



Real Estate Assets Department
SDC003

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS





THE CITY OF SAN DIEGO

SAN DIEGO COUNTY WATER AUTHORITY,
a public agency

Flat Rate Lease

LEASE OUTLINE

SECTION 1: USES	1
1.1 <u>Premises</u>	1
1.2 <u>Uses</u>	1
1.3 <u>Quiet Possession</u>	1
1.4 <u>Easements and Reservations</u>	2
1.5 <u>Competent Management</u>	2
1.6 <u>Political Activities</u>	2
SECTION 2: TERM	2
2.1 <u>Commencement</u>	2
2.2 <u>Termination</u>	2
2.3 <u>Holdover</u>	2
2.4 <u>Surrender of Premises</u>	3
SECTION 3: RENT	3
3.1 <u>Time and Place of Payment</u>	3
3.2 <u>Rent</u>	3
3.3 <u>Delinquent Rent</u>	5
3.4 <u>Inspection of Records</u>	5
SECTION 4: ASSIGNMENT/DEFAULT	6
4.1 <u>Time is of Essence; Provisions Binding on Successors</u>	6
4.2 <u>Assignment and Subletting</u>	6
4.3 <u>Defaults and Remedies</u>	7
4.4 <u>Eminent Domain</u>	8
4.5 <u>Encumbrance</u>	9
SECTION 5: INSURANCE RISKS/SECURITY	9
5.1 <u>Indemnity</u>	9
5.2 <u>Insurance</u>	9
5.3 <u>Waste, Damage, or Destruction</u>	11
SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS	11
6.1 <u>Acceptance of Premises</u>	11
6.2 <u>Entry and Inspection</u>	12
6.3 <u>Maintenance</u>	12
6.4 <u>Improvements/Alterations</u>	12
6.5 <u>Utilities</u>	12
6.6 <u>Liens</u>	12
6.7 <u>Taxes</u>	13
6.8 <u>Signs</u>	13
6.9 <u>Ownership of Improvements and Personal Property</u>	13
6.10 <u>Hazardous/Toxic Waste</u>	14
SECTION 7: GENERAL PROVISIONS	15
7.1 <u>Notices</u>	15
7.2 <u>Compliance with Law</u>	16
7.3 <u>CITY Approval</u>	16
7.4 <u>Nondiscrimination</u>	16

7.5	<u>Compliance with CITY'S Equal Opportunity Contracting Program</u>	16
7.6	<u>Partial Invalidity</u>	16
7.7	<u>Legal Fees</u>	16
7.8	<u>Captions</u>	16
7.9	<u>Entire Understanding</u>	16
7.10	<u>Drug-free Workplace</u>	17
7.11	<u>Disabled Access Compliance</u>	17
7.12	<u>Corporate Authority</u>	18
7.13	<u>Standard of Employees</u>	18
7.14	<u>Relocation Payments</u>	18
7.15	<u>Survival</u>	18
7.16	<u>Water Quality - Water Pollution Control Program</u>	18
7.17	<u>Number and Gender</u>	18
7.18	<u>CITY Employee Participation Policy</u>	18
7.19	<u>Unavoidable Delay</u>	19
SECTION 8:	SIGNATURES	20
8.1	<u>Signature Page</u>	20
SECTION 9:	EXHIBITS	21
9.1	<u>Exhibit A</u>	21
9.2	<u>Water Pollution Control Program</u>	22
9.3	<u>Development Plan</u>	23

**CITY OF SAN DIEGO
FLAT RATE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and SAN DIEGO COUNTY WATER AUTHORITY, a public agency, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 Premises. CITY hereby Leases to LESSEE and LESSEE Leases from CITY all of that certain real property amounting to approximately 7.68 acres situated on the west end of Lake Hodges in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "Premises" or "Leased Premises."
- 1.2 Uses. It is expressly agreed that the Premises are Leased to LESSEE solely and exclusively for parking of employee owned vehicles, staging of contractor owned equipment, and material storage and for no other purpose whatsoever. LESSEE shall ensure that no person shall remain inside any motor vehicle or anywhere on the Leasehold overnight. LESSEE is also authorized to use the Premises for other related or incidental uses associated with a construction staging area as may be first approved in writing by the City Manager and for no other purpose whatsoever. However, LESSEE is prohibited from conducting any activities on the Leasehold before 6:00 a.m. every morning and after 8:00 p.m. every evening Monday through Sunday. However, if the City receives any complaints from the local residents about noise or traffic, the permitted starting time will be moved to a later time. Any weekend activity with the exception of parking of employee owned vehicles and maintenance of contractor owned equipment, must be pre-approved by the City Manager. LESSEE shall be responsible for obtaining all permits and security for the maintenance and use of the Premises and shall fence and screen the Premises.

The use of the Premises for any unauthorized purpose shall constitute a substantial default and subject this Lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the Premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the Premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

- 1.3 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at the commencement of the term, or if during the Lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this Lease shall not be

voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises.

1.4 Easements and Reservations.

- a. CITY hereby 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 Leased Premises for utilities, thoroughfares, or access as it deems advisable 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.

However, 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 Leased Premises resulting from CITY exercising the rights reserved in this section. Such 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.

1.5 Competent Management. Throughout the term of this Lease agreement, LESSEE shall provide competent management of the Leased Premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of an employee parking lot and related activities in a fiscally responsible manner.

1.6 Political Activities. The Leased Premises shall be used exclusively for the purposes specified in Section 1.2, Uses, hereof. 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. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be 3 years commencing on January 15, 2005 following execution by the City Manager and approval by the City Attorney. "Lease year" as used in this Lease shall mean the 12-month period commencing January 15, 2005.
- 2.2 Termination. This Lease shall automatically terminate at the end of the 3 year term, unless it is previously canceled by either the CITY or the LESSEE.
- 2.3 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the

Premises after the expiration or termination of this Lease shall constitute a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, CITY shall have the right to an increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.

- 2.4 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.

SECTION 3: RENT

- 3.1 Time and Place of Payment. Rent for the entire three (3) year term of this lease is to be paid by the LESSEE in advance and submitted to the City along with the executed Lease. Check is to be made payable to the City Treasurer. Rent for any holdover period is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California.

The place and time 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 such 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. The initial rent is one thousand six hundred and eighteen dollars and seventy five cents (\$1,618.75) per month. Rent for the entire three (3) year term has been paid in advance by LESSEE. Rent for any holdover period is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) as hereinafter provided.
- b. (1) CPI Index Adjustments. At the end of three (3) years following the effective date of the Lease, and for each year thereafter, the rent shall be adjusted to reflect increases in the Consumer Price Index (CPI).

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Anaheim/Riverside, 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 rental 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.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Subsection b.(1), CPI Index Adjustments. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to CITY within thirty (30) days. In no event shall the adjusted rent as established by the Consumer Price Index be less than the rent in existence immediately prior to the adjustment date.

- (2) Index Adjustment Computation. The rent for each rental period following the adjustment until the next adjustment or other rental determination, as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure", both as defined herein:

The "base figure" for the first such adjustment shall be a three-month average of index figures published by said CPI using the fourth, fifth, and sixth full months preceding the effective date of this agreement.

To illustrate, if the Lease began in May, the CPI figures for November (sixth month), December (fifth month), and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth, and sixth full months preceding the adjustment date.

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index 121
Base Figure 110 = 1.10 (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index 138
Base Figure 121 = 1.14 (Adjustment Figure)

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period to determine the new rent. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month (\$1,000 x 1.10). In the second adjustment it will be \$1,254 per month (\$1,100 x 1.14).

- 3.3 Delinquent Rent. If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, 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 hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. LESSEE agrees to pay such amount and further agrees that the specific 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 Inspection of Records. LESSEE shall, at all times during the lease term keep accurate and complete records in double entry bookkeeping form of all financial transactions made possible by business operation on the Premises. The records must be supported by source documents of original entry, purchase invoices, or other pertinent documents. Complete records will be kept on the leased Premises

or in a location acceptable to CITY. CITY shall have the right to inspect and audit these records at any reasonable time.

CITY shall have the discretion to require the installation of any additional methods or control it may consider necessary. If CITY agrees that the records may be maintained at a place other than the leased Premises. LESSEE will pay all necessary expenses incurred by CITY in auditing the records at the location where they are maintained.

The cost of the audit(s) will be borne by CITY unless the audit(s) reveal a discrepancy of more than five percent (5%) between the rent due as reported by LESSEE in accordance with this lease and rent due as determined by CITY audit(s). In the event of such discrepancy the cost of the audit(s) will be borne by LESSEE. Any rent due plus any costs incurred by CITY as defined under Section 3.3, Delinquent Rent, hereof, shall be paid immediately.

LESSEE'S failure to keep complete and accurate records by means of double entry bookkeeping and make them available for inspection by CITY is a breach of this lease and cause for termination.

SECTION 4: ASSIGNMENT/DEFAULT

- 4.1 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 herein, 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.
- 4.2 Assignment and Subletting. LESSEE shall not assign this Lease or any interest therein and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, contractors, and guests of LESSEE, to use or occupy the Premises or any part thereof, 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 such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest therein, 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 clause 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 conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. 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.

4.3 Defaults and Remedies.

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;
- (2) LESSEE defaults in the performance of any covenant or condition required by this Lease;
- (3) LESSEE voluntarily files or has filed against it any petition under any bankruptcy or insolvency act or law;
- (4) LESSEE is adjudicated a bankrupt;
- (5) LESSEE shall make a general assignment for the benefit of creditors;

b. Remedies.

- (1) Upon default by LESSEE, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written Three (3) Day Notice to pay or Quit, or CITY may terminate the Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premise or the possession thereof, and CITY may enter and take possession of the Premises and may recover from the LESSEE the sum of:
 - (2) the worth at the time of award of any unpaid rent that had been due at the time of termination;
 - (3) the worth at the time of award of the amount by which (a) the unpaid rent that would have been earned after termination until the time of award exceeds (b) the amount of rental loss, if any, as LESSEE affirmatively proves could have been reasonably avoided;
 - (4) the worth at the time of award of the amount by which (a) the unpaid rent for the balance of the term after the time of award exceeds (b) the amount of rental loss, if any, as LESSEE affirmatively proves could be reasonably avoided;
 - (5) any other amount necessary to compensate CITY for all 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
 - (6) 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 (1) and (2) of this Section, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (3) of this Section, the "worth at the time of award" is computed by discounting 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 Base Rent, Percentage Rent and any other payments required by LESSEE.

- c. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the property, 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 hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. 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 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 rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that 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 such 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 such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.4 Eminent Domain. If all or part of the Premises are 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 (or beneficiary or mortgagee) will be as follows:

- a. In the event 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. In the event of a partial taking, if, 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. In the event of a partial taking, if, 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 unless tenant exercises his right to cancel on 30 days written notice. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken.

- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the Leasehold or the fee or both; provided, however, 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. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.
 - 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.
- 4.5 Encumbrance. Prior to causing any encumbrances to be placed on the Premises or on any permanent improvements thereon, LESSEE shall give written notice to the City Manager describing the nature and amount of such encumbrance and attaching all documentation needed to effect the encumbrance. LESSEE shall not cause any encumbrance to be placed on the Premises or any permanent improvements thereon unless and until receiving approval in writing from the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its elected officials, agents, officers, and employees and representatives 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 same; provided, however, that 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 the CITY, its elected officials, agents, officers, or employees and representatives.
- 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) Public liability and property damage insurance in the amount of not less than Three Million Dollars (\$3,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, 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 insurance policy on all insurable property on the Premises in an amount to cover 100 percent 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 said insurance also includes the following:

- (1) Additional Insured. All insurance policies will name the City of San Diego, its elected officials, officers, employees, agents and representatives as additional insured, protect them against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the Lease, 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. A copy of the insurance policy will remain on file with CITY during the entire term of the 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.
- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE thirty (30) 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 also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Lease.
- (3) 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.

- (4) 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. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection b(4), 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 such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Leased Premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Leased Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the Leased Premises all debris resulting from said 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 such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within ten (10) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said Premises are untenable by reason of such damage.

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 further 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, including the presence of any hazardous wastes.

- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter said Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said 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. Said bond shall be in an amount adequate in the opinion of CITY to correct the said 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 agrees to assume full responsibility and cost for the operation and maintenance of the Premises throughout the term. LESSEE will perform all such 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 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.
- 6.4 Improvements/Alterations. Except for improvements described or shown on the Water Pollution control Program or the Development Plan, no improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. 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 agrees to 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 will be installed underground except temporary power service.
- 6.6 Liens. LESSEE shall at all times save 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 such 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 such 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.

6.7 Taxes. LESSEE agrees to 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 Leased Premises, including any licenses or permits. LESSEE recognizes and agrees 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 such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.8 Signs. Except for prudent and necessary construction signs, and environmental signs as necessary for the uses described in Section 1.2, LESSEE agrees not to 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 such unauthorized item is found on the Premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.9 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by LESSEE shall at Lease expiration or termination 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 as otherwise provided in this Lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before Lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this Lease. Any said 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 said items at LESSEE'S expense.

- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE agrees to repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said Premises upon expiration or termination of this Lease, then CITY shall have the first right to acquire or purchase said personal property.

6.10 Hazardous/Toxic Waste. LESSEE will not allow the installation of any underground storage tanks or 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 769704-1 and by this reference is incorporated herein.

In the event of any release of a hazardous substance in connection with LESSEE'S use of the Premises, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, 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.

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 such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such 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 such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY, except as otherwise provided herein.

At any time within the twelve (12) months before the expiration or earlier termination of this Lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the Premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and 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 allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

Without limiting the foregoing, LESSEE shall be permitted to change motor oil and other fluids in the motor vehicles being used by LESSEE'S employees or those of its contractors provided that said fluids are used in accordance with the manufacturer's recommendations and that any used oil or fluids are properly disposed of in accordance with State and federal law.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the Leased Premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager
Attention: Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

and to LESSEE as follows:

San Diego County Water Authority
Attention: Right of Way Director
4677 Overland Avenue
San Diego, CA 92123

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

- 7.2 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. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.
- 7.3 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.
- 7.4 Nondiscrimination. LESSEE agrees not to 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.
- 7.5 Compliance with CITY'S Equal Opportunity Contracting Program.
- CITY acknowledges that LESSEE'S compliance with the CITY'S Equal Opportunity Contracting Program shall be achieved through LESSEE'S administration of its own Small Contractor's Outreach and Opportunities Program (SCOOP).
- 7.6 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.
- 7.7 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 attorneys' fees.
- 7.8 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. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.
- 7.9 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 Leased 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. This Lease does not grant any easements appurtenant to the Premises, unless expressly set forth herein.

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.

7.10 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:

- a. 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.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. 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.

7.11 Disabled Access Compliance. LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any

areas of the Premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.

- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.

- 7.12 Corporate 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 said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this Lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the Premises are situated.
- 7.13 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Leased Premises in a creditable manner.
- 7.14 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Lease.
- 7.15 Survival. All obligations and liabilities of the parties to this Lease that accrue prior to the expiration of earlier termination of this Lease shall survive such termination or expiration of the Lease.
- 7.16 Water Quality - Water Pollution Control Program. LESSEE will develop and implement a comprehensive Water Pollution Control Program which shall first be approved at the sole discretion of the City prior to the City's execution of this Lease and shall thereafter be subject to annual review by City.
- 7.17 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.
- 7.18 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 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 of 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.

- 7.19 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, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this Lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

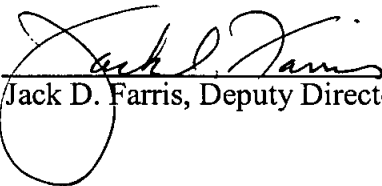
SECTION 8: SIGNATURES

8.1 Signature Page.

IN WITNESS WHEREOF, this Lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 1/19/05

By 
Jack D. Farris, Deputy Director

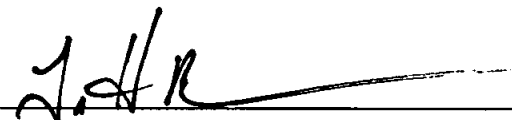
LESSEE: SAN DIEGO COUNTY WATER
AUTHORITY, a public agency

Date January 4, 2005

By 
William J. Rose, Right of Way Director

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

Date 1/12/05

By 

APPROVED as to form and legality this 24th day of January, 2004⁵.

MICHAEL AGUIRRE, CITY ATTORNEY

By 
Deputy City Attorney

JAB/cj
12/16/04
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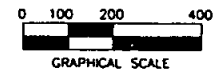
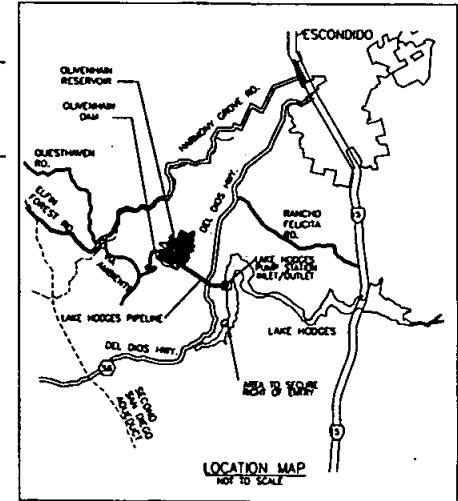
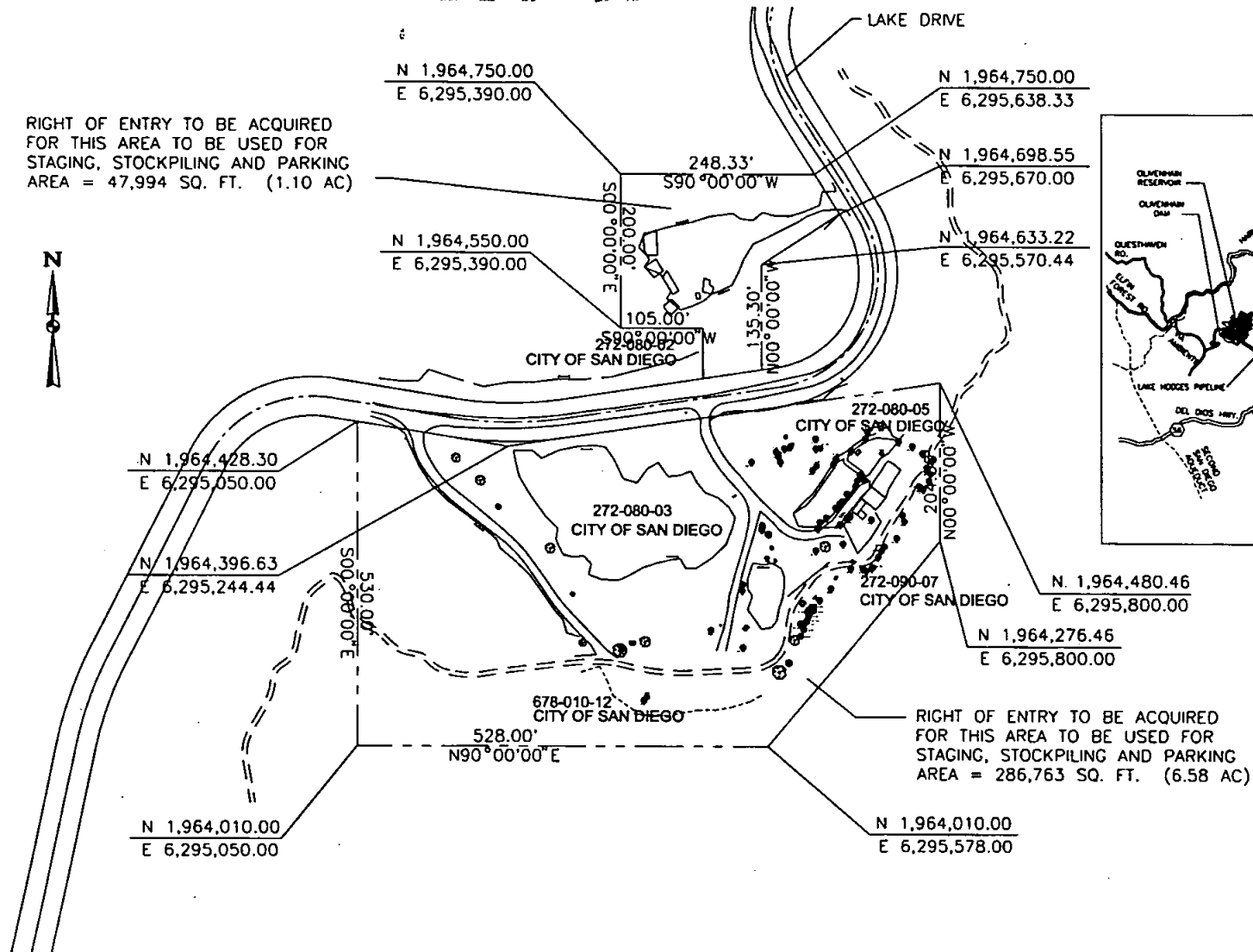
SECTION 9: EXHIBITS

9.1 Exhibit A.

EXHIBIT A

EXHIBIT A

RIGHT OF ENTRY TO BE ACQUIRED
FOR THIS AREA TO BE USED FOR
STAGING, STOCKPILING AND PARKING
AREA = 47,994 SQ. FT. (1.10 AC)



Pasadena
California



San Diego County
Water Authority

SAN DIEGO COUNTY
WATER AUTHORITY

4877 OVERLAND AVENUE
SAN DIEGO, CA 92123
619-522-8600

810 W. FIFTH AVENUE
ESCONDIDO, CA 92025
760-480-1991

LAKE HODGES PROJECTS

CITY OF SAN DIEGO
RIGHT OF ENTRY PERMIT
EXHIBIT A

9.2 Water Pollution Control Program.

See attached memo from Bob Collins, Watershed/Storm Water Program Manager,
Water Operations Division.

CITY OF SAN DIEGO
M E M O R A N D U M

DATE: November 10, 2004

TO: James Braun, Real Estate Assets Department

FROM: Bob Collins, Watershed/Storm Water Program Manager, Water Operations
Division

SUBJECT: Review of the Olivenhain-Hodges ESP Project SWPPP

I have received a copy of the Storm Water Pollution Prevention Plan (SWPPP) for the Olivenhain-Hodges ESP/Pumped Storage Project. It has been reviewed and accepted in its entirety and this memo grants Water Department's approval.

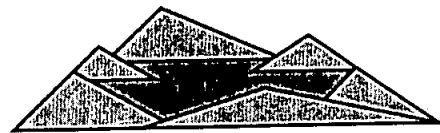
Sincerely,



Bob Collins

NG/ar

9.3 Development Plan.



Emergency Storage Project

OLIVENHAIN - HODGES ESP / PUMPED STORAGE PROJECTS

Development Plan

TEMPORARY STOCKPILE AND CONTRACTORS LAYDOWN AREA

Prepared for:



**San Diego County
Water Authority**

By:



MWH

In Association with:

Allied Geotechnical
Complete Energy Services, Inc.
Darnell & Associates
DeC Consultants, Inc.
Franklin G. DeFazio, Inc.
Jacobs Associates
KTU&A
MARRS Services

Michael Wall Engineering
Platt/Whitelaw Architects
Richard Brady & Associates
Right-of-Way Engineering
Ruen Drilling, Inc.
Simon Wong Engineering
URS Corporation
VSA n Associates

October 15, 2004

Table of Contents

Table of Contents	i
List of Exhibits	i
List of Attachments.....	i
1 Introduction.....	1
1.1 Project Background.....	1
1.2 Purpose.....	1
2 Site Uses	2
3 Public Safety	2
4 Environmental Compliance	2
5 Restoration.....	3

List of Exhibits

Exhibit 1 - Staging Area Layout Plan

List of Attachments

Staging Area Restoration Meeting Minutes and Restoration Plan Exhibit A

1 Introduction

1.1 Project Background

The San Diego County Water Authority (Water Authority) is implementing the regional Emergency Storage Project (ESP). The ESP will increase water storage capacity and protect the region in the event of earthquake, drought, or other disaster that interrupts the Water Authority's imported water supply. The Lake Hodges Projects is part of the ESP.

The Lake Hodges Project Facilities consists of the following three major components, as organized according the Water Authority's Capital Improvement Program budgets:

- ESP - Lake Hodges Pump Station /Inlet/Outlet (I/O), including the pump house and equipment to be located on the shore of Lake Hodges, redundant by-pass gravity flow release facilities, operations and maintenance buildings, electrical facilities (transmission line and switchyard) to interconnect the equipment in the pump house with the local electrical supply facilities, and the I/O located in Lake Hodges;
- ESP - Lake Hodges to Olivenhain Pipeline, including an I/O already constructed in the Olivenhain Reservoir, and a water conductor consisting of a shaft and tunnel; and
- Olivenhain - Hodges Pumped-Storage Project, which includes the incremental facilities necessary to permit generation of hydroelectricity in the gravity flow mode, and energy storage operations at other times, consistent with other operational constraints imposed for water storage and delivery purposes.

1.2 Purpose

To facilitate construction of the Lake Hodges Projects, temporary staging and storage areas (Staging Area) are proposed to be leased from the City of San Diego. The Staging Areas include the recreational area formerly used as a windsurfing rental area, grasslands adjacent to the windsurfing rental area and a smaller cleared area to the north. The areas are shown on the Staging Area Layout Plan included as Exhibit 1.

The Lake Hodges project will be constructed in multiple construction contracts. It is intended that two general contractors and their subcontractors will be allowed access to portions of the Staging Areas. The first is the Site Development and Tunnel Contractor and the second is the Pump House Contractor. Each contractor will be allowed use of separate areas within the proposed Staging Area. Early activities on the site include clearing of Coastal Sage Scrub expected in January of 2005 by the Water Authority prior to the Gnatcatcher breeding season. The Staging Areas will be made available to the Water Authority and the Water Authority's contractors for the time period specified in the lease agreement.

The purpose of this Development Plan is to document the following for inclusion in the Lease Agreement between the Water Authority and the City of San Diego for use of the Staging Areas:

- Intended uses of the staging area during construction;

- Public safety protection requirements of the Contractor;
- Protection of environmentally sensitive areas; and,
- Document the restoration requirements of the Staging Areas and Lake Drive access road.

2 Site Uses

The Staging Areas will be provided to the contractors for their use. The contractors will determine the exact use and layout of the site at the time of construction. However, it is anticipated that the contractor will use the Staging Areas for parking, construction offices, storage of material and equipment, and temporary stockpiling of excavated material. Lake Drive, from Rancho Drive to the Staging Areas, will also be used to access both the construction site and the Staging Areas and will be improved with decomposed granite surfacing during construction.

A portion of the Staging Areas will be used during construction as a parking area for workers, inspectors, and visitors to the site. Other portions of the Staging Areas will be used for construction offices for the contractors, the owner and construction manager. It is anticipated that the majority of the Staging Areas will be used for temporary stockpiling of topsoil and excavated material.

3 Public Safety

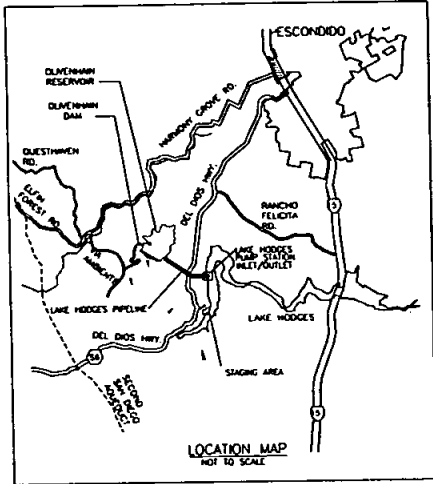
During construction, the contractor will be responsible to maintain the Staging Areas in a safe and secure manner. This may include fencing the Staging Areas or other methods as preferred by the contractor. The leased area will have environmental fencing at the edge of the leased property line to delineate the edge of the leased property and for environmental protection. The proposed Staging Areas will be fenced at the edge of the Coast-to-Crest trail so that the trail will not be impacted by the contractor's operations. Initial set-up, stockpiling, and installation of the fencing adjacent to the Coast-to-Crest trail will require temporary closure of the trail for approximately 3 to 5 days during one of the first weeks of construction. Appropriate signage and notification will be coordinated between the San Dieguito River Park Joint Powers Authority and the Water Authority.

4 Environmental Compliance

The Water Authority has conducted environmental surveys of the proposed staging area and has documented the findings in the Post Environmental Assessment (PEA) attached to the Lease Agreement. The Water Authority has identified two potential cultural resource sites within the proposed staging area. The contractor will be required to fence these areas and to keep the areas undisturbed. Additionally, the Water Authority has prepared a Stormwater Pollution Prevention Plan (SWPPP) for the site and will require that the contractor activities be in accordance with the SWPPP.

5 Restoration

The Contractor will be required to restore the Staging Areas. See Exhibit A for the restoration plan which is attached to the minutes of the Site Meeting. Most of the area will be regraded to match the original existing contours and reseeded with native grasses and Coastal Sage Scrub. The contractor will be responsible for maintenance of the revegetated area for a period of one year. An area on the south side of the Staging Areas will be graded to provide parking for approximately 50 cars. Additionally the contractor will be required to restore Lake Drive by blading and grading the decomposed granite.



Attachment to the Development Plan

Staging Area Restoration Meeting Minutes
and Restoration Plan Exhibit A

**SAN DIEGO COUNTY WATER AUTHORITY
OLIVENHAIN – HODGES ESP/PUMPED STORAGE PROJECTS
CITY OF SAN DIEGO STAGING AREA RESTORATION
SITE VISIT MEETING MINUTES**

Date: 07 October 2004
Time: 1:30 PM ~ 3:30 PM
Location: Lake Hodges

On October 7, 2004 a site visit was held at Lake Hodges to discuss issues surrounding the restoration of the proposed staging areas being leased from the City of San Diego (City) for the Lake Hodges Project. The following were in attendance:

- Jesus Meda - City of San Diego;
- Joe Webber - City of San Diego
- Annie Kaskade - Water Authority
- Jack Adam - MWH

The following is a summary of the site visit.

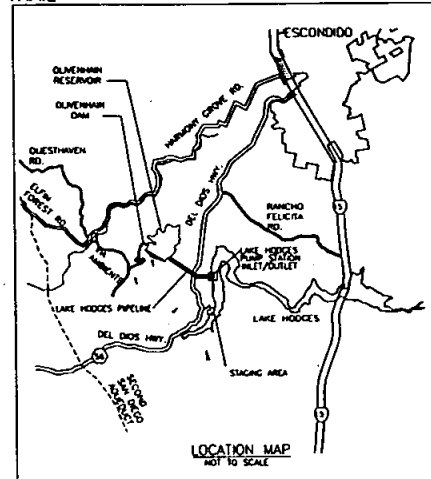
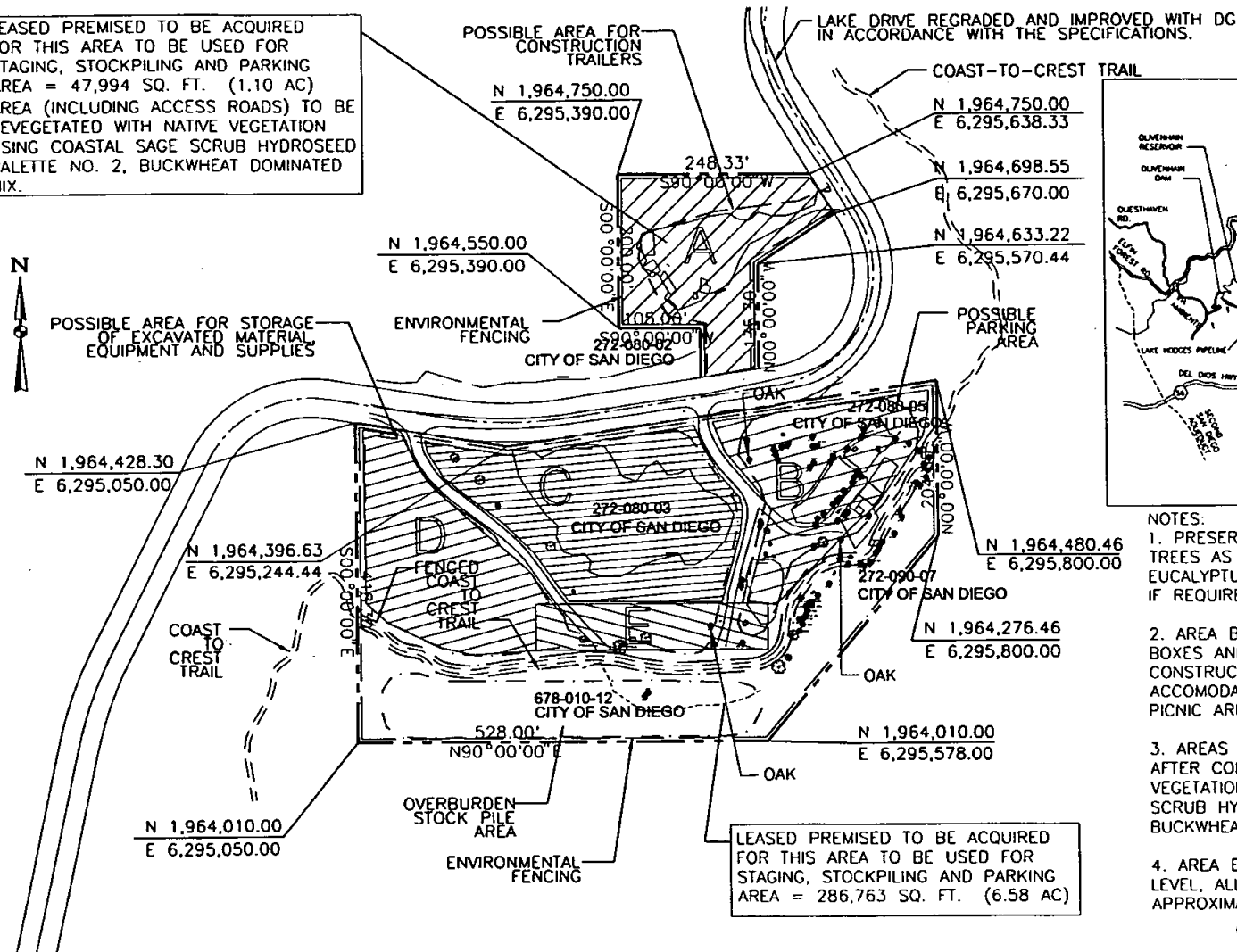
- The attached Exhibit A identifies the staging areas and the City's preferences for restoration.
- The three mature oak trees located in the staging area should be preserved. The eucalyptus trees can be removed, if required, by the contractor.
- The City will remove the large storage boxes and port-a-potties currently located on-site. The picnic tables and signs will not be removed. The City considers the picnic tables and signs not worth storing during construction and replacing later.
- The westerly portion of the staging area will be restored with native vegetation in accordance with the Site Development Plan and Post Environmental Assessment. The City requested an area be graded flat, large enough to accommodate about 50. The locations identified by the City are shown on the attached Exhibit A.
- In the smaller area north of the main staging area, labeled A on the attached Exhibit, the City requested that the Water Authority's contractor be responsible for removal and disposal of the existing on-site debris (telephone poles). The entire area should then be restored with native vegetation as the City requires no future access to the area. [Based on further research and discussion, after the site visit, it has been decided that the Water Authority does not want to accept responsibility for removing these poles. In the Bid Package 2 project specifications the Water Authority will require the contractor to fence off the poles and not allow any excavation or grading within a buffer zone defined around the poles.]
- The restoration of Lake Drive was discussed. As previously discussed in various coordination meetings the road will be bladed and surfaced with decomposed granite (DG).

The road will be bladed and graded to drain and any culverts or drainage facilities will also be maintained during construction. The technical requirements for the DG and the restoration of Lake Drive at the end of construction will be contained in the Bid Package 2 and Bid Package 3 specifications

- It was agreed that these meeting minutes and the restoration exhibit would be attached to the Site Development Plan, prepared by the Water Authority for the City to document the requested site restoration provisions.

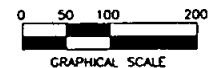
EXHIBIT A

LEASED PREMISE TO BE ACQUIRED FOR THIS AREA TO BE USED FOR STAGING, STOCKPILING AND PARKING AREA = 47,994 SQ. FT. (1.10 AC) AREA (INCLUDING ACCESS ROADS) TO BE REVEGETATED WITH NATIVE VEGETATION USING COASTAL SAGE SCRUB HYDROSEED PALLETTE NO. 2, BUCKWHEAT DOMINATED MIX.



NOTES:

1. PRESERVE THE THREE MATURE OAK TREES AS INDICATED BY "OAK". EUCALYPTUS TREES CAN BE REMOVED IF REQUIRED.
2. AREA B: CITY TO REMOVE STORAGE BOXES AND OUT HOUSE PRIOR TO CONSTRUCTION. RESTORATION TO ACCOMMODATE FUTURE USE AS A PICNIC AREA. DETAILS TBD WITH CITY.
3. AREAS C & D: TO BE REVEGETATED AFTER CONSTRUCTION WITH NATIVE VEGETATION USING COASTAL SAGE SCRUB HYDROSEED, PALLETTE NUMBER 2, BUCKWHEAT DOMINATED MIX.
4. AREA E TO BE RESTORED BY GRADING LEVEL, ALLOWING PARKING SPACE FOR APPROXIMATELY 50 CARS.



SAN DIEGO COUNTY
WATER AUTHORITY

4877 OVERLAND AVENUE
SAN DIEGO, CA 92123
858-522-6600

610 W. FIFTH AVENUE
ESCONDIDO, CA 92025
760-480-1991

OLIVENHAIN-HODGES ESP/
PUMPED STORAGE PROJECTS

STAGING AREA / LAKE DRIVE
RESTORATION PLAN

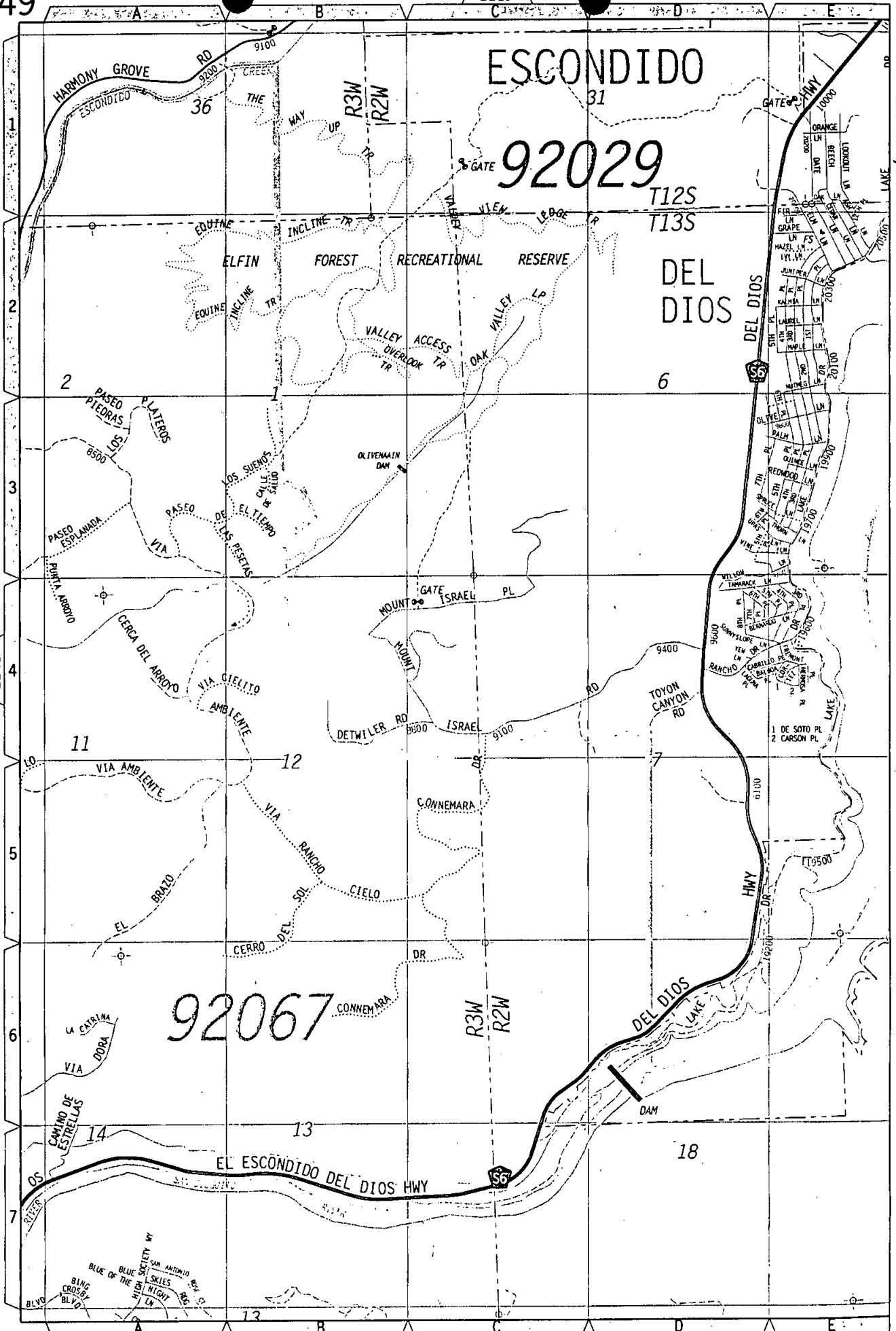
1149

SEE 1129 MAP

3/18/04 per zoning, use can be allowed because it is temporary.

SAN DIEGO CO.

SEE 1148 MAP



0 .125 .25 .375 .5 miles 1 in. = 1900 ft.

SEE 1169 MAP

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FIRST AMENDMENT TO FLAT RATE LEASE AGREEMENT BETWEEN CITY OF SAN
DIEGO AND SAN DIEGO COUNTY WATER AUTHORITY

Whereas, the CITY and LESSEE entered into a Lease Agreement (hereinafter referred to as the "AGREEMENT") as of January 15, 2005, whereby the CITY agreed to lease an area of City-owned land to LESSEE, and

Whereas, the parties desire to amend Section 1.1 and Exhibit "A" of the AGREEMENT to reconfigure the Leased Premises to be used by LESSEE, and

This FIRST AMENDMENT is made and entered into as of MAY 13, 2005, by and between the CITY OF SAN DIEGO (hereinafter referred to as "CITY") and the SAN DIEGO COUNTY WATER AUTHORITY (hereinafter referred to as "LESSEE"), whereby the parties hereto agree as follows:

NOW, THEREFORE, IT IS MUTUALLY AGREED THAT THE FLAT RATE LEASE SHALL BE AMENDED AS FOLLOWS:

Section 1.1 shall be deleted in its entirety and replaced with the following:

Premises. CITY hereby Leases to LESSEE and LESSEE Leases from CITY all of that certain real property amounting to approximately 7.12 acres situated on the west end of Lake Hodges in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "Premises" or "Leased Premises."

IN WITNESS WHEREOF, the parties hereto have set their hands on the date first above written.

CITY OF SAN DIEGO

SAN DIEGO COUNTY WATER
AUTHORITY

By: Jack D. Farris

Jack D. Farris
Deputy Director

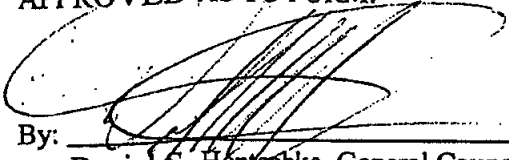
By: William J. Rose

William J. Rose
Director of Right of Way

APN 272-080-02,03,05

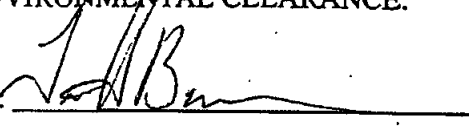
TB 1149-E5 (024) OFF RANCHO DRIVE

APPROVED AS TO FORM:

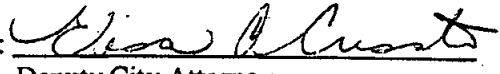
By: 

Daniel S. Hentschke, General Counsel
San Diego County Water Authority

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

By: 

MICHAEL J. AGUIRRE, CITY ATTORNEY

By: 

Deputy City Attorney

JAB/cj
5/5/05

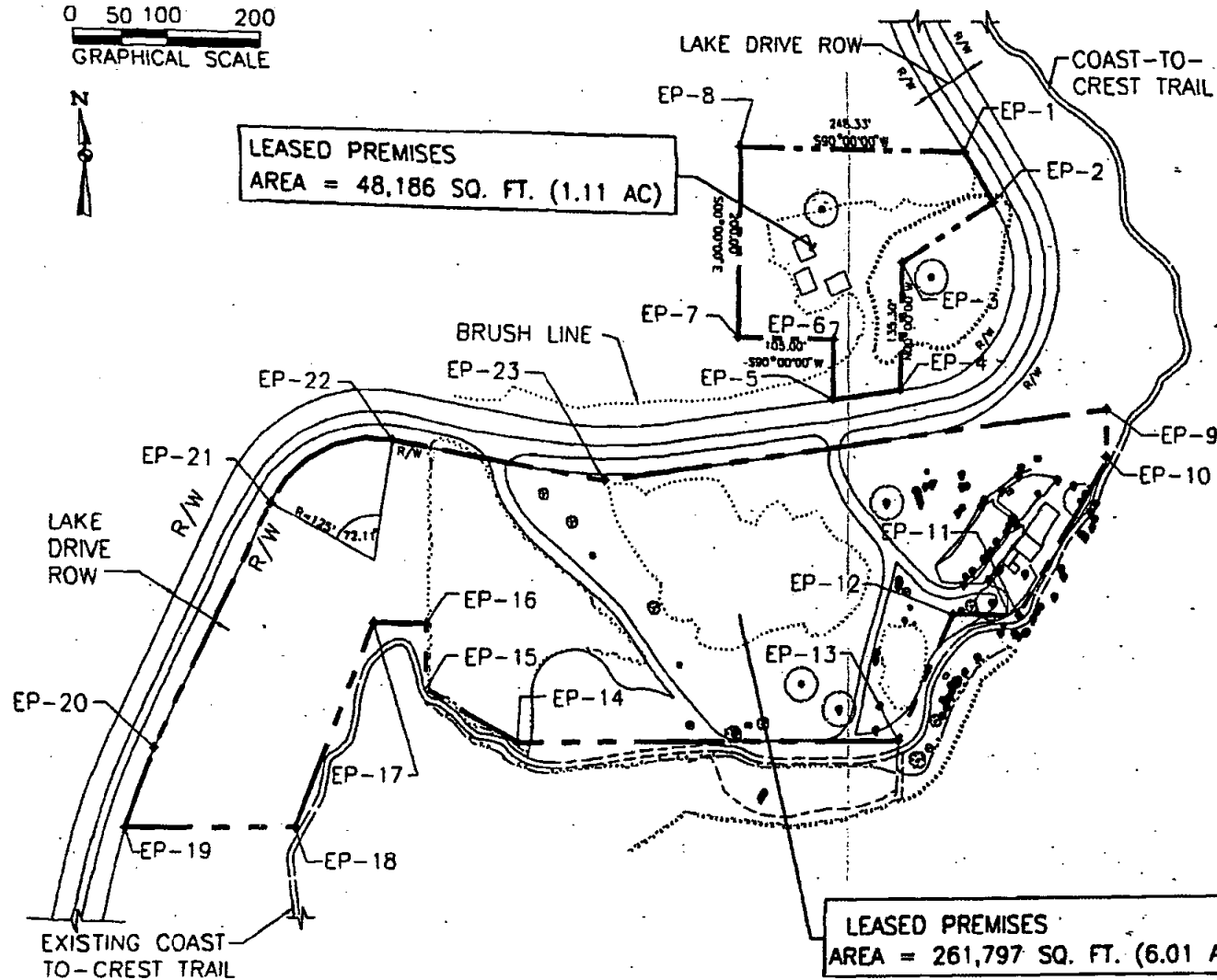
FIRST AMENDMENT SAN DIEGO COUNTY WATER AUTHORITY.doc

EXHIBIT "A"

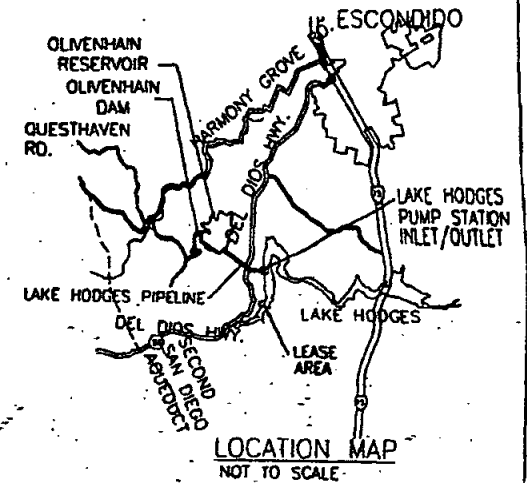
0 50 100 200
GRAPHICAL SCALE



LEASED PREMISES
AREA = 48,186 SQ. FT. (1.11 AC)



LEASED PREMISES
AREA = 261,797 SQ. FT. (6.01 AC)



COORDINATE TABLE		
END POINT	NORTHING	EASTING
1	1,964,750.00	6,295,638.33
2	1,964,698.55	6,295,670.00
3	1,964,631.68	6,295,570.41
4	1,964,496.38	6,295,570.41
5	1,964,485.02	6,295,495.00
6	1,964,550.00	6,295,495.00
7	1,964,550.00	6,295,390.00
8	1,964,750.00	6,295,390.00
9	1,964,480.46	6,295,800.00
10	1,964,430.00	6,295,800.00
11	1,964,260.00	6,295,704.00
12	1,964,260.00	6,295,630.00
13	1,964,127.00	6,295,571.00
14	1,964,127.00	6,295,150.00
15	1,964,181.00	6,295,050.00
16	1,964,247.92	6,295,050.00
17	1,964,247.92	6,294,992.00
18	1,964,041.00	6,294,910.00
19	1,964,041.00	6,294,725.00
20	1,964,120.00	6,294,756.00
21	1,964,367.00	6,294,881.00
22	1,964,434.00	6,295,012.00
23	1,964,397.00	6,295,245.00



SAN DIEGO COUNTY
WATER AUTHORITY

4677 OVERLAND AVENUE
SAN DIEGO, CA 92123
610 W. FIFTH AVENUE
ESCONDIDO, CA 92025
658-322-6600 760-400-1981

OLVENHAIN-HODGES ESP/
PUMPED STORAGE PROJECTS

CITY OF SAN DIEGO
LEASE AGREEMENT