses or permits. LESSEE acknowledges that this lease may create a possessory interest subject to property taxation, and that LESSEE may be

subject to the payment of taxes levied on the leasehold interest, and that LESSEE shall pay all possessory interest taxes. LESSEE payment of taxes, fees, and assessments will not reduce any Rents due CITY.

6.9 Signs.

LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any unauthorized items are found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours notice by CITY. After the twenty-four (24) hour period, CITY may remove the item at LESSEE'S cost. The minimum cost of removal shall not be less than five hundred dollars (\$500).

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises, except personal property described in Section 1.14, now existing or constructed on the Premises by LESSEE shall at the expiration or earlier termination of this Lease be deemed to be part of the Premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except personal property loaned to LESSEE for public display, and any other items specifically exempted in this Lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall notify LESSEE thirty (30) days prior to termination of this Lease or one hundred eighty (180) days prior to expiration of this Lease, and LESSEE shall remove all the improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before the expiration or earlier termination of this Lease. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE shall pay CITY the full cost of any removal.
- c. LESSEE shall remove LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property by the date of the expiration or earlier termination of this Lease. Any items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove the items at LESSEE'S expense.
- d. If any removal of personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE shall repair all the damage at its expense.

- e. For any necessary removal by either CITY or LESSEE which takes place beyond the expiration or earlier termination of this Lease, LESSEE shall pay a charge to CITY at the rental rate in effect immediately prior to the expiration or earlier termination of this Lease until all of LESSEE'S property has been removed from the Premises.
- f. If LESSEE desires to dispose of any of its personal property used in the operation of the Premises upon the expiration or earlier termination of this lease, then CITY shall have the first right to acquire or purchase the personal property.

6.11 Unavoidable Delay.

If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, the party shall be excused from performing that act for the period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay the Rent required by this Lease. If LESSEE or CITY claims the existence of a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of any such claimed delay.

6.12 Development Plan.

LESSEE shall develop the Premises in accordance with the Development Plan approved by the City Manager and filed in the Office of the City Clerk. The Development Plan is attached as Exhibit E. The City Manager shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval, and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the Development Plan shall constitute a major default and subject this Lease to termination by CITY. The City Manager, in his sole discretion, may approve an extension to the date specified for completion in the Development Plan of up to one (1) year without further City Council approval. If LESSEE ceases activity on constructing the improvements for more than six (6) months, CITY may, at its option, terminate this Lease. LESSEE must provide CITY with written notice if construction activity ceases for a thirty (30) day period and if any construction activity subsequently resumes.

6.13 Hazardous Substances

- a. LESSEE shall not allow the release of hazardous substances in, on, under, or from the Premises. 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, leeching, 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'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 Lease.

- b. If any release of a hazardous substance occurs, LESSEE shall be responsible for all costs of remediation and removal of such the substances in accordance with all applicable rules and regulations of governmental authorities.
- c. LESSEE shall defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the Premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- d. If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of the knowledge or cause for belief. If LESSEE knows or has reasonable cause to believe that the substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate the danger. LESSEE shall notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property Premises without the prior written consent of CITY.
- e. At least twelve (12) months prior to the expiration of this Lease, or prior to any earlier termination of this lease, LESSEE, at CITY'S sole option, shall obtain an environmental assessment of the Premises conducted 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 the sole expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the Premises, and in what quantities. If any hazardous substances exist in quantities greater than that existed on the Commencement Date or greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the

environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to restore the Premises to the condition which existed on the Commencement Date or to comply with those laws or statutes. Estimates of the cost of the remediation or removal shall be included in the environmental assessment. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment to achieve compliance with the law. LESSEE shall be solely responsible for all remediation and removal expenses .

6.14 Best Management Practices.

LESSEE shall comply with the Best Management Practices (“BMP”) including the Stormwater Pollution Prevention Plan (“SWPPP”) approved by CITY’S Stormwater Management Program. LESSEE shall submit within ninety (90) days of the Commencement Date of this Lease, BMP and a SWPPP that are satisfactory to the City Manager that will control erosion and reduce the amount of pollutants and other sediments discharged from the Premises. The BMP and SWPPP will be reviewed periodically by CITY. Upon written notice from the City Manager requesting an update of the BMP and SWPPP, LESSEE shall submit updated BMP and SPPP that are satisfactory to the City Manager within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the BMP and SWPPP as a result of any review by CITY to ensure compliance with any changes in laws or regulations. It is LESSEE’S responsibility to inform employees, contractors, subcontractors, agents, and vendors of the BMP and SWPPP.

6.15 Possible Future Widening of West Bernardo Drive.

LESSEE acknowledges that the Rancho Bernardo Community Plan designates West Bernardo Drive as a four-lane arterial street and that future plans may include widening the road to accommodate additional traffic. Widening of the street may result in the temporary closure and/or replacement of the pathway that is proposed to extend from the bridge to the trail staging area. If the widening of West Bernardo Drive occurs, LESSEE shall be responsible for maintenance of the bike lanes on West Bernardo Drive following the widening and keeping the median open for bicycle access at the intersection with the south end of the bridge.

6.16 Sediment Catchment Devices.

LESSEE shall not use straw bales or hay bales for temporary or permanent sediment catchment devices due to the possible presence of non-native, invasive plant species.

## **SECTION 7: CITY POLICY IMPLEMENTATION**

### **7.1 Nondiscrimination.**

LESSEE 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 LESSEE'S use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

### **7.2 Compliance with CITY'S Equal Opportunity Contracting Program.**

LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Lease. LESSEE and all of its subcontractors are individually responsible to abide by its contents. LESSEE will 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 any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law. LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities. LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

### **7.3 CITY Employee Participation Policy.**

It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an

individual who, within the twelve (12) months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

7.4 Drug-free Workplace.

LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.

Establishing a drug-free awareness program to inform employees about all of the following:

- a. The dangers of drug abuse in the workplace.
- b. LESSEE'S policy of maintaining a drug-free workplace.
- c. Any available drug counseling, rehabilitation, and employees assistance programs.
- d. The penalties that may be imposed upon employees for drug abuse violations.

LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

**SECTION 8: GENERAL PROVISIONS**

8.1 Notices.

- a. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to LESSEE:

Director  
San Dieguito River Valley Open Space Park, JPA  
18372 Sycamore Creek Road  
Escondido, CA 92025

If to CITY:

City of San Diego  
Real Estate Assets Department  
Department Director  
1200 Third Avenue, Suite 1700  
San Diego, CA 92101-4155

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by that party.

- b. Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.
- c. Notice served pursuant to the terms of this section shall be effective upon personal service or two (2) days after service by mail.

8.2 Compliance with Law.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any law, statute, ordinance, or regulation.

8.3 CITY Approval.

The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

8.4 Partial Invalidity.

If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

8.5 Legal Fees.

In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.

8.6 Number and Gender.

Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

8.7 Captions.

The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. The lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.

8.8 Entire Understanding.

This Lease contains the entire understanding of the parties. LESSEE, by signing this Lease, agrees that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease. The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Lease will be valid unless it is in writing and signed by all parties.

8.9 Disabled Access Compliance.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with the 1990 Americans with Disabilities Act and Title 24 of the California Code of Regulations (Building Code) as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

8.10 Joint Powers Authority.

Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of the joint powers authority in accordance with a duly adopted resolution of its Board of Directors of the joint powers authority and that this Lease is binding upon the joint powers authority in accordance with its terms, and that LESSEE is a duly qualified joint powers authority, and all steps have been taken prior to the effective date of this Lease to qualify LESSEE to do business in California.

8.11 Standards of Employees.

LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.

8.12 Estoppel Certificates.

CITY and LESSEE shall at any time during the term of this Lease, within thirty (30) days of written notice from the other party, execute and deliver to the requesting party a statement in a form certifying that this lease is unmodified and in full force and effect or, if modified, stating the nature of such modification, the current rent, the date to which rent is paid, whether the party has any knowledge of a breach of this Lease by either party, and other information regarding this Lease as may be reasonably requested. Any statement may be relied upon conclusively by any prospective assignee, sublessee, or encumbrance of the Premises or of LESSEE'S or CITY'S interest in this Lease.

8.13 Survival.

Any obligation which accrues under this Lease prior to its expiration or termination shall survive the expiration or earlier termination of this Lease.

8.14 Exhibits Incorporated.

All exhibits and other documents referenced in this Lease are incorporated into the Lease by this reference.

**SECTION 9: SPECIAL PROVISIONS**

9.1 LESSEE Responsibility for Preserving Environmental, Historical, and Cultural Resources Sites.

LESSEE understands and agrees that in connection with the establishment of the San Dieguito River Valley Park, sensitive resource sites as well as environmental,

historical, and cultural resources may be identified along the proposed trail system or elsewhere on the Premises. LESSEE shall be responsible for protecting the sites and resources to the extent reasonably feasible. If additional measures for protecting the site such as fencing are required, the installation and maintenance costs involved shall be the sole responsibility of LESSEE.

9.2 Boundary Adjustments.

LESSEE has been advised and acknowledges that the boundaries of the Premises are subject to adjustments related to the Multiple Species Conservation Program. LESSEE agrees that, if boundary adjustments are made, the property needed for Multiple Species Conservation Program may be deleted from the Premises, subject to one hundred eighty (180) days prior written notice from CITY. The notice of intent to delete the property shall include a plat clearly designating the area to be deleted.

9.3 Emergency Response Plan.

LESSEE shall at all times have our emergency response plan in effect in accordance with Exhibit D.

9.4 San Diego's Strong Mayor Form of Governance.

The CITY began operating under a mayor-council form of governance on January 1, 2006 (commonly referred to as 'strong mayor') pursuant to article XV of the City of San Diego City Charter. All references to "City Manager" in this Lease and any subsequent amendments to this Lease shall be deemed to refer to "Mayor." This provision shall remain in effect for the period of time that CITY operates under the mayor-council form of governance.



**SECTION 10: SIGNATURES**

10.1 Signature Page.

This Lease is executed by CITY, acting by and through its Deputy Chief of Land Use and Economic Development pursuant to City Council Resolution No. \_\_\_\_\_, and by LESSEE, acting by and through its lawfully authorized officer(s).

LESSOR: THE CITY OF SAN DIEGO

Date \_\_\_\_\_

By \_\_\_\_\_  
James T. Waring, Deputy Chief  
Land Use and Economic Development

LESSEE: SAN DIEGUITO RIVER PARK  
VALLEY REGIONAL OPEN SPACE, JOINT  
POWERS AUTHORITY

Date \_\_\_\_\_

By \_\_\_\_\_  
Richard Bobertz, Executive Director

ENVIRONMENTAL ANALYSIS SECTION  
ENVIRONMENTAL CLEARANCE:

Date \_\_\_\_\_

By \_\_\_\_\_

APPROVED as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

MICHAEL J. AGUIRRE, CITY ATTORNEY

By \_\_\_\_\_  
Deputy City Attorney

DM/  
6/12/06  
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Exhibit A – Legal Description.

Exhibit B – Project Location Map and Lease Parcel Drawing.

Exhibit C - Maintenance, Cleaning, And Security Specifications.

Hodges Reservoir Pedestrian/Bicycle Bridge

1. Maintenance Specifications - Landscaping.

LESSEE shall plant, monitor and maintain willow and mule fat trees that will be used as screening material on both sides of the north and south concrete abutments as shown on LESSEE'S landscape planting plans, copies of which will be filed in the CITY'S lease file in the Real Estate Assets Department. Dead or dying vegetation shall be replaced in a timely manner. If the hydrology in the area changes and the plantings die due to a lack of water or from too much water, then this vegetation shall be replaced with other appropriate screening vegetation that can tolerate the changed conditions. No trees shall be disturbed, unless there is a public, health, or safety issue, during the breeding season as indicated by the presence of active nests.

2. Facilities Maintenance.

A bi-annual inspection of the bridge structure shall be performed by a licensed engineer and a written report of the findings shall be filed with the Water and Real Estate Assets Department. Inspections shall coincide with the commencement date of this Lease. All worn and faded signs shall be replaced in a timely manner. All fencing and benches are to be properly maintained and replaced as needed.

Trash receptacles shall be conveniently located, covered, and anchored in all areas open for recreation and at both bridge ends. Trash receptacles shall be secured to minimize animal access and vandalism. A sufficient number of such containers shall be provided to accommodate refuse generated during peak use periods.

LESSEE shall install a portable toilet at the north end of the bridge in a location to be approved in advance by CITY. The portable toilet shall be maintained by a sanitation service under contract with LESSEE.

3. Cleaning Specifications.

The following minimum cleaning specifications assume that between 400 and 500 people, many with their dogs, will use the bridge each weekend day, with approximately half that number using the bridge during week days. The frequency of these specifications shall be proportionately increased on weekend or week days if the actual usage exceeds these projections. The facility shall be consistently cleaned to the satisfaction of the City. Nothing shall be dumped or swept into the reservoir.

4. Bridge Daily.

- a. Trash containers emptied, damp wiped, relined as needed, and disinfected before opening and when 75% filled throughout the day.
- b. Remove all debris from bridge walking surface, including but not limited to paper and gum.
- c. Remove all graffiti from all surfaces as required.
- d. Refill all dog waste bag dispensers.
- e. Spot mop spills and pet “accidents” on the surface of the bridge.
- f. Spot clean all furniture as needed.
- g. Inspect Portable Toilet.

LESSEE shall contract with a portable toilet vendor to provide full service cleaning a minimum of two (2) times per week.

Ranger Staff (defined in item 5, below) shall inspect the portable toilet daily and report needed service (e.g. unsanitary conditions) to LESSEE’S contract vendor for immediate resolution.

5. Security Specifications.

The JPA staff includes one part-time and three full-time park rangers (“Ranger Staff”) who, among other duties, maintain all of the San Dieguito River Park trails. Ranger Staff is equipped with two-way radio, cell phones, park vehicles and maintenance equipment. JPA staff also includes volunteers from the volunteer trail patrol program.

Ranger Staff shall patrol the Premises on a daily basis to the satisfaction of CITY and in accordance with CITY’S Domestic Water Supply Permit. Ranger Staff shall perform random patrols of the bridge at least three times per day. Ranger Staff shall patrol the bridge at opening and closing. LESSEE shall keep daily records of its patrol inspections in a form satisfactory to CITY. LESSEE shall provide CITY with copies of the inspection records on a monthly basis. Coordination with the City Lakes Manager shall be done as needed.

Exhibit D - City of San Diego, Water Department Emergency Response Plan for Operation of Pedestrian/Bicycle Bridge at Hodges Reservoir.

Background.

The San Dieguito River Park Joint Powers Authority (“JPA”) proposes to operate the Hodges Reservoir Pedestrian/Bicycle Bridge to allow for a recreational route for people to cross Hodges Reservoir and the San Dieguito River Valley. As part of the process to approve such operation, the California Department of Health Services, San Diego Drinking Water Field Operation Branch (“DWFOB”) has directed the Water Department to prepare an emergency response plan that will be implemented in the event of an incident having the potential to affect water quality. This document presents the Emergency Response Plan.

The purpose of this Emergency Response Plan is to insure that, in the unlikely event of a contamination incident involving recreational use of the pedestrian/bicycle bridge at Hodges Reservoir, appropriate steps are taken to limit affects on the public water supply.

Emergency Response Plan.

This Emergency Response Plan is applicable only to the authorized recreational activities associated with the Pedestrian/Bicycle Bridge at Hodges Reservoir as described in this Lease.

The most important component of the Emergency Response Plan is oversight of the use of the Pedestrian/Bicycle Bridge by the public. The Reservoir Keeper at Hodges, or his designee, is the Department’s on-site personnel responsible for the operation of the water supply functions of the reservoir, and thus, is the focal point of any emergency response relative to water supply.

The Emergency Response Plan is intended to proceed as follows:

1. In the event of an incident associated with operation of the pedestrian bridge that has the potential to affect reservoir water quality, JPA staff will immediately contact the Reservoir Keeper or his staff: Conway Bowman, Reservoir Keeper, office on boat dock (858) 538-8112, pager (619) 232-2237 code 8079 or home (858) 720-1425.
2. If the Reservoir Keeper or his staff is not available, the persons observing the incident should proceed to step 3.
3. The Reservoir Keeper or the person observing the incident will immediately report the incident to each of the following:
  - Joe Weber, Reservoir Program Manager, office (619) 668-2030 or pager (619) 232-2237 code 8053 or home (619) 741-3215; and
  - Jeffery Pasek, Senior Biologist, Water Quality Laboratory, office (619) 668-3240, cell phone (619) 668-3240, or home (619) 444-5110; and

- San Dieguito and Santa Fe, R.E. Badger Filtration Plant, (858) 756-2569; after hours (858) 602-7611.
4. Water Department staff and other on-site City staff will respond to the incident following the procedures and practices that have been established for a boating accident, including the following:
    - attend to the needs of, and insure the safety of all recreational patrons;
    - request assistance of the San Diego Police Department and other emergency agencies, as needed;
    - mark the location of the incident;
    - contain any observed or potential fuel spills, including the deployment of floating containment booms;
    - contact the appropriate hazardous materials response agency, generally the County of San Diego, Hazardous Materials Management, (619) 338-2222.
  5. Water Department staff will contact the California Department of Health Services, San Diego Drinking Water Field Operation Branch, via telephone (619) 525-4159, as soon as practical.
  6. A written report of the accident or incident, including any water quality monitoring data, will be submitted to the California Department of Health Services, San Diego Drinking Water Field Operation Branch within two weeks.

## Exhibit E - Development Plan and Preliminary Construction Schedule.

The San Dieguito River Park Joint Powers Authority (JPA) proposes to construct a 990-foot-long, 14-foot-wide pedestrian/bicycle bridge and related trail connections across Lake Hodges linking the Lake Hodges North Shore Trail with the Bernardo Bay trail staging area and Piedras Pintadas Trail (Figures 1 and 2). The bridge would not accommodate equestrian use. The bridge is proposed approximately 1,000 feet west of Interstate 15 (I-15) as it passes over Lake Hodges in the San Pasqual Valley. The project site is located on land owned by the City of San Diego Water Department and within the San Dieguito River Park Focused Planning Area (FPA). The bridge is identified as a top priority “Programmed Bikeway Project” Class I bicycle transportation facility in the City’s Bicycle Master Plan (2002). The project would be constructed by the JPA with funds from the Federal Highway Administration Transportation Enhancement Activity (TEA) grant administered by the California Department of Transportation, District 11.

The bridge would have a 14-foot wide outside dimension, with 12-foot-wide clearance for bicyclists and pedestrians. It will also have a 10 foot high clearance at flood conditions, allowing boats to safely pass underneath. It is proposed as a “stress ribbon” design with two piers in the lake and concrete abutments at either end. The bridge would be constructed by a series of pre-cast concrete panels that would be strung on cables anchored into the two bridge abutments. The bridge platform would be supported by two piers in the lake. The bridge would broaden at each pier to create two 24-foot wide belvederes for interpretive displays and bench seating. Two seating areas overlooking the lake would be installed at the north and south ends.

On the north side of the lake, the existing North Shore Trail would be realigned slightly to accommodate the bridge abutment. Approximately 400 linear feet of the trail would be resurfaced with a non-permeable polymer binder mixed with decomposed granite to create an 8-foot-wide smooth hardened surface for bicycles and wheelchairs. Also, the 150 feet of trail that follows the alignment of old Highway 395 would be repaired with asphalt patches and/or new asphalt, depending on the existing level of asphalt deterioration, to create a smooth riding surface for bicycles and retain the historic highway alignment.

The Lake Hodges Bicycle/Pedestrian Bridge is a component of the San Dieguito River Park’s overall trail network. The trail network includes the 55-mile-long River Park’s overall trail network. The primary trail that the Lake Hodges Bridge will access is the Hodges North Shore Trail (an existing segment of the planned Coast to Crest Trail), which exists along the entire north shore of Lake Hodges. The Lake Hodges Bridge will provide direct access for pedestrians and bicyclists to the planned Coast to Crest Trail from the south side of the lake. The Lake Hodges will also provide direct access to the existing Piedras Pintadas loop trail on the south side of Lake Hodges. The bridge is to be used by pedestrians and bicyclists and their leashed dogs. No equestrian or motorized uses will be allowed. Fishing is also specifically prohibited. The bridge shall include locking gates at each end to prohibit access at night, when closed to the public. The LESSEE shall be responsible for opening and closing gates everyday. LESSEE shall provide additional keys to the City for access when needed.



Preliminary Construction Schedule:

(Bridge and North Shore Re-alignment)

Begin Construction September 15, 2006

Complete Construction March 15, 2007

**THE CITY OF SAN DIEGO**

**SAN DIEGUITO RIVER VALLEY REGIONAL OPEN SPACE PARK  
JOINT POWERS AUTHORITY**

**Lease**

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**EXHIBIT "A"**

THAT PORTION OF RANCHO SAN BERNARDO, PATENT BOOK 2, PAGE 462 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF PARCEL NUMBER 22668-2 AS DESCRIBED IN DOCUMENT NUMBER 1979-080427, RECORDED IN THE OFFICIAL RECORDS OF SAID COUNTY RECORDER'S OFFICE ON FEBRUARY 26, 1979; SAID CORNER BEING ON THE NORTHERLY LINE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY, KNOWN AS WEST BERNARDO DRIVE; THENCE ALONG SAID RIGHT OF WAY LINE NORTH 59°41'50" EAST 357.88 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE LEAVING SAID RIGHT OF WAY LINE NORTH 00°03'50" WEST 909.64 FEET; THENCE NORTH 89°56'10" WEST 65.00 FEET; THENCE SOUTH 00°03'50" EAST 886.03 FEET TO SAID RIGHT OF WAY LINE; THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 74°57'23" WEST 47.45 FEET; THENCE SOUTH 59°41'50" WEST 22.24 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 1.337 ACRES MORE OR LESS

PREPARED UNDER THE SUPERVISION OF:

  
MICHAEL JAMES KNAPTON

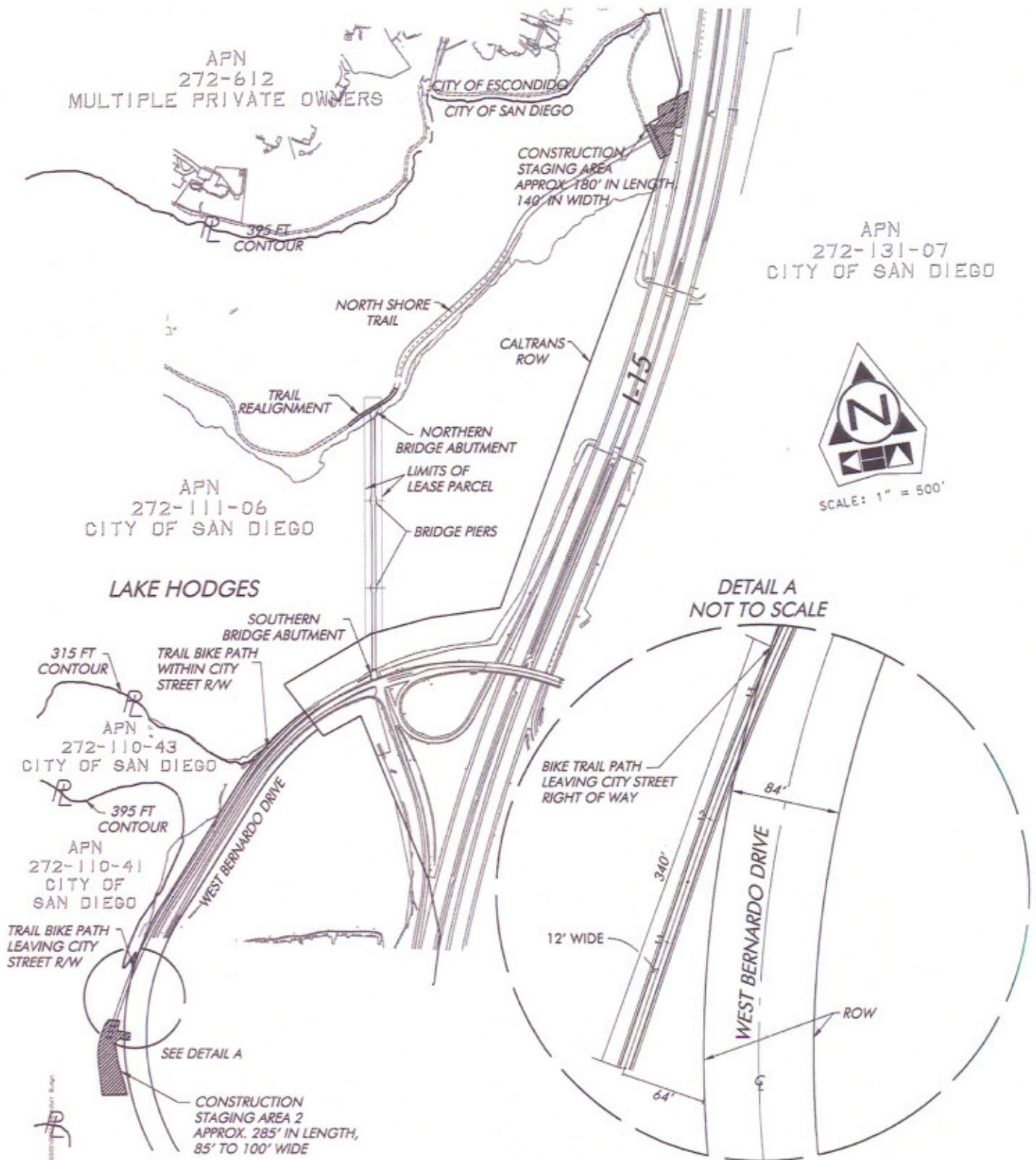
*9/12/05*  
DATE

P.L.S. 8012

EXPIRES 12/31/06



**Lake Hodges - Bike Trail**



**KIMLEY-HORN and ASSOCIATES**

**EXHIBIT B**  
**PROJECT LOCATION MAP**  
**Lake Hodges Bike Trail**