

**DEPARTMENT OF THE NAVY
GENERAL PURPOSE OUTLEASE**

**LEASE
BETWEEN**

**THE UNITED STATES OF AMERICA
AND
THE CITY OF SAN DIEGO**

THIS LEASE, executed this 6 day of JUNE 2008, by and between THE UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "**Government**" and the City of San Diego, a California municipal corporation, hereinafter referred to as "**Lessee**".

W I T N E S S E T H:

WHEREAS, The Leased Premises covered by this Lease are under the control of the Department of the Navy; and

WHEREAS, The Leased Premises are not excess property as defined in section 3 of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. §102); and

WHEREAS, The Secretary of the Navy, pursuant to the provisions of 10 U.S.C. §2667, has determined that the proposed use of the Leased Premises, subject to the terms and conditions of this Lease, will promote the national defense or be in the public interest.

NOW THEREFORE, in consideration of the terms, covenants, and conditions hereinafter set forth, Government and Lessee hereby agree as follows:

1. LEASED PREMISES. Government does hereby lease, rent, and demise to Lessee, and Lessee does hereby hire and rent from the Government the Leased Premises, as more particularly described and/or shown in Attachment "A" (The Leased Premises), attached hereto and made a part hereof, together with all improvements and all related Personal Property as described and/or shown in Attachment "A", and with all rights of access to the Leased Premises for ingress, egress, parking, and utilities as provided in accordance with Paragraphs 10 and 29 below.

2. TERM. The term of this Lease shall be for a period of five (5) years beginning on June 6, 2008 and ending on June 5, 2013, unless sooner terminated in accordance with the provisions of Paragraph 14, Termination. Upon mutual agreement by both parties the term of this Lease may be extended for one (1) additional period of

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five (5) years each by delivery to the Local Government Representative of written notice of its intention to extend no later than ninety (90) days prior to the expiration of the then current term provided no extension shall be granted which creates a total term in excess of twenty (20) years. Each succeeding lease term shall be on the same terms and conditions as the initial term, except with respect to expiration date and rent. Per 10 U.S.C. 2695, Lessee will provide funding to have a fair market rent value appraisal of the property performed and the rent shall be modified accordingly. Rent for any succeeding term shall not be less than the preceding term.

3. CONSIDERATION.

A. Lessee shall pay rent in the amount of \$24,000.00 per year, payable annually in advance. The rent shall increase each year thereafter by 3%: Year 2 - \$24,720.00, Year 3 - \$25,461.60; Year 4 - \$26,225.45; Year 5 - \$27,012.21. Rent checks shall be made payable to the United States Treasury, citing the Contract Number. The check shall be delivered to the following address:

Commanding Officer
Naval Facilities Engineering Command Southwest
Attn: Real Estate
1220 Pacific Highway
San Diego, CA 92132-5190

~~B. **In Kind Consideration.** Note: In lieu of cash payment, the use of In Kind Consideration shall be pursued whenever practicable and shall be in an amount not less than the Fair Market Value of the leasehold interest as determined by the Deputy Assistant Secretary of the Navy (Installations and Facilities) (DASN) (I&F) or designee. Allowable types of In Kind Consideration pursuant to 10 U.S.C §2667 include, (1) the operation, repair or improvement of the property leased by the Lessee as part or all of the payment of the consideration for the Lease; (2) maintenance, protection, repair, alteration, improvement, or restoration (including environmental restoration) of facilities under the control of the Department of the Navy; (3) construction of new facilities; (4) provision of facilities; (5) facilities operation support; and (6) provision of such other services relating to activities that will occur on the Leased Premises as the Assistant Secretary of the Navy (Installations and Environment) (ASN) (I&E) considers appropriate. Sample language is included below for illustration purposes only. Site-specific language should be developed by the FEC for each actual lease situation with advice of FEC Counsel.~~

~~—— (1) If In Kind Consideration is to be provided in lieu of cash, the form of In Kind Consideration and terms of performance/delivery shall be described on or before _____ of each year of the Lease term. The Government and Lessee shall meet on an as-needed basis, but not less than annually from the date of inception of this Lease to review and amend if necessary the established list of specific in-kind projects or services to be provided. For each project or service proposed, an estimated cost to perform the work must be included with the project or service description. The estimated cost shall~~

~~be broken down by material, subcontract cost, labor, overhead, general and administrative expense. Projects or services shall be selected by the Government and scheduled so that the value of the work to be performed is not less than the rent obligations of the Lessee. Authorization to proceed will be provided by written approval from the Government. Approval shall be in the form of a written letter of approval in advance by the Real Estate Contracting Officer. A "not to exceed cost ceiling" will be established by the approval letter. The Real Estate Contracting Officer may, upon request, with supporting rationale from the Lessee, increase the "not to exceed cost ceiling". Such request for an increase in said amount must be submitted prior to incurring any cost in excess of the said amount and sufficiently in advance to provide for review of the requirement and, in any event, not less than ten (10) days prior to the date authorization is required. In the limited circumstances wherein, due to unavoidable time constraints, if it is not practicable to comply with the ten day requirement, Lessee may seek verbal approval from the Real Estate Contracting Officer, pending written confirmation. The Lessee shall not be obligated to incur costs in excess of the "not to exceed cost ceiling."~~

~~(2) The incurred cost of performing such project or service will be subject to Government audit and should such audited allowable cost be less than the "not to exceed cost ceiling" amount authorized, then the amount of credit towards rent reduction to Lessee shall be adjusted to the audited, allowable incurred cost. In the event that the audited, allowable incurred cost of a project or service exceeds the amount authorized (the "not to exceed cost ceiling"), such excess cost shall be deemed to be additional cost of performing the work and will be credited to rent reduction.~~

~~— (3) Nothing in this Lease shall preclude the Lessee from contracting with a third party contractor for the work. Lessee shall require any contractor to have a performance bond with the penal amount of no less than the estimated cost of the work contracted for. Lessee shall be solely responsible for obtaining any environmental permits required for the proposed work independent of any existing permits. Copies of all required construction permits shall be provided to the Government.~~

~~— (4) The Government will retain the right to technical review of any proposed work to be performed or personal property to be provided. A Government representative may oversee the work solely for the benefit of the Government and confirm satisfactory completion to the Commanding Officer. The Real Estate Contracting Officer must provide a written final acceptance of the work performed in order for Lessee to get rent reduction credit for the work performance. Title to any improvements constructed or personal property provided shall vest in the Government upon acceptance of such improvements or personal property by the Government. Any bills of sale, purchase receipts, written warranty agreements and other indicia or documents of ownership shall be provided to the Government upon its acceptance of the improvement or personal property. Written warranties shall include but not be limited to a warranty that work performed conforms to the contract requirements and is free of any defect in equipment, material or design furnished or workmanship performed, and that the Lessee or Lessee's contractor will remedy any failure to conform or any defect. Additionally, warranty shall~~

~~provide that Lessee or Lessee's contractor shall remedy any damage to Government owned or controlled real or personal property when that damage results from either contractor failure to conform to contract requirements or any defect of equipment, material, workmanship or design furnished. All warranties shall name the Government as an additional beneficiary. Lessee shall enforce all warranties for the benefit of the Government if directed by the Government.~~

~~—(5) Upon termination of this Lease pursuant to Paragraph 14 herein, a final accounting will be performed and the balance of any rent accrued and still payable to the Government will be due on demand. Notwithstanding termination, the Government reserves the right to have a final accounting at any time during the course of the Lease and request that the value of any rent accrued up to that date and not already contractually obligated to any specific project or service to be performed, be paid in cash to the Government on demand. Upon termination, at Government's option, Lessee shall complete any work or service already contracted for or if otherwise directed by Government, terminate any contract and pay all accrued rent in cash.~~

~~—(6) The terms of consideration shall be renegotiable prior to the renewal of this Lease.~~

4. USE OF LEASED PREMISES.

A. The purpose for which the Leased Premises may be used, in the absence of prior written approval by the Government, is for a point to point microwave relay station. The Lessee understands and acknowledges that this Lease is not and does not constitute a commitment by the Government with regard to any fee title conveyance of the Leased Premises, in whole or in part, to Lessee or any agency or instrumentality thereof, or to any sublessee.

B. Lessee shall not undertake any activity that may affect a historic or archeological property, including excavation, construction, alteration or repairs of the Leased Premises, without the approval of the Government and compliance with Section 106 of the National Historic Preservation Act, 16 U.S.C. §470, and the Archeological Resources Protection Act of 1979, 16 U.S.C. §470 aa. Buried cultural materials may be present on the Leased Premises. If such materials are encountered, Lessee shall stop work immediately and notify the Government. The Government has no knowledge of any historical or archeological property on the Leased Premises; in the event that it becomes aware of such property, the Government will immediately notify the Lessee.

5. ASSIGNMENT AND SUBLEASING.

A. Lessee shall neither transfer, assign, or sublet this Lease or any interest therein or any property on the Leased Premises, or grant any interest, privilege or license whatsoever in connection with this Lease without the prior written consent of Government. Such consent shall not be unreasonably withheld or delayed.

B. Any sublease granted by Lessee shall contain a copy of this Lease as an attachment and be consistent with the terms and conditions of this Lease and shall terminate

immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of the Government to Lessee or any sublessee, except as specifically provided in this Lease. No sublease shall relieve Lessee of any of its obligations hereunder. Under any sublease made with or without consent of the Government, the sublessee shall be deemed to have assumed all of the obligations of the Lessee under this Lease. Every sublease shall be subject to, and shall be deemed to contain, the Environmental Protection provisions set forth in Paragraph 13 below.

C. Lessee shall submit to the Government for its prior written consent, a copy of each sublease Lessee proposes to execute. Such consent may include a requirement that Lessee renegotiate the sublease to conform to the provisions of this Lease. Consent to the sublease shall not be taken or construed to diminish or enlarge any of the rights or obligations of either of the parties to this Lease. Should a conflict arise between the provisions of this Lease and a provision of the sublease, the provisions of this Lease shall take precedence. Upon its execution, a copy of each sublease shall be immediately furnished to the Government.

6. JOINT INSPECTION & INVENTORY REPORT

A. Prior to use and occupancy of the Leased Premises by the Lessee or any sublessee, a Joint Inspection and Inventory Report (JIIR) thereof will be conducted by representatives of the Government and the Lessee and a complete inventory of Government real and personal property located thereon shall be made. The JIIR shall describe the condition of the Leased Premises and will note any deficiencies found to exist. The report shall be attached to the Lease and made a part thereof as Attachment "B".

B. Each inventory contained in the JIIR shall be identified by building number or facility number and signed and dated by the parties to this Lease. All personal property in a building, unless specifically exempted by the terms and conditions of this Lease, shall remain with the building.

C. The Leased Premises shall be delivered to the Lessee on an "As Is, Where Is" basis, and, as such, Government makes no warranty relative to the Leased Premises as to its usability generally or as to its fitness for any particular purpose. Any safety and/or health hazards identified and listed as such in the JIIR shall be corrected at the Lessee's expense prior to use and occupancy of the related portion of the Leased Premises. Such safety and/or health hazards shall be limited to those identified in the JIIR.

D. In the event this Lease is terminated and the parties have not agreed to enter into a new Lease, or conveyance of title to the Leased Premises, or a Lease In Furtherance of Conveyance, Lessee shall return the Leased Premises to the Government in the same condition in which it was received, reasonable wear and tear and Acts of God excepted. Lessee may, at its expense and with prior written approval of the Government, (a) replace any personal property with personal property of like kind and utility, (b) replace any personal property in a good and workmanlike manner, and (c) dispose of any worn out, obsolete or non-functioning personal property, in accordance with applicable laws and regulations. Government shall not unreasonably withhold or delay granting its approval to Lessee's request for such actions.

7. ENVIRONMENTAL CONDITION OF PROPERTY. An Environmental Condition of Property (ECP) is attached to this Lease and made a part hereof as Attachment "C". The ECP sets forth the existing environmental conditions of the Leased Premises as represented by a survey conducted by the Government and sets forth the basis for the Government's determination that the Leased Premises are suitable for leasing. Lessee and each sublessee are hereby made aware of the notifications contained in the ECP and shall comply with all restrictions set forth therein.

8. ALTERATIONS/RESTORATION.

A. Lessee, or any sublessee, shall not construct or make any substantial construction, alterations, additions, modifications, excavations, betterments, or improvements to, installations upon, or otherwise modify or alter the Leased Premises in any way (hereinafter called "work"), including those that may adversely affect human health or the environment, without the prior written consent of the Government. Such consent shall not be unreasonably withheld, conditioned or delayed. Further, such consent may involve a requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the Government. For such work in the proximity of any known Installation Restoration Program (IRP) site, such consent may also include a requirement for the written approval of the Government's Remedial Project Manager in addition to approval by the Real Estate Contracting Officer. All such work shall be done in a workmanlike manner and be subject to the requirements of all state and local building codes. Lessee shall provide Government with prior written notification and a full description of the proposed work including any other information on the proposed work on the Leased Premises requested by Government. Except as provided herein or provided in the Government's written approval, all such approved work affixed to the Leased Premises shall, upon expiration or termination of the Lease, become the property of the Government. Upon termination of the Lease or by revocation or surrender of any sublease, to the extent directed by the Government, Lessee or sublessee shall either:

(1) Promptly remove all alterations, additions, betterments, and improvements made or installed without the consent of the Government or which were previously noted by the Government to be removed, and restore the Leased Premises, to the same or as good condition as existed on the date of entry under this Lease as shown in Attachment "B" hereof; subject to reasonable wear and tear and loss or damages for which the Lessee is not responsible hereunder; or

(2) Abandon such work in place, at which time title to said work shall vest in Government, provided, in either event all personal property and trade fixtures of Lessee or any third party may be removed and Lessee or such third party shall repair any damages to the Leased Premises resulting from such removal.

9. ACCESS BY GOVERNMENT. In addition to access required under Paragraph 13 below, at all reasonable times throughout the term of this Lease, the Government shall be allowed access to the Leased Premises for any purpose upon reasonable notice to Lessee or sublessee. Government normally will give Lessee or any sublessee 24-hour prior notice of its intention to enter the Leased Premises, unless it reasonably determines the

entry is an emergency required for safety, health, environmental, operations or security purposes, in which event no notice shall be required. Lessee or sublessee shall have no claim on account of any entries against the Government or any Government officer, agent, employee or contractor, provided, however, that nothing herein shall be deemed to prejudice the rights of the Lessee or any sublessee under any contract, other agreement or law including, but not limited to the Federal Tort Claims Act, as to the Government. All necessary keys to the buildings and Leased Premises occupied by Lessee or any sublessee shall be made available to the Government upon request.

10. UTILITIES AND SERVICES. Provision to the Leased Premises of any utilities such as gas, water, steam, sewer, telephone, trash removal, etc., shall be the responsibility of the Lessee and any sublessee. In the event that the Lessee shall request and the Government shall furnish Lessee with any utilities and services maintained by the Government that Lessee may require in connection with its use of the Leased Premises, Lessee shall pay the Government the agreed charges therefor in addition to the consideration rent required under this Lease. Such charges and the method of payment thereof shall be determined by Government or the appropriate supplier of such service, in accordance with applicable laws and regulations, on such basis as the Government or appropriate supplier of such service may establish, and may include a requirement for the installation of adequate connecting and metering equipment at the sole cost and expense of the Lessee. It is expressly agreed and understood that the Government in no way warrants the continued maintenance or adequacy of any utilities or services furnished by it to the Lessee. Lessee shall have the right, subject to Paragraph 8 above, to install such utilities or make improvements to existing utilities on the Leased Premises, including but without limitation, the installation of emergency power generators, as may be necessary for the operation of Lessee's equipment.

11. NON INTERFERENCE WITH GOVERNMENT OPERATIONS. Lessee or any sublessee shall not conduct operations or activities, nor make any alterations, that would interfere with or otherwise restrict Government operations, environmental clean-up otherwise restrict Government operations, environmental clean-up or restoration actions by the Government, U.S. Environmental Protection Agency (EPA), state environmental regulators, or their contractors. Cleanup, restoration, or testing activities for environmental purposes by these parties shall take priority over Lessee's or any sublessee's use of the Leased Premises in the event of any conflict. However, the Government will take reasonable steps to prevent interference with the Lessee's or the sublessee's use of the Leased Premises.

12. PROTECTION AND MAINTENANCE OF LEASED PREMISES.

A. Lessee shall, at its own expense, protect, preserve, maintain, and repair the Leased Premises such that it will be kept at all times in at least as good condition as when the Lessee received it as reflected in the JIIR, attached hereto and made a part hereof as Attachment "B", normal wear and tear and Acts of God excepted. Lessee's responsibilities shall include, but not be limited to, removal of trash, litter, broken glass and other hazards/obstructions from the Leased Premises that are generated by Lessee, its agents, contractors or employees. Lessee shall ensure the Leased Premises is maintained free of any noxious or nuisance-causing condition. Lessee is responsible for the

maintenance and repair of all buildings or structures built on the Leased Premises by Lessee.

B. Exterior Utility Systems. The Lessee is responsible for the repair and maintenance of all exterior utility distribution lines, connections, and equipment that solely support Lessee's facilities. This responsibility extends from the facilities leased to the point of connection with the utility system that serves users other than the Lessee. These systems include but are not limited to: heating plants, steam lines, traps, high voltage transformers, substations, power distribution lines (overhead and underground), poles, towers, gas mains, water and sewage mains, water tanks, fire protection systems, hydrants, lift stations, manholes, isolation valves, meters, storm water systems, catch basins, etc.

C. Refuse Removal. Debris, trash and other undesirable materials shall be promptly removed from the Leased Premises, and the Leased Premises shall be kept reasonably clean and free of undesirable materials at all times. At completion of the Lease, the Leased Premises shall be left without containers, Lessee's equipment, and other undesirable materials, and in an acceptably clean condition.

D. Security Protection. Lessee shall provide security to assure security and safety of the Leased Premises. Any crimes or other offenses, including traffic offenses and crimes and offenses involving damage to or theft of Government property, shall be reported to the appropriate state or local municipal authorities for investigation and disposition (in non-Exclusive Legislative Jurisdiction areas) and to the Government as property owner.

13. ENVIRONMENTAL PROTECTION PROVISIONS.

A. Lessee, any sublessees and contractors shall comply with the applicable Federal, state and local laws, regulations and standards that are, or may become, applicable to Lessee's activities on the Leased Premises.

B. Lessee and any sublessee shall be solely responsible for obtaining, at its own cost and expense, any applicable environmental permits required for its operations under the Lease, independent of any existing permits held by the Government. Any and all environmental permits required by the Lessee or any sublessee for its operations on the Leased Premises shall be subject to prior concurrence by the Government. Copies of all permits obtained shall be provided to the Government.

C. Government's rights under this Lease specifically include the right for Government officials to inspect, upon reasonable notice, the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Government normally will give the Lessee or sublessee twenty-four (24) hours prior notice of its intention to enter the Leased Premises unless it determines that entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee or contractor thereof.

D. The Government, EPA, and the State of California, its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to Lessee and any sublessee, to enter upon the Leased Premises for the purposes enumerated below and for such other purposes consistent with needs associated with execution of the Government's Installation Restoration Program (IRP);

(1) To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, testing soil borings, and other activities related to the IRP;

(2) To inspect field activities of the Government and its contractors and subcontractors in implementing the IRP;

(3) To conduct any test or survey required by the EPA or state or otherwise relating to the implementation of the IRP or other assessment of environmental conditions on the Leased Premises or to verify any data submitted to the EPA or state relating to such program or conditions;

(4) To construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the IRP, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

E. The Lessee agrees to comply with the provisions of any Government health or safety plan in effect under the IRP during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee and any sublessee. The Lessee and any sublessees, assignees, licensees, or invitees shall have no claim on account of such entries against the Government or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the Lessee shall comply with all applicable federal, state and local occupational safety and health regulations. Nothing herein shall obligate the Government to compensate Lessee or any third person for any lost profits, lost opportunities, wages or operating expenses or any other costs incurred as a result of Lessee's compliance with this provision.

F. The Lessee shall strictly comply with all applicable hazardous waste management and permitting requirements under the Resource Conservation and Recovery Act (RCRA) and/or its applicable state equivalent. Except as specifically authorized by the Government in writing, the Lessee must provide at its own expense all necessary hazardous waste management facilities in compliance with applicable laws and regulations. Any existing Government hazardous waste management facilities will not be made available to the Lessee or any sublessee. Any DoD component accumulation points for either hazardous or non-hazardous wastes will not be used by the Lessee nor will the Lessee or any sublessee permit its hazardous wastes to be commingled with hazardous waste of any DoD component. Any violation of the requirements of this condition may, depending upon their severity and at the discretion of the Government, be deemed a material breach of this Lease.

G. The Lessee shall have a Government-approved plan for responding to wastewater, hazardous waste, fuel, or toxic chemical spills prior to commencement of operations on the Leased Premises. Such plan shall be independent of any existing Government plan for the Naval installation and, unless expressly agreed to by the Government otherwise, shall not rely on use of installation personnel or equipment for necessary fire response and/or spill containment. Should the Government provide fire response and/or spill containment services upon request of the Lessee, or because Lessee was not, in the opinion of the Real Estate Contracting Officer, conducting timely cleanup actions, the Lessee shall reimburse the Government for the full cost of such services.

H. The Lessee shall not conduct or permit any sublessee(s) to conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Government. If, after receipt of written approval by the Government, the Lessee undertakes any subsurface excavation, digging, drilling, or other disturbance of the surface, the Lessee shall immediately notify the Government should any buried debris, or foreign, potentially hazardous material be encountered during this work.

I. Lessee shall indemnify and hold harmless the Government from any costs, expenses, liabilities, fines or penalties resulting from discharges, emissions, spills, storage, or disposal, arising from Lessee's occupancy, use or operations, or any other action by Lessee or any sublessee giving rise to Government liability, civil or criminal, or responsibility under Federal, state, or local environmental laws. This provision shall survive the expiration or termination of the Lease, and Lessee's obligations hereunder shall apply whenever Government incurs costs or liabilities for Lessee's or any sublessee's actions.

J. The Lessee and any sublessee shall provide prior written notification to the Government of any articles, tools, equipment, or devices brought on-site that contain radioactive material. Examples of potential radiological sources include radium-containing dials, gauges, and illuminators; tritium in illuminators and exit signs; thorium in optical lenses or welding consumables; abrasive blasting material; or any radioactive source used for calibration, medical diagnosis or therapy, or industrial radiography. The Lessee is responsible for removal of any such potential radiological sources upon termination of the Lease.

K. Storage, treatment, or disposal of toxic or hazardous materials on the Leased Premises is prohibited except as authorized by the Government in accordance with 10 U.S.C. §2692. ~~Any hazardous materials that the Government authorizes the storage, treatment, or disposal of in connection with the use of the Leased Premises shall be identified on the Hazardous Materials List, attached as Attachment "D".~~

14. TERMINATION.

A. Termination by Government. The Government shall have the right to terminate this Lease in whole or in part, without liability, and regardless of any lack of breach by Lessee of any of the terms and conditions of this Lease upon ninety (90) days notice to Lessee.

B. National Emergency. In the event of a national emergency declared by the President or the Congress, the Government may terminate this Lease immediately, without notice to Lessee.

C. Breach of Terms by Lessee. In the event of breach by Lessee of any of the terms, conditions, or obligations hereof, the Lessee shall be afforded thirty (30) calendar days from the receipt of Government's notice of intent to terminate, to complete the performance of the obligation or otherwise cure the subject breach and avoid termination of this Lease, unless Government determines that a shorter period of time is required for safety, environmental, operational or security purposes. The Government may grant a reasonable extension of time to complete the cure. In the event that the Government shall elect to terminate this Lease on account of the breach by the Lessee of any of the terms and conditions, the Government shall be entitled to recover and the Lessee shall pay to the Government:

- (1) The reasonable costs incurred in resuming possession of the Leased Premises;
- (2) The costs incurred in performing any obligation on the part of the Lessee to be performed hereunder;
- (3) An amount equal to the aggregate of any maintenance obligations, and charges assumed hereunder and not paid or satisfied, such amounts shall be due and payable at the time when such obligations and charges would have accrued or become due and payable under this Lease.

D. Sale or Transfer of the Property. If the property is to be sold or transferred by the Government during the term of this Lease, the Government may terminate this Lease by providing ninety (90) days written notice to Lessee.

E. Federal Requirement. In the event the property is required for Federal use, or if Lessee's use of the property is not consistent with Federal program purposes, the Government may terminate the Lease upon issuance of ninety (90) days written notice to Lessee.

F. Termination by Lessee. Lessee may terminate this Lease at any time upon ninety (90) days written notice to the Real Estate Contracting Officer.

15. INDEMNIFICATION. Lessee shall indemnify, defend and save Government harmless and shall pay all costs, expenses, and reasonable attorney's fees for all trial and appellate levels and post-judgment proceedings in connection with any fines, suits, actions, damages, liability and causes of action of every nature whatsoever arising or growing out of, or in any manner connected with, the occupation or use of the Leased Premises by Lessee, its employees, servants, agents, guests, invitees, and contractors. This includes, but is not limited to, any fines, claims, demands and causes of action of every nature whatsoever that may be made upon, sustained or incurred by the Government by reason of any breach, violation, omission or non-performance of any term, covenant or condition hereof on the part of the Lessee, its employees, servants, agents, guests, invitees, or contractors. This indemnification also applies to claims

arising out of the furnishings of any utilities or services by the Government or any interruption therein or failure thereof, occasioned by the negligence or lack of diligence of Lessee or its respective officers, agents, servants or employees. However, this indemnity shall not extend to damages due to the sole fault of the Government or its employees, agents, servants, guests, invitees or contractors. This covenant shall survive the termination of this Lease.

16. INSURANCE.

A. Self-Insured. Lessee represents and warrants that it is self-insured in accordance with applicable law, and shall pay all claims related to this Lease or Lessee's use of the Leased Premises that would be covered by a third-party insurance company in the usual course of business, including without limitation Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least two million dollars (\$2,000,000) per occurrence, subject to an annual aggregate of four million dollars (\$4,000,000), together with Causes of Loss-Special Form Property Insurance covering one hundred percent (100%) of the replacement cost. Upon request, Lessee shall provide the Government evidence of insurance or its ability to self-insure.

B. All insurance required of the Lessee hereunder shall be in such form, for such periods of time and with such insurers as the Government may require or approve. All policies or certificates issued by the respective insurers for public liability and property insurance shall name the United States of America as an additional insured, shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Lessee or the Government or any other person, shall provide that no cancellation, reduction in amount or any material change in coverage thereof shall be effective until at least thirty (30) calendar days after receipt by the Government of written notice thereof.

C. If and to the extent required by law, the Lessee shall provide workman's compensation or similar insurance in such forms and amounts required by law.

D. During the entire period the Lease shall be in effect, Lessee shall require its contractors or sublessees or any contractor performing work at Lessee's or sublessee's request on the Leased Premises to carry and maintain the insurance required below:

(1) Comprehensive general liability insurance in the amount of two million dollars (\$2,000,000).

(2) Workman's compensation or similar insurance in the form and amount required by law.

E. The Lessee and sublessees shall deliver or cause to be delivered promptly to the Real Estate Contracting Officer a certificate of insurance or a certified copy of each renewal policy evidencing the insurance required by this Lease and shall also deliver no later than thirty (30) calendar days prior to expiration of any such policy, a certificate of insurance evidencing each renewal policy covering the same risks.

17. LABOR PROVISIONS.

A. Equal Opportunity. During the term of this Lease, Lessee and each sublessee agree as follows with regard to all employees located at, or involved with, the Leased Premises:

(1) Lessee and each sublessee shall not discriminate against any employee or applicant for employment because of race, color, age, marital status, handicap, religion, sex, or national origin. Lessee and each sublessee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, marital status, handicap, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, retention or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Lessee and each sublessee agree to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause.

(2) Lessee and each sublessee shall, in all solicitations or advertisements for employees placed at the Leased Premises by or on behalf of Lessee and each sublessee, state that all qualified applicants will receive consideration for employment without regard to age, marital status, handicap, race, color, religion, sex, or national origin.

(3) Lessee and each sublessee shall send to each labor union or representative of workers for the Leased Premises with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by Government, advising the labor union or worker's representative of commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Lessee and each sublessee shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor as it relates to the Leased Premises.

(5) Lessee and each sublessee shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to its books, records, and accounts by Government and the Secretary of Labor for purposes of investigating to ascertain compliance with such rules, regulations, and orders.

(6) In the event of Lessee's or any sublessee's noncompliance with the Equal Opportunity Clause or with any of said rules, regulations, or orders, this Lease or such sublease may be canceled, terminated, or suspended in whole or in part and Lessee or such sublessee may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September

24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Lessee shall include the above provisions in every sublease unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each sublessee. Lessee will take such action with respect to any sublessee as Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Lessee becomes involved in, or is threatened with, litigation with sublessee as a result of such direction by Government, Lessee may request the Government to enter into such litigation to protect the interests of the Government.

B. Contract Work Hours and Safety Standards Act (40 U.S.C. §327-330). This Lease and each sublease, to the extent that it is a contract of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. §327-330) and is not covered by the Walsh-Healy Public Contracts Act (41 U.S.C. §35-45), is subject to the following provisions and exceptions of said Contract Work Hours and Safety Standards Act and to all other provisions and exceptions of said law as they apply to employment at the Leased Premises:

(1) Lessee and each sublessee shall not require or permit any laborer or mechanic in any workweek in which he/she is employed on any work on the Leased Premises to work in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for all such hours worked in excess of 40 hours in such workweek. The "basic rate of pay", as used in this clause, shall be the amount paid per hour, exclusive of the employer's contribution or cost for fringe benefits and any cash payment made in lieu of providing fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

(2) In the event of any violation of the provision of the preceding sub-paragraph, Lessee or sublessee shall be liable to any affected employee for any amounts due, and to the Government for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph 17.B.1 above, in the sum of \$10.00 for each calendar day on which such employee was required or permitted to be employed on such work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the preceding sub-paragraph.

C. Convict Labor. In connection with the performance of work required by this Lease or any sublease, Lessee or such sublessee agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

18. SUBMISSION OF NOTICES. Notices shall be sufficient under this Lease if made in writing and submitted in the case of Lessee to:

City of San Diego
Real Estate Assets Department
Attn: Real Estate Assets Director
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101-4155

With a copy to:

San Diego City Attorney
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, CA 92101-4106

and in the case of the Government to:

Commanding Officer
Naval Facilities Engineering Command SW
Attn: Director, Real Estate
1220 Pacific Highway
San Diego, CA 92132-5190

The above-named individuals shall be the representatives of the parties and the points of contact during the period of the Lease. Such notice shall be deemed to have been given unless delivered personally, when deposited in the U.S. mail, postage pre-paid, certified mail, return receipt requested and addressed as set forth above or to such other address as either party shall have provided to the other by like notice, or upon confirmation of receipt if sent by facsimile on a regular business day and addressed as set forth above, or within twenty-four (24) hours, or the next business day if sent by an overnight delivery service such as Federal Express.

19. AUDIT. This Lease and any sublease shall be subject to audit by any and all cognizant Government agencies. Lessee and each sublessee shall make available to such agencies for use in connection with such audits all records that it maintains with respect to this Lease or any sublease and copies of all reports required to be filed hereunder or thereunder.

20. INTEREST. Notwithstanding any other provision of this Lease, unless paid within thirty (30) calendar days, all amounts that become payable by Lessee to Government under this Lease (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due. The rate of interest will be the Current Value of Funds Rate published by the Secretary of the Treasury pursuant to 31 U.S.C. §3717 (Debt Collection Act of 1982). Amounts shall be due upon the earliest of (a) the date fixed pursuant to this Lease, (b) the date of the first written demand for payment, consistent with this Lease, including demand consequent upon default termination, (c) the date of transmittal by Government to Lessee of a proposed supplemental agreement to confirm completed negotiations fixing the amount, or (d) if this Lease provides for revision of

prices, the date of written notice to Lessee stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by lease supplement.

21. AGREEMENT. This Lease shall not be modified unless in writing and signed by both parties. No oral statements or representation made by, or for, on behalf of either party shall be a part of this Lease. Should conflict arise between the provisions of this Lease and any attachment hereto, or any other agreement between Government and Lessee, the provisions of this Lease shall take precedence.

22. FAILURE TO INSIST ON COMPLIANCE. The failure of Government to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or relinquishment of Government's right to the future performance of any such terms, covenants, or conditions and Lessee's obligations in respect to such future performance shall continue in full force and effect.

23. DISPUTES.

A. This Lease is subject to the provisions of the Contract Disputes Act of 1978, as amended, (41 U.S.C. §§601-613), the "Act".

B. Except as provided in the Act, all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Act.

C. "Claim", as used in this clause, means a written demand or written assertion by the Lessee or the Government seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a Lease clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding one hundred thousand (\$100,000) is not a claim under the Act until certified as required by subparagraph 23.D.(2) below. A voucher, invoice, or other routine request for payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

D. (1) A claim by the Lessee shall be made in writing and submitted within six (6) years after accrual of the claim to the Commanding Officer, Naval Facilities Engineering Command SW the claim should be sent), for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the Government (as specified in paragraph 18 above).

(2) Lessee shall provide the certification stated in subparagraph (2)(b)(ii) immediately below, when submitting any claim:

(a) Exceeding one hundred thousand (\$100,000); or

(b) Regardless of the amount claimed, when using:

(i) Arbitration conducted pursuant to 5 U.S.C. §§575-580; or

(ii) Any other alternative means of dispute resolution (ADR) technique that the Government elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

"I certify that the claim is made in good faith; that the supporting data is accurate and complete to the best of Lessee's knowledge and belief; that the amount requested accurately reflects the Lease adjustment for which the Lessee believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Lessee."

(3) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(4) The certification may be executed by any person duly authorized to bind the Lessee with respect to the claim.

E. For Lessee claims of one hundred thousand (\$100,000) or less, to Commanding Officer, Naval Facilities Engineering Command SW must, if requested in writing by the Lessee, render a decision within sixty (60) days of the request. For Lessee-certified claims over one hundred thousand (\$100,000.00), the Commanding Officer, Naval Facilities Engineering Command SW must, within sixty (60) days decide the claim or notify the Lessee of the date by which the decision will be made.

(1) The decision of the Commanding Officer, Naval Facilities Engineering Command SW shall be final unless the Lessee appeals or files a suit as provided in the Act.

F. At the time a claim by the Lessee is submitted to the Commanding Officer, Naval Facilities Engineering Command SW, or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using arbitration conducted pursuant to 5 U.S.C. §§575-580 or when using any other ADR techniques that the Government elects to handle in accordance with ADRA, any claim, regardless of amount, shall be accompanied by the certification described in Paragraph 23.D(2)(b)(ii) above and executed in accordance with Paragraph 23.D(4) above.

G. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that (as specified in paragraph 18 above) initially receives the claim. Simple interest on claims shall be paid at the rate fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the Commanding Officer, Naval Facilities Engineering Command SW receives the

claim and then at the rate applicable for each six (6) month period as fixed by the Treasury Secretary during the pendency of the claim.

H. Notwithstanding anything herein to the contrary, the Lessee shall proceed diligently with the performance of the Lease, pending final resolution of any request for relief, claim, appeal, or action arising under the Lease, and comply with any decision of the Commanding Officer, Naval Facilities Engineering Command SW.

24. COVENANT AGAINST CONTINGENT FEES. Lessee warrants that no person or agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by Lessee for the purpose of securing business. For breach or violation of this warranty, Government shall have the right to annul this Lease without liability or in its discretion to require Lessee to pay, in addition to the rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

25. OFFICIALS NOT TO BENEFIT. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Lease or to any benefit to arise therefrom, but this provision shall not be construed to extend to this Lease if made with a corporation for its general benefit.

26. LIENS. Lessee and each sublessee shall promptly discharge or cause to be discharged any valid lien, right in rem, claim, or demand of any kind, except one in favor of Government, which at any time may arise or exist with respect to the Leased Premises or materials or equipment furnished thereof, or any part thereof, due to the Lessee's or such sublessee's use of the Leased Premises, and if the same shall not be promptly discharged by Lessee or such sublessee, or should Lessee or any sublessee be declared bankrupt or make an assignment on behalf of creditors, or should the leasehold estate be taken by execution, Government reserves the right to take immediate possession without any liability to Lessee or any sublessee. Lessee and any sublessee shall be responsible for any costs incurred by Government in securing clear title to its property due to their acts or omissions clouding the title.

27. TAXES. Lessee shall pay to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges that, at any time during the term of this Lease may be imposed with respect to the Leased Premises. Title 10 U.S.C. §2667 (f) contains the consent of Congress to the taxation of Lessee's interest in the Leased Premises, whether or not the Leased Premises are in an area of exclusive Federal jurisdiction. Should Congress consent to taxation of Government's interest in the Leased Premises, this Lease will be renegotiated.

28. SUBJECT TO EXISTING AND FUTURE EASEMENTS AND RIGHTS-OF-WAY. This Lease, and each sublease, is subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Leased Premises, or any portion thereof, and to the right of Government to grant such additional easements and rights-of-way over, across, in and upon the Leased Premises as it shall be deemed to be in the public interest; provided that (i) the Government coordinates with the Lessee to minimize any impact to the Lessee's operations, and (ii) any such additional

easement or right-of-way shall be conditioned on the assumption by the grantee thereof of liability to Lessee for such damages as Lessee shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such easements and rights-of-way as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities located thereon, and to any Federal, state, or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Leased Premises as shall be necessary for the performance of their duties with regard to such facilities subject to Paragraph 9 (Access by Government) above.

29. INGRESS, EGRESS, PARKING AND SECURITY.

A. Lessee and any sublessees, and their employees, vendors, and business invitees will be granted reasonable access to the Leased Premises under this Lease. As a condition, Lessee and sublessee, and their employees, vendors, and business invitees agree to adhere to all base rules and regulations regarding Station security, ingress, egress, safety and sanitation as may be prescribed from time to time by the Station Commanding Officer. Lessee and any sublessee and their employees, vendors, and business invitees shall coordinate parking with the appropriate office of the Station.

B. Station Security. The Leased Premises are located on a secure Navy installation and the Lessee and any sublessee(s) are required to comply with all applicable security rules, regulations, and procedures issued by the Station Commanding Officer. Any and all employees of the Lessee or sublessee(s) that are required by the Station to do so shall obtain a security clearance to access the Leased Premises. Failure to obtain the required security clearance shall result in denial of access to the Leased Premises of the Lessee's or sublessee'(s) employees. Lessee and any sublessee(s) agrees to hold harmless the Government from any liability of any nature for financial or other losses incurred by the Lessee or any sublessee(s) by reason of Lessee's or any sublessee'(s) employees failure to obtain security clearance for access to the Leased Premises.

30. ADMINISTRATION. Except as otherwise provided for under the Lease, the Real Estate Contracting Officer of Naval Facilities Engineering Command Southwest shall have complete charge of the administration of this Lease, including granting any consents and/or approvals hereunder, and shall exercise full supervision and general direction thereof insofar as the interests of the Government are affected.

31. DAMAGE TO THE LEASED PREMISES. In the event the Leased Premises or any portion of the Leased Premises are damaged either directly or indirectly as a result of Lessee's use or occupancy of the Leased Premises, whether during the construction, operation, maintenance, or replacement or removal of improvements or otherwise, due to acts or omissions of Lessee, its agents, contractors or employees, Lessee shall, upon demand, either compensate the Government for such loss or damage, or rebuild, replace or repair the item or items of the Leased Premises or facilities so lost or damaged, as the Government may elect.

32. APPLICABLE RULES AND REGULATIONS.

A. Lessee and any sublessee shall comply with all Federal, State, and local laws, regulations, and standards that are applicable or may become applicable to Lessee's or sublessee's activities on the Leased Premises. This includes, but is not limited to, laws and regulations concerning the environment, construction of facilities, health, safety, food service, water supply, sanitation, and any licenses and permits to conduct business. Lessee and any sublessee are responsible for obtaining and paying for permits required for its operations under the Lease.

B. Further, all activities authorized hereunder shall be subject to such rules, regulations, and procedures regarding Station security, supervision or otherwise, as may, from time to time, be prescribed by the Station Commanding Officer.

33. SUBCONTRACTORS AND AGENTS FOR LESSEE. All work involving Lessee Facilities must be performed by skilled tradesmen who are accomplished at their craft and bonded against loss due to damages resulting directly or indirectly from work performed.

34. SURRENDER. Upon the expiration of this Lease or its prior termination, Lessee shall quietly and peacefully remove itself and its personal property from the Leased Premises and surrender the possession thereof to Government; provided, in the event Government shall terminate this Lease upon less than thirty (30) days notice, Lessee shall be allowed a reasonable period of time, as determined by the Real Estate Contracting Officer, but in no event to be less than thirty (30) days from receipt of notice of termination, in which to remove all of its personal property from and terminate its operations on the Leased Premises. During such period prior to surrender, all obligations assumed by Lessee under this Lease shall remain in full force and effect; provided, however, that if the Government shall in its sole discretion, determine that such action is equitable under the circumstances, it may suspend, in whole or in part, any further accruals of rent if any, or maximum amount to be expended between the date of termination of the Lease and the date of final surrender of the Leased Premises. Government may, in its discretion, declare any personal property that has not been removed from the Leased Premises upon termination provided for above, as abandoned personal property upon an additional ninety (90) days notice.

35. ATTACHMENTS. Attachments to this Lease are set forth below:

- A. The Leased Premises
- B. Joint Inspection and Inventory Report (JIIR)
- C. Environmental Condition of Property (ECP) Document

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth below duly executed this Lease as of the day and year first above written.

WITNESSES:

THE UNITED STATES OF AMERICA, acting by and through the Department of the Navy:

Laura L. Boschen
Signature

By: [Signature]
Real Estate Contracting Officer

Laura L. Boschen
(Print Name)

Date: JUNE 6, 2008

Signature

(Print Name)

WITNESSES:

Teresa Morse
Signature

LESSEE:

By: [Signature]

TERESA Morse
(Print Name)

Name: James F. Barwick, CCIM
Director, Real Estate Assets

Title: _____

[Signature]
Signature

Date: 5/19/08

April M. [Signature]
(Print Name)

APPROVED AS TO FORM AND LEGALITY:

**OFFICE OF THE CIO
COMMUNICATIONS DIVISION APPROVAL:**

MICHAEL J. AGUIRRE, City Attorney

By: [Signature]
Date: 5-21-08

[Signature]
Date: 5/15/08

CONCURRENCE:

[Signature] By Direction
COMMANDING OFFICER
Naval Base Point Loma

Date: 4 JUNE 2008

EXHIBIT 'A'

**GREEN TANK LEASE-
RELAY TOWER**

APN: 532-520-11

That portion of the United States of America, Department of the Navy, U.S. Military Reservation located within Point Loma, in the County of San Diego, State of California, according to Miscellaneous Map No. 129, filed in the office of the County Recorder of said San Diego County on April 16, 1934, being more particularly described as follows:

Beginning at City of San Diego Horizontal Control Point No. 98, the coordinates of which are North 1828921.21 and East 6254675.52, and are based on the California Coordinate System, NAD 83 (Epoch 1991.35) Zone 6, said coordinate values are based on a static Global Positioning System (GPS) survey performed by the City of San Diego in May 1994, a copy of said survey is on file in the Field Engineering Office City of San Diego; thence South $82^{\circ}47'08''$ East a distance of 1190.98 feet to the **True Point of Beginning**; thence North $06^{\circ}02'39''$ East a distance of 16.00 feet; thence South $83^{\circ}57'21''$ East a distance of 13.00 feet; thence South $06^{\circ}02'39''$ West a distance of 16.00 feet; thence North $83^{\circ}57'21''$ West a distance of 13.00 feet to the **True Point of Beginning**.

The above described area contains 208.00 square feet.

Exhibit 'B' attached and by this reference is made a part hereto. See City of San Diego drawing No. 20841-B.

Richard McCormick 3-27-2008

Richard McCormick, LS 7450
Associate Land Surveyor, Field Engineering
City of San Diego
My Registration Expires 12/31/2008



File: RelayTower_legal.doc
W.O. 543002-March 2008

EXHIBIT 'B'

LEGEND

P.O.B. POINT OF BEGINNING
T.P.O.B. TRUE POINT OF BEGINNING
▲ FOUND HORIZONTAL CONTROL POINT AS NOTED.



P.O.B.

CONTROL POINT No. 98
BRASS PLATE IN CONCRETE
STAMPED "CITY OF SAN DIEGO"
PT 'A' 1962
N 1828921.21
E 6254675.52

CITY OF SAN DIEGO
POINT LOMA SEWAGE
TREATMENT PLANT

BASIS OF BEARINGS/COORDINATES

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE NAD 83 (EPOCH 1991.35), ZONE 6 GRID BEARING BETWEEN CONTROL POINT No. 98 AND GPS 1130 PER CITY FIELD NOTES (SEE NOTE) AND ROS 14492 RESPECTIVELY, I.E. S 15° 17' 50" E.

NOTE:
COORDINATE VALUES WERE ESTABLISHED ON CONTROL POINT No. 98 DURING A STATIC GPS SURVEY DONE BY THE CITY OF SAN DIEGO IN MAY 1994 WHICH CONSTRAINED TO SD-GPS 18 AND SD-GPS 23 PER ROS 14310.

REFERENCES:

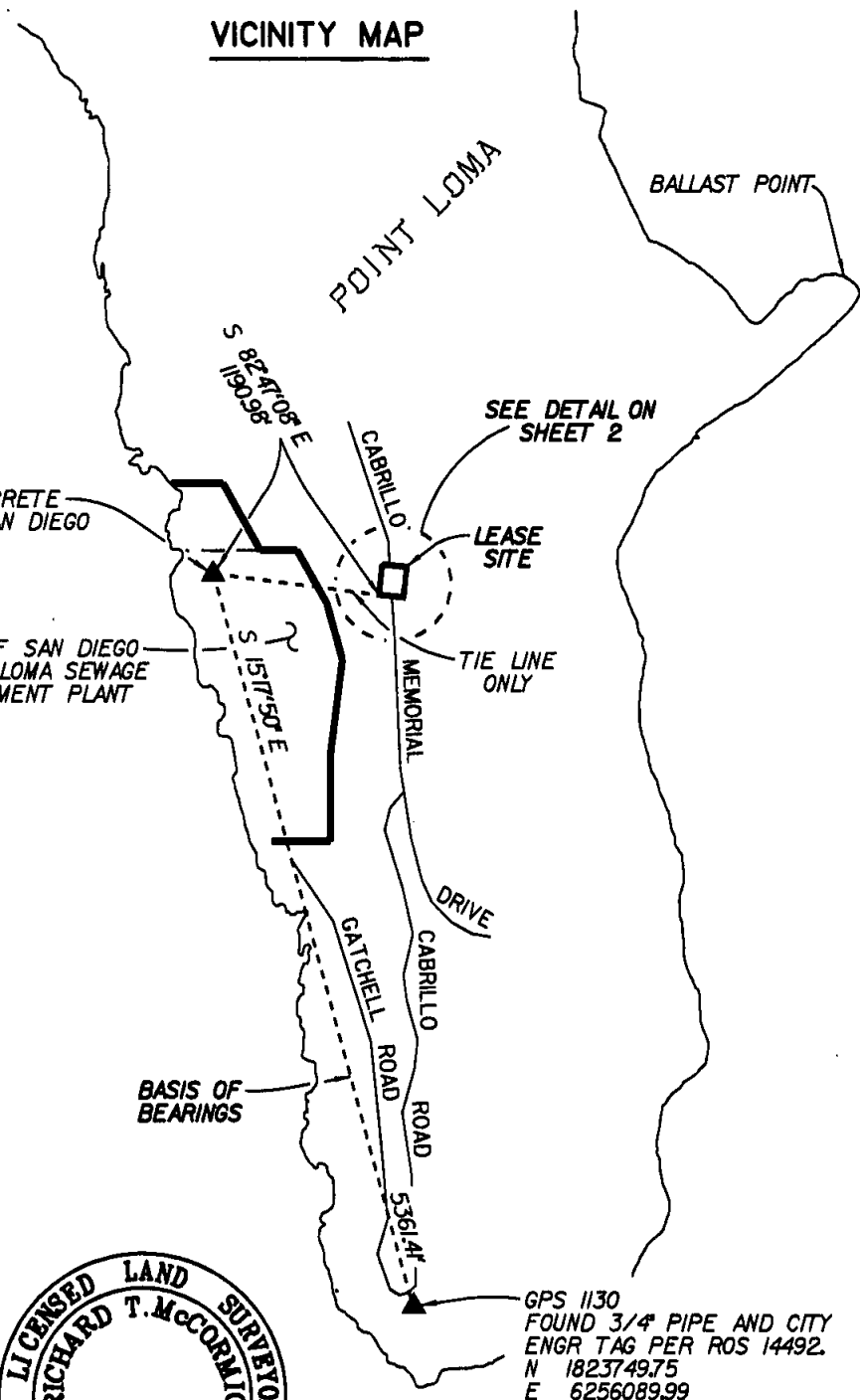
CITY OF SAN DIEGO SURVEY FIELD NOTES BY LEPAGE, INDEX 186-1692, JUNE 3, 1994. ROS 13792, ROS 16846, MM 129



Richard McCormick 3-27-2008

RICHARD MCCORMICK, LS 7450 DATE

VICINITY MAP



GPS 1130
FOUND 3/4" PIPE AND CITY
ENGR TAG PER ROS 14492.
N 1823749.75
E 6256089.99

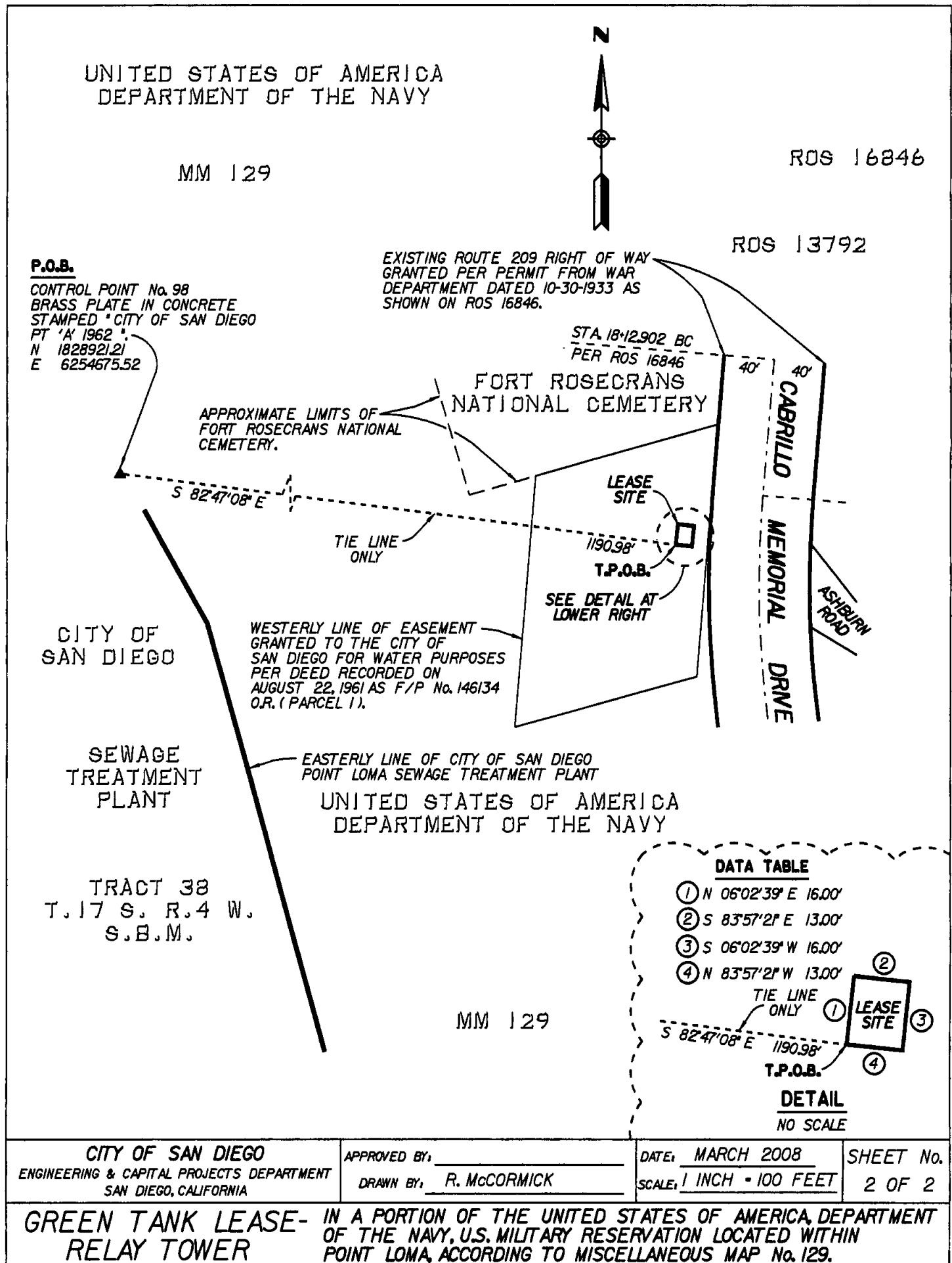
APN: 532-520-11

OWNER:
UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY

CITY OF SAN DIEGO ENGINEERING & CAPITAL PROJECTS DEPARTMENT SAN DIEGO, CALIFORNIA	APPROVED BY: <i>Donald J. [Signature]</i> DRAWN BY: R. MCCORMICK	DATE: MARCH 2008 SCALE: NO SCALE	SHEET No. 1 OF 2
GREEN TANK LEASE- RELAY TOWER			
IN A PORTION OF THE UNITED STATES OF AMERICA, DEPARTMENT OF THE NAVY, U.S. MILITARY RESERVATION LOCATED WITHIN POINT LOMA, ACCORDING TO MISCELLANEOUS MAP No. 129.			

ATTACHMENT (A)

EXHIBIT 'B'



ATTACHMENT (A)

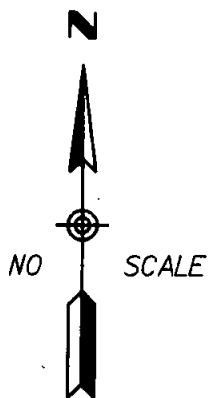
LEGEND

P.O.B. POINT OF BEGINNING
T.P.O.B. TRUE POINT OF BEGINNING
 ▲ FOUND HORIZONTAL CONTROL POINT AS NOTED.

VICINITY MAP**P.O.B.**

CONTROL POINT No. 98
 BRASS PLATE IN CONCRETE
 STAMPED 'CITY OF SAN DIEGO
 PT 'A' 1962'.
 N 1828921.21
 E 6254675.52

CITY OF SAN DIEGO
 POINT LOMA SEWAGE
 TREATMENT PLANT



BASIS OF
 BEARINGS

BASIS OF BEARINGS/COORDINATES

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE NAD 83 (EPOCH 1991.35), ZONE 6 GRID BEARING BETWEEN CONTROL POINT No. 98 AND GPS 1130 PER CITY FIELD NOTES (SEE NOTE) AND ROS 14492 RESPECTIVELY, I.E. S 15° 17' 50" E.

NOTE:
 COORDINATE VALUES WERE ESTABLISHED ON CONTROL POINT No. 98 DURING A STATIC GPS SURVEY DONE BY THE CITY OF SAN DIEGO IN MAY 1994 WHICH CONSTRAINED TO SD-GPS 18 AND SD-GPS 23 PER ROS 14310.

REFERENCES:

CITY OF SAN DIEGO SURVEY FIELD NOTES BY LEPAGE, INDEX 186-1692, JUNE 3, 1994.
 ROS 13792, ROS 16846, MM 129

APN: 532-520-II

OWNER:
 UNITED STATES OF AMERICA
 DEPARTMENT OF THE NAVY

PREPARED BY:

CITY OF SAN DIEGO ENGINEERING DEPARTMENT,
 FIELD DIVISION - SURVEY SECTION, UNDER
 THE DIRECTION OF RICHARD McCORMICK, LS 7450,
 ASSOCIATE LAND SURVEYOR,



Richard T. McCormick 3-27-2008
 DATE

RESOLUTION No. _____

ADOPTED: _____

F/P: _____

RECORDED: _____

GREEN TANK LEASE- RELAY TOWER

IN A PORTION OF THE UNITED STATES OF AMERICA,
 DEPARTMENT OF THE NAVY, U.S. MILITARY RESERVATION
 LOCATED WITHIN POINT LOMA, ACCORDING TO MISCELLANEOUS
 MAP No. 129.

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA		T.M.
ORIGINAL	RTMc		2-2008		SHEET 1 OF 2 SHEETS		W.O. 543002
REVISION	RTMc	RSO	3-2008		<i>Donnell J. Davis</i> 3/28/08		
					FOR CITY ENGINEER DATE		
							188-1694
							LAMBERT COORDINATES
STATUS							20841-B

MM 129

UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY

ROS 16846

ROS 13792



EXISTING ROUTE 209 RIGHT OF WAY
GRANTED PER PERMIT FROM WAR
DEPARTMENT DATED 10-30-1933 AS
SHOWN ON ROS 16846.

SCALE:
1 INCH = 60 FEET

P.O.B.

CONTROL POINT No. 98
BRASS PLATE IN CONCRETE
STAMPED "CITY OF SAN DIEGO"
PT 'A' 1962
N 1828921.21
E 6254675.52

APPROXIMATE LIMITS OF
FORT ROSECRANS NATIONAL
CEMETERY.

FORT ROSECRANS
NATIONAL CEMETERY

STA 18+12.902 BC
PER ROS 16846

40'

40'

CABRILLO

MEMORIAL DRIVE

ASHBURN ROAD

S 82°47'08" E

TIE LINE
ONLY

LEASE
SITE

1190.98'

T.P.O.B.

SEE DETAIL AT
LOWER RIGHT

WESTERLY LINE OF EASEMENT GRANTED
TO THE CITY OF SAN DIEGO FOR WATER
PURPOSES PER DEED RECORDED ON
AUGUST 22, 1961 AS F/P No. 146134 O.R.
(PARCEL 1).

CITY OF
SAN DIEGO

SEWAGE
TREATMENT
PLANT

MM 129

UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY

TRACT 38
T.17 S. R.4 W.
S.B.M.

EASTERLY LINE OF CITY OF SAN DIEGO
POINT LOMA SEWAGE TREATMENT PLANT

DATA TABLE

- ① N 06°02'39" E 16.00'
- ② S 83°57'21" E 13.00'
- ③ S 06°02'39" W 16.00'
- ④ N 83°57'21" W 13.00'

TIE LINE
ONLY

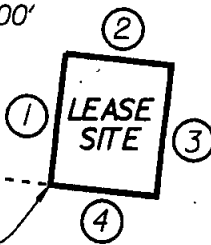
S 82°47'08" E

1190.98'

T.P.O.B.

DETAIL

NO SCALE



GREEN TANK LEASE-
RELAY TOWER

IN A PORTION OF THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE NAVY, U.S. MILITARY RESERVATION
LOCATED WITHIN POINT LOMA, ACCORDING TO MISCELLANEOUS
MAP No. 129.

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA		T.M.
ORIGINAL	RTMc	RJD	2-2008		SHEET 2 OF 2 SHEETS		W.O. 543002
					FOR CITY ENGINEER		
					DATE		
STATUS							188-1694
							LAMBERT COORDINATES
							20841-B

May 14, 2008

JOINT INSPECTION AND INVENTORY REPORT

A site visit was conducted on May 14, 2008. Parties present were Laura L. Boschen, Department of the Navy Real Estate, Carol Young, Property Agent, Real Estate Assets, City of San Diego and Huw Williams, Associate Communications Engineer, City of San Diego. This property consists of approximately 208 square feet of vacant land only. No concerns were noted. This property is further described in Attachment "A".


LAURA L. BOSCHEN
Real Estate Specialist
Naval Facilities Engineering Command SW

Attachment "B"

20 May 2008

MEMORANDUM FOR THE RECORD

Subj: OUTGRANT TO THE CITY OF SAN DIEGO FOR A COMMUNICATION TOWER
AND ANCILLARY EQUIPMENT LOCATED AT NAVAL BASE POINT LOMA,
SAN DIEGO, CALIFORNIA

Ref: (a) ASN (I&E) Memorandum, DON Environmental Policy Memorandum 02-06,
Streamlined Environmental Procedures Applicable to Non-BRAC Real
Estate Actions of 5 July 06

Encl: (1) Proposed Government Lease N62473-08-RP-00097 - City of San Diego

1. Enclosure (1) provides the City of San Diego access to install and operate a microwave repeater station on Naval Base Point Loma property located near the corner of Cabrillo Memorial Drive and Ashburn Road. Currently, the City has an easement with the Navy that allows it to operate its sewage pump station at this site. This new lease will allow the City to install and operate the following items: 10' x 6' x 4' equipment enclosure, twenty foot monopole tower with two dishes. Once installed this equipment will become part of the City of San Diego's existing Safety Microwave System and will allow the transfer of microwave signals from the City's Sewage Treatment Plant to the City's radio site in Encanto.

2. Environmental Baseline Surveys have been prepared for a number of projects in this area within the past few years. The Caltrans road transfer to the Navy, VA Cemetery's waterline replacement project and the Waste Water Treatment Plant Expansion were located in this area. Based on the data provided by these surveys there is no reason to suspect any environmental condition that is inconsistent with modifying the conditions/terms of the lease.

3. Based upon these findings and in accordance with reference (a), it has been determined that no further action must be taken to document the environmental condition of the property nor its suitability for a new Government Lease to the City of San Diego.



KAREN P. RINGEL

ATTACHMENT (C)