

RIGHT OF ENTRY PERMIT AGREEMENT

STATE OF CALIFORNIA DEPARTMENT OF GENERAL SERVICES CALIFORNIA INSTITUTION FOR MEN CHINO, CALIFORNIA

This RIGHT OF ENTRY PERMIT ("Permit") is made and entered into this ____ day of September 2013, by and between the **STATE OF CALIFORNIA**, acting by and through its Director of the Department of General Services, with the approval of the California Department of Corrections and Rehabilitation ("**CDCR**") and the California Institution for Men, Chino, California ("**CIM**") (collectively, the "**State**"), and the **County of San Bernardino**, its officers, employees, agents, contractors, subcontractors, consultants, sub-consultants and volunteers ("**Permittee**").

WHEREAS, State of California is the owner of real property located in the City of Chino, California known as the CIM.

WHEREAS, the Permittee is the owner and operator of the Chino Airport, a general aviation airport located in the City of Chino, California immediately across Euclid Avenue (State Route 83) to the east of a portion of CIM;

WHEREAS, a plume of groundwater contamination appears to be emanating from Chino Airport and has migrated off site ("**Plume**");

WHEREAS, Permittee has retained Tetra Tech Inc., as its agent and consultant, to perform groundwater characterization and other work related to investigating the Plume;

WHEREAS, Tetra Tech Inc, on behalf of its client the Permittee, submitted to CDCR a document dated July 11, 2013 entitled "Request for Temporary Easement and Agreement for Exploratory Soil Borings and Monitoring Well Installation, Construction, Maintenance and Sampling";

WHEREAS, Permittee has requested permission of CDCR to have Tetra Tech Inc. enter a portion of CIM to perform work related to investigating the Plume;

WHEREAS, Majestic Realty Co. is currently processing a zone change, general plan amendment, environmental impact report, among other approvals, for the development of a portion of the Property;

NOW, THEREFORE, the State and Permittee agree that the foregoing recitals are true and correct and accordingly, State does hereby agree to grant Permittee a non-exclusive temporary access permit upon the following terms and conditions:

1. **Right of Entry**: The State hereby gives permission to Permittee, to enter upon those certain portions of the CIM facility as shown on Exhibit "A" and Exhibit "B" attached hereto and

incorporated by reference herein ("Property"), for the purposes of performing the investigation work, as defined below.

- a. This Permit is subject to existing and future contracts, leases, licenses, encumbrances and claims which may affect the Property and Permittee's ability to exercise the rights granted to it by this document.
2. **Characterization Work:** Permittee's work on the Property ("Work") shall consist of performing up to nine (9) exploratory soil borings using a combination of CPT and direct-push drilling methods. The proposed soil borings will require disturbance of an area of less than six inches (6") in diameter at the ground surface during drilling.
- a. All locations shall be cleared for underground utilities by contacting Dig Alert, conducting a surface geophysical survey, and by hand auguring each location to a depth of approximately five feet (5') or refusal.
 - b. Upon completion of drilling activities all soil borings shall be grouted from the bottom of the hole up to the ground surface.
 - c. Permittee shall have sole responsibility for obtaining all city, county, state and federal authorizations necessary to enjoy this Permit.
 - d. The Permittee shall conduct all its Work on the Property in a manner which protects the public health, safety and welfare.
 - e. Permittee shall provide at no cost to State copies of: (i) all reports and studies generated as result of the Work, and (ii) the results of each sampling done as part of the Work, including copies of any raw data and instrument printouts. Data will be provided in electronic portable document format ("PDF"), Microsoft Excel, Microsoft Word, or another format approved by State. Laboratory data will also be provided as laboratory reports in PDF format and electronic data deliverable in Microsoft Excel format, including but not limited to copies of the standard level II data package. Permittee shall also provide at no cost to State any additional consultation and documentation required by State during analysis and review of the reports related to the sampling results obtained by the Permittee during the exercise of this Permit. Said results shall be sent in a timely fashion to:

California Department of Corrections and Rehabilitation Facilities Planning,
Construction and Management Facilities Operations Branch
9838 Old Placerville Road, Suite B
Sacramento, CA 95827
Attn: Diana Frederick

Department of General Services, Real Estate Services Division
Asset Management Branch
707 3rd Street, 5th Floor
West Sacramento, CA 95605
Attn: Jonathan Heim

- f. In Permittee's exercise of rights of entry and obligations under this Permit, including the Work, Permittee shall take all reasonable measures to make the same in such a manner as will cause the least injury to the surface of the ground and improvements thereon, and shall replace the earth so removed by it and restore the surface of the ground and any improvements thereon to as near the same condition as they were immediately prior to commencement of Permittee's activities pursuant to this Right of Entry Permit as is practicable, including any and all work necessary to cap said boring holes in accordance with all laws and regulations relating thereto, or as State may dictate.
 - g. The Work shall NOT include the installation of any monitoring wells or any other equipment staying on the Property after the expiration or earlier termination hereof.
3. **Notice of access:**
- a. Prior to any entry upon CIM, Permittee shall give State at least seven (7) days written notice, which notice shall include the following:
 - i. The date of entry and commencement of Work, planned duration on the property, scheduled date of completion of Work on the Property and date of demobilization. Permittee shall also provide State notice of any anticipated deviations from such schedule.
 - ii. A list of sample analyses anticipated for groundwater sample treating and potential other testing activities
 - iii. The name of the firm(s) and person(s) that will perform the work.
 - iv. If additional equipment, analysis, or testing is planned in the future, Permittee shall notify State in writing of this additional activity at least seven (7) days prior to commencement of the activity.
 - b. Permittee shall notify the State immediately via email or telephone of the following: (i) any delay in its scheduled commencement or completion of the Work, (ii) its actual

entry onto the Property, (iii) its actual exit from the Property, (iii) any injury that occurs on or damage to the Property. All such notices shall be given as follows:

If via telephone, to:

Diana Frederick: (916) 255-0445

Bob Nobles (Plant Manager): (909) 606-7032

If via email, to:

Diana.Frederick@cdcr.ca.gov

Robert.Nobles@cdcr.ca.gov

4. **Term**: This Permit shall only be for the period beginning on the date the Permit is fully executed by the State and Permittee, and ending on the earlier of: (i) the date the Permittee completes the Work and demobilizes, (ii) the date the State terminates this Permit, (iii) November 1, 2013 for the work, described above, in the area delineated by Exhibit "A", or (iv) January 17, 2014 for the work, described above, in the area delineated by Exhibit "B".
5. **Termination**: This Permit may be canceled without cause by State at any time upon the giving of notice to Permittee, in which case Permittee shall immediately demobilize and leave the Property, subject to the terms and conditions of this Permit.
6. **Access**: In recognition that the Property is located on a portion of CIM, Permittee agrees that this Permit is subject to any and all limitations and/or requirements customarily imposed as security measures of a State prison facility.

PERMITTEE agrees to comply with the following conditions:

- a. Unless otherwise modified in writing by the Designated CDCR Staff, all of PERMITTEE'S officers, employees, agents, and contactors shall have security clearance from the Designated CDCR Staff. PERMITTEE shall obtain the necessary forms from the Designated CDCR Staff and submit such forms in the time and manner as directed by said authorities in charge.
- b. PERMITTEE will comply with all rules and regulations adopted by the Designated CDCR Staff. No article or material deemed by the Designated CDCR Staff to be considered as contraband shall be brought on said real Property. Contraband includes, but is not limited to beer, alcoholic beverages, narcotics, tobacco, the possession or use of firearms, explosive or edged weapons, and restricted controlled substances. Any willful violation of said rules and regulations are grounds for immediate termination of this

Permits, and could result in ejection from Prison grounds and/or in arrest and criminal prosecution.

- c. Unless otherwise modified in writing by Designated CDCR Staff, all of PERMITTEE'S officers, employees, agents, and contractors allowed by this permit within said real property shall be prohibited from wearing clothing which in any combination shades or types of material that resemble State-issued inmate clothing such as blue or black denim jeans, blue trousers, blue chambray work shirts, orange vests, law enforcement or military-type forest green or camouflage patterned articles, including rain gear and any other articles of clothing disallowed by the authorities in charge.
- d. PERMITTEE shall conduct all activities so as to protect the health, safety, and well-being of those people upon the premises of said CDCR facilities.
- e. PERMITTEE may only use that equipment on property approved by STATE and necessary to conduct the activities permitted by this Permit. PERMITTEE agrees to remove all equipment from the property within twenty-four (24) hours of completion of work.
- f. PERMITTEE shall immediately prepare and promptly provide to the designated CDCR Staff of said STATE facilities, such detailed, written instructions as are sufficient to allow the designated CDCR Staff to quickly identify, address, and resolve emergency situations related to said permit activities. Said instructions shall identify such information (e.g., company names, job titles, individual persons, locations, mailing addresses, telephone numbers, electronic mail addresses, and other means of electric communication) as may be needed the Designated CDCR Staff to handle said emergency situations. Failure to provide said instructions maybe deemed by STATE to be a breach of this Permit, and STATE shall be entitled to appropriate redress, up to and including termination of this permit.
- g. Prior to any entry upon said land pursuant to the rights granted hereby, Permittee shall notify the Chief of Plant Operations of the CIM or designee by written or oral notice of Permittee's intent to enter the Property.

Correctional Plant Manager
Bob Nobles
(909) 606-7032 Direct

- h. Permittee shall restrict its travel to such roads or routes on the Property as CIM authorities in charge may designate.
- i. Use of such roads or routes on the Property shall be restricted to that use reasonably necessary in connection with the Work.

- j. State reserves the right to prevent Permittee entry upon the Property in the event of a suspected or actual emergency.
7. **Indemnification**: Permittee waives all claims against State, its officers, agents, employees, lessees and sub-lessees, for loss or damage caused by, arising out of, or in any way connected with the exercise of this Permit, and Permittee agrees to protect, save harmless, indemnify, and defend State, its officers, agents, employees, lessees and sub-lessees, from any and all loss, damage or liability, including, without limitation, all legal fees, expert witness or consultants fees and expenses suffered or incurred by the State, its officers, agents, employees, lessees and sub-lessees that is caused by, arises out of, or is in any way connected with Permittee's exercise of the rights hereby granted, except those arising out of the sole negligence of State.
8. **Contamination**: Permittee shall take all measures possible to ensure that their Work does not exacerbate the extent of the Plume under the Property, or result in any contamination of the Property. In the event that Permittee's Work does contaminate the Property, in addition to all other provisions of this Permit, including without limitation Section 7 regarding indemnification, Permittee shall be liable to State and Majestic Realty Co. for any damage that results according to law and proof.
9. **Insurance Requirements**:
- a. Permittee shall furnish to State a Certificate of Insurance upon which the State can rely naming the State an additional insured (or proof of a policy endorsement which names the State an additional insured), with evidence of insurance as follows:
 - i. **Commercial General Liability**: The Permittee shall maintain Commercial General Liability aggregate for bodily injury and property damage and Fire Legal Liability with those limits of not less than \$2,000,000 per occurrence. The policy shall include coverage for liabilities arising out of premises, operations, personal and advertising injury and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suite is brought subject to the Provider's limit of liability. The policy must include State of California, its officers, agents, employees, lessees and sub-lessees as additional insured, not only insofar as the operations under this permit are concerned.
 - ii. **Automobile Liability**: The Permittee, if performing work under this Permit, shall maintain motor vehicle liability with limits of not less than \$250,000 per accident for bodily injury and property damage. The State of California, its officers, agents, employees, lessees and sub-lessees are to be additional insured

with respect to liability arising out of all vehicles, owned, leased and non-owned.

- b. **Workers' Compensation**: The Permittee, or such agent, consultant or sub-consultant retained by Permittee to perform the Work shall provide proof that either: (i) it has no employees requiring workers' compensation insurance, or (ii) carries workers' compensation insurance.
 - c. **Miscellaneous**: The State shall not be liable for the payment of any premiums or assessments on the insurance coverage required by the above provisions. The certificate of insurance shall provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the State. Permittee agrees that the insurance herein required shall be in effect at all times during this Permit. In the event that said insurance coverage expires or is terminated at any time during the term of this Permit, Permittee agrees to provide State, at least thirty (30) days prior to said expiration or termination date, a new certificate of insurance evidencing insurance coverage as provided for herein. In the event Permittee or its staff or consultants fail to keep in effect, at all times, insurance coverage as herein provided, State may, in addition to any other remedies it may have, immediately terminate this Permit. If Permittee is self-insured, Permittee shall provide State with written acknowledgement of this fact at the time of the execution of this Permit. If, at any time after the execution hereof, Permittee abandons its self-insured status for any reason whatsoever, Permittee shall immediately notify State of this fact and put in place an insurance policy (or policies, as the case may be) as described herein.
- 10. **No Assignment**: This Permit shall not be assigned or sublet without the express written consent of the State, which may be withheld in the State's sole discretion.
 - 11. **Modification**: This Permit shall only be modified in writing subscribed by Permittee and State.
 - 12. **Severability**: If a court of law rules that any provision of this Permit is void or voidable, it shall be deemed severed from this Permit and the remaining terms shall remain effective and enforceable.
 - 13. **Notice**: Written notices required by this Permit, other than as stated elsewhere herein, shall be delivered by US Mail or a reputable national overnight carrier, and addressed to the other party at their addresses as set forth below:

To State of California

Department of General Services, Real Estate Services Division
Asset Management Branch
707 3rd Street, 5th Floor
West Sacramento, CA 95605
Attn: Jonathan Heim

With a copy to California Department of Corrections and Rehabilitation:

California Department of Corrections and Rehabilitation Facilities Planning,
Construction and Management Facilities Operations Branch
9838 Old Placerville Road, Suite B
Sacramento, CA 95827
Attn: Diana Frederick

With a copy to California Institution for Men:

Dean Borders
Associate Warden, Business Services
California Institution for Men
14901 Central Avenue
Chino, CA 91710
(909) 597-1821 XT 7055

To San Bernardino County

Robert F. Messinger
Deputy County Counsel
Office of County Counsel
County of San Bernardino
385 N. Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415

14. **Integration:** This Permit constitutes the entire agreement of the Parties with regard to the subject matter herein, and supersedes any prior understanding between the parties with respect to the matters covered by this Permit.
15. **Counterparts:** This Permit may be executed in one or more counterparts, any one or all of which shall constitute an original. Facsimile signatures shall be considered and treated as original signatures.
16. **Authority:** The signatories to this Permit, below, have been delegated the authority to bind their respective entity.

17. **Survivability**: The provisions of Sections 7 and 8 herein shall survive the expiration or earlier termination of this Permit.

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IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this document as of the date first written above.

PERMITTEE:

COUNTY OF SAN BERNARDINO

By: _____

Name: _____

Title: _____

STATE:

STATE OF CALIFORNIA, DEPARTMENT OF GENERAL SERVICES

By: _____

Name: _____

Title: _____

APPROVED:

STATE OF CALIFORNIA, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

By: _____

DEBORAH HYSEN, Deputy Director
Facility Planning, Construction and Management

ACKNOWLEDGED:

MAJESTIC REALTY CO.

By: _____

Name: _____

Title: _____

EXHIBIT A

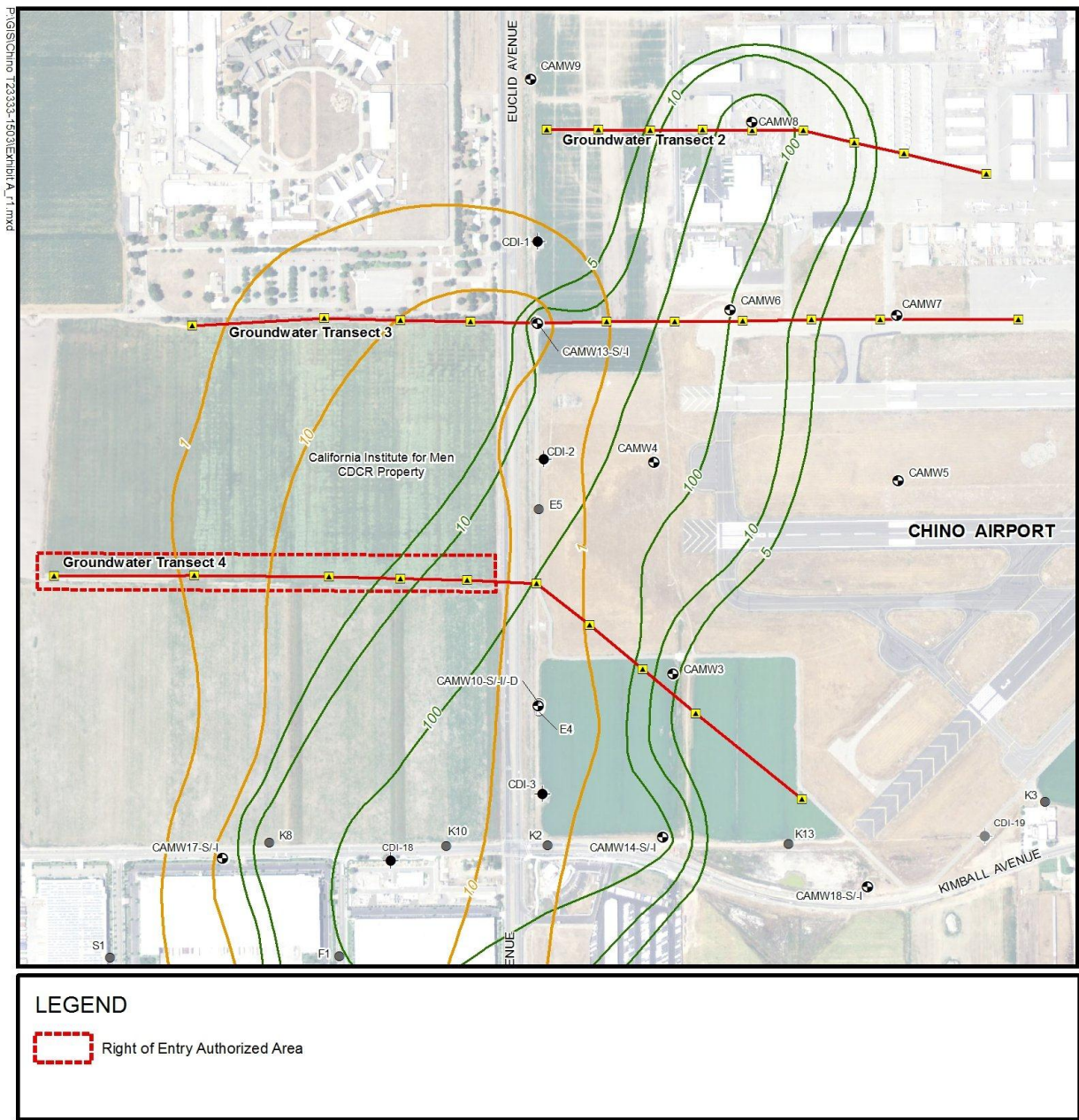


EXHIBIT B

