

**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES

**WHEN RECORDED MAIL TO**  
**PERMIT INTAKE**  
**MAIL STATION 501**

JOB ORDER NUMBER: 42-3983

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**PUBLIC RIGHT-OF-WAY USE PERMIT NO. 249359**  
**AIRPORT NOISE MONITORING STATIONS – PROJECT NO. 67657**  
**PLANNING COMMISSION**

This Public Right-of-Way Use Permit No. 249359 is granted by the Planning Commission of the City of San Diego to San Diego County Regional Airport Authority, Owner, and Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0905 and 126.0906. The project site is located within portions of the public right-of-way in the following communities: Peninsula, Uptown, Ocean Beach, Mission Beach, Centre City, and Southeast. The project site is legally described as portions of the public right-of-way located between the curb and adjacent property lines at nine locations as shown on Exhibit “A” dated August 25, 2005, on file in the Office of the Development Services Department and attached hereto and summarized as follows:

- Station 3 (8<sup>th</sup> Ave/Date St)
- Station 4A (2nd Avenue/Juniper St.)
- Station 5A (Columbia St./Fir St.)
- Station 8 (Oleander Place/Amaryllis Dr.)
- Station 14A (Cape May Ave/Sunset Cliffs Blvd)
- Station 18 (Nutmeg St./Brant St.)
- Station 23 (Coastal Zone - North Jetty Road/Mission Blvd)
- Station 25A (Santa Barbara St. between Niagara and Newport Avenues)
- Station 26 (Gateway Center Way adjacent to Dennis Allen Park)

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to install, establish, and maintain ten airport noise monitoring poles within the identified communities, described and identified by size, dimension, quantity, type, and location on the approved exhibits, dated August 25, 2005, on file in the Development Services Department.

The project or facility shall include:

Installation and maintenance of nine, five-inch diameter aluminum poles, 20-feet in height above ground surface, five to nine feet deep below ground surface, each equipped with a microphone, lightning rod and grounding, solar panels, equipment box, wireless communications transmission, and battery backup installed within the public right-of-way with eleven feet of clearance for tilt-down pole maintenance.

**STANDARD REQUIREMENTS:**

1. Installation of the noise monitoring poles must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Permittee signs and returns the Permit to the Development Services Department;
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Engineer.
4. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
5. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
6. Before issuance of any right-of-way permit, complete working drawings shall be submitted to the City Engineer for approval. Plans shall be in substantial conformity to Exhibit "A," dated August 25, 2005, on file in the Development Services Department. No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

7. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

#### **PLANNING REQUIREMENTS:**

8. This permit does not eliminate the need to obtain necessary authorizations and/or permits from other agencies. Applicant shall obtain a Coastal Development Permit from the California Coastal Commission prior to installation at the Mission Beach (Station 23) and Ocean Beach (Station 24) sites.

9. If any existing hardscape or landscape is damaged or removed during installation or maintenance activities, it shall be the responsibility of the Permittee/Owner, to assure that it shall be repaired and/or replaced in kind and equivalent size within 15 days. At such time when the poles are removed, the applicant shall return the right-of-way to the existing conditions at that time.

10. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as a condition of approval of this Permit. Where there is a conflict between a condition (including exhibits) of this Permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this Permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

11. Any future requested amendment to this Permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

12. The applicant shall remove or relocate, at its own expense, any encroachment within 30 days after notice by the City, or the City may cause such work to be done, and deduct or obtain costs from the applicant's permit bond, deposit or other security at the sole discretion of the City without further notice to the applicant. The applicant shall remove or relocate, at its own expense, any encroachment on shorter notice by the City in the case of an emergency or if determined necessary by the city. If the applicant fails to remove or relocate the encroachment

in the required time and manner, or if deemed necessary by the City, the City may cause such work to be done, and deduct or obtain costs from the applicant's permit bond, deposit or other security, at the sole discretion of the City, without further notice to the applicant.

13. The applicant shall agree to defend, indemnify, protect, and hold harmless the City, its agents, officers, or employees from and against any and all claims asserted or costs, liability, demands, losses, damages, or expenses or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the applicant or which ~~that~~ the City or the record owner may sustain or incur in any manner resulting from the design, construction, maintenance, state of use, repair or presence of the encroachment, satisfactory to the City Manager and City Attorney.

The applicant shall also agree to indemnify the city for liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the applicant, its agents, officers, or employees ~~its employees, agents, or officers, or any third party~~ which are in combination with the active or passive negligent acts or omissions of the applicant, its employees, agents, or officers. The applicant also agrees to indemnify the city for liability arising from any claim of injury or damage by a third party sustained as a result of the design, construction, maintenance, state of use, repair or presence of the encroachment.

The applicant's duty to defend, indemnify, protect, and hold harmless shall not include any claims or liabilities arising from the established sole negligence or sole willful misconduct of the City, its agents, officers or employees. The applicant also agrees to pay any and all costs the City may incur to enforce the indemnity and defense provisions set forth above.

14. The City's rights with respect to the public right-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the encroachment.

15. The applicant shall maintain liability insurance in the amount of \$1,000,000.00 in order to protect the City from any potential claims which may arise from the encroachment. The policy shall name the City as an additional insured.

16. The applicant shall furnish a surety bond, cash deposit, or other security, in an amount acceptable to the City Manager, if required by the decision maker.

**ENGINEERING REQUIREMENTS:**

17. The precise locations of the proposed airport noise monitoring poles are subject to the approval of the City Engineer.

18. No alterations to the design, location and materials, shall be permitted unless approved by the City Engineer.

**TRANSPORTATION REQUIREMENTS:**

19. The applicant shall obtain a "Public Right-of-Way Permit for Traffic Control" prior to any work within the public right-of-way to the satisfaction of the City Engineer.
20. The applicant shall protect any City property removed as part of the project and return said property to the satisfaction of the City Engineer.
21. The applicant shall provide a Public Improvement Plan including a Traffic Control Plan to the satisfaction of the City Engineer that addresses both installation and maintenance activities.
22. The applicant shall inform the City, and the City agrees to inform the applicant, in the event of a knock-over of a station, to the satisfaction of the City Engineer.
23. The poles in the visuals shall be maintained free of the clutter (equipment box and cabinet for backup batteries) that could alert reviewers to issues of visibility being obstructed and of safety to pedestrians and other sidewalk traffic.

**INFORMATION ONLY:**

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.

APPROVED by the City Council of the City of San Diego on November 15, 2005 by Resolution

AUTHENTICATED BY THE CITY MANAGER

By \_\_\_\_\_

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The undersigned Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

Applicant  
SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

By \_\_\_\_\_

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1180 et seq.**