



Real Estate Assets Department
SDC003

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS





UNITED STATES MARINE CORPS
HEADQUARTERS MARINE CORPS AIR STATION MIRAMAR
P O BOX 452007
SAN DIEGO CA 92145-2007

September 28, 2006

City of San Diego Real Estate Assets Department
Attention: Mr Frederick R. Reale
1200 Third Avenue
Suite 1700, MS 51A
San Diego, California 92121

Dear Mr. Reale,

The City of San Diego request to extend the service contract with Allan Company for the operation of the Miramar Recycling Center was received in your letter of September 15, 2006. Marine Corps Air Station Miramar consents to a one year extension retroactive to January 1, 2006 and consents to an additional one year extension commencing January 1, 2007.

Sincerely,

A handwritten signature in black ink that reads "Jack R. Harkins".

JACK R. HARKINS

Deputy Director Installations and Logistics
MCAS Miramar
PO Box 452007
San Diego, CA 92145-2007



THE CITY OF SAN DIEGO

September 15, 2006

Commanding Officer
Marine Corps Air Station Miramar
Attn: Mr. Jack Harkins, S-4
P.O. Box 452007
San Diego, CA 92145-2007

Reference: Ground Lease Agreement between the City of San Diego ("City") and the United States of America ("Government") Entered into August 17, 1995 ("Lease")

Dear Mr. Harkins:

Subject: Prior Written Consent of the Government to the Third Extension of the City's Service Contract with the Allan Company for the Operation of the Miramar Recycling Center

As you are aware, the City operates the Miramar Landfill under the terms and conditions of the above-referenced Lease. Paragraph 2, "USE", of the Lease approved and authorized the construction, installation, operation and maintenance of a recycling area on Parcel 4 (as described in the Lease) of the Leased Property. Under that authorized use, the Allan Company ("Allan") has been operating the Miramar Recycling Center ("Center") for the City's Environmental Services Department ("ESD") under the terms and conditions of a five (5) year service contract ("Contract"), of which the effective date was January 1, 2002 and the initial termination date was December 31, 2006. Pursuant to a Contract provision, at the conclusion of the second year of the Contract and on the anniversary date of the Contract every year thereafter, the Contract's termination date may be extended for an additional year if mutually agreed upon by ESD and Allan ("Parties") and approved by the City's City Council ("City Council") by resolution. Thus far, the Contract has been extended twice in accordance with this provision. A third extension, to be effective retroactively to January 1, 2006, has been agreed to by ESD and Allan and is ready to be brought before the City Council for approval. Therefore, per our recent telephone conversations, and pursuant to Section 12, "Assignment or Subletting", Subparagraph (a), of the Lease, please accept this letter as the City's formal request for the subject consent.

Additionally, it is anticipated that the Parties will agree to a fourth extension of the Contract, to be effective January 1, 2007. Therefore, please also accept this letter as the City's formal request for the Government's prior written consent to the fourth extension of the Contract. In the future, unless you require otherwise, all requests for prior written consent to extensions of the Contract will be initiated by ESD directly.



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199

Tel (619) 236-6020 Fax (619) 236-6706

Page 2
Mr. Jack Harkins
September 15, 2006

Thank you for your time and consideration of this matter. Should you have any questions, please feel free to contact me at (619) 236-7028 or via e-mail at FReale@sandiego.gov.

Sincerely,

A handwritten signature in black ink, reading "Frederick L. Reale". The signature is fluid and cursive, with the first name "Frederick" being more prominent and the last name "Reale" following in a similar style.

Frederick L. Reale
Property Agent

FLR

cc: James F. Barwick, Real Estate Assets Department Director
Elmer L. Heap, Jr., Environmental Services Department Director
Kip Sturdevan, Deputy Director, Waste Reduction and Enforcement Division
Grace C. Lowenberg, Deputy City Attorney
Stephen L. Geitz, Supervising Property Agent, Asset Management and Marketing
Stephen Grealy, Recycling Supervisor, Waste Reduction and Enforcement Division

THIRD EXTENSION TO MIRAMAR RECYCLING CENTER
SERVICE CONTRACT/REAL PROPERTY LEASE
(CITY OF SAN DIEGO AND ALLAN COMPANY)

This Agreement to extend the term of the Miramar Recycling Center Service Contract/Real Property Lease Agreement [Third Extension], as authorized in Resolution 295859 adopted on December 10, 2001, is made and entered into between the City of San Diego [City], a municipal corporation, and Allan Company [Contractor], to take effect on January 1, 2006.

RECITALS

WHEREAS, the City of San Diego [City] is required by California state law to reduce the amount of solid waste disposed in landfills by 50% and to make a good faith effort to implement programs as described in City's Source Reduction and Recycling Element; and

WHEREAS, the City's Environmental Services Department [ESD] operates many recycling and educational outreach programs to divert recyclables from the City's waste stream; and

WHEREAS, ESD requires a contractor to operate the Miramar Recycling Center [Center], located at the entrance to the City's Miramar Landfill, to provide a convenient location for the public to recycle; and

WHEREAS, in 2001, the San Diego City Council authorized the City Manager to execute the Miramar Recycling Center Service Contract/Real Property Lease [Agreement] with Allan Company [Contractor] for the operation of the Center, which Agreement is on file in the office of the City Clerk as Document Number RR-295859; and

WHEREAS, since the original agreement was approved in 2001, the Contractor spent over \$265,200 on site improvements and marketing, and has increased usage 19 percent from FY 2004 to FY 2005, serving over 90,000 customers a year. In addition to traditional recycling, Contractor has taken steps to comply with new State regulations for accepting "Materials that Require Special Handling" (MRSH) including appliances containing Chlorofluorocarbons (CFC) (refrigerators, freezers, and air conditioners) and other major appliances, such as stoves, clothes washers and dryers, dish washers and water heaters. When the strict compliance and monitoring regulations take effect January 1, 2006, the Center will remain as one of the few options available in San Diego for the legal recycling and disposal of these items.

WHEREAS, the Center also accepts cathode ray tube (CRT) devices such as computer monitors and TVs. The Center also provides free tax paper shredding and recycling during April, cooking oil recycling, and the sale of bagged Miramar Greenery compost and Recycle Or Else items at no additional charge to the City; and

WHEREAS, the Agreement provides for a five-year initial term and includes an evergreen clause which, beginning at the end of the second contract year and at the end of each contract year thereafter, allows for a one-year extension of the Agreement if mutually agreed upon by the parties and approved by the Council; and

WHEREAS, the Third Extension also amends the agreement to increase the monthly rent paid by the Contractor to ESD, beginning January 1, 2006, from \$5,450 to \$8,000 per month, thereby increasing the FY 2006 revenue from \$65,400 to \$80,700 and to \$96,000 annually thereafter, increase to be paid retroactive upon adoption of the Third Extension;

WHEREAS, the City Council by resolution authorized execution of the Second Extension to the Miramar Recycling Center Service Contract/Real Property Lease on February 7, 2005, which Second Extension was subsequently executed; and

WHEREAS, extending the Agreement will allow Contractor to continue providing high quality services in support of the City's efforts to meet State-mandated waste diversion goals and divert waste from the Miramar Landfill thereby extending the useful life of the landfill;

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein and in the Agreement, both parties do agree as follows:

1. Pursuant to section 3.14 of the Agreement, the term of the Agreement is extended for a period of one year from December 31, 2008 to December 31, 2009.
2. The table in Section 2.2: Compensation and Required Reports to the City, which sets forth the amounts the Contractor shall pay the City during specified time periods, shall be replaced in it's entirety with the following:

Time frame (FY)	Total rent/mo.	Total rent/year
July 2001-June 2002	\$1,450	\$16,251/(Fiscal Year [FY])*
July 2002 - June 2003	\$2,450	\$29,400/(FY)
July 2003 - June 2004	\$3,450	\$41,400/(FY)
July 2004- June 2005	\$4,450	\$53,400/(FY)
July 2005-Dec 2005	\$5,450	\$32,700/(6 month period)
Jan – Dec 2006	\$8,000	\$96,000/(Calendar Year [CY])
Jan – Dec 2007	\$8,000	\$96,000 (CY)
Jan – Dec 2008	\$8,000	\$96,000/(CY)
Jan – Dec 2009	\$8,000	\$96,000/(CY)

* Includes one month at \$301/mo. and eleven months at \$1,450/mo.

3. This Third Extension to the Agreement, shall affect only the terms and/or conditions referred to herein. All other terms and conditions shall remain in full force and effect.

4. The effective date of this Third Amendment to the Agreement is retroactive to January 1, 2006.

IN WITNESS WHEREOF, this THIRD EXTENSION to the AGREEMENT is executed by THE CITY OF SAN DIEGO, acting by and through its City Manager and by ALLAN COMPANY, acting by and through its authorized representative.

Date: 12-2-2005

ALLAN COMPANY

By Stephen A. Young
Stephen A. Young, President

Date: _____

CITY OF SAN DIEGO

By _____
Elmer L. Heap, Jr.
Environmental Services Director

I HEREBY APPROVE the form and legality of the forgoing Third Extension to the Agreement, this _____ day of _____, 2006.

Michael J. Aguirre, CITY ATTORNEY

By _____
Grace C. Lowenberg
Deputy City Attorney

RECEIVED MAR 14 2006

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

N/A

TO:

CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):

ENVIRONMENTAL SERVICES, WRED

3. DATE:

2/10/2006

4. SUBJECT:

MIRAMAR RECYCLING CENTER CONTRACT/REAL PROPERTY LEASE EXTENSION

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.):

Stephen Grealy, X31275, MS 1103B

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.):

Jennifer Ott, X31285, MS 1103B

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



B. COMPLETE FOR ACCOUNTING PURPOSES

FUND	41210					9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.	755					No funds will be expended. City will receive estimated revenue of \$80,700 in FY2006, increasing to \$96,000 annually thereafter. Revenue will be deposited in Fund 41210 - Recycling Fund.
ORGANIZATION	2310					
OBJECT ACCOUNT	NA					
JOB ORDER	NA					
C.I.P. NUMBER	NA					
AMOUNT	\$80,700 Revenue					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>[Signature]</i>	2/13/06	8	DEPUTY CHIEF	<i>[Signature]</i>	3-14-06
2	EOCP	<i>[Signature]</i>	2/15/06	9	COO		
3	FOR/EAS	<i>[Signature]</i>	2/16/06	10	CITY ATTORNEY		
4	LIASON OFFICE	<i>[Signature]</i>	2/28/06	11	ORIG. DEPT		
5	(FINANCIAL REVIEW)	<i>[Signature]</i>	3/2/06	DOCKET COORD: _____ COUNCIL LIASON: _____ ☒ COUNCIL PRESIDENT ☐ SPOB ☐ CONSENT ☐ ADOPTION ☐ REFER TO: _____ COUNCIL DATE: _____			
6	(FINANCIAL REVIEW)	<i>[Signature]</i>	3/7/06				
7							

11. PREPARATION OF:

☒ RESOLUTIONS☐ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

- 1) Authorize Staff to execute the third extension to the existing agreement for the operation of the Miramar Recycling Center, to retroactively take effect January 1, 2006, thereby extending the existing contract one year and increasing payments due from Contractor under the third extension retroactive to January 1, 2006. The revised expiration date would be December 31, 2009.

11A. STAFF RECOMMENDATIONS:

Approve the extension of the Agreement.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S):

CENTER IS LOCATED WITHIN DISTRICT 7 AND IS USED BY RESIDENTS FROM ALL OF THE COUNCIL DISTRICTS.

COMMUNITY AREA(S):

ALL

ENVIRONMENTAL IMPACT:

THIS ACTIVITY IS CATEGORICALLY EXEMPT FROM CEQA PURSUANT TO STATE CEQA GUIDELINES SECTION 15301.

HOUSING IMPACT:

NONE

OTHER ISSUES:

NONE

REPORT TO THE CITY COUNCIL EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED: February 10, 2006
ATTENTION: Council President and City Council
ORIGINATING DEPT: Environmental Services Department (ESD)
SUBJECT: Miramar Recycling Center Contract/Real Property Lease Extension
COUNCIL DISTRICT(S): Citywide
STAFF CONTACT: Stephen Grealy, Recycling Program Manager, (858) 573-1275

REQUESTED ACTION:

Council authorization to execute the third extension to the existing agreement for the operation of the Miramar Recycling Center to take effect January 1, 2006.

STAFF RECOMMENDATION:

Staff recommends executing the third extension to the existing agreement for the operation of the Miramar Recycling Center. This action will result in an immediate increase (retroactive to January 1, 2006) in rent revenue from \$5,450 to \$8,000 per month, thereby increasing the anticipated FY 2006 revenue from \$65,400 to \$80,700.

EXECUTIVE SUMMARY:

In 2001, the San Diego City Council authorized the City Manager to execute a new agreement with Allan Company (Contractor) for the operation of the Miramar Recycling Center (Center), located at the entrance of the City's Miramar Landfill (Resolution RR-295859). The new agreement provided the City with increased revenue, services, and capital improvements, in exchange for a five-year contract that includes an "evergreen clause" which, beginning at the end of the second contract year, and at the end of each contract year thereafter, allows for a one-year extension of the agreement if mutually agreed upon by the parties and approved by Council. If the City Council does not approve the third extension to the agreement, the contract will terminate in three years.

The Third Extension, to take effect January 1, 2006, also amends the Agreement to increase the monthly rent paid by the Contractor, beginning January 1, 2006 from \$5,450 to \$8,000 per month, thereby increasing the FY 2006 revenue from \$65,400 to \$80,700 and to \$96,000 annually thereafter. The increase is to be paid retroactive upon adoption of the Third Extension. An independent analysis provided by the Real Estate Assets Department has concluded that, given the restrictions of the property sited on closed landfill and Federal military property, a monthly rent of \$8,000 is a fair value for the property.

FISCAL CONSIDERATIONS:

The present contract calls for rent payments from the Contractor of \$5,450 per month increasing to \$6,450 after July 2007. Based upon the success of the recycling center and the volume of materials being processed there, ESD staff proposed an increase in the monthly rent payments to \$8,000 per month. Annual revenues from the proposed agreement are estimated at \$80,700 for FY 2006 and \$96,000 for FY 2007, and annually thereafter.

PREVIOUS COUNCIL COMMITTEE ACTION:

None

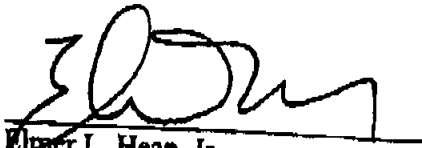
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The Miramar Recycling Center provides a valuable, high-quality service to City residents and businesses by providing a one-stop recycling opportunity. In addition to the paper, cardboard, beverage containers, scrap metal and other recyclable items the Center accepts, it accepts cathode ray tube (CRT) devices such as computer monitors and TVs free of charge, and accepts for a small fee such hard to handle items as appliances and electronics. It also provides free tax paper shredding and recycling during April, cooking oil recycling, and the sale of bagged Miramar Greenery compost and Recycle Or Else items at no additional charge to the City.

Since the original agreement was approved in 2001, the Contractor has spent over \$265,200 on site improvements and marketing. Through print media, television and radio advertising, the Contractor has increased usage 19 percent from FY 2004 to FY 2005, serving over 90,000 customers a year. The Miramar Recycling Center is featured on the BSD web page and promoted in our annually updated *City of San Diego Recycling Guide*.

KEY STAKEHOLDERS:

In 1999 the City issued a RFB for management of the Miramar Recycling Center. Only two eligible bids were received; one from Allan Company and one from Escondido Recycling. Escondido Recycling subsequently withdrew their bid, leaving only Allan Company as an eligible bidder with a monthly rent proposal of \$301.


Elmer L. Heap, Jr.
Environmental Services Director
R.F. Haas
Deputy Chief of Public Works

DOC 1998-0390050

Jun 25, 1998 8:11 AM

RECORDING REQUESTED BY:

CITY OF SAN DIEGO

859

AFTER RECORDING MAIL TO:

CITY OF SAN DIEGO
REAL ESTATE ASSETS DEPT.
ATTN: STEW CERVENY
MAIL STATION 51A

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER

FEES: 0.00
OC: NA



1998-0390050

349-030-01, 02 349-020-02, 03
349-010-03 356-011-06, 08
356-031-14

NO DOCUMENTARY TAX DUE - R&T11922 (amended)
PRESENTED FOR RECORDING BY CITY OF SAN DIEGO

N687 119 5RP 05 P90
For Benefit of City of San Diego

MEMORANDUM OF LEASE

This Memorandum of Lease, made and entered into this 24th day of June, 1998, by and between the United States of America, acting by and through the Department of the Navy (hereinafter called Lessor) and the City of San Diego, California (hereinafter called the Lessee)

WITNESSETH

- Real Estate Lease: Lessor and Lessee have entered into a certain unrecorded lease agreement dated as of August 17, 1995 (hereinafter called Lease) wherein Lessor leased and demised unto Lessee and Lessee accepted from Lessor on the terms and conditions stated in the Lease, certain premises in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit "A" attached hereto, and by this reference made a part thereof.
- Term: The term of the Lease is for fifty (50) years starting August 17, 1995 and expiring on August 16, 2045.
- Memorandum of Lease: This Memorandum of Lease is made for the purpose of giving notice of the said Lease and certain of its terms, covenants and conditions, and for no other purposes. The provisions of this Memorandum of Lease shall not in any way change or affect the provisions of the said Lease, express reference to which is hereby made and the terms and conditions of which remain in full force and effect. A full copy of said Lease is on file in the Office of the City Clerk of the City of San Diego as Document No. OO-18218.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the date first written above.

CITY OF SAN DIEGO

UNITED STATES OF AMERICA
Department of the Navy

By Michael S. Hoff

Title DEPUTY DIRECTOR

By Christopher E. Haskett

Title **CHRISTOPHER E. HASKETT**
Real Estate Contracting Officer

I hereby approve the form of the foregoing
Memorandum this 24th day of June, 1998.

CASEY GWINN, City Attorney

By: Frederick M. Cichelli

(CORRECTED LEGAL DESCRIPTION 6-9-98)

MIRAMAR LEASE AREAS FOR
INTEGRATED WASTE MANAGEMENT FACILITIES

Being those portions of Lot 78 of, Partition of Rancho Mission of San Diego, in the County of San Diego, State of California according to Map No. 330 filed in the office of the County Clerk of said County, January 14, 1886, made in action entitled Juan, et al, vs. Commercial Bank of San Diego, et al, under Superior Court Case No.348, more particularly described as follows:

PARCEL 1

Beginning at the common corner of Sections 13, 18, 19, and 24, Township 15 South, Range 3 West, of the San Bernardino Meridian according to the United States Government Survey; thence along the North line of said section 24 North 89°03'16" West 2413.89 feet; thence continuing along said North line North 89°02'17" West 425.00 feet; thence South 41°24'51" West 2,619.35 feet to a point designated herein as Point "A"; thence South 35°06'02" West 1,010.25 feet; thence South 01°20'14" West, 986.07 feet; thence North 76°23'57" East 621.39 feet; thence North 83°20'21" East 613.37 feet; thence North 27°43'20" East 629.64 feet; thence North 75°55'34" East 2,458.58 feet; thence North 45°20'22" East 1,796.57 feet; thence North 00°19'59" East 1,094.43 feet to the point of beginning.

(Said parcel of land contains 249.725 acres more or less)

PARCEL 2

Beginning at Point "A" as described in Parcel 1 herein; thence South 80°16'35" West 353.52 feet; thence North 5°47'48" West 1,131.27 feet; thence North 56°05'45" West 770.00 feet; thence North 5°54'23" East 518.69 feet to a point on the northerly line of Section 23 as described in said Parcel 1; thence along said section line North 89°00'28" West 2,380.12 feet; thence leaving said section line South 75°56'16" West 3879.28 feet; thence South

68°12'22" West 2917.12 feet to an angle point on the easterly line of the State of California Department of Transportation (Caltrans) right-of-way (State Route 11-SD-805) as shown on Caltrans monumentation map Miscellaneous Survey No. 726(M.S.726); thence along said easterly line South 28°36'46" East 2,501.27 feet (South 28°36'58" East 2,501.28 feet per M.S.726); thence South 50°16'36" East 554.51 feet (South 50°16'58" East 554.40 feet per M.S.726) to the beginning of monumentation mapping for the northerly line of Caltrans right-of-way (State Route 11-SD-52) as shown on M.S.988; thence leaving said easterly line of (State Route 11-SD-805) along the northerly line of said Caltrans right-of-way (State Route 11-SD-52) South 73°58'06" East 474.98 feet (South 73°58'20" East per M.S.988) to the most easterly point of the Monardella Mitigation Site as delineated on said M.S.988; thence leaving said northerly right-of-way line along the northerly line of said mitigation site North 80°58'05" East (North 80°57'51" East per M.S.988) 110.94 feet; thence South 78°31'21" East (South 78°31'35" East per M.S.988) 200.81 feet; thence North 88°37'01" East 1,387.20 feet (North 88°36'47" East per M.S.988); thence South 30°42'19" East (South 30°42'33" East per M.S.988) 402.29 feet; thence leaving the northerly line of said mitigation site South 80°24'03" East 53.98 feet; thence North 79°46'28" East 1,530.33 feet; thence North 76°19'14" East 3,540.93 feet to a point designated herein as Point "B"; thence continuing along said last course North 76°19'14" West 326.00 feet; thence North 1°20'14" East 986.07 feet; thence North 35°06'02" East 1,010.25 feet to the point of beginning.

(Said parcel of land contains 801.445 acres more or less)

PARCEL 3

Beginning at Point "B" as described in Parcel 2 herein; thence South 9°02'16" East 597.85 feet; thence South 11°02'18" West 420.41 feet; thence South 16°51'36" East 338.36 feet to a point designated herein as Point "C"; thence South 64°56'54" East 345.15 feet; thence North 20°16'59" West 416.11 feet; thence North 0°00'00" East 350.10 feet; thence North 14°26'22" East 881.88 feet; thence South 76°23'57" West 188.42 feet; thence South 76°19'14" West, 326.00 feet to the point of beginning.

(Said parcel of land contains 9.847 acres more or less)

Beginning at Point "C" as described in Parcel 3 herein; thence North 89°50'06" West 1,513.85 feet; thence South 41°31'31" West 511.04 feet; thence South 4°29'56" West 569.70 feet; thence South 40°00'00" West, 94.71 feet; thence South 7°55'19" East, 216.59 feet; thence South 40°00'00" West 111.90 feet; thence South 82°30'01" West 83.99 feet; thence North 68°39'24" West 62.44 feet; thence South 89°50'33" West 99.26 feet; thence North 50°00'00" West 145.28 feet; thence North 2°06'06" East 99.31 feet; thence North 50°00'00" West 245.96 feet; thence South 84°58'42" West 64.56 feet; thence North 53°59'57" West 182.03 feet; thence North 19°59'57" West 75.94 feet; thence North 13°24'41" East 125.83 feet; thence North 50°00'00" West, 50.58 feet; thence South 74°39'19" West, 57.28 feet; thence North 50°00'00" West 220.75 feet; thence North 59°11'45" West 65.96 feet; thence North 84°41'34" West 175.73; thence North 50°00'00" West 86.30 feet; thence North 30°00'15" West 82.44 feet; thence North 50°00'00" West 195.91 feet; thence North 89°27'31" West 40.22 feet; thence South 40°00'00" West 195.98 feet; thence South 7°36'31" East 94.97 feet; thence South 40°00'00" West 870.69 feet to a point on the northerly line of the State of California Department of Transportation (CalTrans) right-of-way (State Route 11-SD-52) as shown on Caltrans monumentation map Miscellaneous Survey No. 988 (M.S.988); thence along said northerly line South 47°52'05" East 1049.62 feet (South 47°52'10" East per M.S.988); thence South 51°21'05" East 501.22 feet (South 51°21'10" East 501.22 feet per M.S.988); thence South 43°46'15" East 400.78 feet (South 43°46'20" East per M.S.988); thence South 53°19'55" East (South 53°19'58" East per M.S.988) 762.36 feet; thence South 63°46'30" East 284.78 (South 63°46'35" East 284.88 feet per M.S.988); thence South 65°58'33" East (South 65°58'38" East per M.S.988) 382.89 feet; thence South 79°17'24" East (South 79°17'29" East per M.S.988) 485.05 feet; thence North 88°13'38" East (North 88°13'33" East per M.S.988) 193.19 feet; thence North 82°29'51" East (North 82°29'46" East per M.S.988) 96.65 feet; thence North 51°19'37" East (North 51°19'32" East per M.S.988) 132.62 feet; thence North 82°49'51" East (North 82°49'46" East per M.S.988) 166.54 feet; thence North 73°21'22" East (North 73°11'17" East per M.S.988) 195.60 feet; thence North 65°39'57" East (North 65°39'52" East per M.S.988) 312.73 feet; thence North 68°47'31" East (North 68°47'26" East per M.S.988) 102.80 feet; thence South 83°38'38" East (South 83°38'43" East per M.S.988) 115.47 feet; thence South 86°14'12" East (South 86°14'17" East per M.S.988) 291.46 feet; thence South 78°15'34" East 98.69 feet (South 78°15'39" East per M.S.988); thence North 88°22'14" East (North 88°22'09" East per

M.S.988) 97.49 feet; thence North 82°45'34" East (North 82°45'29" East per M.S.988) 490.34 feet; thence North 77°03'50" East (North 77°03'45" East per M.S.988) 1000.01 feet; thence North 76°42'50" East (North 76°42'45" East per M.S.988) 900.00 feet; thence North 77°46'55" East (North 77°46'50" East per M.S.988) 600.00 feet to a point designated herein as Point "D"; thence leaving said northerly right-of-way line North 3°02'08" West 672.67 feet; thence North 64°55'10" West 3,566.06 feet; thence North 64°56'54" East 345.15 feet to the point of beginning.

West*

(Said parcel of land contains 359.336 acres more or less)

PARCEL 5

Beginning at Point "D" as described in Parcel 4 herein; thence South 3°02'08" East, 317.65 feet to a point on the southerly line of Caltrans right-of-way (11-SD-52) as shown on M.S.988, said point being the TRUE POINT OF BEGINNING; thence along said southerly line South 75°41'44" West (South 75°39'24" West) 39.69 feet; thence South 82°17'00" West (South 82°17'12" West) 691.03 feet; thence leaving said southerly line South 10°03'42" West 278.81 feet; thence North 77°12'59" East 813.14 feet; thence North 6°05'27" West 198.31 feet to the TRUE POINT OF BEGINNING.

(Said parcel of land contains 4.024 acres more or less)

THIS LEGAL DESCRIPTION WAS PREPARED
BY ME OR UNDER MY DIRECTION:

Leroy C. Hennes 9-12-94

LEROY C. HENNES, DEPUTY CITY ENGINEER

L.S. 4804

W.O. No. 118802

DWG. No. 27235-D



PAGE 4 OF 4 PAGES

* NOTE: 6-9-98

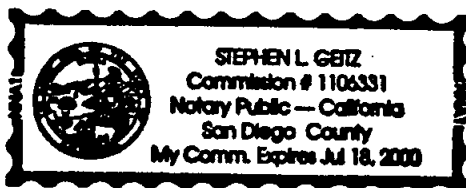
I have reviewed the subject legal description and referenced City of San Diego Drawing No. 27235-D, and confirmed that the closing course of Parcel 4 is North 64°56'54" West. The subject "quadrant error" has been noted and corrected hereon.

Lester E. Carter
Lester E. Carter Jr., Sr. Land Surveyor - Field Engineering.
PLS 6148, Ph: 619-627-3220

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA
 County of SAN DIEGO
 On JUNE 24, 1998 before me, STEPHEN L. GEITZ, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared MICHAEL R STEFFEN
Name(s) of Signer(s)

☒ personally known to me – OR – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Stephen L Geitz
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: MEMORANDUM OF LEASE
 Document Date: 6/24/98 Number of Pages: 6

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
 OF SIGNER
 Top of thumb here

Signer Is Representing:

Signer's Name: _____

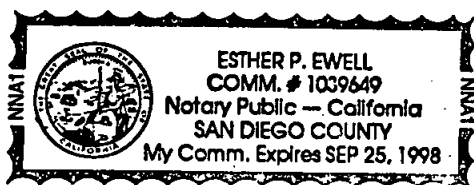
- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
 OF SIGNER
 Top of thumb here

Signer Is Representing:

State of CaliforniaCounty of San DiegoOn 6-24-98 before me, Esther P. Ewell, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"personally appeared Christopher E. Haskett
NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☐ ~~proved to me on the basis of satisfactory evidence~~
to be the person(s) whose name(s) is/are
subscribed to the within instrument and ac-
knowledged to me that he/~~she/they~~ executed
the same in his/~~her/their~~ authorized
capacity(ies), and that by his/~~her/their~~
signature(s) on the instrument the person(s),
or the entity upon behalf of which the
person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Esther P. Ewell

SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
 NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENTMemorandum of Lease

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE



THE CITY OF SAN DIEGO

File: Landfill Lease

June 16, 1998

Matthew V. P. McTygue
Rath, Young and Pignatelli
One Capital Plaza
Concord, New Hampshire 03302-1500

Dear Mr. McTygue:

Re: Corrected Legal Description - Miramar Lease Area For Integrated Waste
Management Facilities

Best copy of legal description, per your request.

Any questions, please give me a call at (619) 236-6186.

Sincerely,

Stewart A. Cervený
Acquisition Supervisor



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706

(CORRECTED LEGAL DESCRIPTION 6-9-98)

MIRAMAR LEASE AREAS FOR
INTEGRATED WASTE MANAGEMENT FACILITIES

Being those portions of Lot 78 of, Partition of Rancho Mission of San Diego, in the County of San Diego, State of California according to Map No. 330 filed in the office of the County Clerk of said County, January 14, 1886, made in action entitled Juan, et al, vs. Commercial Bank of San Diego, et al, under Superior Court Case No.348, more particularly described as follows:

PARCEL 1

Beginning at the common corner of Sections 13, 18, 19, and 24, Township 15 South, Range 3 West, of the San Bernardino Meridian according to the United States Government Survey; thence along the North line of said section 24 North 89°03'16" West 2413.89 feet; thence continuing along said North line North 89°02'17" West 425.00 feet; thence South 41°24'51" West 2,619.35 feet to a point designated herein as Point "A"; thence South 35°06'02" West 1,010.25 feet; thence South 01°20'14" West, 986.07 feet; thence North 76°23'57" East 621.39 feet; thence North 83°20'21" East 613.37 feet; thence North 27°43'20" East 629.64 feet; thence North 75°55'34" East 2,458.58 feet; thence North 45°20'22" East 1,796.57 feet; thence North 00°19'59" East 1,094.43 feet to the point of beginning.

(Said parcel of land contains 249.725 acres more or less)

PARCEL 2

Beginning at Point "A" as described in Parcel 1 herein; thence South 80°16'35" West 353.52 feet; thence North 5°47'48" West 1,131.27 feet; thence North 56°05'45" West 770.00 feet; thence North 5°54'23" East 518.69 feet to a point on the northerly line of Section 23 as described in said Parcel 1; thence along said section line North 89°00'28" West 2,380.12 feet; thence leaving said section line South 75°56'16" West 3879.28 feet; thence South

68°12'22" West 2917.12 feet to an angle point on the easterly line of the State of California Department of Transportation (Caltrans) right-of-way (State Route 11-SD-805) as shown on Caltrans monumentation map Miscellaneous Survey No. 726(M.S.726); thence along said easterly line South 28°36'46" East 2,501.27 feet (South 28°36'58" East 2,501.28 feet per M.S.726); thence South 50°16'36" East 554.51 feet (South 50°16'58" East 554.40 feet per M.S.726) to the beginning of monumentation mapping for the northerly line of Caltrans right-of-way (State Route 11-SD-52) as shown on M.S.988; thence leaving said easterly line of (State Route 11-SD-805) along the northerly line of said Caltrans right-of-way (State Route 11-SD-52) South 73°58'06" East 474.98 feet (South 73°58'20" East per M.S.988) to the most easterly point of the Monardella Mitigation Site as delineated on said M.S.988; thence leaving said northerly right-of-way line along the northerly line of said mitigation site North 80°58'05" East (North 80°57'51" East per M.S.988) 110.94 feet; thence South 78°31'21" East (South 78°31'35" East per M.S.988) 200.81 feet; thence North 88°37'01" East 1,387.20 feet (North 88°36'47" East per M.S.988); thence South 30°42'19" East (South 30°42'33" East per M.S.988) 402.29 feet; thence leaving the northerly line of said mitigation site South 80°24'03" East 53.98 feet; thence North 79°46'28" East 1,530.33 feet; thence North 76°19'14" East 3,540.93 feet to a point designated herein as Point "B"; thence continuing along said last course North 76°19'14" West 326.00 feet; thence North 1°20'14" East 986.07 feet; thence North 35°06'02" East 1,010.25 feet to the point of beginning.

(Said parcel of land contains 801.445 acres more or less)

PARCEL 3

Beginning at Point "B" as described in Parcel 2 herein; thence South 9°02'16" East 597.85 feet; thence South 11°02'18" West 420.41 feet; thence South 16°51'36" East 338.36 feet to a point designated herein as Point "C"; thence South 64°56'54" East 345.15 feet; thence North 20°16'59" West 416.11 feet; thence North 0°00'00" East 350.10 feet; thence North 14°26'22" East 881.88 feet; thence South 76°23'57" West 188.42 feet; thence South 76°19'14" West, 326.00 feet to the point of beginning.

(Said parcel of land contains 9.847 acres more or less)

PARCEL 4

Beginning at Point "C" as described in Parcel 3 herein; thence North 89°50'06" West 1,513.85 feet; thence South 41°31'31" West 511.04 feet; thence South 4°29'56" West 569.70 feet; thence South 40°00'00" West, 94.71 feet; thence South 7°55'19" East, 216.59 feet; thence South 40°00'00" West 111.90 feet; thence South 82°30'01" West 83.99 feet; thence North 68°39'24" West 62.44 feet; thence South 89°50'33" West 99.26 feet; thence North 50°00'00" West 145.28 feet; thence North 2°06'06" East 99.31 feet; thence North 50°00'00" West 245.96 feet; thence South 84°58'42" West 64.56 feet; thence North 53°59'57" West 182.03 feet; thence North 19°59'57" West 75.94 feet; thence North 13°24'41" East 125.83 feet; thence North 50°00'00" West, 50.58 feet; thence South 74°39'19" West, 57.28 feet; thence North 50°00'00" West 220.75 feet; thence North 59°11'45" West 65.96 feet; thence North 84°41'34" West 175.73; thence North 50°00'00" West 86.30 feet; thence North 30°00'15" West 82.44 feet; thence North 50°00'00" West 195.91 feet; thence North 89°27'31" West 40.22 feet; thence South 40°00'00" West 195.98 feet; thence South 7°36'31" East 94.97 feet; thence South 40°00'00" West 870.69 feet to a point on the northerly line of the State of California Department of Transportation (CalTrans) right-of-way (State Route 11-SD-52) as shown on Caltrans monumentation map Miscellaneous Survey No. 988 (M.S.988); thence along said northerly line South 47°52'05" East 1049.62 feet (South 47°52'10" East per M.S.988); thence South 51°21'05" East 501.22 feet (South 51°21'10" East 501.22 feet per M.S.988); thence South 43°46'15" East 400.78 feet (South 43°46'20" East per M.S.988); thence South 53°19'55" East (South 53°19'58" East per M.S.988) 762.36 feet; thence South 63°46'30" East 284.78 (South 63°46'35" East 284.88 feet per M.S.988); thence South 65°58'33" East (South 65°58'38" East per M.S.988) 382.89 feet; thence South 79°17'24" East (South 79°17'29" East per M.S.988) 485.05 feet; thence North 88°13'38" East (North 88°13'33" East per M.S.988) 193.19 feet; thence North 82°29'51" East (North 82°29'46" East per M.S.988) 96.65 feet; thence North 51°19'37" East (North 51°19'32" East per M.S.988) 132.62 feet; thence North 82°49'51" East (North 82°49'46" East per M.S.988) 166.54 feet; thence North 73°21'22" East (North 73°11'17" East per M.S.988) 195.60 feet; thence North 65°39'57" East (North 65°39'52" East per M.S.988) 312.73 feet; thence North 68°47'31" East (North 68°47'26" East per M.S.988) 102.80 feet; thence South 83°38'38" East (South 83°38'43" East per M.S.988) 115.47 feet; thence South 86°14'12" East (South 86°14'17" East per M.S.988) 291.46 feet; thence South 78°15'34" East 98.69 feet (South 78°15'39" East per M.S.988); thence North 88°22'14" East (North 88°22'09" East per

M.S.988) 97.49 feet; thence North 82°45'34" East (North 82°45'29" East per M.S.988) 490.34 feet; thence North 77°03'50" East (North 77°03'45" East per M.S.988) 1000.01 feet; thence North 76°42'50" East (North 76°42'45" East per M.S.988) 900.00 feet; thence North 77°46'55" East (North 77°46'50" East per M.S.988) 600.00 feet to a point designated herein as Point "D"; thence leaving said northerly right-of-way line North 3°02'08" West 672.67 feet; thence North 64°55'10" West 3,566.06 feet; thence North 64°56'54" East 345.15 feet to the point of beginning. West*

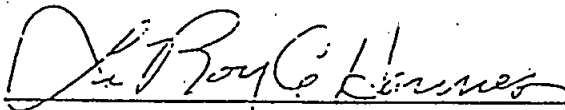
(Said parcel of land contains 359.336 acres more or less)

PARCEL 5

Beginning at Point "D" as described in Parcel 4 herein; thence South 3°02'08" East, 317.65 feet to a point on the southerly line of Caltrans right-of-way (11-SD-52) as shown on M.S.988, said point being the TRUE POINT OF BEGINNING; thence along said southerly line South 75°41'44" West (South 75°39'24" West) 39.69 feet; thence South 82°17'00" West (South 82°17'12" West) 691.03 feet; thence leaving said southerly line South 10°03'42" West 278.81 feet; thence North 77°12'59" East 813.14 feet; thence North 6°05'27" West 198.31 feet to the TRUE POINT OF BEGINNING.

(Said parcel of land contains 4.024 acres more or less)

THIS LEGAL DESCRIPTION WAS PREPARED
BY ME OR UNDER MY DIRECTION:

 9-12-94

LEROY C. HENNES, DEPUTY CITY ENGINEER

L.S. 4804



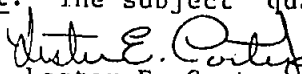
W.O. No. 118802

DWG. No. 27235-D

PAGE 4 OF 4 PAGES

* NOTE: 6-9-98

I have reviewed the subject legal description and referenced City of San Diego Drawing No. 27235-D, and confirmed that the closing course of Parcel 4 is North 64°56'54" West. The subject "quadrant error" has been noted and corrected hereon.


Lester E. Carter Jr., Sr. Land Surveyor - Field Engineering.
PLS 6148, Ph: 619-627-3220



MATTHEW V. P. McTYGUE
Attorney at Law

1112-5187-8 CHARGE TO Accy

RATH, YOUNG AND PIGNATELLI

Professional Association

ONE CAPITAL PLAZA · P.O. BOX 1500 · CONCORD, NEW HAMPSHIRE 03302-1500
TELEPHONE (603) 226-2600 · FACSIMILE (603) 226-2700

April 22, 1998

VIA FEDERAL EXPRESS

Stewart Cervený
City of San Diego
Real Estate Assets Department
1200 3rd Avenue, Suite 1700
San Diego, CA 92101

RECEIVED
APR 23 1998
REAL ESTATE ASSETS

Re: Miramar Landfill Leases Site Descriptions

Dear Stew:

Enclosed please find three site descriptions for the leases on the Miramar landfill. I have attached these descriptions to the title page and table of contents for each agreement (so that you know which description goes with which lease).

Please keep me apprised of whether you will be able to record the ordinances with these property descriptions or whether you will need us to have memoranda of leases prepared. The sooner you can let me know this the better.

Thanks again for your help. Please call with any questions.

Very truly yours,

Matthew V. P. McTygue

Encls.

COUNSELLORS AT LAW

NASHUA OFFICE: THE GLASS TOWER · 20 TRAFALGAR SQUARE · NASHUA, NEW HAMPSHIRE 03063 · (603) 889-9952 · FAX (603) 595-7489



RATH, YOUNG AND PIGNATELLI

Professional Association

ONE CAPITAL PLAZA · P.O. BOX 1500 · CONCORD, NEW HAMPSHIRE 03302-1500
TELEPHONE (603) 226-2600 · FACSIMILE (603) 226-2700

MATTHEW V. P. McTYGUE
Attorney at Law

May 11, 1998

VIA FEDERAL EXPRESS

Stewart Cervený
City of San Diego
Real Estate Assets Department
1200 3rd Avenue, Suite 1700
San Diego, CA 92101

Re: Term Provisions for Miramar Project Leases

Dear Stew:

Enclosed please find the term provisions for each of the three leases to be incorporated into your recording documents. Note that each provides for a twenty year term with two renewal terms, for a maximum of a thirty year term. Please let me know how you will incorporate this information into the recording documents.

Thanks again for all of your help.

Very truly yours,

Matthew V.P. McTygue

MVPM/sdc
Enclosures

RECEIVED
MAY 12 1998
REAL ESTATE ASSETS

COUNSELLORS AT LAW

NASHUA OFFICE: THE GLASS TOWER · 20 TRAFALGAR SQUARE · NASHUA, NEW HAMPSHIRE 03063 · (603) 889-9952 · FAX (603) 595-7489

ORDINANCE NUMBER O- 18475 (NEW SERIES)

ADOPTED ON MAR 17 1998

AN ORDINANCE AUTHORIZING AMENDMENTS TO
TWENTY-YEAR AGREEMENTS FOR THE MIRAMAR
AND NORTH CITY COGENERATION PROJECTS.

WHEREAS, the City has heretofore entered into privatization agreements for the Miramar Landfill Gas and Cogeneration Projects and for the North City Cogeneration Project (the Project Agreements); and

WHEREAS, it is of mutual benefit to all parties to amend the Project Agreements in order to: (1) resize the North City Cogeneration Facility to more closely match the expected North City Water Reclamation Plant electrical load and the amount of fuel available; (2) to provide the Project Companies with certain language acceptable to their lender to assist their project financing; and (3) to provide the City with price protection for energy purchased under the Miramar Cogeneration and Energy Sales Agreement; and

WHEREAS, it is of benefit to the City to enter into Digester Gas Agreements with a Project Company to permit their qualification for tax credits for digester gas; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. The City Manager is hereby authorized and empowered to execute, for and on behalf of the City, the following:

- (a) An Amendment No. 1 to the Miramar Landfill Gas Lease and Operating Agreement with NEO San Diego, LLC, dated December 4, 1995, under the terms and conditions set forth in said Amendment No. 1, on file in the office of the City Clerk as Document

① * No. 00-18475-1, which specifically includes the Amended and Restated Landfill Gas Lease and Operating Agreement

(b) An Amendment No. 1 to the Miramar Cogeneration Facility Site Lease Agreement with Minnesota Methane, LLC, dated December 4, 1995, under the terms and conditions set forth in said Amendment No. 1, on file in the office of the

② * City Clerk as Document No. 00-18475-2, which specifically includes the Amended and Restated Cogeneration Site Lease Agreement.

(c) An Amendment No. 2 to the Cogeneration Facility and Energy Sales Agreement with Minnesota Methane, LLC, dated December 4, 1995, as amended by Amendment No. 1 dated February 25, 1997, under the terms and conditions set forth in said Amendment No. 2, on file in the office of the City Clerk as

③ * Document No. 00-18475-3, which specifically incorporates:

1. An Amended and Restated Miramar Privatized Cogeneration Facility and Energy Sales Agreement between the City and MM San Diego, LLC;
2. An Amended and Restated North City Privatized Cogeneration Facility & Energy Sales Agreement between the City and MM San Diego, LLC.
3. An Amended and Restated North City Cogeneration Facility Site Lease Agreement between the City and MM San Diego, LLC.
4. An Amended and Restated Well Installation Agreement between the City and NEO San Diego, LLC.

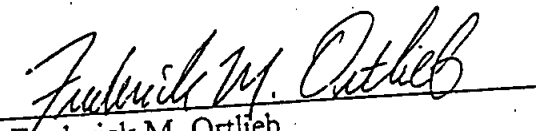
(d) A Digester Gas Agreement with MM San Diego, LLC, under the terms and conditions set forth in that instrument on file in the office of the City Clerk as Document No. 00-18475-4.

- (e) A Nonoperating Interest Acquisition Agreement with NEO San Diego, LLC, under the terms and conditions set forth in that instrument on file in the office of the City Clerk as Document No. OO- 18475 -5.
- (f) Guaranty Agreements with NEO Corporation and with Minnesota Methane, LLC, under the terms and conditions set forth in those instruments on file in the office of the City Clerk as Document Nos. OO- 18475 -6(a) and OO- 18475 -6(b).
- (g) An Amended and Restated Financing Commitment from NEO Corporation, under the terms and conditions set forth in that instrument on file in the office of the City Clerk as Document No. OO- 18475 -7.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By


Frederick M. Ortlieb
Deputy City Attorney

FMO:mb
02/17/98
Or.Dept:MWWD
O-98-80
Form=o&t.ord

DUPLICATE

DOCUMENT NO. 00-18218

GROUND LEASE

FILED OCT 02 1995
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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 199 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 derived from construction site preparation, provided, however, that 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 disposed 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

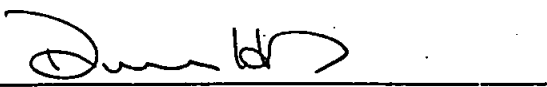
No notice, order, direction, determination, requirement, consent, or approval under this Agreement shall be of any effect unless in writing.

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 + F)

MIRAMAR LEASE AREAS FOR
INTEGRATED WASTE MANAGEMENT FACILITIES

Being those portions of Lot 78 of, Partition of Rancho Mission of San Diego, in the County of San Diego, State of California according to Map No. 330 filed in the office of the County Clerk of said County, January 14, 1886, made in action entitled Juan, et al, vs. Commercial Bank of San Diego, et al, under Superior Court Case No.348, more particularly described as follows:

PARCEL 1

Beginning at the common corner of Sections 13, 18, 19, and 24, Township 15 South, Range 3, West, of the San Bernardino Meridian according to the United States Government Survey; thence along the North line of said section 24 North 89°03'16" West 2413.89 feet; thence continuing along said North line North 89°02'17" West 425.00 feet; thence South 41°24'51" West 2,619.35 feet to a point designated herein as Point "A"; thence South 35°06'02" West 1,010.25 feet; thence South 01°20'14" West, 986.07 feet; thence North 76°23'57" East 621.39 feet; thence North 83°20'21" East 613.37 feet; thence North 27°43'20" East 629.64 feet; thence North 75°55'34" East 2,458.58 feet; thence North 45°20'22" East 1,796.57 feet; thence North 00°19'59" East 1,094.43 feet to the point of beginning.

(Said parcel of land contains 249.725 acres more or less)

PARCEL 2

Beginning at Point "A" as described in Parcel 1 herein; thence South 80°16'35" West 353.52 feet; thence North 5°47'48" West 1,131.27 feet; thence North 56°05'45" West 770.00 feet; thence North 5°54'23" East 518.69 feet to a point on the northerly line of Section 23 as described in said Parcel 1; thence along said section line North 89°00'28" West 2,380.12 feet; thence leaving said section line South 75°56'16" West 3879.28 feet; thence South

EXHIBIT "A" TO LEASE

68°12'22" West 2917.12 feet to an angle point on the easterly line of the State of California Department of Transportation (Caltrans) right-of-way (State Route 11-SD-805) as shown on Caltrans monumentation map Miscellaneous Survey No. 726(M.S.726); thence along said easterly line South 28°36'46" East 2,501.27 feet (South 28°36'58" East 2,501.28 feet per M.S.726); thence South 50°16'36" East 554.51 feet (South 50°16'58" East 554.40 feet per M.S.726) to the beginning of monumentation mapping for the northerly line of Caltrans right-of-way (State Route 11-SD-52) as shown on M.S.988; thence leaving said easterly line of (State Route 11-SD-805) along the northerly line of said Caltrans right-of-way (State Route 11-SD-52) South 73°58'06" East 474.98 feet (South 73°58'20" East per M.S.988) to the most easterly point of the Monardella Mitigation Site as delineated on said M.S.988; thence leaving said northerly right-of-way line along the northerly line of said mitigation site North 80°58'05" East (North 80°57'51" East per M.S.988) 110.94 feet; thence South 78°31'21" East (South 78°31'35" East per M.S.988) 200.81 feet; thence North 88°37'01" East 1,387.20 feet (North 88°36'47" East per M.S.988); thence South 30°42'19" East (South 30°42'33" East per M.S.988) 402.29 feet; thence leaving the northerly line of said mitigation site South 80°24'03" East 53.98 feet; thence North 79°46'28" East 1,530.33 feet; thence North 76°19'14" East 3,540.93 feet to a point designated herein as Point "B"; thence continuing along said last course North 76°19'14" West 326.00 feet; thence North 1°20'14" East 986.07 feet; thence North 35°06'02" East 1,010.25 feet to the point of beginning.

(Said parcel of land contains 801.445 acres more or less)

PARCEL 3

Beginning at Point "B" as described in Parcel 2 herein; thence South 9°02'16" East 597.85 feet; thence South 11°02'18" West 420.41 feet; thence South 16°51'36" East 338.36 feet to a point designated herein as Point "C"; thence South 64°56'54" East 345.15 feet; thence North 20°16'59" West 416.11 feet; thence North 0°00'00" East 350.10 feet; thence North 14°26'22" East 881.88 feet; thence South 76°23'57" West 188.42 feet; thence South 76°19'14" West, 326.00 feet to the point of beginning.

(Said parcel of land contains 9.847 acres more or less)

PARCEL 4

Beginning at Point "C" as described in Parcel 3 herein; thence North 89°50'06" West 1,513.85 feet; thence South 41°31'31" West 511.04 feet; thence South 4°29'56" West 569.70 feet; thence South 40°00'00" West, 94.71 feet; thence South 7°55'19" East, 216.59 feet; thence South 40°00'00" West 111.90 feet; thence South 82°30'01" West 83.99 feet; thence North 68°39'24" West 62.44 feet; thence South 89°50'33" West 99.26 feet; thence North 50°00'00" West 145.28 feet; thence North 2°06'06" East 99.31 feet; thence North 50°00'00" West 245.96 feet; thence South 84°58'42" West 64.56 feet; thence North 53°59'57" West 182.03 feet; thence North 19°59'57" West 75.94 feet; thence North 13°24'41" East 125.83 feet; thence North 50°00'00" West, 50.58 feet; thence South 74°39'19" West, 57.28 feet; thence North 50°00'00" West 220.75 feet; thence North 59°11'45" West 65.96 feet; thence North 84°41'34" West 175.73; thence North 50°00'00" West 86.30 feet; thence North 30°00'15" West 82.44 feet; thence North 50°00'00" West 195.91 feet; thence North 89°27'31" West 40.22 feet; thence South 40°00'00" West 195.98 feet; thence South 7°36'31" East 94.97 feet; thence South 40°00'00" West 870.69 feet to a point on the northerly line of the State of California Department of Transportation (CalTrans) right-of-way (State Route 11-SD-52) as shown on Caltrans monumentation map Miscellaneous Survey No. 988 (M.S.988); thence along said northerly line South 47°52'05" East 1049.62 feet (South 47°52'10" East per M.S.988); thence South 51°21'05" East 501.22 feet (South 51°21'10" East 501.22 feet per M.S.988); thence South 43°46'15" East 400.78 feet (South 43°46'20" East per M.S.988); thence South 53°19'55" East (South 53°19'58" East per M.S.988) 762.36 feet; thence South 63°46'30" East 284.78 (South 63°46'35" East 284.88 feet per M.S.988); thence South 65°58'33" East (South 65°58'38" East per M.S.988) 382.89 feet; thence South 79°17'24" East (South 79°17'29" East per M.S.988) 485.05 feet; thence North 88°13'38" East (North 88°13'33" East per M.S.988) 193.19 feet; thence North 82°29'51" East (North 82°29'46" East per M.S.988) 96.65 feet; thence North 51°19'37" East (North 51°19'32" East per M.S.988) 132.62 feet; thence North 82°49'51" East (North 82°49'46" East per M.S.988) 166.54 feet; thence North 73°21'22" East (North 73°11'17" East per M.S.988) 195.60 feet; thence North 65°39'57" East (North 65°39'52" East per M.S.988) 312.73 feet; thence North 68°47'31" East (North 68°47'26" East per M.S.988) 102.80 feet; thence South 83°38'38" East (South 83°38'43" East per M.S.988) 115.47 feet; thence South 86°14'12" East (South 86°14'17" East per M.S.988) 291.46 feet; thence South 78°15'34" East 98.69 feet (South 78°15'39" East per M.S.988); thence North 88°22'14" East (North 88°22'09" East per

M.S.988) 97.49 feet; thence North 82°45'34" East (North 82°45'29" East per M.S.988) 490.34 feet; thence North 77°03'50" East (North 77°03'45" East per M.S.988) 1000.01 feet; thence North 76°42'50" East (North 76°42'45" East per M.S.988) 900.00 feet; thence North 77°46'55" East (North 77°46'50" East per M.S.988) 600.00 feet to a point designated herein as Point "D"; thence leaving said northerly right-of-way line North 3°02'08" West 672.67 feet; thence North 64°55'10" West 3,566.06 feet; thence North 64°56'54" East 345.15 feet to the point of beginning.

(Said parcel of land contains 359.336 acres more or less)

PARCEL 5

Beginning at Point "D" as described in Parcel 4 herein; thence South 3°02'08" East, 317.65 feet to a point on the southerly line of Caltrans right-of-way (11-SD-52) as shown on M.S.988, said point being the TRUE POINT OF BEGINNING; thence along said southerly line South 75°41'44" West (South 75°39'24" West) 39.69 feet; thence South 82°17'00" West (South 82°17'12" West) 691.03 feet; thence leaving said southerly line South 10°03'42" West 278.81 feet; thence North 77°12'59" East 813.14 feet; thence North 6°05'27" West 198.31 feet to the TRUE POINT OF BEGINNING.

(Said parcel of land contains 4.024 acres more or less)

THIS LEGAL DESCRIPTION WAS PREPARED
BY ME OR UNDER MY DIRECTION:

Leroy C. Hennes 9-12-94

LEROY C. HENNES, DEPUTY CITY ENGINEER

L.S. 4804

W.O. No. 118802

DWG. No. 27235-D



Disk: 0111A
Document No. 1486A

DUPLICATE

O.R. San Diego County

GRANT OF EASEMENT

9/24/82 Doc # 82-295885

THIS INDENTURE, made the 19th day of July 1982, between the United States of America, herein called the Government, acting through the Department of the Navy, represented by the Commanding Officer, Western Division, Naval Facilities Engineering Command, San Bruno, California, and the City of San Diego, herein called the Grantee:

WHEREAS, the Government owns that certain real property identified as the Naval Air Station, Miramar, California, herein called the Station, and

WHEREAS, the Grantee requires the use of certain land at the Station for a sanitary landfill, and has requested an easement for the operation and maintenance of a sanitary landfill on, in, over, and under that portion of the Station hereinafter described, and

WHEREAS, the Grantee desires to convey fee title to approximately 60.85 acres of land hereinafter described, as partial consideration for this grant of easement, and

WHEREAS, authority to accept fee title to approximately 60.85 acres has been approved by Public Law 94-107, and

WHEREAS, the Secretary of the Navy has found that this grant of easement is compatible with the military mission of the Station and the public interest;

NOW THEREFORE, this indenture witnesseth that, in partial consideration of the conveyance by Grantee to the Government of fee simple title to the land described in Exhibit "A" and shown on Exhibit "B" (E.F.D. Drawing No. A-102300), both attached hereto and made a part hereof, the Government hereby grants to Grantee and its assigns, for a term of twenty-five (25) years commencing 27 July 1982, and ending 26 July 2007, an easement for the operation and maintenance of a sanitary landfill on, in, over, and under the land legally described in Exhibit "C" and shown on Exhibit "D" (E.F.D. Drawing Nos. C-102481, C-102482, C-102483), both attached hereto and made a part hereof.

THIS EASEMENT is granted upon the following terms and conditions, acceptance of which is acknowledged by execution by the City of San Diego:

1. Grantee shall permit all Department of the Navy Stations and/or Activities located within or near the boundaries of the City of San Diego to dispose of wastes in the sanitary landfill at no cost to the Government for the term of this easement. This waiver of fees shall not apply to other solid waste disposal facilities operated by the City of San Diego.

2. The only wastes which will be permitted to be accepted at the sanitary landfill are Group II wastes as so defined by the State of California Solid Waste Management Board.

EXHIBIT B

DOCUMENT NO. R-256573-3FILED JUN 14 1982OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIAEXHIBIT "B"
TO LEASEDoc. 020567 P/A

Code File

Encl Atty Can Opinion of FEB 15 1983Micro F83-M1-1 To NAVFAC

3. The Government owns and reserves all rights to recover methane gases produced from the completed landfill areas. Recovery will be coordinated with ongoing landfill operations.

4. Grantee shall:

a. Prepare a Sanitary Landfill Master Plan for the Land described in Exhibit "C".

b. Submit a revegetation plan to the Commanding Officer, Western Division, Naval Facilities Engineering Command for his review and approval. The revegetation plan may be updated and/or amended subject to the review and approval of the Commanding Officer, Naval Air Station, Miramar. If revegetation is deemed by the Government to be inadequate, particularly in terms of preventing soil erosion, the Grantee may be required to perform corrective measures including repeating the soil preparation and reseeding.

c. Provide an environmental fence acceptable to the Navy within the landfill area to protect two major vernal pool areas from vehicular and pedestrian traffic.

d. Transplant individuals of the barrel cactus (Ferocactus viridescens), that will otherwise be lost as a result of the landfill project.

e. Establish a 50 foot wide "buffer" zone over the Navy fuel pipeline as shown on Exhibit "D". In this buffer zone, no structures shall be installed, no heavy equipment allowed, no subsurface excavations made, and no refuse deposited without the written permission of the Station.

f. Provide and maintain, in conformance with the Sanitary Landfill Master Plan, adequate drainage facilities to handle surface runoff water, prevent ponding of water and erosion upon the landfill and upon adjacent property. Grantee shall undertake any necessary controls to prevent leachate.

g. Protect and safeguard water wells 23 P 1 and 23 P 2 located in San Clemente Canyon and shown on Exhibit "D".

h. Be permitted to earth fill the finger canyon areas on the Station located between the landfill easement and the runway, such use to be documented under a separate agreement. Grantee shall relocate all roads, fences, and utilities to Government's specifications as established by the Public Works Officer of the Station.

i. Install and maintain a:

(1) Gate, at a location mutually acceptable to Station and Grantee, to facilitate the transporting of wastes to the landfill for disposal. Grantee shall install and maintain a road from the gate to the nearest landfill service road.

(2) Fence on the outside boundary of the sanitary landfill; size, type and exact location of the fence to be determined by the Public Works Officer of the Station. All roads within the sanitary landfill not utilized for access to landfill operations shall be barricaded or fenced to prevent encroachment by the public.

j. Obtain, at its own expense, all permits necessary to develop and operate a sanitary landfill on that area of the Station granted by this easement, and operate the landfill in accordance with the terms and conditions of those permits.

k. Maintain the premises and the sanitary landfill in good condition at all times and promptly make all repairs necessary to preserve the condition of the premises and continued operation and maintenance of the sanitary landfill.

l. Take all reasonable precautions to prevent fires. There shall be no burning on the sanitary landfill. In the event of a brush fire south of the Station's runways in West Miramar, Grantee will make heavy equipment such as bulldozers and water trucks available to the senior Navy fire fighting official in charge.

m. Temporarily cease sanitary landfill operations within twenty-four (24) hours after receipt of either a verbal or written request from the Commanding Officer, Naval Air Station, Miramar advising of an operational or emergency impact interfering with Station's defense mission. Grantee shall not resume sanitary landfill operations until the Government gives written notice authorizing the resumption of such operations. Station will minimize any cessation of landfill operations and, insofar as possible, will cordon off only the immediate impact area.

n. Procure and maintain or, to extent that any work is performed on the premises by non-governmental persons or organizations, the grantee shall require such persons or organizations to procure and maintain the following minimum amounts and types of insurance covering its use of the lands described in Exhibit "C":

Bodily Injury Liability \$300,000 per person
\$500,000 per accident

Property Damage Liability \$100,000 per occurrence

The United States of America shall be named as an additional insured on all such policies. All such policies shall specify that the insured shall have no right of subrogation against the United States for payments of any premiums or deductibles thereunder and such insurance policies shall be assumed by, be for the account of, and be at the insurers sole risk.

Procurement of insurance will not be required in the event Grantee provides evidence to the Government that it is self-insured for the minimum amounts stipulated above.

5. Grantee may:

a. Continue use of Mercury Street access as shown on Exhibit "D" until an alternate access road is designed and constructed. Once the new access road is constructed, the Mercury Street access will terminate.

b. Establish, in conformance with the Sanitary Landfill Master Plan, a limited administrative and maintenance area to support Grantee's landfill operations. Any proposed expansion of this area shall be submitted to the Commanding Officer, Western Division, Naval Facilities Engineering Command for his review and approval prior to any construction.

c. Operate a voluntary recycling center in the administrative area during the hours the landfill is open to the public.

d. Excavate dirt from the area covered by this easement for the purpose of providing the final topsoil cover for the North Miramar sanitary landfill.

6. Additional specifications relative to landfill operations, maintenance, and environmental considerations are set forth in Attachment One to Land Exchange Agreement N6247482RP00V23 dated 14 June, 1982.

7. All work in connection with the construction, installation, operation, repair, and replacement of the sanitary landfill shall be done without cost or expense to the Government, except as provided herein, in accordance with plans previously approved by the Commanding Officer of the Western Division, Naval Facilities Engineering Command.

8. Grantee recognizes the increased potential hazards to flight operations at the Station resulting from the presence of sea gulls on the sanitary landfill premises particularly during the months of November through February. Landfill operations may be conducted during these months provided the methods employed by Grantee to eliminate the sea gull hazard are satisfactory to the Commanding Officer of the Station.

9. Grantee releases, remises, and forever discharges the United States of America, its officers, agents, and employees of and from any and all causes of action, trespasses, injuries, damages, and demands whatsoever in law or in equity arising out of or connected with Grantee's use and operation of the sanitary landfill authorized hereby, excepting any such causes of action, trespasses, injuries, damages, or demands caused by the negligent or intentional acts or omissions of the United States of America, its officers, agents or employees.

To the extent that any work is performed on the premises by non-governmental persons or organizations the grantee shall require such persons or organizations to:

a. Pay the United States the full value for all damages to lands or other property of the United States caused by him or his employees, contractors, or employees of the contractors, and

b. Indemnify, save and hold harmless and defend the United States against all fines, claims, damages, law suits, judgments and expenses arising out of or from any omission or activity in connection with activities under this easement.

10. Grantee's exercise of its rights hereunder shall at all times be subject to such reasonable rules and regulations as may be prescribed by the Government to prevent interference with Government activities at the Station.

11. In the event sanitary landfill capacity remains at the end of the term of this easement, Grantee may, at its option, by written notification to the Contracting Officer, at least six (6) months prior to the expiration of the easement, extend the term of this easement for two additional periods of five years each. In consideration for the extension of the term, Grantee shall continue the waiver of landfill disposal fees as described in paragraph 1 above. Upon the expiration of this easement Grantee shall remove itself and its property from the premises and surrender the possession thereof to the Government. In the event the Government shall terminate this easement, Grantee shall be allowed reasonable time, as determined by the Commanding Officer of the Station, but in no event less than sixty (60) days from receipt of notice of termination, in which to remove all its property from and terminate its operations on the premises. During such period prior to surrender, all obligations assumed by Grantee shall remain in full force and effect.

12. Before the expiration or prior termination of this easement, Grantee shall take all necessary action to leave the premises in a clean and orderly condition. All slopes shall be dressed, property drainage provided, and fences removed to the satisfaction of the Commanding Officer of the Station. In the event the Government shall terminate this easement, Grantee shall have a minimum of sixty (60) days from the receipt of the notice of termination to accomplish these actions.

13. During the term of this easement, Grantee shall have the right, at its own expense, to install such machinery or equipment, make such minor improvements and additions, and to attach such removable fixtures in or upon the premises as may be required for its use of the premises as a sanitary landfill, and to remove same at any time prior to the expiration or termination of this easement. In the event of termination of this easement by the Government, Grantee may remove such items within sixty (60) days from the receipt of the notice of termination. All property not removed shall be deemed abandoned by the Grantee and may be used or disposed of by the Government in any manner whatsoever without any liability to account to Grantee therefore, but such abandonment shall in no way reduce any obligation of Grantee for restoration under paragraph 12 above.

14. This easement may be terminated by the Government at any time prior to the term hereof or any extended term:

a. Upon the failure by the Grantee to comply with the terms and conditions of this easement; or

b. Upon abandonment of the rights herein, or nonuse of such rights for two consecutive years.

The Government recognizes the importance of the sanitary landfill to the health, safety, and welfare of the citizens of San Diego, and will exercise this section only for good and significant cause and after reasonable time for Grantee to correct any deficiencies in operations.

15. The Commanding Officer, Western Division, Naval Facilities Engineering Command, has designated the Director of the Real Estate Division to act as

Contracting Officer. All correspondence concerning this easement shall be directed to:

Director, Real Estate Division (Code 24)
Western Division, Naval Facilities Engineering Command
P.O. Box 727
San Bruno, California 94066

Government shall notify Grantee in writing of any change in the designated Contracting Officer and/or his address.

16. Notices to be given by the Government to the Grantee may be personally served upon Grantee by serving the City Manager, or any person hereafter authorized in writing to receive such notice, or may be served by certified letter directed to:

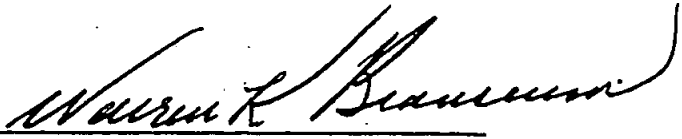
City Manager
City of San Diego
202 "C" Street M99A
San Diego, California 92101

Grantee shall notify Government in writing of any change in the Grantee's designated representative and/or address.

IN WITNESS WHEREOF, the Government has caused this instrument to be executed on the day and year written first above.

UNITED STATES OF AMERICA

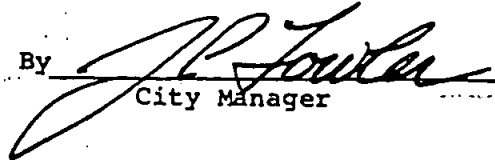
By


WARREN K. BRANSCUM
Director, Real Estate Division
Western Division
Naval Facilities Engineering Command
For and on behalf of the United States
of America, Department of the Navy

IN WITNESS WHEREOF, this Grant of Easement is accepted by the City of San Diego acting through its City Manager pursuant to Resolution No. dated _____ authorizing such acceptance.

The City of San Diego

By


City Manager

6247482RP00077

SAN DIEGO CITY PARCEL
FOR EXCHANGE WITH U.S. NAVY
LANDFILL AREA
AT NAS MIRAMAR, CA

All that land belonging to the City of San Diego being a portion of:

H.L. Barrow's subdivision of the north half of the southeast quarter of section 9 and lots 4, 5, 6 and 11 in said section 9, all in Township 15 South, Range 3 West, San Bernardino Meridian, in the City of San Diego, County of San Diego, State of California, according to the map thereof no. 704, filed in the Office of the County Recorder of San Diego County, March 4, 1892, described as follows:

COMMENCING for a point of reference at a found standard monument with punched brass cap in the centerline of Miramar Road as shown on Map #10031 filed with the County Recorder of said county, said monument also shown on Record of Survey No. 8742 filed in the Office of the County Recorder on June 18, 1981, said standard monument having California State Coordinates of $y = 259,320.243$ feet, and $x = 1,710,133.938$ feet, Zone 6;

(i) thence along the centerline of said Miramar Road, North $80^{\circ} 34' 54''$ East, 805.77 feet to the southwesterly corner of said land belonging to the City of San Diego, said southwesterly corner being the TRUE POINT OF BEGINNING;

1. Thence along the westerly boundary line of said lands belonging to the City of San Diego, North $35^{\circ} 29' 37''$ West, 736.59 feet;
2. Thence continuing along said westerly boundary line, North $12^{\circ} 26' 16''$ West, 1259.73 feet to the northerly boundary line of Lot 14 of said H.L. Barrow subdivision and the northerly boundary of City of San Diego lands;
3. Thence along said northerly line to and along the northerly line of Lot 11 of said subdivision; South $89^{\circ} 23' 52''$ East, 1453.21 feet to the centerline of Road Survey No. 304 known as Old Miramar Road, on file in the Office of the County Recorder and Surveyor of said county;
4. Thence along said centerline and said northerly line, South $54^{\circ} 02' 29''$ East, 303.48 feet to a tangent curve to the right having a radius of 1700.00 feet through a central angle of $27^{\circ} 26' 47''$ for an arc distance of 814.35 feet;
5. Thence leaving said centerline and said northerly line of said City of San Diego lands and along the southeasterly and easterly boundary of said City of San Diego lands, South $59^{\circ} 41' 19''$ West, 596.36 feet to the east boundary line of Lot 7 of said H.L. Barrow subdivision;
6. Thence along said southeasterly and easterly boundary line of City of San Diego lands and said east boundary line of Lot 7, South $00^{\circ} 55' 36''$ West, 554.99 feet to the centerline of said Miramar Road, said centerline being the southerly boundary of said City of San Diego lands;

7. Thence along a centerline and said southe. / boundary line, South 80° 34' 50" West, 1101.49 feet to the TRUE POINT OF BEGINNING.

The bearings and distances herein described are based on the California State Coordinate System, Zone 6 and are derived from said Record of Survey 8724 and in accordance with the Adjudicated line per S.C.C. No. 287298, dated October 10, 1968.

Reserving unto the Grantor herein an easement for Street and General Utility purposes, together with all appurtenances and incidents thereto through, over, under, upon, along, and across those portions of the above-described land lying within Road Survey No. 304 known as Old Miramar Road and Miramar Road, all as shown on Department of the Navy, Naval Facilities Engineering Command Drawing No. A-102300 attached hereto and made a part hereof.

This deed is subject to an existing easement granted to the San Diego Gas & Electric Company, recorded April 5, 1956 as Recorder's File No. 46458, Official Records of the San Diego County Recorder.

Distance error

1101.49'
should be 1101.43'

LEGAL DESCRIPTION	
WRITTEN MSM	APPROVED Mike McAney
CHECKED SPM	
PREPARED (52)	DATE: 4/26/82

LEGAL DESCRIPTION - WEST MIRAMAR
SANITARY LANDFILL LEASE & ACCESS ROAD EASEMENT

All that portion of Lot 78, Rancho Mission of San Diego, according to partition map thereof on file in the Office of the County Clerk of said County in Superior Court Action No. 348, entitled Juan M. Luco, et al, vs. Commercial Bank of San Diego, et al, more particularly described as follows:

PARCEL 1

Commencing at the common corner of Sections 13, 18, 19 and 24, T15S, R3W according to United States Government Survey thereof; thence North $89^{\circ}03'14''$ West, 2,413.89 feet; thence North $89^{\circ}02'14''$ West, 2,896.49 feet to the Southwest corner of said Section 13; thence North $89^{\circ}00'19''$ West, 310.00 feet to the TRUE POINT OF BEGINNING; thence continuing North $89^{\circ}00'19''$ West, 2,380.06 feet; thence South $75^{\circ}56'21''$ West, 722.60 feet to a point hereby set aside and designated Point "A" for purposes of this description; thence South $01^{\circ}13'14''$ West, 1,537.98 feet; thence South $0^{\circ}50'29''$ West, 1,572.96 feet; thence South $06^{\circ}44'08''$ West, 1,503.23 feet; thence North $76^{\circ}19'44''$ East, 3,866.83 feet; thence North $01^{\circ}20'14''$ East, 986.07 feet to a point hereby set out and designated as Point "B" for purposes of this description; thence North $35^{\circ}06'04''$ East, 1,010.24 feet; thence South $80^{\circ}16'35''$ West, 353.52 feet; thence North $05^{\circ}47'48''$ West, 1,131.27 feet; thence North $56^{\circ}05'44''$ West, 770.00 feet; thence North $05^{\circ}54'35''$ East, 518.74 feet, returning to the TRUE POINT OF BEGINNING.

354.870 Ac.

PARCEL 2

Beginning at Point "A" as set aside and designated in Parcel 1 above; thence South $75^{\circ}56'21''$ West, 3,156.94 feet; thence South $68^{\circ}12'49''$ West, 2,916.91 feet to a point of intersection with the Northeasterly line of Interstate 805 as said Highway is located and established as of the date of the instrument; thence along said Northeasterly line of Interstate 805, South $28^{\circ}36'43''$ East, 2,501.24 feet; thence South $50^{\circ}16'44''$ East, 554.67 feet; thence South $74^{\circ}00'55''$ East, 561.84 feet; thence leaving said Northeasterly line of Interstate 805, South $80^{\circ}16'08''$ East, 1,895.47 feet; thence North $79^{\circ}46'28''$ East, 1,530.33 feet; thence North $06^{\circ}44'08''$ East, 1,503.23 feet; thence North $00^{\circ}50'29''$ East, 1,572.96 feet; thence North $01^{\circ}13'14''$ East, 1,537.98 feet, returning to the Point of Beginning.

453.085 Ac.

PARCEL 3 - Access Road Easement

A strip of land 52.00 feet in width lying 26.00 feet on each side of the following described centerline:

EASEMENT
EXHIBIT C

Commencing at Point "B" as set aside and designated in Parcel 1 above; thence North 35°06'04" East, 290.73 feet to the TRUE POINT OF BEGINNING; thence South 14°59'52" East, 71.53 feet to the beginning of a tangent 900-foot radius curve concave Westerly; thence Southerly along the arc of said curve through a central angle of 21°37'03" a distance of 339.57 feet; thence tangent to said curve South 06°37'11" West, 698.31 feet to the beginning of a tangent 900-foot radius curve concave Westerly; thence Southerly along the arc of said curve through a central angle of 07°22'50" a distance of 115.93 feet; thence tangent to said curve South 14°00'01" West, 805.14 feet to the beginning of a tangent 900-foot radius curve concave Easterly; thence Southerly along the arc of said curve through a central angle of 36°46'04" a distance of 577.55 feet; thence tangent to said curve South 22°46'03" East, 459.26 feet to a point hereby set out and designated as Point "C" for purposes of this description, said point also being the point of termination for the above-described strip of land.

3.662Ac

PARCEL 4 - Access Road Easement

A strip of land 52.00 feet wide lying 26.00 feet on each side of the following described centerline:

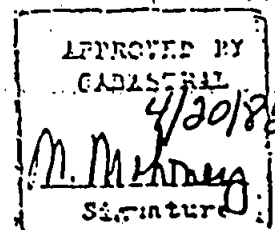
Commencing at Point "C" set out and designated in Parcel 3 above; thence North 67°13'57" East, 60.00 feet; thence South 22°46'03" East, 600.00 feet to the TRUE POINT OF BEGINNING; thence continuing South 22°46'03" East, 254.17 feet to the beginning of a tangent 900-foot radius curve concave Westerly; thence Southerly along the arc of said curve through a central angle of ~~66°09'35"~~ ^{correct} a $\Delta = 56°29'52"$ distance of ~~1,039.24~~ ^{387.465} feet; thence tangent to said curve South 33°43'49" West, 806.22 feet to the beginning of a tangent 900-foot radius curve concave Easterly; thence Southerly along the arc of said curve through a central angle of 28°52'03" a distance of 453.45 feet; thence tangent to said curve, South 04°51'46" West, 805.23 feet to the beginning of a tangent 1,600-foot radius curve concave Westerly; thence Southerly along the arc of said curve through a central angle of 02°31'03" a distance of 70.26 feet to a terminal intersection with the existing centerline of Convoy Street as said street is located and established on the date of this instrument.

3.912Ac

PARCEL 5 - Weigh Station Easement

Beginning at Point "C" set out in Parcel 1 above; thence North 67°13'57" East, 156.00 feet; thence South 22°46'03" East, 600.00 feet; thence South 67°13'57" West, 202.00 feet; thence North 22°46'03" West, 600.00 feet; thence North 67°15'57" East, 46.00 feet returning to the Point of Beginning.

2.782Ac



Job 15309/Dwg. 17849-1-D/GLENN/ed/2-10-82

State of California)
County of San Mateo) SS.



OFFICIAL SEAL
BEVERLY J. FREITAS
 NOTARY PUBLIC • CALIFORNIA
 SAN MATEO COUNTY
 My Comm. Expires Feb. 7, 1986

Beverly J. Freitas
Notary Public in and for said
County and State

EARLY CANCELLATION REFUND SCHEDULE

Projected Lease Payments - FIRP/NSPF/MRF

Assumptions:

Year 1 market rent: \$298,440
Lease term (years): 50
Discount Rate: 9.0%

(payment in advance)

Year	Rent	PWF	Present Worth
1	\$298,440	1.0000	\$298,440
2	298,440	0.9174	273,798
3	298,440	0.8417	251,191
4	298,440	0.7722	230,450
5	298,440	0.7084	211,422
6	298,440	0.6499	193,966
7	298,440	0.5963	177,950
8	298,440	0.5470	163,257
9	298,440	0.5019	149,777
10	298,440	0.4604	137,410
11	298,440	0.4224	126,064
12	298,440	0.3875	115,655
13	298,440	0.3555	106,106
14	298,440	0.3262	97,345
15	298,440	0.2992	89,307
16	298,440	0.2745	81,933
17	298,440	0.2519	75,168
18	298,440	0.2311	68,961
19	298,440	0.2120	63,267
20	298,440	0.1945	58,043
21	298,440	0.1784	53,251
22	298,440	0.1637	48,854
23	298,440	0.1502	44,820
24	298,440	0.1378	41,119
25	298,440	0.1264	37,724
26	298,440	0.1160	34,609
27	298,440	0.1064	31,752
28	298,440	0.0976	29,130
29	298,440	0.0895	26,725
30	298,440	0.0822	24,518
31	298,440	0.0754	22,494
32	298,440	0.0691	20,636
33	298,440	0.0634	18,933
34	298,440	0.0582	17,369
35	298,440	0.0534	15,935
36	298,440	0.0490	14,619
37	298,440	0.0449	13,412
38	298,440	0.0412	12,305
39	298,440	0.0378	11,289
40	298,440	0.0347	10,357
41	298,440	0.0318	9,502
42	298,440	0.0292	8,717
43	298,440	0.0268	7,997
44	298,440	0.0246	7,337
45	298,440	0.0226	6,731
46	298,440	0.0207	6,175
47	298,440	0.0190	5,665
48	298,440	0.0174	5,198
49	298,440	0.0160	4,769
50	298,440	0.0147	4,375

\$3,565,831

Summary (payment in advance)

FIRP/NSPF/MRF \$3,565,831
Other Areas \$2,257,093
Pipeline easements \$177,268
\$6,000,192

Projected Lease Payments - Other Areas

Assumptions:

Year 1 market rent: \$188,906
Lease term (years): 50
Discount Rate: 9.0%

(payment in advance)

Year	Rent	PWF	Present Worth
1	\$188,906	1.0000	\$188,906
2	188,906	0.9174	173,308
3	188,906	0.8417	158,998
4	188,906	0.7722	145,870
5	188,906	0.7084	133,826
6	188,906	0.6499	122,776
7	188,906	0.5963	112,638
8	188,906	0.5470	103,338
9	188,906	0.5019	94,806
10	188,906	0.4604	86,978
11	188,906	0.4224	79,796
12	188,906	0.3875	73,207
13	188,906	0.3555	67,163
14	188,906	0.3262	61,617
15	188,906	0.2992	56,529
16	188,906	0.2745	51,862
17	188,906	0.2519	47,580
18	188,906	0.2311	43,651
19	188,906	0.2120	40,047
20	188,906	0.1945	36,740
21	188,906	0.1784	33,707
22	188,906	0.1637	30,924
23	188,906	0.1502	28,370
24	188,906	0.1378	26,028
25	188,906	0.1264	23,879
26	188,906	0.1160	21,907
27	188,906	0.1064	20,098
28	188,906	0.0976	18,439
29	188,906	0.0895	16,916
30	188,906	0.0822	15,519
31	188,906	0.0754	14,238
32	188,906	0.0691	13,062
33	188,906	0.0634	11,984
34	188,906	0.0582	10,994
35	188,906	0.0534	10,087
36	188,906	0.0490	9,254
37	188,906	0.0449	8,490
38	188,906	0.0412	7,789
39	188,906	0.0378	7,146
40	188,906	0.0347	6,556
41	188,906	0.0318	6,014
42	188,906	0.0292	5,518
43	188,906	0.0268	5,062
44	188,906	0.0246	4,644
45	188,906	0.0226	4,261
46	188,906	0.0207	3,909
47	188,906	0.0190	3,586
48	188,906	0.0174	3,290
49	188,906	0.0160	3,018
50	188,906	0.0147	2,769

\$2,257,093

In the event of cancellation prior to the contract term of 50 years, the above schedule shall be used to calculate the refund to the City of pre-paid rent for the unused term. The "Years" column shall represent the number of years remaining in the lease at time of cancellation and the refund shall be the sum of the values in the present worth column for the number of years remaining.

Example No. 1: 45 years have passed, 5 years remain at time of cancellation of FIRP/NSPF/MRF area; Sum of years 1-5 (\$298,440....\$211,422) = \$1,265,301. Example No. 2: 49 years have passed, 1 year remains; = \$298,440.

EXHIBIT C

TO LEASE

ORDINANCE NUMBER O- 18218 (NEW SERIES)

ADOPTED ON 007-031001

WHEREAS, on December 5, 1994, the COUNCIL OF THE CITY OF SAN DIEGO adopted Ordinance No. O-18130 (New Series), approving on the part of the CITY OF SAN DIEGO, a fifty year lease agreement with the UNITED STATES OF AMERICA, DEPARTMENT OF THE NAVY, for the lease of land at NAS Miramar for the location of the Miramar Landfill General Development Plan/Fiesta Island Replacement Project; and

WHEREAS, said lease agreement was forwarded to the DEPARTMENT OF THE NAVY for its formal approval; and

WHEREAS, upon further consideration, the DEPARTMENT OF THE NAVY desired certain material modifications to the proposed lease agreement; and

WHEREAS, the parties have met and conferred regarding the modifications to the proposed lease, and the City, for its part, remains intent to enter it; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, that Ordinance No. O-18130 (New Series) is hereby repealed.

BE IT FURTHER ORDAINED, that in lieu of that lease approved by Ordinance No. O-18130 (New Series), the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a lease agreement with the UNITED STATES OF AMERICA, DEPARTMENT OF THE NAVY, for the lease of land at NAS Miramar for the location of the Miramar Landfill General Development Plan/Fiesta Island

Plan/Fiesta Island Replacement Project, under the terms and conditions set forth in the lease agreement on file in the office of the City Clerk as Document No. OO-18218.

BE IT FURTHER ORDAINED, that this ordinance shall be in full force and effect on the thirtieth day after its passage.

APPROVED: JOHN W. WITT, City Attorney

By Frederick M. Ortlieb
Frederick M. Ortlieb
Deputy City Attorney

FMO:pev
08/18/95
Or.Dept:REA
O-96-37
Form=o+t

DOCUMENT NO. 00-18218

FILED October 2, 1995

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

(LEAS - United States of America, Dept.
of the Navy - October 2, 1995, Item 54)

A fifty year lease agreement with the United
States of America, Department of the Navy
for the lease of land at NAS Miramar for
the location of the Miramar Landfill General
Development Plan/Fiesta Island Replacement
Project.

cc: M. Steffen, REA, x66050, MS 51A
(Original & 2 copies)

Auditor - MS 61 (Copy)

10/23/95

ew

Passed and adopted by the Council of The City of San Diego on
October 2, 1995 by the following vote:

YEAS: Mathis, Harvey, Kehoe, Stevens, Warden, Stallings, McCarty, Vargas.

NAYS: None.

NOT PRESENT: Mayor Golding.

AUTHENTICATED BY:

SUSAN GOLDING

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: Esther Woronicz, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O-18218 (New Series) of The City of San Diego, California.

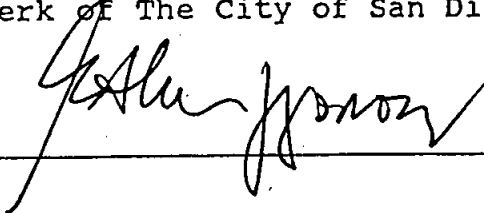
I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on September 12, 1995 and on October 2, 1995.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: , Deputy

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER:

TO:

CITY ATTORNEY

2. FROM: (Originating Department)

Real Estate Assets Department

3. DATE August 24, 1995

4. SUBJECT:

MIRAMAR LANDFILL GENERAL DEVELOPMENT PLAN/FIESTA ISLAND REPLACEMENT PROJECT

5. FOR INFORMATION CONTACT: (NAME & MAIL STA.)

Steffen/MacKenzie

51-A

6. TELEPHONE NO.

66725/66050

7. CHECK HERE IF BOX 1472A, "DOCKET SUPPORTING INFORMATION," HAS BEEN COMPLETED ON PAGE 2:



8.

COMPLETE FOR ACCOUNTING PURPOSES

FUND				
DEPT.				
ORGANIZATION				
OBJECT ACCOUNT				
JOB ORDER				
C.I.P. NO.				
AMOUNT				

9. ADDITIONAL INFORMATION / ESTIMATED COST:

None.

Job: 521696

cc: Docket

10. ROUTING AND APPROVALS

ROUTE (✓)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	Department Director	<i>Michael P. Steffen</i>	8-24-95	X	CITY MANAGER	<i>Conrad</i>	8-25-95
X	ENVIRONMENTAL SERVICES	<i>John Toran EAS</i>	8/24/95	X	AUDITOR		
X	METROPOLITAN WASTE WATER	<i>Scott Zell</i>	8/24/95	X	CITY ATTORNEY		
X	DEP/EAS			X	ORIGINATING DEPARTMENT	<i>Blaine P. Steffen</i>	8/28/95
	2. ENVIRONMENTAL SERVICES	<i>Rue P. Steffen</i>	8-21-95		MGR. DOCKET COORD.	<i>AW 8/28/95</i>	COUNCIL REP. <i>AMJ 8/29/95</i>
				✓	RULES COMMITTEE	☐ CONSENT ☐ Refer to _____	☒ ADOPTION ☐ Date <i>9/11/95</i>

11. PREPARATION OF:

☐ RESOLUTION(S)☒ ORDINANCES(S)☐ AGREEMENT(S)☐ DEED(S)

1. Authorizing the City Manager to enter into an agreement with the United States of America for lease of 625+ acres of land at NAS Miramar for the location of the Miramar Landfill General Development Plan/Fiesta Island Replacement Project.

11a. MANAGER'S RECOMMENDATION:

Approve the Ordinance

12. SPECIAL CONDITIONS (REFER TO A.R. 9.20 FOR INFORMATION ON COMPLETING THIS SECTION).

SOURCE OF FUNDS - Funding of \$6,000,000 approved 12/5/1994 by Resolution R-285060.

ACTION REQUESTED BY: Metropolitan Waste Water Department and Environmental Services Department.

DESCRIPTIVE LOCATION: South of NAS Miramar and north of State Route 52.

ENVIRONMENTAL ASSESSMENT: The City of San Diego has under NEPA completed an EIR, and as Lead Agency under CEQA has completed an EIR, DEP File No. 91-0653, dated August 29, 1994. The City Council reviewed and considered this final EIR covering this action.

JUSTIFICATION: This Ordinance will supersede Ordinance OO-18130 approved December 5, 1994.

0-18218 001 66050

CITY ATTORNEY
2 21 PM '95

DOCKET SUPPORTING INFORMATION

CITY OF SAN DIEGO

DATE

August 24, 1995

SUBJECT

MIRAMAR LANDFILL GENERAL DEVELOPMENT PLAN/FIESTA ISLAND REPLACEMENT PROJECT

BACKGROUND:

On December 5, 1994 the City Council approved Ordinance OO-18130 authorizing a lease agreement with the Department of the Navy in connection with the Miramar Landfill General Development Plan/Fiesta Island Replacement Project. The lease agreement provided for the citing of the Fiesta Island Replacement Project (FIRP), as well as solid waste facilities needed for the West Miramar Landfill Project, and access to completed portions of closed and inactive landfills on Miramar for monitoring and maintenance for a period of 50 years.

Various changes have been made, by the Department of Navy, to the lease document since its approval on December 5. These changes included expanded language for property restoration, methane gas extraction and payment, and the handling and disposition of hazardous substances.

The proposed facilities will help the City comply with the Coastal Commission mandate to cease sludge treatment at Fiesta Island and vacate the site.

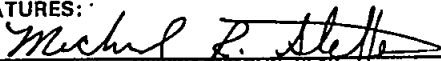
FISCAL IMPACT: None with this action.

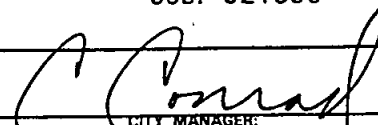
BYLINE: (DEPUTY CITY MGR/DEPT. HEAD/AUTHOR INITIALS)

CONRAD:SPOTTS:BLM

Job: 521696

SIGNATURES:


ORIGINATING DEPT. HEAD


CITY MANAGER:
(FOR MANAGERIAL DEPARTMENTS ONLY)

0-18218

285060

(R-95-532)

RESOLUTION NUMBER R-

ADOPTED ON DEC 05 1994

BE IT RESOLVED, by the Council of The City of San Diego, that the City Auditor and Comptroller is hereby authorized to transfer an amount not to exceed \$1,748,110 from Fund 41201, (Waste Management CIP Fund), CIP No. 32-013.0 (South Chollas Land Closure), to CIP No. 37-056.0 (West Miramar Refuse Disposal Facility - Phase II), for the acquisition of property rights in connection with the Miramar Landfill General Development Plan/ Fiesta Island Replacement Project.

BE IT FURTHER RESOLVED, that the expenditure of an amount not to exceed \$177,268 from Metropolitan Wastewater Department Fund 41509, CIP No. 42-911.3, for the acquisition of easement rights and related costs for the North City Raw Sludge and Water Pipeline, is hereby authorized.

BE IT FURTHER RESOLVED, that the expenditure of amounts not to exceed \$2,665,917 from Metropolitan Wastewater Fund 41509, CIP No. 42-911.4; \$1,418,705 from Materials Recovery Facility Waste Management Enterprise Fund 41201, CIP No. 37-255.0; and \$1,748,110 from the West Miramar Refuse Disposal Facility - Phase II, CIP No. 37-056.0; are hereby authorized, for property rights and related costs in connection with the Miramar/Fiesta Island leased property.

APPROVED: JOHN W. WITT, City Attorney

By

Frederick M. Ortlieb
Frederick M. Ortlieb
Deputy City Attorney

FMO:HOV:ps
09/28/94
Or.Dept:REA
Aud.Cert:9500379
R-95-532
Form=r-t

COPY

SECOND EXTENSION TO MIRAMAR RECYCLING CENTER
SERVICE CONTRACT/REAL PROPERTY LEASE
(CITY OF SAN DIEGO AND ALLAN COMPANY)

This Agreement to extend the term of the Miramar Recycling Center Service Contract/Real Property Lease Agreement [Second Extension], as authorized in Resolution 295859 adopted on December 10, 2001, is made and entered into between the City of San Diego [City], a municipal corporation, and Allan Company [Contractor].

RECITALS

WHEREAS, the City of San Diego [City] is required by California state law to reduce the amount of solid waste disposed in landfills by 50% and to make a good faith effort to implement programs as described in City's Source Reduction and Recycling Element; and

WHEREAS, the City's Environmental Services Department [ESD] operates many recycling and educational outreach programs to divert recyclables from the City's waste stream; and

WHEREAS, ESD requires a contractor to operate the Miramar Recycling Center [Center], located at the entrance to the City's Miramar Landfill, to provide a convenient location for the public to recycle; and

WHEREAS, in 2001, the San Diego City Council authorized the City Manager to execute the Miramar Recycling Center Service Contract/Real Property Lease [Agreement] with Allan Company [Contractor] for the operation of the Center, which Agreement is on file in the office of the City Clerk as Document Number RR-295859; and

WHEREAS, Contractor has spent \$35,000 in 2004 on site improvements and marketing in fulfillment of the Agreement and an additional \$68,700 on improvements and marketing beyond the scope of the Agreement, and has increased usage 11 percent from the year 2002 to 2003, serving over 71,000 customers a year. In addition to traditional recycling, the Center accepts special handling items such as appliances containing Chlorofluorocarbons (CFC) (refrigerators, freezers and air conditioners), other appliances, and cathode ray tube (CRT) devices such as computer monitors and TVs. In addition, Contractor also provides free tax paper shredding and recycling during April, cooking oil recycling, and sale of bagged Miramar Greenery compost and Recycle Or Else gear at no additional charge to the City; and

WHEREAS, the Agreement provides for a five-year initial term and includes an evergreen clause which, beginning at the end of the second contract year and at the end of each contract year thereafter, allows for a one-year extension of the Agreement if mutually agreed upon by the parties and approved by the Council; and

WHEREAS, the City Council by resolution authorized execution of the First Extension to the Miramar Recycling Center Service Contract/Real Property Lease on March 29, 2004, which First Extension was subsequently executed; and

DOCUMENT NO. 300109

FILED FEB 07 2005
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

WHEREAS, extending the Agreement will allow Contractor to continue providing high quality services in support of the City's efforts to meet State mandated waste diversion goals;

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein and in the Agreement, both parties do agree as follows:

1. Pursuant to section 3.14 of the Agreement, the term of the Agreement is extended for a period of one year from December 31, 2007 to December 31, 2008.
2. This Second Extension to the Agreement, shall affect only the terms and/or conditions referred to herein. All other terms and conditions shall remain in full force and effect.

IN WITNESS WHEREOF, this SECOND EXTENSION to the AGREEMENT is executed by THE CITY OF SAN DIEGO, acting by and through its City Manager and by ALLAN COMPANY, acting by and through its authorized representative.

Date: 12/23/2004

ALLAN COMPANY

By Stephen A. Young
Stephen A. Young, President

Date: 2/15/05

CITY OF SAN DIEGO
By Elmer L. Heap, Jr.
Environmental Services Director

I HEREBY APPROVE the form and legality of the forgoing Agreement, this 17th day of February, 2005.

MICHAEL J. AGUIRRE, CITY ATTORNEY

By Grace C. Lowenberg
Grace C. Lowenberg
Deputy City Attorney

Passed and adopted by the Council of San Diego on February 7, 2005 by the following vote:

YEAS: **PETERS, ZUCCHET, ATKINS, YOUNG, MAIENSCHIN, FRYE, MADAFFER, INZUNZA, MAYOR MURPHY.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

AUTHENTICATED BY:

DICK MURPHY
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

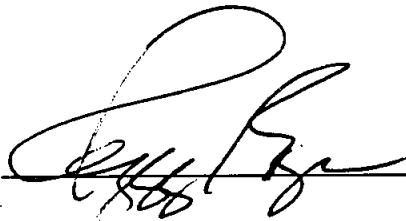
By: Peggy Rogers, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R- 300109.

passed and adopted by the Council of The City of San Diego, California on February 7, 2005.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By:  , Deputy

DUPLICATE

COPY

FIRST EXTENSION TO MIRAMAR RECYCLING CENTER
SERVICE CONTRACT/REAL PROPERTY LEASE
(CITY OF SAN DIEGO AND ALLAN COMPANY)

This agreement to extend the term of the Miramar Recycling Center Service Contract/Real Property Lease Agreement [First Extension,] as authorized by Council Resolution 295859 adopted on December 10, 2001, is made and entered into by and between the City of San Diego ("City"), a municipal corporation, and Allan Company [Contractor].

RECITALS

WHEREAS, the City of San Diego [City] is required by California state law to reduce the amount of solid waste disposed in landfills by 50% and to make a good faith effort to implement programs as described in City's Source Reduction and Recycling Element; and

WHEREAS, the City's Environmental Services Department [ESD] operates many recycling and educational outreach programs to divert recyclables from the City's waste stream; and

WHEREAS, ESD requires a contractor to operate the Miramar Recycling Center [Center], located at the entrance to the City's Miramar Landfill, to provide a convenient location for the public to recycle; and

WHEREAS, in 2001, the San Diego City Council authorized the City Manager to execute the Miramar Recycling Center Service Contract/Real Property Lease [Agreement] with Allan Company (Contractor) for the operation of the Center, which Agreement is on file in the office of the City Clerk as Document Number RR-295859; and

WHEREAS, Contractor has spent a total of \$223,200 in permanent site improvements in the first two years of the Agreement; has increased customer usage 25 percent; and has expanded service to residents by accepting, at City's request, special handling items such as appliances containing Chlorofluorocarbons (refrigerators, freezers and air conditioners), other appliances, and cathode ray tube devices such as computer monitors and TVs. At the City's request, Contractor also provides free tax paper shredding and recycling during April, cooking oil recycling, and sale of bagged Miramar Greenery compost; and

WHEREAS, the Agreement provides for a five-year initial term and includes an evergreen clause which, beginning at the end of the second contract year and at the end of each contract year thereafter, allows for a one-year extension of the Agreement if mutually agreed upon by the parties and approved by the Council; and

WHEREAS, extending the Agreement will allow Contractor to continue providing high quality services in support of the City's efforts to meet State-mandated waste diversion goals;

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein and in the Agreement, both parties do agree as follows:

DOCUMENT NO. RR-299012
FILED MAR 29 2004
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

1. Pursuant to section 3.14 of the Agreement, the term of the Agreement is extended for a period of one year from December 31, 2006 to December 31, 2007.

2. This First Extension to the Agreement, shall affect only the terms and/or conditions referred to herein. All other terms and conditions shall remain in full force and effect.

IN WITNESS WHEREOF, this FIRST EXTENSION to the AGREEMENT is executed by THE CITY OF SAN DIEGO, acting by and through its City Manager and by ALLAN COMPANY, acting by and through its authorized representative.

Dated this 26 day of FEB, 2003

ALLAN COMPANY

By Stephen A. Young
Stephen A. Young, President

CITY OF SAN DIEGO

By Richard L. Hays
Richard L. Hays, Environmental Services Director

I HEREBY APPROVE the form and legality of the foregoing Agreement, this 14th day of April, 2004

CASEY GWINN, CITY ATTORNEY

By Grace C. Lowenberg
Grace C. Lowenberg
Deputy City Attorney

December 11, 2003

L:\Lowenberg\Recycling\RECYCLINGCENTERCONTRACTTEXT12.03.doc

R- 299012

Passed and adopted by the Council of the City of San Diego on December 10, 2001 by the following vote:

YEAS: PETERS, WEAR, ATKINS, STEVENS, MAIENSCHIN, FRYE, MADAFFER, INZUNZA,
MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: NONE.

AUTHENTICATED BY:

DICK MURPHY
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

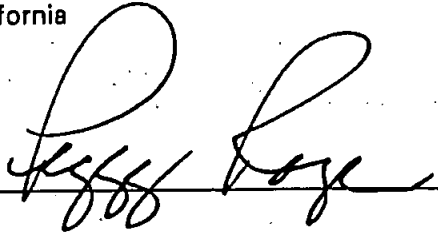
By: PEGGY ROGERS Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION No. R-295859, passed and adopted by the Council of The City of San
Diego, California on December 10, 2001.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy

**MIRAMAR RECYCLING CENTER SERVICE CONTRACT/REAL PROPERTY LEASE
(CITY OF SAN DIEGO AND ALLAN COMPANY)**

This Agreement ("Agreement") is made and entered into between the City of San Diego ("City"), a municipal corporation, and Allan Company ("Contractor") for Contractor to provide services associated with operating and managing the Miramar Recycling Center ("Center"), located at 5165 Convoy Street, San Diego, California, at the entrance to the City's Miramar Landfill.

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939) (California Public Resources Code Section 40000 et. seq.), has required jurisdictions to reduce the waste they landfill by 50 percent by the year 2000 against a 1990 base year, and maintain this diversion in following years; and

WHEREAS, the City operates many recycling and educational outreach programs to reach the goal established in AB 939; and

WHEREAS, the City currently has a contract with Contractor to operate the Miramar Recycling Center to provide a convenient location for the public to recycle, and Contractor was the only responsive bidder in the selection process for said contract; and

WHEREAS, Contractor spent \$250,000 on permanent site improvements, spent 50 percent more than required on advertising, provided additional staffing, increased customer usage by 20%, increased material tonnages and expanded recycling opportunities to small businesses; and

WHEREAS Contractor has represented to and assured City that Contractor possesses the necessary expertise, experience, qualifications, equipment, staff, permits and financial wherewithal to carry out this Agreement in compliance therewith and in compliance with all applicable federal, state and local laws; and

WHEREAS, in negotiations for exercising the first one-year extension option on its current contract with City to operate and manage the Center, Contractor offered to pay increased rent, make many more site improvements at their own expense, and provide additional services to the City and the public in return for a three-year evergreen clause regarding the expiration of this Agreement.

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants, and agreements contained herein, the parties do hereby agree as follows:

1.0 SITE

1.1 Center Site

The Center is a graded, partially paved, two-acre site. At the time the Contractor began operating the Center on May 7, 1999, the Center improvements, also included, but were not limited to, the following:

- 8' high chain link fencing around site perimeter, with 20' and 24' wide gates.
- 2" water service to central area of the site and at eastern fence line.
- 400 Amp, 208/120 volt, 3 Phase, underground electrical service to main distribution panel on site, which is separately metered. Utility hookup to equipment and buildings to be provided by Contractor.
- Asphalt-paved driveway and parking area.
- 50'x125, concrete paved equipment operations area.

After taking over operation of the Center, the Contractor made the following permanent site improvements, which became the sole property of the City, including, but not limited to:

- 47,000 sq. ft., concrete paved equipment operation and material storage areas.
- Concrete truck scale foundation and scale.
- Utility lines and hookup to scale, baler, trailers and other equipment.

Attachment A is the current site plan for the Center.

1.2 Site Improvements

Within the first year of this Agreement, Contractor will make the following improvements to the Center site, at its own expense, which improvements will remain on-site after this Agreement is terminated and which improvements become the sole property of City upon completion of such improvements. The design of these improvements will require City approval of plans prior to construction as described in section 2.5.

- Concrete remaining 35,000 sq. ft. of unpaved area inside the Center footprint and incorporate necessary drainage measures into the design to ensure compliance with current storm water regulations.
- Improve area north of the Center by preparing surface, installing class 2 aggregate, and laying concrete where roll-off bins will be stored and on the apron area where trucks turn around to enter the north gate of the Center.
- Photo Voltaics (PV): install and maintain two (2) stand-alone PV systems, one at the Center and one at the Household Hazardous Waste Transfer Facility (HHWTF). These systems will help power the office trailers.

- Appliance Recycling improvements: if the appliance recycling pilot project described in section 2.1.2 becomes permanent, Contractor will pay for required paving and fencing of the area that will be used for this activity.
- Contractor will erect/purchase an informational kiosk (design to be approved in advance by the City) to provide Center customers with information on City Environmental Services Department ("ESD") programs.

2.0 SCOPE OF SERVICES

Pursuant to this Agreement, Contractor shall be responsible for the collection, separation, processing, marketing, and sale or other proper disposal of all materials described herein purchased from, paid for by, or donated by, the public at the Center. Contractor shall perform the following services:

2.1 Miramar Recycling Center Services

The purpose of the Center is to provide convenient and comprehensive multi-material recycling services to the San Diego public. Contractor shall maintain the Center facility in a well-organized, clean, and aesthetically pleasing manner so as to provide a convenient and pleasant environment for the public. Contractor is required to maintain the following hours of operation at the Center: Monday through Friday from 7:00 a.m. to 4:30 p.m. and Saturday and Sunday from 7:30 a.m. to 4:30 p.m. The Center will be closed for the following holidays: New Year's Day, Easter, Thanksgiving and Christmas Day.

The Contractor must obtain and continuously maintain a valid certification from the California Department of Conservation under the California Beverage Container Recycling and Litter Reduction Act to operate a recycling center at the site. The Contractor must obtain and continuously maintain a valid Storm Water Discharge Permit from the California Regional Water Quality Control Board, and must comply with such permit including, but not limited to, performing all required monitoring.

2.1.1 Acceptance of Recyclables

Contractor must accept for free, or purchase as market conditions allow, the following materials from the public: newspaper (ONP); corrugated cardboard (OCC); high grade papers including white ledger, colored ledger, computer print-out (CPO), and mixed paper; all containers covered under the California Beverage Container Recycling and Litter Reduction Act/AB2020; high-density polyethylene (HDPE) milk and water bottles; polyethylene terephthalate (PET) beverage containers; non-CRV glass containers (flint, amber, and green glass); aluminum; brass; copper; iron; electronics; steel cans; textiles; and scrap metal.

Contractor must accept the following materials, but may charge the public a recycling fee as set forth in section 2.1.3: mattresses, box springs, tires, toilets, and computer monitors.

Contractor must accept enamel-coated major appliances such as washing machines, clothes dryers, hot water heaters, stoves and refrigerators under the conditions outlined in section 2.1.2.

Contractor must accept from ESD 50 vehicle tires (without rims) each month at no cost to City. Any additional tires brought to the Center by ESD in excess of 50 tires per month will be assessed the fee paid by the public.

Contractor may, upon prior approval of the City and in compliance with all applicable laws, accept other recyclable materials or reusable items from the public that are not listed above.

2.1.2 Appliance Recycling

During the first sixteen (16) weeks of this Agreement, the Contractor and ESD's Support Services Section will conduct a pilot project for recycling appliances as defined in section 2.1.1. The pilot project will involve the following:

- Contractor will accept chlorofluorocarbon (CFC) and Non-CFC appliances and charge an appliance recycling fee for units containing CFCs. A portion of this fee will be remitted to the City to cover the costs incurred by ESD's Support Services Section for the removal of CFCs. The parties acknowledge that state law deems any party removing hazardous waste from major appliances to be a generator of hazardous waste and subject to applicable statutes and regulations. Contractor shall not remove CFCs or any other hazardous materials/wastes from accepted appliances. The appliance recycling fee, as well as that portion of the fee to be remitted to the City, are to be mutually agreed upon by the parties at a future date.
- Contractor will place CFC containing units in two roll-off bins, which will be provided and serviced by ESD's Support Services Section. The bins for CFC units will be stored outside the Center (see Attachment A), and bins for Non-CFC units will be stored within the Center. Access to the bins for CFC units by Contractor shall be in a manner to prevent site access by unauthorized personnel and illegal dumping of other materials including, but not limited to, hazardous materials/wastes. The bins for non-CFC units will be provided and serviced by Contractor.
- ESD Support Services Section will pick-up the roll-off bins containing CFC units on an as needed basis.
- Contractor shall transfer all non-CFC appliances to a recycling facility lawfully authorized to accept non-CFC appliances on behalf of the ESD. Any and all such recycling facilities selected by Contractor must be approved in advance in writing by City. City reserves the right to revoke its approval of any such recycling facility, at any time, in its sole discretion, and to require Contractor to select a different recycling facility for non-CFC appliance recycling. In the event the receipt of major appliances as contemplated by the parties is alleged to be a violation of state law or local ordinances, Contractor shall cease receiving major appliances and such action shall not be a breach of this Lease.

If the pilot project is deemed successful by the City, it will become a permanent service offered by Contractor at the Center with support from the ESD's Support Services Section.

2.1.3 Fees Charged to Recycling Center Customers

Contractor may charge the public a recycling fee for the following materials. Such fees shall not exceed the rates specified below:

Non-City Rebate Program Toilets	\$2.00 per toilet
Computer Monitors (no broken tubes)	\$0.60 per pound
Mattresses or Box Springs	\$2.50 per item
Vehicle Tire (18" in rim diameter or less)	\$2.00 per tire

Contractor must receive prior approval from the City in order to increase fees charged to the public.

2.1.4 Acceptability of Recyclables

Contractor is solely responsible for determining/verifying that materials accepted from the public at the Center pursuant to this Agreement are in compliance with this Agreement, all applicable permits, and all applicable federal, state and local laws, regulations and ordinances.

2.2 Compensation and Required Reports to the City

Contractor will pay the City according to the schedule, below. Payments will range from \$1,450/month in the first year to \$6,450/month in the seventh year. All payments to the City by the Contractor will be due and payable commencing on the first day of this Agreement and on the first day of each month thereafter. All payments received after the fifteenth day of each month will be assessed a 10% late fee. Failure to make payment for two consecutive months can result in the City immediately terminating this Agreement with the Contractor.

Contractor shall pay the City according to the following schedule:

Time frame (FY)	Total rent/mo.	Total rent/FY
July 2001-June 2002	\$1,450	\$16,251*
July 2002-June 2003	\$2,450	\$29,400
July 2003-June 2004	\$3,450	\$41,400
July 2004-June 2005	\$4,450	\$53,400

July 2005-June 2006	\$5,450	\$65,400
July 2006-June 2007	\$6,450	\$77,400
July 2007-June 2008	\$6,450	\$77,400

* Includes one month at \$301/mo. and eleven months at \$1,450/mo.

Contractor acknowledges this Agreement may not extend beyond the initial five-year term set forth in section 3.13 below. In the event that the San Diego City Council by resolution approves any one-year extension of the initial five-year term of this Agreement, pursuant to section 3.14 below, rent for years six and seven will be as shown in the above schedule. If this Agreement extends for any term beyond the end of year seven from the effective date of this Agreement, the City reserves the right to negotiate the rent amount for any such future term.

The Contractor will be allowed to keep all revenue derived from the Center operation.

Contractor shall provide the City with a monthly statement, by the 20th day of each month, which includes an accounting of (1) the amount of all materials accepted by the Contractor during the previous month by type of material, (2) the total amount paid to the public for materials accepted during the previous month by material type, and (3) an estimate of the number of customers served by the Center during the previous month.

Contractor shall also be prepared to provide to the City an accounting of all revenues received by Contractor by material type from operation of the Center, and a statement of expenditures (including payments to the public by type of material) should such information be requested by the City. No report, information, or other data given to, or prepared by, the Contractor pursuant to this Agreement shall be made available to any individual or organization by the Contractor without prior approval by the City.

All reports required from the Contractor, as part of this Agreement, shall be the exclusive property of the City. However, should the Contractor claim that certain information provided is of a proprietary nature and request that the City not release said information to the public, then City shall not release such proprietary information or make same available as a public record, except as required by law or order of a court of competent jurisdiction.

2.3 Staffing

Contractor shall provide the following minimum level of staffing at the Center at all times: Manager (1), customer attendant/equipment operator/cashier (3). Contractor shall ensure that, during all hours of operation, the Center will have a manager or assistant manager on-site. Contractor will ensure only properly trained staff handle CFC appliances and hazardous

materials/wastes that are used/generated in the operation or maintenance of its equipment/machinery. Contractor shall ensure that each of its employees is properly trained for the job duties assigned to that employee including, but not limited to, any and all training required by law.

2.4 Center Promotion

Within forty-five (45) days of the signing of this Agreement by the City, Contractor is required to provide the City an advertising/marketing plan outlining how it intends to inform the public on an ongoing basis about the Center and the services it offers. Contractor is required to spend a minimum of \$5,000 annually promoting the Center, of which at least \$1,000 annually will be spent to promote electronics recycling. Contractor will be required to provide the City with receipts associated with advertising and marketing of the Center as well as copies of promotional advertisements upon request. The \$5,000 minimum cannot be spent for one specific promotional campaign without the approval of the City.

2.5 Site Design and Improvements

Contractor acknowledges and agrees that its occupation of the Center site is solely for the provision of services pursuant to this Agreement.

The site has metered water. Any additional improvements and costs required to access metered water and electrical power shall be the responsibility of the Contractor. Contractor will be responsible for furnishing its own septic system or providing temporary bathrooms as required by local, state or federal law. The cost of all utilities (water, electricity, telephone, etc.) will be the responsibility of the Contractor (See section 2.20).

The City reserves the right to approve the plans for any and all improvements and the final design of the facility. This approval shall not be unreasonably withheld. The design of the facility shall incorporate existing features for operational efficiency and convenience for the public. The site shall also be designed to provide alternate access for City and emergency vehicles. Site design plans shall include proposed location of all equipment, storage containers, traffic flow, customer service area, and a proposed time line for construction that ensures minimal disruption for existing services and adjacent operations, including the City Hazardous Substance Enforcement Team offices, HHWTF and Miramar Landfill).

2.6 Site Weigh Systems

Contractor must obtain and maintain a scale approved, tested and sealed as required by law, and must provide to each customer as a receipt, for materials accepted by Contractor, a weighmaster certificate issued by a California state licensed weighmaster.

2.7 Site Storage

Storage at the Center shall be limited to materials which result from operations at the Center, equipment/machinery used at the Center, containers used for the storage of recyclable materials accepted at the Center, temporary office structures, or other equipment that is required to meet the terms of this Agreement. Vehicles stored on-site shall be limited to those used for the transportation of materials within the Center's grounds. Contractor shall not store materials, vehicles, temporary office structures, storage containers or other equipment/machinery beyond the fenced boundaries of the Center, except as follows:

- Northeast of the Center: Contractor may use 3,000 sq. ft. to store up to six roll-off containers and for employee parking. A portion of this area is reserved for a Goodwill Donation Bin, pending ESD negotiations with Goodwill.
- HHWTF: Contractor will be allowed to use space within the HHWTF to store two roll-off bins, which will be provided by the ESD's Support Services Section, during the Appliance Recycling Pilot Project (section 2.1.2). If this project becomes a permanent program, the ESD will provide a permanent location for storing these bins.

2.8 Material Storage

The volume of storage at the Center shall be limited to the amount needed to handle surge capacity for materials to ensure they are not stored on the ground. Any exceptions to this must receive the written approval of the City which shall not be unreasonably withheld. All materials must be stored in appropriate metal containers of a uniform color or in bunkers, and no material will be allowed to be stored on the ground. All residue and contaminants that must be landfilled are the responsibility of the Contractor and will be subject to normal landfill disposal fees to be paid by the Contractor. The Contractor will designate an area to store hazardous materials/wastes needed for, or generated by, maintenance of its equipment/machinery and shall properly manage these materials/wastes in accordance with local, state and federal law.

2.9 Buildings and Structures

Contractor will provide its own office trailers and other structures required to operate the Center. Any permanent or temporary structures must meet all applicable federal, state and local building codes.

2.10 Hazardous Materials/Waste

No hazardous materials/waste shall be accepted at the Center nor stored on-site, except for materials/waste used for, or generated by, the maintenance of the Contractor's equipment/machinery which is required to meet the terms of this Agreement. The Contractor is responsible for properly disposing of, at its own expense and in accordance with all applicable

laws, all hazardous materials/waste left on-site. Contractor shall adhere to the following procedures:

1. Upon finding illegally dumped materials which might reasonably be considered hazardous waste, the Contractor shall immediately contact the City's Landfill Hazardous Substance Enforcement Team (858) 573-1415.
2. If material appears to be an immediate threat to safety, immediately call 911 (Fire Department) and provide all relevant information possible.
 - Contact the City's Landfill Hazardous Substance Enforcement Team (858) 573-1415.
 - Safety permitting, cordon off the area where the material has been found, to the extent possible.
 - Safety permitting, remain at site until the Fire Department arrives.
 - Inform on-site management. (Environmental Services Department Disposal Site Supervisor).
 - Do not come in contact with or inhale any of the material.
3. Provide documentation on a quarterly basis indicating the type of hazardous materials/waste transported off-site by a licensed transporter.

2.11 Posting of Signs

Contractor must have a minimum of one sign listing the hours of operation and the scope of materials accepted for recycling. The sign shall also indicate that it is illegal to dump materials not accepted at the Center. Contractor must post all current prices to be paid for accepted materials. Pricing shall be expressed as payment by the ton or pound as is most appropriate. The California Redemption Value for appropriate containers shall also be listed and its relationship to the total price of a given commodity displayed. All signs shall be clearly visible to the public. All signs must be done professionally, shall be maintained in good condition, and must be approved by the City before posting.

2.12 Operations

Contractor acknowledges and agrees that the Center site is on property leased by City from the United States of America, acting by and through the Department of the Navy. Contractor shall operate the Center in strict compliance with all permits and all lease conditions that apply to the Miramar Landfill as the host site. City shall provide Contractor with a copy of said lease and all pertinent conditions thereof applicable to the Center. Further, all recycling operations must be conducted in such a manner so as not to interfere with landfill operations which shall have priority in the event of any conflicts.

2.13 Site Maintenance

During the initial term of this Agreement and any and all extensions thereof, Contractor shall be responsible for performing and paying for all maintenance and repairs to the Center site and all improvements thereon. With respect to all buildings and containers on site, Contractor shall paint them frequently enough to ensure there are no cracking or peeling surfaces. Any damage to the Center site or to any improvement thereon will be repaired to its original condition by the Contractor at its expense within 14 days of Contractor's discovery of any such damage or Contractor's receipt of notice and request from the City to repair any such damage, whichever occurs first. Failure to repair as required herein could result in termination of this Agreement.

Contractor is required to keep the Center clean at all times. All wind blown paper and other trash originating from the Center will be collected by the Contractor. The areas outside the Center, including the HHWTF, shall be patrolled twice daily to collect all litter. Weeds shall be removed from inside the Center facility and along all fence lines.

2.14 Safety Requirement

All work performed under this Agreement shall be performed in such a manner so as to ensure public safety and to meet or exceed the safety standards outlined by Cal-OSHA. The City reserves the right to issue restraint or cease and desist orders to the Contractor when unsafe or harmful acts are observed or reported relative to the performance of the work under this Agreement.

Contractor shall maintain the work sites free of hazards, to persons and property, which may result from its operations. Any hazardous conditions noted by Contractor shall be immediately reported to the City.

2.15 Site Inspections

City staff will inspect the Center every 30 days or more frequently, if necessary, for compliance with the provisions of this Agreement and with hazardous materials/wastes storage regulations.

2.16 Temporary Interruption of Center Operations

Contractor acknowledges and agrees that the actual owner of the property on which the Center is located is the United States of America, Department of the Navy, and that due to national emergencies or other unforeseen events, a temporary closure of the landfill and the Center may be required. During any such closure, all obligations of performance by Contractor hereunder shall be temporarily suspended.

2.17 Financing

All costs incurred for the operation and management of the Center pursuant to this Agreement including, but not limited to, all costs for site improvements, site maintenance, equipment, equipment maintenance/replacement, containers, insurance, taxes, administration, and labor shall be the sole responsibility of the Contractor.

2.18 Site Closure

In the event Contractor discontinues operating the Center it will be required to do the following:

1. Remove all recyclable materials, trash, equipment, machinery, vehicles, containers, and temporary office buildings in accordance with all applicable laws and regulations;
2. Inspect the site with City staff to locate and identify any remaining hazardous materials/wastes and property that belongs to the Contractor and arrange for the Contractor to remove it;
3. Provide the City with copies of all documentation and permits associated with the proper disposal of hazardous materials/wastes and equipment;
4. Notify utility companies to discontinue service; and
5. Leave the site in a clean condition acceptable to City.

2.19 Performance Bond

Simultaneously with the signing of this Agreement by City, Contractor shall furnish and maintain in full force and effect a performance bond satisfactory to City in the amount of \$100,000 as security for the faithful performance of all Contractor's obligations under this Agreement. This bond shall remain in effect at least until one year after termination of this Agreement, except as otherwise provided by law.

2.20 Utilities

Contractor shall pay all costs incurred for utility services for the operation and management of the Center including, but not limited to, costs incurred for fuel, gas, water, sewer, electricity and telephone service. The Contractor will also supply its own septic system or portable toilets at its expense.

3.0 GENERAL PROVISIONS

3.1 Insurance Requirements

Contractor must obtain, and maintain in full force and effect during the life of this Agreement, insurance coverage including, at a minimum, Comprehensive General Liability, Automobile Liability, and Worker's Compensation. Insurance policy limits shall be no less than the following:

1. Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage;
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage;
3. Worker's Compensation and Employer's Liability: \$1,000,000 as required by the Labor Code of the State of California.

All insurance coverage required herein shall be issued by an insurance company or companies authorized/licensed to do business in the State of California and having an insurance rating in the most recent edition of the A.M. Best Key Rating Guide of "A" or better.

The City of San Diego shall be named as an additional insured on each policy required herein. Each such insurance policy shall provide that it shall remain in full force and effect throughout the life of this Agreement and shall not be canceled, terminated or allowed to expire without thirty (30) days prior written notice to the City from the insurance company.

All insurance policies required herein shall contain a waiver of subrogation of rights against City, its officials, employees, agents, and volunteers.

All deductibles under the insurance policies required herein shall be the responsibility of Contractor.

The insurance coverage required herein shall be primary insurance as respects the City, its officials, employees, agents, or volunteers. Any insurance or self-insurance maintained by City shall be excess of Contractor's insurance and shall not contribute with it.

Any failure to comply with reporting provisions of the insurance policies shall not affect coverage provided to City, its officials, employees, agents, or volunteers.

Each insurance policy shall contain appropriate endorsements as specified by City.

Simultaneously with the signing of this Agreement by City, Contractor shall furnish City with certificates of each insurance policy required herein. Renewal certificates will be furnished

periodically to City to demonstrate maintenance of the required insurance coverages throughout the life of this Agreement.

At the end of the first year after the effective date of this Agreement and at the end of each year thereafter, the City reserves the right to review insurance coverage requirements and to require more or less insurance depending upon assessment of the risk of exposure, the Contractor's past claims experience, and the availability and affordability of increased insurance coverage.

3.2 Notices

All notices, demands, requests, approvals, reports, and statements to be given under this Agreement, shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, approvals, reports, and statements from Contractor to City shall be addressed to City at:

City of San Diego

Environmental Services Department

9601 Ridgehaven Ct., Suite 320

San Diego, CA 92123

ATTENTION: Recycling Program Manager, Programs Division

All notices, demands, requests, approvals, reports, and statements from City to Contractor shall be addressed to Contractor.

3.3 Force Majeure

Neither the City nor the Contractor shall be responsible hereunder for any delay, default or non-performance of this Agreement, other than payment of monies due hereunder, to the extent that such delay, default or non-performance is caused by an Act of God, labor strike, explosion, riot, war, or any other cause beyond the reasonable control of the party claiming such event as an excuse for non-performance.

3.4 Termination

3.4.1 City's Right to Terminate for Default

In the event Contractor fails or refuses to perform any of its obligations under this Agreement, at the time and in the manner required hereunder, Contractor shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of five (5) days after receipt by Contractor from the City of written notice of default, specifying the

nature of such default and the steps necessary to cure such default or, if corrective action will require more than five (5) days, the Contractor fails to commence such correction within said five (5) days and fails diligently to pursue such correction to completion, City may terminate the Agreement forthwith by giving to the Contractor written notice thereof.

3.4.2 City's Right to Terminate for Bankruptcy

In the event Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to or demand upon Contractor immediately terminate this Agreement, and terminate each and every right of Contractor and any person claiming any rights by or through Contractor.

3.4.3 Termination Rights are Cumulative

The rights and remedies of City under this section 3.4 are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this section otherwise limit, waive, or deny any right or remedy, at law or in equity, existing as of the date of this Agreement, or hereinafter enacted or established, that may be available to City against Contractor.

3.5 Audit and Inspection of Records

Contractor agrees that the City Auditor and Comptroller of the City of San Diego, California, or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any pertinent books, documents, papers, and records of the Contractor regarding any and all matters covered by this Agreement.

At any time during normal business hours and as often as City may deem necessary, Contractor shall make available to the City for examination at reasonable locations within the City/County of San Diego all of Contractor's data and records with respect to all matters covered by this Agreement, and Contractor shall permit the City to audit, examine, and make excerpts of transcripts from such data and records, and to make audits of all invoices, materials, payrolls, records of personnel, and any other data and records relating to any and all matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years following termination of this Agreement unless the City agrees in writing to an earlier disposition.

The full cost of the City's audit will be borne by City unless one or all of the following conditions exist, in which case Contractor hereby agrees to pay City's costs of audit:

1. The audit reveals an error of five percent (5%) or more in total sales, receipts, costs, expenses, or materials accepted by Contractor and City's audit is correct; or
2. Contractor has failed to maintain complete and true books, records, accounts and supporting source documents; or
3. If Contractor does not maintain such records locally, Contractor shall promptly, reimburse City for all reasonable costs incurred in conducting the audit at a location other than City including, but not limited to, personnel, salaries, private auditors, travel, lodging, meals, and overhead expenses.

3.6 Indemnification And Hold Harmless Agreement

Contractor agrees to defend, indemnify, protect and hold harmless City, its agents, officers, and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property including, but not limited to, injury to City's or Contractor's employees, agents or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of Contractor or its agents, officers or employees in performing, providing, manufacturing or supplying the work, services, product or equipment relating to this Agreement, and all expenses of investigating and defending against same; provided, however, that Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence or sole negligence or sole willful misconduct of the City, its agents, officers or employees.

With respect to appliances accepted by Contractor pursuant to and in compliance with this Agreement, City agrees to defend with counsel to be agreed upon by both parties, indemnify, protect, and hold harmless Contractor, its agents, officers, and employees from and against any and all claims asserted or liability established for injury to persons, damage to property, natural resource damages, emergency response costs, removal costs and remediation costs, arising from or caused by the hazardous materials/wastes, if any, contained in such appliances. This duty to defend, indemnify, protect and hold harmless as described above is limited to claims and liability arising from those activities of Contractor necessary to the performance of Contractor's obligations under this Agreement and undertaken in compliance with this Agreement. This duty to defend, indemnify, protect and hold harmless as described above shall not include any claims or liability arising from the established negligence or wilful misconduct of Contractor, its agents, officers, or employees.

3.7 Compliance With The Law

Contractor agrees that performance under this Agreement shall comply with all applicable laws, regulations, ordinances and policies of the United States of America, the State of California, and the County and the City of San Diego. In addition, Contractor shall comply immediately with all directives issued by the City or its designated representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

3.8 Equal Employment Opportunity

Contractor shall not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, age or physical handicap. The Contractor shall take affirmative action to ensure that all employees and applicants for employment shall be treated with equality in all aspects of employment processes including but not limited to, hiring, transfer, promotion, training, compensation and termination, regardless of their race, creed, color, sex, national origin, age or physical handicap.

Contractor is required to complete the attached forms titled "Vendor's Self-Certification" and "Drug-Free Workplace" and furnish copies to City upon request.

3.9 Americans with Disabilities Act

Every person or organization awarded a contract, lease, or grant by the City of San Diego acknowledges and agrees that it is aware of and shall comply with Council Policy 100-04, adopted by Resolution No. 282153, relating to the Federally-mandated Americans with Disabilities Act (ADA). Contractors and subcontractors shall be individually responsible for their own ADA program.

3.10 Prohibition Against Transfer

Contractor shall not assign, hypothecate, or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise, without the prior written consent of City. Any attempt to assign, hypothecate, or transfer this Agreement or any interest therein shall constitute a default and is grounds for immediate termination of this Agreement, at the sole discretion of City. Any assignee, hypothecatee or transferee shall acquire no right of interest by reason of such attempted assignment, hypothecation or transfer.

3.11 Changes in Service Requirements

The City reserves the right to alter this Agreement during the initial term hereof and any extension of such term. This may include, but is not limited to, the following: hours and days of operation, materials accepted at the Center, and site design modifications including material storage. The Contractor will be notified in writing thirty (30) days in advance of any such change.

3.12 Independent Contractors/Subcontractors

Although not prohibited, no subcontractor will be recognized as such. Contractor acknowledges it is an independent contractor and not an agent or employee of City. All persons engaged in providing the services outlined under this Agreement shall be considered employees

of the Contractor, and the Contractor shall be directly responsible for their work and for all acts and omissions of such employees in the course and scope of their employment.

3.13 Effective Date and Term of Agreement

The effective date of this Agreement shall be Jan. 1, 2002. The initial term of this Agreement granted to the Contractor shall be five (5) years commencing from the effective date of this Agreement to Dec. 31, 2006, inclusive. Any separate agreements for service between Contractor and its customers shall automatically terminate upon the termination of this Agreement.

3.14 Extension Term

At the conclusion of the second year of the initial five (5) year term of this Agreement, and on the anniversary date of the Agreement every year thereafter, a one year extension shall be applied to said Agreement if mutually agreed upon by the parties hereto and approved by the San Diego City Council by resolution. To the extent any one year extension is approved, the new term of the Agreement will become four years, unless this Agreement is otherwise terminated in accordance with Sections 3.4 or 2.2 of this Agreement. To the extent any one year extension is not agreed upon by the parties hereto or approved by the San Diego City Council by resolution, the remaining term of this Agreement will be three years, unless this Agreement is otherwise terminated in accordance with Sections 3.4 or 2.2 of this Agreement. The City reserves the right to meet and confer with the Contractor to revise the terms of the Agreement on each annual anniversary date of the Agreement.

3.15 Mediation

3.15.1 Mandatory Non-Binding Mediation

If a dispute arises out of, or relates to, this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties hereto agree to first endeavor to settle the dispute in an amicable manner, using mandatory mediation through a neutral organization mutually agreed upon by the parties, before having recourse in a court of law.

3.15.2 Mandatory Mediation Costs

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator ("Mediator"), and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the parties hereto, unless they agree otherwise.

3.15.3 Selection of Mediator

A single mediator that is acceptable to both parties hereto shall be used to mediate the dispute. To initiate mediation, the initiating party shall serve a Request for Mediation on the other party. The Mediator, as well as the date, time, and place for the mediation shall be agreed upon by the parties hereto.

3.15.4 Conduct of Mediation Sessions

Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All conduct, discussions, statements, or admissions made in connection with mediation will be considered confidential pursuant to California Evidence Code section 1152. The parties hereto may agree to exchange any information they deem necessary.

Both parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either party may have attorney(ies) or expert(s) present. Upon reasonable demand, either party may request and receive a list of witnesses and notification whether attorneys will be present.

Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be non-binding and inadmissible for any purpose in any legal proceeding, unless otherwise agreed upon in a writing signed by the parties hereto. Mediators shall not be subject to any subpoena or liability and their actions in connection with the mediation shall not be subject to discovery.

3.16 Financial Risk

The City will assume no financial risk associated with the operation or management of the Center.

3.17 Use Of Site

Contractor's use of the site as a recycling center is based upon the terms, conditions, and requirements in this Agreement.

3.18 Severability

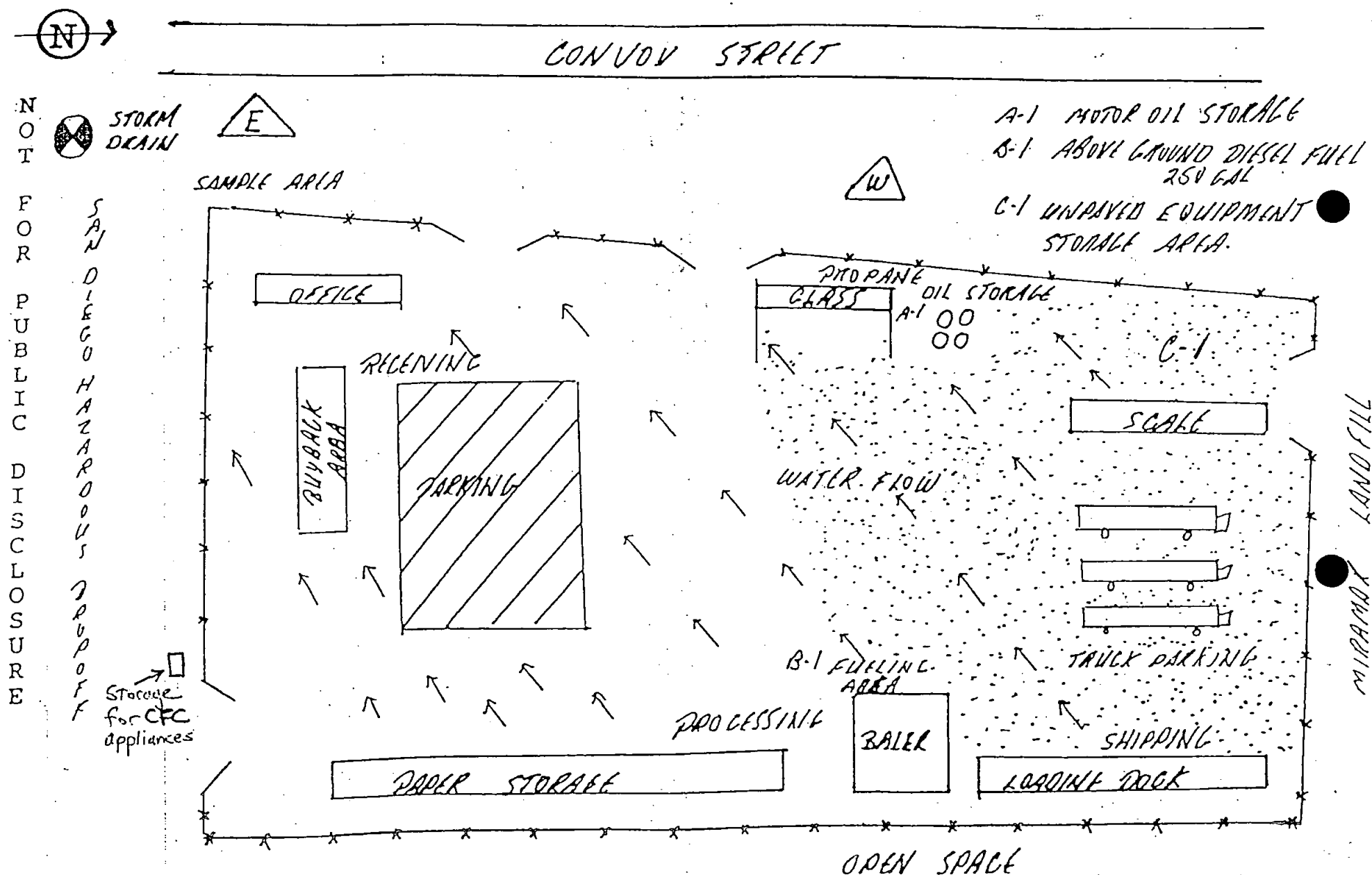
The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid or illegal.

BUSINESS NAME MIRAMAR RECYCLING / ALLAN CO.DATE 11-1-00BUSINESS ADDRESS 5165 CONVOY STREET S.D. CA.ZIP CODE 92111

OFFICE USE ONLY

REVIEWED BY: _____

DATE: _____



3.19 Municipal Powers

Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

3.20 Integration

This Agreement fully expresses all understandings between the parties hereto concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties hereto, their officers, agents, or employees shall be valid unless made in writing and approved by City. All prior negotiations and agreements are merged into this Agreement.

IN WITNESS WHEREOF, this AGREEMENT is executed by THE CITY OF SAN DIEGO, acting by and through its City Manager and by ALLAN COMPANY.

Dated this 6th day of August, 2001

ALLAN COMPANY

By Stephen A. Young
Stephen A. Young, President

CITY OF SAN DIEGO

By Richard L. Hays
Richard L. Hays
Environmental Services Director

I HEREBY APPROVE the form and legality of the foregoing Agreement, this 21st day of December, 2001.

CASEY GWINN, CITY ATTORNEY

By Grace C. Lowenberg
Grace C. Lowenberg
Deputy City Attorney

RESOLUTION NUMBER R- 295859

ADOPTED ON DEC 10 2001

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939) (California Public Resources Code section 40000 et seq.), required jurisdictions to reduce the waste they landfill by 50 percent by the year 2000 against a 1990 base year, and maintain this diversion in following years; and

WHEREAS, the City operates many recycling and educational outreach programs to reach the goal established in AB 939, one of which includes the Miramar Recycling Center currently operated by Allan Company under a two-year contract with the City, which provides for three one-year extension options ("three-year evergreen clause"); and

WHEREAS, during the existing contract term, Allan Company spent \$250,000 on permanent site improvements, spent 50 percent more than required on advertising, provided additional staffing, increased customer usage by 20 percent, increased material tonnages, and expanded recycling opportunities to small businesses; and

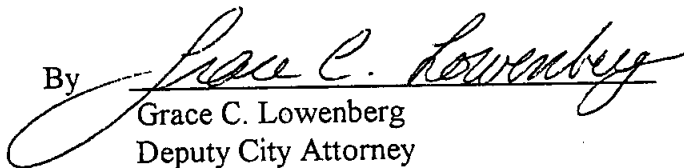
WHEREAS, in negotiations for exercising the first one-year extension option on its current contract with the City, Allan Company offered to pay increased rent, make many additional site improvements at its own expense, and provide additional services to both the City and the public in return for a five-year contract with a three-year evergreen clause; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of the City, an agreement with the Allan Company for the operation of the Miramar Recycling Center for five years, under the

terms and conditions, including a three-year evergreen clause which could be exercised at the end of the second year and each year thereafter if agreed on by the parties and approved by the Council, set forth in the Agreement on file in the office of the City Clerk as Document Number RR-295859.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized to deposit revenues received under this Agreement in Fund No. 41210 - Recycling Fund.

APPROVED: CASEY GWINN, City Attorney

By 
Grace C. Lowenberg
Deputy City Attorney

GCL:mb
11/16/01
Aud.Cert:N/A
Or.Dept:ESD
R-2002-701
Form=auagr.frm

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER:

TO: CITY ATTORNEY

2. FROM: (ORIGINATING DEPARTMENT)
Environmental Services Department, Programs Division

3. DATE
October 17, 2001

4. SUBJECT: Miramar Recycling Center Service Contract/Real Property Lease

5. FOR INFORMATION, CONTACT: (NAME & MAIL STA.)
Steven Fontana/Stephen Grealy, MS 1103B

6. TELEPHONE NO.
25010/31275

7. CHECK HERE IF BOX 1472A, "DOCKET SUPPORTING INFORMATION," HAS BEEN COMPLETED ON PAGE 2: ☐

COMPLETE FOR ACCOUNTING PURPOSES

FUND				
DEPT.				
ORGANIZATION				
OBJECT				
JOB ORDER				
C.I.P. NO.				
AMOUNT				

9. ADDITIONAL INFORMATION / ESTIMATED COST:
No funds will be expended. City will receive estimated revenue of \$16,000 to \$77,000 annually. Revenue will be deposited in Fund 41210 - Recycling Fund.

ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	DEPARTMENT DIRECTOR	<i>Paula H. Hays</i>	10/25/01	5	CITY MANAGER	<i>[Signature]</i>	11.13.01
2	EOCP	<i>[Signature]</i>	10/30/01	6	AUDITOR	<i>[Signature]</i>	11.15.01
3	PD/EAS	<i>Paula H. Hays</i>	11/4/01	7	CITY ATTORNEY	<i>[Signature]</i>	11/16/01
4	FINANCIAL MANAGEMENT	<i>[Signature]</i>	11/8/01	8	ORIGINATING DEPARTMENT	<i>Paula H. Hays</i>	11-8-01

☒ NGR DOCKET COORD. ☐ COUNCIL REP.
☒ RULES COMMITTEE ☐ CONSENT ☐ ADOPTION
 Refer to _____ Date _____

11. PREPARATION OF: ☒ RESOLUTION(S) ☐ ORDINANCE(S) ☒ AGREEMENT(S) ☐ DEED(S)

I) Authorize the City Manager to execute an agreement with Allan Company for the operation of the Miramar Recycling Center. The term of the contract is for a base of five years with a three-year evergreen clause which could be exercised at the end of the second year and each year thereafter if agreed upon by the parties and approved by the San Diego City Council by resolution.

11a. MANAGER'S RECOMMENDATIONS: Approve the agreement.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): Center is located within District 7 and is used by residents from all of the Council Districts.

COMMUNITY AREA(S): All

CITY CLERK INSTRUCTIONS: Please send a copy of the completed resolution to Steven Fontana, MS 1103-B

ENVIRONMENTAL IMPACT: This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301.

OTHER ISSUES: None

Passed and adopted by the Council of the City of San Diego on December 10, 2001 by the following vote:

YEAS: PETERS, WEAR, ATKINS, STEVENS, MAIENSCHIN, FRYE, MADAFFER, INZUNZA, MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: NONE.

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

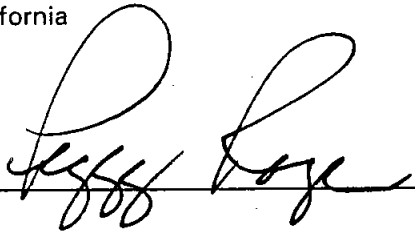
By: PEGGY ROGERS Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION No. R- 295859, passed and adopted by the Council of The City of San
Diego, California on December 10, 2001.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy

OFFICE OF

THE CITY ATTORNEY
CITY OF SAN DIEGO

John W. Witt
CITY ATTORNEY

CITY ADMINISTRATION BUILDING
202 "C" STREET
SAN DIEGO, CALIFORNIA 92101-3863
TELEPHONE (619) 236-6220
FAX (619) 236-7215

JOHN M. KAHENY
ASSISTANT CITY ATTORNEY
CURTIS M. FITZPATRICK
ASSISTANT CITY ATTORNEY
(SPECIAL PROJECTS)
STUART H. SWETT
SENIOR CHIEF DEPUTY CITY ATTORNEY
TED BROMFIELD
LESLIE GIRARD
HAROLD O. VALDERHAUG
CHIEF DEPUTY CITY ATTORNEYS
FREDERICK M. ORTLIEB
DEPUTY CITY ATTORNEY

September 30, 1994

United States of America
Department of the Navy
NAS Miramar
c/o Ronald G. Ress, Esq.
Counsel to the Commander
MCAS, Western Areas
MCAS El Toro (AQ2)
Santa Ana, CA. 92709

Dear Mr. Ress:

City of San Diego Ground Lease
with United States for lease
at Naval Air Station Miramar

This will acknowledge our review of the City of San Diego's obligations under the proposed ground lease of property at the Miramar Naval Air Station and our analysis whether such obligations are either general obligations or special obligations.

After a review of all applicable authority, it is the opinion of this office that the obligations under the proposed lease of property at Miramar Naval Air Station, including hazardous waste removal and property restoration obligations, will be the general obligations of the City of San Diego and will be backed by its full faith and credit.

We recognize and consent to the use of this opinion as an exhibit to the lease and this opinion is further set forth in our Memorandum of Law No. 94-80, dated September 29, 1994.

Sincerely yours,

JOHN W. WITT, City Attorney

By


Frederick M. Ortlieb
Deputy City Attorney

FMO:mb:825

E X H I B I T D

MIRAMAR LEASE AREAS FOR
INTEGRATED WASTE MANAGEMENT FACILITIES

Being those portions of Lot 78 of, Partition of Rancho Mission of San Diego, in the County of San Diego, State of California according to Map No. 330 filed in the office of the County Clerk of said County, January 14, 1886, made in action entitled Juan, et al, vs. Commercial Bank of San Diego, et al, under Superior Court Case No. 348, more particularly described as follows:

PARCEL 1

Beginning at the common corner of Sections 13, 18, 19, and 24, Township 15 South, Range 3, West, of the San Bernardino Meridian according to the United States Government Survey; thence along the North line of said section 24 North 89°03'16" West 2413.89 feet; thence continuing along said North line North 89°02'17" West 425.00 feet; thence South 41°24'51" West 2,619.35 feet to a point designated herein as Point "A"; thence South 35°06'02" West 1,010.25 feet; thence South 01°20'14" West, 986.07 feet; thence North 76°23'57" East 621.39 feet; thence North 83°20'21" East 613.37 feet; thence North 27°43'20" East 629.64 feet; thence North 75°55'34" East 2,458.58 feet; thence North 45°20'22" East 1,796.57 feet; thence North 00°19'59" East 1,094.43 feet to the point of beginning.

(Said parcel of land contains 249.725 acres more or less)

PARCEL 2

Beginning at Point "A" as described in Parcel 1 herein; thence South 80°16'35" West 353.52 feet; thence North 5°47'48" West 1,131.27 feet; thence North 56°05'45" West 770.00 feet; thence North 5°54'23" East 518.69 feet to a point on the northerly line of Section 23 as described in said Parcel 1; thence along said section line North 89°00'28" West 2,380.12 feet; thence leaving said section line South 75°56'16" West 3879.28 feet; thence South

EXHIBIT A TO LEASE