

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE
N6871195RP05P90PAGE OF PAGES
1 of 12. AMENDMENT/MODIFICATION NO.
P002 TWO (2)3. EFFECTIVE DATE
1 October 2008

4. REQUISITION/PURCHASE REQ. NO.

5. PROJECT NO. (IF APPLICABLE)

6. ISSUED BY
COMMANDING OFFICER
NAVAL FACILITIES ENGINEERING COMMAND SOUTHWEST
1220 PACIFIC HIGHWAY
SAN DIEGO, CA 92132-0001CODE
RES.CH

7. ADMINISTERED BY (IF OTHER THAN ITEM 6)

CODE

8. NAME AND ADDRESS OF CONTRACTOR (NO., STREET, COUNTY, STATE AND ZIP CODE)

City of San Diego
Real Estate Assets Department
200 Third Avenue, Suite 1700
San Diego, CA 92101City Manager
City of San Diego
202 "C" Street
San Diego, CA 92101

(3) 9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

CODE

FACILITY CODE

10A. MODIFICATION OF CONTRACT/ORDER NO.

N6871195RP05P90

10B. DATE (SEE ITEM 13)

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers

— is extended, — is not extended.

Offers must be acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (IF REQUIRED)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

- 3 A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (SPECIFY AUTHORITY) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
- B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (SUCH AS CHANGES IN PAYING OFFICE, APPROPRIATION DATE, ETC.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
- D. OTHER (SPECIFY TYPE OF MODIFICATION AND AUTHORITY):

XX BY MUTUAL AGREEMENT OF BOTH PARTIES

E. IMPORTANT: Contractor is required to sign this document and return 3 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (ORGANIZED BY UCF SECTION HEADINGS, INCLUDING SOLICITATION/CONTRACT SUBJECT MATTER WHERE FEASIBLE)

Authorize an increase in allowed height of the West Miramar landfills Phase I (inactive) and Phase II (active) to 485' Mean Sea Level (MSL).

1. Paragraph 2, USE is amended to change the limitation on height for Parcel 2 (West Miramar Landfill) from the limitations in Exhibit "B" of the Lease (1982 Easement) to a new height limitation of 485 feet MSL.2. Paragraph 19, SPECIAL USE RESTRICTIONS Subparagraph (4) is amended to change the limitation on height to 485 feet MSL from 465 MSL.

-EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE DOCUMENT REFERENCED IN ITEM 9A OR 10A, AS HERETOFORE CHANGED, REMAINS UNCHANGED AND IN FULL FORCE AND EFFECT.

15A. NAME AND TITLE OF SIGNER (TYPE OR PRINT)

JAMES F. BARNICK
DIRECTOR, REAL ESTATE ASSETS15B. CONTRACTOR/OFFEROR
CITY OF SAN DIEGO

15C. DATE SIGNED

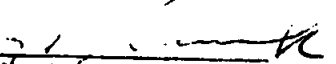
9/23/08

16A. NAME AND TITLE OF CONTRACTING OFFICER

CHRISTOPHER E. HASETT
Real Estate Contracting Officer

16B. UNITED STATES OF AMERICA

16C. DATE SIGNED

BY 
(SIGNATURE OF PERSON AUTHORIZED TO SIGN)BY 
(SIGNATURE OF CONTRACTING OFFICER)

AMENDMENT OF SOLICITATION MODIFICATION OF CONTRACT

CONTRACT ID CODE

N6871195RP05P90

PAGE OF PAGES

1 | 2

2. AMENDMENT/MODIFICATION NO. ONE (1)	3. EFFECTIVE DATE 24 SEPTEMBER 2007	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY CODE RES.AP NAVAL FACILITIES ENGINEERING COMMAND SOUTHWEST REAL ESTATE DEPARTMENT 1220 PACIFIC HIGHWAY SAN DIEGO, CA 92132-5190		7. ADMINISTERED BY (If other than item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county State and ZIP Code) THE CITY OF SAN DIEGO ACQUISITION/RELOCATION DIVISION REAL ESTATE ASSETS 1200 THIRD AVENUE, SUITE 1700 SAN DIEGO, CALIFORNIA 92101 EXPIRES: 16 AUGUST 2045		9A. AMENDMENT OF SOLICITATION NO.	
CODE M67865		9B. DATED (SEE ITEM 11)	
FACILITY CODE MCAS MIRAMAR		10A. MODIFICATION OF CONTRACT/ORDER NO. N6871195RP05P90	
		10B. DATED (SEE ITEM 13)	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers: ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing items 8 and 15, and returning copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference of the solicitation and amendment numbers. FAILURE TO YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.
IT MODIFIED THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

☐	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
☐	B. THE ABOVE NUMBERED CONTRACT/ORDERED IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
☐	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
☒	D. OTHER (Specify type of modification and authority) UNILATERAL AGREEMENT

E. IMPORTANT: Contractor ☒ is not, ☐ is required to sign this document and return 0 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible)

THE PURPOSE OF THIS MODIFICATION IS TO MAKE THE FOLLOWING CHANGES:

- In accordance with Section 22. TERMINATION of the Lease, the Government hereby terminates the Lease with respect to 9.674 acres of Parcel 4 as legally described in Exhibit "A" to the Lease. Parcel 4 originally was comprised of 359.336 acres and is hereby reduced in size to 349.662 acres. Exhibit "D" attached hereto and by this reference made a part hereof, legally describes the subject 9.674 acres to be comprised of a lease area and an easement area, and revises the legal description of Parcel 4 to reflect the reduction.
- As consideration for this Lease modification, and in accordance with Section 22 TERMINATION of the Lease, and Exhibit C of the Lease, upon mutual execution of this Modification One (1) by the Government and the Lessee, the Government shall pay the Lessee the sum of \$361,230 as stipulated by the Lessee and the Government.
- All other terms and conditions of the Lease shall remain unchanged and are in full force and effect.

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) KAREN P. RINGEL REAL ESTATE CONTRACTING OFFICER	
15B. CONTRACTOR/OFFEROR BY _____ (Signature of Person Authorized to Sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY <u>Karen P. Ringel</u> (Signature of Contracting Officer)	16C. DATE SIGNED 9/21/07

WA. DILL

871195RP 05 P90

GROUND LEASE

This Agreement is made and entered into this 17th day of August, 1995, by and between the City of San Diego, California, (hereinafter called the Lessee), and the United States of America, acting by and through the Department of the Navy (hereinafter called the Government) under the authority contained in 10 U.S.C. Sec. 2667.

WHEREAS, the Government is the owner of the Naval Air Station, Miramar, in the City of San Diego, California (hereinafter called the Station); and

WHEREAS, the Lessee desires to lease a portion of the Station for use by its Environmental Service Department, and the Metropolitan Wastewater Department; and

WHEREAS, the Secretary of the Navy has determined that entering into this lease would be in the public interest and will not substantially injure the interests of the United States in the property:

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and the terms, covenants, obligations, and agreements set out hereinafter, the parties hereto do hereby contract and agree as follows:

1. LEASED PROPERTY:

(a) The Government hereby leases to the Lessee a portion of the Station encompassing approximately 1400 acres of land together with all improvements thereon hereinafter called the Leased Property. The Leased Property is more particularly shown and described as Parcels 1, 2, 3, 4, and 5 in the plat and legal description in Exhibit "A", which is attached hereto and made a part hereof. This lease is subject to and will be effective upon the approval of the Assistant Secretary of the Navy (Installations & Environment).

(b) Attached hereto as Exhibit "B" is "Grant of Easement" dated July 19, 1982, whose terms and conditions are herein made part of this lease. In the event of any conflict between the provisions of the easement at Exhibit "B" and the provisions of this lease, this lease shall be the controlling document.

(c) At such time as Naval Air Station, Miramar shall be redesignated as a Marine Corps Air Station, all references to the Station shall be deemed to refer to the Marine Corps Air Station.

2. USE: In the absence of prior written approval of the Government, the sole purposes for which the Lessee shall use the Leased Property are as follows:

Parcel 1: The construction, installation, operation and maintenance of: (A) a vehicle maintenance facility for vehicles used by Lessee in its sanitary landfill operations (but no new

above-ground storage of flammable substances shall be permitted thereon); (B) field operations office used by Lessee in its sanitary landfill operations; and (C) monitoring equipment and facilities required to manage methane gas generation from the former solid waste landfill operated by Lessee on the premises, as well as ground water monitoring, for Lessee's compliance with Federal, State, and local laws, rules, ordinances and regulations governing the closure and post-closure requirements, including any corrective action required by law, of said solid waste landfill, which compliance shall be performed by Lessee at its sole cost and expense.

Parcel 2 (being the area encompassing the West Miramar Landfill): (A) The operation and maintenance of a sanitary landfill, subject to all the rules, regulations, requirements, conditions and restrictions set forth on the document attached hereto as Exhibit "B", and subject further to the restriction that Lessee shall not install, operate, maintain or conduct in or on the leased premises or any part thereof any structure, operation or activity which is an "incompatible land use" in accordance with the guidelines set forth in the Department of the Navy's Air Installation Compatible Use Zone (AICUZ) Study for Naval Air Station (or Marine Corps Air Station) Miramar as of the time of such use; and (B) the installation, operation and maintenance of monitoring equipment and facilities required to manage methane gas generation from the landfill operated by Lessee or Sublessee on the premises, as well as ground water monitoring, for Lessee's compliance with Federal, State, and local laws, rules, ordinances and regulations governing the closure, post-closure, monitoring, and/or corrective action required by law of said solid waste landfill, which compliance, closure, post-closure, corrective action required by law, and monitoring shall be performed by Lessee at its sole cost and expense.

Parcel 3: Expansion of access areas identified in West Miramar Landfill Easement.

Parcel 4: The construction, installation, operation and maintenance of: (A) a household hazardous waste transfer station for consumers to divert household hazardous waste from disposal in Lessee's sanitary landfill; (B) a recycling area to receive recyclable materials from the public and divert them from disposal in Lessee's active landfill; (C) a fee booth and weigh station facility; (D) monitoring equipment and facilities required to manage methane gas generation from the former solid waste landfill operated by Lessee on the Leased Property, as well as ground water monitoring, for Lessee's compliance with Federal, State, and local laws, rules, ordinances and regulations governing the closure and monitoring of said solid waste landfill, which compliance shall be performed by Lessee at its sole cost and expense; (E) a material recovery facility (MRF) to separate recyclable material from solid waste intended for landfill disposal, for composting and use off of the leased property (Lessee's Fiesta Island Replacement Project (FIRP) and the Northern Sludge Processing Facility (NSPF)), as such project and facility are described in Lessee's General Development Plan for Miramar Landfill, dated July 1994, and Government's

Environmental Impact Statement for Part II - Miramar Landfill, dated July 1994; (F) a public or private cogeneration plant to generate electricity using methane gas from Lessee's sludge processing activities on the Leased Property, as well as methane gas collected from former landfills operated by Lessee on the Leased Property, which compliance, closure and monitoring shall be performed by Lessee at its sole cost and expense; (G) mounding of overburden derived from Lessee's active landfill operations, shown and described in the plat and legal description in Exhibit "B", which is attached hereto and made a part hereof, provided, however, that such overburden material shall, in no event, cover more than 62.34 acres nor be mounded to a height exceeding 465 feet above mean sea level (465' MSL), including any vegetation thereon, and such overburden is subject to removal and use by Government at its sole expense and discretion in a manner not inconsistent with Lessee's use and enjoyment of the Leased Property described herein on condition that such removal shall not cause Lessee to incur any environmental liability or obligation; (H) mounding of overburden such overburden material shall not cover more than 8.6 acres, as shown in Exhibit "B", nor be mounded to a height exceeding 465' MSL including any vegetation thereon, and such overburden is subject to removal and use by Government at its sole expense and discretion in a manner not inconsistent with Lessee's use and enjoyment of the premises described herein; (I) mounding of overburden derived from construction, and site preparation, provided, however, that such overburden material shall not cover more than 7.5 acres, as shown in Exhibit "B", nor be mounded to a height exceeding 465' MSL including any vegetation thereon, and such overburden is subject to removal and use by Government at its sole expense and discretion in a manner not inconsistent with Lessee's use and enjoyment of the premises described herein; (J) haul road for maintenance vehicle or conveyor use; (K) construction, installation, operation and maintenance of an access road and appurtenances to serve the FIRP and NSPF; (L) construction, installation, operation and maintenance of the temporary central access road to the FIRP and NSPF; (M) construction, installation, operation and maintenance of a temporary construction parking area for the FIRP and NSPF.

Parcel 5: Construction, installation, operation and maintenance of monitoring equipment and facilities required to manage methane gas generation from the landfill operated by Lessee on the premises, as well as ground water monitoring, for Lessee's compliance with Federal, State, and local laws, rules, ordinances and regulations governing the closure and monitoring of said solid waste landfill, which compliance, closure, monitoring, and any corrective action as required by law shall be performed by Lessee at its sole cost and expense.

3. TERM: The term of this agreement shall be for fifty (50) years from the date herein, expiring on the 16th day of August, 2045.

4. RESERVATIONS: This Agreement and the Leased Property delivered are and shall be at all times subject to the following:

(a) Utility Rights-of-Way: Rights-of-way for sewers, pipelines, fuel lines, natural gas lines, steam lines, and conduits for telephone, light, heating and power lines as may from time to time be determined necessary by the Government, including the right to enter upon, above, below or through the surface to construct, maintain, replace, repair, enlarge or otherwise utilize the Leased Property for such purpose, without compensation or abatement of rent, provided the surface shall be restored, to the extent possible, without material interference with the operation of the Station, to the condition previously existing, and before locating any future utilities on the Leased Property, Government agrees to consult with the Lessee and minimize interference to the extent possible.

(b) Access Roads: Rights-of-Way for access roads which are apparent from a visual inspection of the Leased Property or which have been duly established or which are reserved herein.

(c) Prior Exceptions: All prior exceptions, reservations, grants, easements, leases or licenses of any kind whatsoever, as the same appear of record in the Office of the Recorder of San Diego County, or as the same appear in the official records of the Government.

(d) Inspection: Lessee has inspected the Leased Property in contemplation of occupying it for the uses permitted and agrees that:

(1) Suitability: Lessee has determined that the Leased Property, including any improvements covered by this Agreement, are suitable for Lessee's intended uses. No officer or employee of Government has made any representation or warranty with respect to the Leased Property, including improvements, nor any agreement or promise to alter or improve the same, or any item thereof, and Lessee has not relied on any such warranty or representation unless the nature and extent of such representation or warranty is described in writing and attached to this Agreement which contains all the agreements made and entered into between the Lessee and the Government.

(2) Additions and Improvements at Lessee's Expense: Any modification, improvement, addition to the Leased Property or equipment installation required by the Fire Department, Air Pollution Control Board, Regional Water Quality Control Board, Environmental Protection Agency (Federal or State), or any other Federal, State or local agency in connection with Lessee's operations shall be constructed or installed at Lessee's sole expense.

(3) Approval of Plans and Specifications: All plans and specifications for specific projects proposed by Lessee for construction and installation which are authorized in paragraph 2 (Use) shall be submitted to the Government for approval, beginning at the preliminary design stage. No construction shall commence until the Government has reviewed and approved the final plans and specifications for each to assure Government of compatibility to

Station's operations and mission only and for no other purpose. Such approvals by the Government shall be given as promptly as practicable and will not be unreasonably withheld. The Government's reasonable rejection of, or its failure to approve, any feature or element of such a plan or specification shall not form a basis for any claim against the Government for loss by, or liability of the Government to, the Lessee. Review and approval of plans and specifications by the Government are solely to assure compatibility with the Station's operations and mission, and do not limit, modify or void any warranty or indemnification provided to the Government herein by Lessee. The Government, by approving such plans and specifications, or if it fails to properly review or wrongfully approves such plans and specifications, shall not be deemed to assume or incur thereby any liability or responsibility for the subject projects nor to warrant that the projects will function as designed, that they will fulfill their intended purpose, or that they will be protective of human health, safety, or the environment. Approval of or failure to approve plans or specifications by the Government shall not be deemed to modify, satisfy or waive any performance requirements or restrictions imposed upon or agreed to by Lessee in this Lease or any other conveyance or agreement between the parties.

5. COMPENSATION:

(a) Lessee shall pay to the Government the sum of \$5,822,732.00 upon this lease taking effect.

(b) Lessee agrees to make additional compensation to Government as provided in paragraph 15(c).

(c) All payments shall be made to the Government by check payable to the Treasurer of the United States at the following address: Commanding Officer, Southwest Division, Naval Facilities Engineering Command (Code 24), 1220 Pacific Highway, San Diego, California 92132-5190.

(d) Government reserves the right for all Department of the Navy installations and facilities located within or near the boundaries of the City of San Diego to dispose of wastes in any sanitary landfill owned and/or operated by the City of San Diego on Department of the Navy property including the sanitary landfill operated on Parcel 2, without limitation as to the quantity and at no cost to the Government, for the term of this Lease and any extension hereof.

6. TITLE TO IMPROVEMENTS: Title to all improvements made by Lessee shall remain in the Lessee during the term of this Agreement, including any extension thereof to which the parties may hereafter agree, and during any period irrespective of the term of this Agreement in which closure, post-closure, maintenance, monitoring, or environmental response or corrective action obligations exist or in which Lessee is required, or permitted by Federal, State, or local law, to monitor, collect or extract methane gas from landfill areas. At or prior to the expiration or earlier termination of this Agreement, the Lessee shall remove, at

its sole cost and expense, all works, structures and improvements placed on the Leased Property by Lessee provided that, subject to the approval of the Assistant Secretary of the Navy (Installations & Environment), the Government may acquire all of Lessee's right, title and interests in any or all of such works, structures and improvements in consideration for releasing Lessee from its restoration obligation under this Agreement with respect to the works, structures and improvements so acquired by the Government. As between the Government and Lessee, for purposes of allocating liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 107, 42 U.S.C. Sec. 9607, and State cleanup laws, Lessee shall be deemed both the "owner" and "operator" of each improvement, operation, or activity on the Leased Property. Lessee shall also be deemed the "owner" of, and to have arranged for the disposal of, all materials, substances, wastes, or other items transported to, stored at, disposed on, or which otherwise is located on the Leased Property.

7. LIENS: Lessee 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 the Government, which at any time may arise or exist with respect to the Leased Property or Lessee's improvements or materials or equipment furnished, or any part thereof, and if the same shall not be promptly discharged by Lessee the Government may discharge, or cause to be discharged, the same at the expense of Lessee.

8. ACCESS:

(a) The Government shall have access to the Leased Property and to the Lessee's improvements at all times for any purpose not inconsistent with the quiet use and enjoyments thereof by Lessee including, but not limited to, the purpose of monitoring and inspection of Lessee's construction or operations, or at any time for reasons of safety, security or the national defense as determined by the Commanding Officer of the Station, or as otherwise provided in this Lease; provided, however, that in time of national emergency or threat to the Station as determined by the Commanding Officer, he may restrict access to all or any part of the Leased Property in such manner or as to such persons as he deems necessary for the duration of such emergency or threat.

(b) No public exhibitions or group tours shall be permitted anywhere on the Leased Property without the express written permission of the Commanding Officer of the Station. No public meetings, conferences or gatherings shall be held anywhere on the Leased Property at which a greater number of persons are assembled in any location or structure than would be permitted in Accident Potential Zone I under the guidelines set forth in the Department of the Navy's Air Installation Compatible Use Zone (AICUZ) Study for Naval Air Station (or Marine Corps Air Station) Miramar as of the time of such use. During any period of operation when the public has access to Lessee's facilities, Lessee shall monitor such activities by the public and ensure that no substances or materials prohibited by this Agreement are disposed of or otherwise left on

the Leased Property. This provision shall not preclude any meeting of the employees at the facility.

9. MAINTENANCE AND RESTORATION:

(a) Maintenance and Repair Performed by Lessee: Lessee shall be responsible for performing and paying for all maintenance and repairs of and to the Leased Property and all improvements thereon, including any long term operation and maintenance or corrective action costs required by any applicable Federal, State, regional, or local environmental laws. Lessee shall also be responsible for keeping the Leased Property, (including landscaping) and all works, structures and improvements thereof, whether a part of the Leased Property or made by Lessee, in a safe, clean, wholesome, sanitary and sightly condition and in conformance with all applicable present and future Federal, State, regional, municipal and other laws and regulations.

(b) Government's Option to Perform Work at Lessee's Expense: If Lessee fails to repair, maintain and keep the Leased Property and improvements as required by the terms of this Lease, the Government may give thirty (30) days written notice to Lessee to correct such default, except that no notice shall be required where, in the opinion of the Government, the failure creates a hazard to persons or property. If Lessee fails to commence curing of such default within said time or fails to proceed diligently to cure such default, or if the Government determines that a hazard to persons or property exists due to such failure, the Government may, but is not required to, enter upon the Leased Property and cause such repair or maintenance to be made, and the costs thereof, including labor, materials, equipment and administrative overhead, to be charged against the Lessee. Such charges shall be due and payable on the first of the month next following the completion of such repair or maintenance. During all such times, the duty shall be on the Lessee to assure the Leased Property are safe and Lessee shall erect barricades and warning signs to assure that workers and the public are protected from any unsafe condition.

(c) Restoration and Surrender of Leased Property:

(1) On or before expiration of the term of this Agreement, or any sooner termination thereof other than by forfeiture pursuant to subsections (a) and (b) of paragraph 10 ("Default and Termination") below, Lessee shall remove, at its sole cost and expense, all works, structures, improvements and pipelines of any kind including paving (collectively referred to as "structures") placed on the Leased Property by Lessee, except (a) such equipment as may be required for compliance by Lessee with applicable laws and regulations, which Lessee will operate, maintain and replace as long as necessary; and (b) such structures as Government may authorize in writing to be abandoned in place on such conditions as Government may require. If any structures are approved by the Government to be abandoned in place, Lessee shall remove and/or decontaminate any toxic or hazardous materials at the structure prior to such abandonment. At the Government's option, environmental monitoring equipment may be required to be left in

place by Lessee, but if such equipment then has a residual value in excess of the costs of removal, Government will reimburse Lessee therefor. Lessee shall leave the surface of the ground in a clean, level, graded and compacted condition with no excavations or holes resulting from structures removed, but Lessee shall not be required to restore Leased Property to its preconstruction topography nor to remove landfill material placed in the regular course of landfill operations except as required by Federal, State or local laws and regulations.

(2) Upon the expiration of the term of this Agreement or any sooner termination thereof, other than by forfeiture pursuant to subsections (a) and (b) of paragraph 10 ("Default and Termination") of this Agreement, Lessee shall quit and surrender possession of the Leased Property to the Government leaving all Government improvements in at least as good and usable a condition, acceptable to the Government, as the same were in at the time of the first occupation thereof by Lessee under this or any prior Agreement, lease or permit, ordinary wear and tear excepted. However, the exception for wear and tear shall not entitle Lessee to damage the paving installed by the Government on the ground, regardless of the nature of Lessee's operations on the Leased Property. If the Government terminates this Agreement pursuant to Section (a) or (b) of paragraph 10 ("Default and Termination") Lessee is also obligated to restore the Leased Property as provided above or to pay the cost of restoration if Government chooses to perform the work. Expiration or termination of this Agreement does not relieve Lessee of its closure, post-closure, environmental response, long term operation and maintenance or corrective action responsibilities under applicable Federal, State, regional, or local environmental laws or as agreed herein.

(3) Lessee may not, nor allow any third party to, handle, receive, store, or dispose of anywhere on the Leased Property any substances classified as hazardous substances or hazardous wastes under any Federal, State or local law, except as may be later authorized pursuant to paragraph 20.(a). If Lessee or any third party has handled, stored, transported, transferred, received, disposed of or otherwise placed any hazardous substance or waste on the Leased Property and such substance or waste has contaminated or threatens to contaminate the Leased Property or adjacent premises or third-party premises (including structures and environmental media), Lessee, in the manner required by Federal, State, or local law or regulation and to the extent necessary to fully protect the Government from liability or obligation in connection therewith shall at its own expense remove or remediate such hazardous substances or wastes including any contaminated media and debris at the Leased Property, adjacent premises, or third party premises. Lessee's removal, remediation, or corrective action obligations under this Agreement shall not be extinguished, nor otherwise diminished, by any subsequent amendments to Federal, State, or local law which purports to reduce Lessee's financial liability and increase Government's financial liability, or limit such financial liability for the cleanup of municipal or other solid waste landfills.

(4) If such contamination can be removed from the Leased Property as required in the preceding paragraph, Lessee shall remove and properly dispose of all contamination and contaminated environmental media and debris and shall replace such environmental media with clean fill dirt, material or water suitable to the Government in compliance with all Federal, State and local laws and regulations. If Lessee determines such contamination or contaminated media or debris are not amenable to a removal action, Lessee shall undertake all necessary remedial and/or corrective actions in conformance with any applicable Federal, State, regional or local laws and cleanup standards. Treatment or off-site disposal shall be the preferred remedy over containment. In accordance with Federal, State and local guidelines and regulations Lessee shall, at its expense, be required to perform environmental media tests and monitoring showing that the Leased Property have not been contaminated by Lessee's operations and that there has not been a release from any of Lessee's facilities on the Leased Property, prior to termination of this agreement or any portion thereof. For the purposes of this subparagraph, such contaminants do not include municipal solid waste.

(5) If Lessee contaminates or has contaminated the Leased Property or adjacent premises or third-party premises (including structures and environmental media) in any manner, it shall immediately notify the Government and shall take immediate steps to remove and/or remediate the contamination in accordance with all applicable Federal, State, and local laws and regulations and perform all required environmental media testing and monitoring at Lessee's expense. If the Leased Property, adjacent premises or premises of a third-party are contaminated by any hazardous substances or wastes, or any pollutants, contaminants, or constituents thereof, of the kind handled by Lessee, the contamination is presumed to be caused by Lessee and the burden of proving (including the burden to produce records and other evidence) contamination by someone other than Lessee, including Lessee's predecessors, shall be on Lessee.

(6) For purposes of this Agreement the term "contaminant" includes: "hazardous substances" as defined in 42 U.S.C. Sec. 9601(14); "pollution or contaminant" as defined in 42 U.S.C. Sec. 9601(33); petroleum products including crude oil or any fraction thereof as defined in applicable Federal law or regulation; "solid waste" as defined in 42 U.S.C. Sec. 6903(27); and all of the above terms as defined under applicable State law. For the purposes of this Agreement, environmental media shall be defined to include soil, ground water, surface water, and air.

(7) Any tests required of Lessee by this paragraph shall be performed by a California certified testing laboratory satisfactory to the Government at Lessee's sole cost and expense. By signing this Agreement Lessee hereby irrevocably directs any such laboratory to provide the Government, upon written request from the Government, copies of all of its reports, test results, and data gathered.

(8) Lessee shall submit to the Government for review and comment any closure plan, post-closure plan, waste analysis plan, contingency plan, corrective action plan, or other plan required by Federal, State, regional or local environmental law and pertaining to Lessee's activities on the Leased Property. Representatives of the Government and Lessee agree to meet one (1) year before this Agreement terminates or one (1) year prior to the commencement of any applicable closure period required under Federal, State, or local environmental laws, whichever comes first, to develop a restoration plan. Such plan shall be prepared in writing by Lessee, with the consultation of the Government, and shall describe in detail Lessee's restoration activities and the time they will be commenced and completed. Such plan will be submitted to the Government at least six (6) months before termination of the Agreement. Lessee's failure to do so shall constitute a material breach of this Agreement.

(9) Lessee understands and agrees that it is responsible to complete restoration of the Leased Property as set forth in paragraph 9(c)(1) above including the cleaning up of any area it has contaminated before the expiration of this Agreement. If, for any reason, such restoration is not completed before such expiration, then Lessee remains responsible for and shall continue such restoration work, including closure, post-closure, and long term maintenance and monitoring, notwithstanding expiration or termination of this Agreement. Subject to approval by the Assistant Secretary of the Navy (Installations & Environment), the Lessee and Government may agree that the Government will complete the restoration work for Lessee on a reimbursable basis. If the Lessee disposes of any contaminated soil, material or groundwater, Lessee shall provide the Government with copies of all records indicating the type of material being disposed of as indicated on a Uniform Hazardous Waste Manifest or other appropriate chain of custody document, the method of transportation of the material to the disposal site and the location of the disposal site. For the purposes of this Agreement, Lessee agrees it has all environmental and financial liabilities for the landfills and will comply with all applicable Federal, State, and local statutes governing closure and post-closure maintenance; except, however, Lessee is not liable for post-closure activities of the Government on landfills that may jeopardize the integrity of previously closed sites or pose a potential threat to public health and safety or the environment.

10. DEFAULT AND TERMINATION:

(a) Upon the neglect, failure or refusal of Lessee to comply with any of the terms or conditions of this Agreement, and should Lessee fail to acknowledge in writing its obligation to cure such default within thirty (30) days after written notice and demand by Government to comply with any such item or condition, or thereafter fail to proceed diligently with such cure, Government may, at its option, declare this Agreement terminated. Thereafter, Government may recover possession of the Leased Property as provided by law. In the event Government shall determine that a breach of the terms or conditions of this Lease by Lessee has created an immediate threat to the health, safety or well-being of persons aboard the

Station, then upon written notice from Government, Lessee shall remove or abate the condition or activity causing such threat as instructed by Government, within the time stated for such action in the notice. Should Lessee fail to remove or abate such condition within a reasonable time as provided in such notice, Government may declare this Lease terminated forthwith and shall have all additional remedies provided herein in the event of breach by Lessee.

(b) Upon any termination of this Agreement by reason of Lessee's default, Lessee shall immediately surrender all rights in and to the Leased Property and all improvements. Lessee expressly agrees to compensate Government for any loss Government may suffer if the Agreement is terminated and Lessee fails to vacate the Leased Property. Upon any such termination any and all buildings, structures and improvements of any character whatsoever, erected, installed or made by Lessee on the Leased Property shall immediately ipso facto either become the property of Government free and clear of any claim of any kind or nature of Lessee or its successors, or become removable by the Government at the sole expense of Lessee, at the option of the Government.

(c) If this Agreement is terminated as set forth above, Government may enforce all of its rights and remedies under this Agreement.

11. MORTGAGE OF FACILITIES: Except as provided in paragraph 12(b), Lessee shall not: (a) engage in any financing or other transaction creating any mortgage upon the Leased Property; (b) place or suffer to be placed upon the Leased Property any lien or other encumbrance, or (c) suffer any levy or attachment to be made on the Lessee's interest in the Leased Property. Any such mortgage, encumbrance or lien shall be deemed a violation of this covenant on the date of its execution or filing of record regardless of whether or not it is foreclosed or otherwise enforced.

12. ASSIGNMENT OR SUBLETTING:

(a) Lessee shall not transfer or assign this Agreement or any interest therein nor sublet or otherwise make available to any third party any portion of the Leased Property or rights therein without the prior written consent of the Government. Under any assignment made, with or without consent, the assignee shall be deemed to have assumed all of the obligations of Lessee hereunder, but no assignment shall relieve the assignor of any of Lessee's obligations hereunder except for an extension of the Agreement term beginning after such assignment, and then only if the Government shall have consented thereto.

(b) Government understands that Lessee intends to utilize private sector contractors to finance, design, build, operate, or otherwise "privatize" certain facilities on the Leased Property, and that to effectuate such "privatization" the Lessee may be required to enter into subleases with such private sector contractors which allow the contractors to encumber their subleased

interests, subject to Government's prior written consent as described above. Government agrees to review any proposed subleases in a timely manner.

13. DISPUTES:

(a) Disputes in General:

(1) Except as otherwise provided in this Lease, any dispute concerning a question of fact arising under this Lease which is not a "claim" as defined in subparagraph (b) below shall be decided by the Commanding Officer, Southwest Division, Naval Facilities Engineering Command (after consultation with the Commander, Marine Corps Air Bases, Western Area when the Station has been redesignated as MCAS Miramar), who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to Lessee. The decision of said Commanding Officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of said decision, the Lessee mails or otherwise furnishes to the Commander, Naval Facilities Engineering Command a written appeal. The decision of the Commander, Naval Facilities Engineering Command or his authorized representative for the determination of such appeal shall be final and conclusive unless the same is proven to be fraudulent, arbitrary or capricious, or so grossly erroneous as necessarily to imply bad faith. In connection with any appeal proceeding under this clause, the Lessee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Lessee shall proceed diligently with the performance of this Agreement and in accordance with the decision of the Commanding Officer, Southwest Division, Naval Facilities Engineering Command.

(2) This Disputes clause does not preclude consideration of questions of law in connection with decisions on matters in dispute. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative or board on a question of law.

(3) Nothing contained in this paragraph shall be deemed to limit or modify the authority of Government to require Lessee to immediately abate or remove any activity or condition which threatens the health, safety or well-being of persons aboard the Station.

(b) Claims:

(1) All disputes arising under or relating to this Lease which constitute "claims" as defined herein shall be resolved under this subparagraph (b).

(2) "Claim," as used in this subparagraph (b), means a written demand or written assertion by one of the parties hereto seeking, as a matter of right arising under and pursuant to the terms of this Lease, the payment of money in a sum certain or the interpretation of a provision of this Lease pursuant to which a party seeks such payment. A written demand or written assertion by

Lessee seeking the payment of money exceeding \$50,000 is not a claim hereunder until certified as required by subparagraph (4) below.

(3) A claim by either party shall be made in writing and submitted to the Commanding Officer, Southwest Division, Naval Facilities Engineering Command for a written decision.

(4) Lessee shall provide the certification specified in subparagraph (6) below when submitting any claim:

(A) exceeding \$50,000; or

(B) regardless of the amount claimed, when using arbitration conducted pursuant to 5 U.S.C. Sec. 575-580 or any other alternative means of dispute resolution (ADR) which the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA); provided, however, that the use of arbitration or other ADR shall require the written consent of both Government and Lessee.

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

(6) The certification shall state as follows:

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

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

(8) For claims by Lessee in the amount of \$50,000 or less, the Commanding Officer must, if requested in writing by the Lessee, render a decision within sixty (60) days of the request. For Lessee-certified claims over \$50,000, the Commanding Officer must, within sixty (60) days, decide the claim or notify the Lessee of the date by which the decision will be made.

(9) The Commanding Officer's decision shall be final unless the Lessee appeals to the Armed Service Board of Contract Appeals or the United States Court of Federal Claims under the Contract Disputes Act of 1978 as amended (41 U.S.C. Sec. 601-613).

(10) By the written mutual consent of Lessee and Government, a claim may be resolved by use of ADR. When arbitration is conducted pursuant to 5 U.S.C. Sec. 575-580, or when any other ADR procedure is employed, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (6) and executed in accordance with subparagraph (7) of this paragraph.

(11) The Government shall pay interest on any amount found due and unpaid from the later of (1) the date that the Commanding Officer receives the claim (certified, if required), or (2) the date that payment otherwise would be due, until the date of payment. Simple interest on claims shall be paid at the same rate as that fixed by the Secretary of the Treasury for claims under the Contracts Disputes Act which is applicable to the period during which the Commanding Officer receives the claim, and then at the rate fixed by the Secretary of the Treasury for each six (6) month period thereafter during the pendency of the claim.

(12) Lessee shall diligently perform all of its obligations under this Lease pending final resolution of any claim filed hereunder, and shall comply with any decision of the Commanding Officer thereon.

14. RISK OF LOSS-INSURANCE:

(a) Lessee shall bear all risk of loss of or damage to the Leased Property arising from any cause whatsoever, with or without fault by Lessee; provided, however, that Lessee's liability for any loss or damage to its property resulting from risks expressly required to be insured against under this Agreement shall not be deemed, by reason of this Agreement, to exceed the amount of insurance so required or the amount actually procured and maintained, whichever shall be the greater: provided, further, that maintenance of the required insurance shall effect no limitation on Lessee's liability with respect to any loss or damage resulting from the willful misconduct, lack of good faith, or negligence of Lessee or any of its officers, agents, servants, employees, subtenants, licensees or invitees, nor any limitation of obligations under Section 9 of the Lease. Lessee shall not have the duty to insure against loss, damage, or injury to Government equipment, machinery, aircraft, or personnel, including legal heirs of Government personnel, where the basis of such risk solely involves the negligence or willful misconduct of Government agents, officers, or employees.

(b) Lessee shall procure and maintain, at its own expense, insurance on the Leased Property in such initial amounts and types as may exceed, but shall not be less than, the minimum amounts and types specified in paragraph 14 (e) below. However, Lessee shall provide, maintain, increase, change or discontinue such insurance as the Government may from time to time require and direct: provided, Lessee's liability for loss of or damage to the Leased Property is modified accordingly.

(c) All insurance which this Agreement requires Lessee to carry on the Leased Property shall be in such form, for such amounts, for such periods of time and with such insurers as the Government may from time to time require or approve. Each policy of insurance shall contain a provision for thirty (30) days written notice to the Government prior to the making of any material change in or the cancellation of the policy. Lessee shall deliver promptly to the Government a certificate of insurance or a certified copy of each policy of insurance required by this Agreement and shall also

deliver to the Government, no later than thirty (30) days prior to the expiration of any such policy, a certificate of insurance or a certified copy of each renewal policy covering the same risks. All insurance required or carried by Lessee on any of the Leased Property shall be for the protection of the Government and Lessee against their respective risks and liabilities in connection with the Leased Property. Each policy of insurance shall name both Lessee and the United States of America (Department of the Navy) as the insured, and each policy of insurance against loss of or damage to the Leased Property shall contain a loss payable clause reading as follows:

"Loss, if any, under this policy shall be adjusted with City of San Diego and the proceeds, at the election of the Government, shall be payable to City of San Diego; any proceeds not paid to City of San Diego shall be payable to the Treasurer of the United States."

(d) The initial minimum amounts and types of insurance which Lessee shall procure and maintain in accordance with this paragraph are the following:

Liability:

\$10,000,000 per person

\$10,000,000 per accident

Property Damage:

\$10,000,000 per accident

(e) In the event and to the extent Lessee elects to meet its insurance obligations hereunder by self-insuring, all references to insurance in this Agreement shall refer to such self-insurance and the Lessee shall be deemed to be the insurer thereof.

(f) Lessee acknowledges that in entering this agreement, Government is relying on the opinion letter of Lessee's City Attorney dated September 30, 1994 which is attached hereto as Exhibit "D".

15. METHANE GAS FROM LANDFILLS:

(a) Lessee acknowledges its responsibility for collection and disposal of methane gas generated by solid waste landfills in performance of its obligation to close and monitor said landfills.

(b) All facilities and equipment for the collection, transportation, use and disposal of methane gas shall utilize, at the time of initial construction and significant replacement of equipment or facilities, the best available control technology (BACT) to maximize collection and minimize the release of gas to the atmosphere. Lessee shall maintain all such facilities in proper working order so as to maintain proper performance thereof.

(c) Government agrees to sell, and Lessee agrees to buy all methane gas extracted from solid waste landfills on the Leased Property, at a total maximum cost (not to exceed \$1.5 million)

Lessee shall make such compensation by means of annual production payments equal to two percent (2%) of the annual gross revenues derived from the sale of energy generated from landfill gas to buyers other than those situated on the Leased Property. Consistent with the total maximum cost specified above, the term during which production payments will be required shall commence at the inception of the sale of energy to off-site buyers, and shall endure until usable methane gas no longer can be produced from the landfills. Lessee makes no representation that cumulative production payments will ultimately satisfy the maximum sale price for the methane gas, and Government agrees to accept the actual cumulative value of production payments as the full sale price for the gas. The parties recognize that the maximum sale price for the methane gas and the percentage of gross revenues applicable as production payment, as provided by this subparagraph, have been agreed upon based only on a preliminary assessment of the quantity and quality of gas available, and of the off-site marketability of energy produced therefrom. Accordingly, the parties agree that said maximum sale price and the percentage of gross revenue applied as production payment may be renegotiated in good faith by the parties either when the total maximum cost is reached, or five (5) years after the execution of this Lease, whichever first occurs; provided, however, that the renegotiated maximum price, if any, shall remain reasonably attainable via the production payments.

16. MITIGATION FOR ENVIRONMENTAL IMPACTS: Lessee understands and agrees that the Leased Property shall not be used to mitigate the environmental impacts of any action or activity of Lessee. Lessee further understands and agrees that lands of the Department of the Navy outside the Leased Property are not available to Lessee for mitigation of any environmental impacts of any action or activity of Lessee, whether on or off of the Leased Property.

17. AIR QUALITY: Lessee acknowledges and understands that it is a material condition of Government's decision to enter into this Agreement that emissions of air pollutants or air contaminants arising from Lessee's past, present and future activities on the Leased Property will be attributed to the Lessee and not to the Government for purposes of all regulation. Such regulation includes, but is not limited to, all Federal, State, interstate, and local requirements (whether substantive or procedural), authority and process and sanctions respecting control and abatement of air pollution, including all permit requirements. Specifically, it is understood and agreed that, as between the Government and Lessee, no part of the Leased Property, nor any mobile, stationary or transportable unit located thereon shall be considered part of the same source, stationary source, facility, building, structure, other regulated unit, or aggregation of such regulated units as the rest of Government's property for purposes of any and all air quality regulation. If it is determined that the Station and Leased Property are part of the same source, Lessee shall, as a prerequisite to conducting or continuing its operations, obtain sufficient emission credits to offset its emissions on the Leased Property so as not to limit or otherwise jeopardize emissions from the Station. Failure of the foregoing condition at any time, for any reason, during the term of this

Agreement shall constitute a material failure of consideration to the Government and be cause for the Government, in its discretion, to terminate this Agreement, suspend Lessee's operations, and/or require Lessee to pay to Government the amount of any fee, expense, cost, fine, penalty or sanction imposed by any governmental agency or entity by reason of any air emissions resulting from Lessee's activities in, on or near the Leased Property. Lessee hereby waives all termination and/or suspension claims and costs if such termination or suspension results from a determination that the Station and Leased Property are part of the same source and Lessee is unable or otherwise fails to obtain sufficient emission credits at Lessee's cost to conduct or continue its operations on the Leased Property.

18. COMPLIANCE WITH BIOLOGICAL OPINION: Lessee acknowledges and understands that its occupancy and use of the Leased Property may affect one or more species which are listed or proposed for listing as Endangered or Threatened pursuant to the Federal Endangered Species Act, codified at 16 U.S.C. Sec.1531 et seq. (Act). As a material term of this Agreement, Lessee covenants and agrees with the Government that it assumes full responsibility for and will insure full compliance with the Act, including aspects of the Act that are applicable to the Government. Lessee acknowledges that it has participated in formal consultation with the U.S. Fish & Wildlife Service which has concluded with the production of Biological Opinion #1-6-94-F-37, dated September 29, 1994 (Opinion). Lessee acknowledges and understands that the Opinion contains provisions that may go beyond the minimums set by the Act. Nonetheless, Lessee covenants and agrees with Government that, to insure full compliance with the Act, Lessee will fully implement the Opinion as an obligation to be performed under this Agreement. Lessee's obligations include, but are not limited to, performance of, or compliance with, all measures, terms and conditions, conservation recommendations and any and all incidental take statement provisions included in the Opinion; and, at the request of either the Government or the U.S. Fish and Wildlife Service, participating in any future consultation(s) and implementing the terms of any superseding Biological Opinion(s). Lessee does not waive any right to challenge or appeal any Opinion but Lessee covenants and agrees that it will indemnify and defend the Government and hold it harmless from any liability arising under the Act as the result of any action or failure to act by Lessee. Failure of the Lessee to perform any of the obligations set forth in this paragraph shall be deemed a material breach of this Agreement and cause, for the Government, in its discretion, to terminate this Agreement.

19. SPECIAL USE RESTRICTIONS:

(a) Lessee understands and agrees that the location of the Leased Property on the Station, and the proximity of the intended uses of the Leased Property by Lessee under this Agreement to the operational areas and flight patterns for high performance and low flying military aircraft requires that the Leased Property be used at all times in strict accordance with special restrictions made necessary by the nature of the military mission and operations of

the Station. Lessee covenants and agrees with Government that, notwithstanding any other provision of this Agreement, it will at all times use the Leased Property so that:

(1) Lessee's activities are in compliance and conformance with the Station's Bird Air Strike Hazard (BASH) Management Plan now or hereafter in effect;

(2) All facilities in which sludge is processed or hauled are covered and use the best available control technology to prevent the release of odor such that they produce less than five (5) odor units, as defined by American Society for Testing and Materials Method E-679 Standard Practice for Determination of Odor and Taste Thresholds by a Forced-Choice Ascending Concentration Series Method of Limits (being the level at which odor is detectable), 99.5% of the hours per calendar year at a distance of one thousand feet (1000') from the exterior of any building from which odor is emitted;

(3) Any modification or changes to Lessee's use of the Leased Property from those set forth in its Miramar Landfill General Development Plan dated September 1994, are approved by Government in writing before they are implemented and are compatible with the Station's established Air Installation Compatible Use Zone plan and any future updated or amended versions then in effect. Government agrees to review and decide such proposals in a timely manner;

(4) No structure, earthen mounds, or natural plant growth on the Leased Property shall be permitted to extend above 465 MSL;

(5) There shall be no reflective glass on the exterior of any structure on the Leased Property and no interior lighting shall be visible from above the horizontal plane of any window, skylight, or opening;

(6) All exterior lighting shall be reflected downward;

(7) No dust, vapors, or particulate matter impairing visibility shall be released or emitted from the Leased Property;

(8) There shall be no open flaring of methane gas from the Leased Property;

(9) No structures, heavy equipment placement or movement, subsurface excavations or placement of refuse or soil mounding shall be allowed within 25 feet on either side of any underground fuel lines on the Leased Property without prior written approval of the Commanding Officer of the Station; and

(10) Lessee understands that electronic emissions at or near the Leased Property could be hazardous to aircraft or otherwise interfere with military operations at the Station. No equipment or device which emits or transmits electronic signals of any kind may be used at the Leased Property or in connection with Lessee's operations or activities without first obtaining the

express written permission of the Station's Frequency Manager, or such other official as the Commanding Officer of Station may designate, for use of that specific equipment or device. Equipment or devices which have been approved by Station shall be operated in such manner as to produce electronic emissions only at the frequency or frequencies specified in such written permission, and only in accordance with such other limitations (such as restrictions on the length or time of emissions or on signal strength) as are stated therein. In the event the Station shall determine at any time that any electronic emissions represent a hazard to aircraft or interfere with Station operations, Lessee will, upon notice from Station, immediately cease operating the device or equipment causing such emissions, whether or not it was previously approved;

(11) Lessee shall not permit open storage of processed bio-solids.

(b) Any breach of the provisions of this paragraph may be deemed a material breach of this Agreement.

20. ENVIRONMENTAL LAW COMPLIANCE:

(a) This Agreement is subject to 10 U.S.C. Sec. 2692, which prohibits the storage and disposal on Department of Defense (DoD) property of toxic or hazardous materials not owned by DoD. The Government's execution of this lease is therefore contingent upon obtaining the necessary statutory relief to store or dispose of non-DoD owned toxic or hazardous materials on the Leased Property.

(b) Lessee shall be solely responsible for obtaining, at its sole cost and expense, any and all permits required for its activities on the Leased Property, independent of any existing permits and shall provide complete copies thereof to Government before commencing any construction or activities pursuant to this Lease.

(c) The Government's rights under this Agreement specifically include the right to inspect, upon reasonable notice, the Leased Property and Lessee's facilities and operations thereon, for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them.

(d) Lessee shall comply with all applicable Federal, State, and local laws, ordinances, rules, Executive Orders and regulations pertaining to environmental protection, health, and safety and shall be solely responsible for any and all fines, penalties, and enforcement actions instituted or imposed pursuant to said laws, ordinances, rules and regulations with respect to the Leased Property or Lessee's use thereof. Lessee hereby assumes all environmental and financial liability for its activities on the Leased Property, and Lessee further agrees to defend, indemnify, and hold the Government, its officers, agents and employees, harmless from any and all claims, fines, penalties, causes of action, or other civil or administrative liability arising out of

or related to Lessee's activities on the Leased Property. Lessee shall be solely responsible to pay and shall hold Government harmless from any fee, assessment, charge or tax imposed on Lessee's activities or operations, including but not limited to the California Quarterly Solid Waste Disposal Fee and any other fee, assessment, charge or tax imposed upon or measured by the quantity or type of waste disposed on the Leased Property.

(e) Lessee shall be responsible for compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) in connection with any construction or other action by Lessee not heretofore specifically covered in completed environmental documentation.

(f) The Lessee and the Government shall use best efforts to reduce the quantities of solid waste requiring landfill disposal under this Agreement through recycling and waste diversion as required by Federal, State, and local law and regulations.

(g) Any violation of the provisions of this paragraph shall be deemed a material breach of this Agreement.

21. SUBJECTION TO EXISTING AND FUTURE EASEMENTS AND RIGHTS OF WAY: This Agreement is subject to all outstanding easements and rights of way for location of any type of facility over, across, in and upon the Leased Property, or any portion thereof, and to the right of the Government to grant such additional easements and rights of way over, across, in and upon the Leased Property as it shall determine to be in the public interest; provided however, that 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 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 Property as shall be necessary for the performance of their duties with regard to such facilities.

22. TERMINATION:

(a) The Government shall have the right to terminate this Agreement, or any portion thereof, at any time, without prior notice, and regardless of any lack of breach by Lessee of any of the terms and conditions of this Agreement. In the event of termination for any reason not involving a breach by Lessee of the terms and conditions of this Agreement, the Government shall make an equitable adjustment of any advance rentals paid by the Lessee consistent with the schedule of rates in Exhibit "C", and subject to the availability of Congressionally appropriated funds for excess rental payments in accounts which are legally available to the Secretary of the Navy for such use. Nothing herein shall be

construed that Congress will at a later date, appropriate funds sufficient to cover any deficiency.

(b) Lessee shall have the right to terminate this Agreement upon ninety (90) days written notice to the Government in the event of damage to or destruction of all of the improvements of the Leased Property or such a substantial portion thereof as to render the Leased Property incapable of use for the purposes for which it is leased hereunder; provided, (1) the Government either has not authorized or directed the repair, rebuilding or replacement of the improvements or has made no provision for payment for such repair, rebuilding or replacement by application of insurance proceeds or otherwise, and (2) that such damage or destruction was not occasioned by the fault or negligence of Lessee or any of its officers, agents, servants, contractors, subcontractors, employees, subtenants, licensees or invitees, or by any failure or refusal on the part of Lessee to fully perform its obligations under this Agreement. Such termination shall not include any of Lessee's obligations regarding the landfills covered by this Agreement.

23. WAIVER OF LIABILITY AND INDEMNIFICATION BY LESSEE; GOVERNMENT NONLIABILITY. WAIVER OF SUBROGATION: To the extent allowed by law, Lessee hereby waives and releases, on behalf of itself and its officers, employees, agents, servants, representatives, subtenants, licensees, invitees, contractors and subcontractors, any and all claims against Government, and its officers, agents, and employees for personal injury, death or property damage which arises out of or is alleged to arise out of an act or omission of Government in, on or affecting the Leased Property. Lessee covenants that it will indemnify the Government and hold it harmless from and against any and all liability or claims for (a) loss of or damage to any property owned by or in the custody or control of Lessee on the Leased Property, or (b) the death of or injury to any person or persons in or on the Leased Property, or which may arise out of or be attributable to the condition or state of repair of the Leased Property, Lessee's activities, operations or actions on or at the Leased Property, or Lessee's use or occupancy of the Leased Property (whether or not such death or injury shall be occasioned by the negligence or lack of diligence of Lessee or its officers, agents, servants or employees) or the furnishing of or failure or interruption of any utilities or services. Lessee agrees that it will adequately insure or self-insure itself and all of its property in or on the Leased Property and that Lessee shall require any financial assurance arrangement to provide that the entity providing such financial assurance waive any subrogation right or other claims it may have against the Government. In the event Lessee is self-insured against any loss or liability, Lessee waives subrogation against the Government in connection with any and all claims of loss or liability. Notwithstanding the other provisions of this paragraph, Lessee shall not be liable to Government for loss, injury, or damage to Government equipment, machinery, aircraft, or personnel in the event that the negligence or willful misconduct of the Government, its agents, officers, or employees is the sole or contributing cause of such loss, injury, or damage.

24. UTILITIES AND SERVICES: In the event that the Government shall furnish Lessee with any utilities and services maintained by the Government which Lessee may require in connection with its use of the Leased Property, Lessee shall pay the Government the charges therefor in addition to the cash rent required under this Agreement. Such charges and the method of payment thereof shall be determined by the appropriate supplier of such service, in accordance with applicable laws and regulations, on such basis as the appropriate supplier of such service may establish, which may include a requirement for the installation of adequate connecting and metering equipment at the sole cost and expense of Lessee. It is expressly agreed and understood that nothing herein shall be deemed to require the Government to provide any utilities or services to Lessee, and the Government in no way warrants the continued maintenance or adequacy of any utilities or services furnished by it to Lessee.

25. COVENANT AGAINST CONTINGENT FEES: Lessee warrants that no person or agency has been employed or retained to solicit or secure this Agreement 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, the Government shall have the right to annul this Agreement 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.

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

27. INTEREST:

(a) Notwithstanding any other provision of this Agreement, unless paid within thirty (30) days, all amounts that become payable by the Lessee to the Government under this Agreement shall bear simple interest from the date until paid unless paid within thirty (30) days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (P.L. 95-563), which is applicable to the period in which the amount becomes due, as provided in subparagraph (b) of this paragraph, and then at the rate applicable for each six (6) month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this Agreement.

(2) The date of the first written demand for payment consistent with this Agreement, including any demand resulting from a default termination.

28. STATE AND LOCAL TAXES: In the event any taxes, assessment or similar charges are imposed by State or local authorities upon the Lessee's interest in the Leased Property, Lessee's improvements or Lessee's operations, the Lessee shall pay the same when due and payable.
29. CONSENT: Where the consent or approval of a party is required in or necessary under this Agreement, the consent or approval shall not be unreasonably withheld.
30. NO PARTNERSHIP: The parties agree that nothing herein nor shall any prior agreement between the Lessee and the Government be deemed or construed by the parties or by any third party as creating or authorizing the creation of any partnership or joint venture between Government and Lessee. It is understood and agreed that no provision of this Agreement, nor any act of the Government or Lessee hereafter, shall be deemed to create any relationship between the Government and Lessee other than that provided herein.
31. TIME OF THE ESSENCE: Time is of the essence for this Agreement and to the performance of each and every term, covenant, and condition thereof.
32. REMEDIES: The specified remedies to which the Government may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the Government may be lawfully entitled in case of any breach or threatened breach by the Lessee of any provision of this Agreement. The failure of the Government to insist in any one or more case upon the strict performance of any of the covenants of this Agreement on the part of Lessee to be performed or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such covenant or option.
33. GOVERNMENT RULES AND REGULATIONS: Lessee, and Lessee's employees, officers, agents, contractors and invitees, shall comply at all times with such rules and regulations regarding security, ingress, egress, safety and sanitation as may be prescribed, from time to time, by the Government.
34. LABOR PROVISION: During the term of this lease, the Lessee agrees to comply with all applicable labor provisions contained within Federal, State, and local statutes and regulations, and shall ensure that all contractors, subcontractors, and sublessees shall likewise comply.
35. ENFORCEMENT: If this Agreement or any term or provision thereof or application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

36. PARTIES BOUND: All of the covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Lessee to the same extent as if each successor and assign were in each case named as a party to this Agreement. Any person, corporation or other legal entity acquiring any or all of the rights, title and interest of the Lessee in the Leased Property shall thereby become liable under and be fully bound by all of the provisions of this Agreement.

37. ADMINISTRATION AND NOTICE: The local Government representative of this Agreement is Commanding Officer, Southwest Division, Naval Facilities Engineering Command. All correspondence and notices concerning this Agreement shall be directed to:

If to the Government:
 Commanding Officer
 Southwest Division
 Naval Facilities Engineering Command
 1220 Pacific Highway
 San Diego, California 92132-5190

and to:
 Commanding Officer
 Naval Air Station, Miramar
 San Diego, California 92145-5005

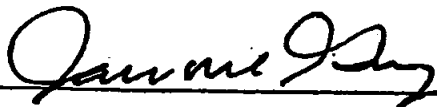
If to the Lessee:
 The City Manager
 City of San Diego
 202 "C" Street
 San Diego, California 92101

No notice, order, direction, determination, requirement, consent, or approval under this Agreement shall be of any effect unless in writing.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the date inserted in the first paragraph.

CITY OF SAN DIEGO

UNITED STATES OF AMERICA
 Department of the Navy

By 

By 

Title CITY MANAGER
 (Signature effective upon
 ratification by the City Council
 of the City of San Diego)

Title DASN (I+P)