

● **DUPLICATE** ●

DUPLICATE ORIGINAL



**Non Profit Lease**

**between**

**THE CITY OF SAN DIEGO**

**AND**

**SAN DIEGO STATE UNIVERSITY FOUNDATION**

DOCUMENT NO. RR-299424

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OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

## LEASE OUTLINE

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**CITY OF SAN DIEGO  
LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation (CITY), and San Diego State University Foundation, a California private non-profit corporation [SDSUF or LESSEE], based upon the following facts:

WHEREAS, the Naval Training Center San Diego Reuse Plan, adopted by the City Council, sitting as the Local Redevelopment Authority on October 20, 1998, designates an eight-acre parcel for use by the City of San Diego's Metropolitan Wastewater Department (MWW) and the San Diego State University's (SDSU) Coastal and Marine Institute (CMI) to conduct marine and environmental sciences research including environmental monitoring of San Diego Bay, Mission Bay, and the ocean from Carlsbad to the Mexican Border and beyond; and

WHEREAS, by application dated September 24, 1999, the CITY applied to the federal government for a public benefit conveyance of approximately eight acres of land at Camp Nimitz adjacent to the boat channel (the site); and

WHEREAS, in its application, the CITY proposed that the site be developed with two technical and marine sciences laboratories: an Environmental Monitoring and Technical Services Laboratory, and Administration Facility to be constructed by the CITY on six acres and to be operated by MWW; and a marine sciences research and educational laboratory complex to be constructed by San Diego State University in conjunction with its Foundation (SDSUF) on two acres to be leased from the CITY; and

WHEREAS, the CITY accepted delivery of a Quitclaim Deed conveying the site on January 18, 2001, from the Secretary of Health and Human Services (HHS) and recorded the same with San Diego County Recorder's Office on January 19, 2001; and

WHEREAS, THE CITY and SDSUF acknowledge that the terms of this agreement shall be subject to and subordinate in all respects to all rights of HHS under the Quitclaim Deed, and in the event of any conflict between the Lease and the Quitclaim Deed, the provisions of the Quitclaim Deed shall control, and

WHEREAS, SDSUF is a private non-profit corporation organized to further the educational, research and community service mission of San Diego State University by acquiring and managing real property for that purpose; and

WHEREAS, the proximity of the two laboratories will facilitate joint research and the exchange of information between scientists and technicians at MWW and researchers and students at CMI in many areas including, for example, pollution remediation, storm water and ground water contaminants, water circulation and contaminant distribution models, community structure of benthic organisms, statistical analysis and sampling design, watershed analysis, and protection of estuarine marine and subtidal habitats; and

WHEREAS, SDSUF has entered into a cooperative agreement with the Water Resources Division of the United States Geological Survey (USGS/WRD) to enable USGS/WRD to join with MWWD and SDSUF on the site to further enhance their combined research capabilities and allow MWWD to leverage its resources with the national leader in earth sciences and water resource management; and,

WHEREAS, the research activities between MWWD, CMI, and USGS/WRD will benefit the citizens of San Diego through improved water quality research and testing capabilities; and WHEREAS, by quitclaim deed dated January 8, 2001, the federal government acting through the Secretary of Health and Human Services accepted the CITY'S application and conveyed the site to the CITY subject to restrictions on the use of the property including that the site be used continuously for thirty years for health purposes consistent with the proposal set forth in the City's application (the Quitclaim Deed); and

WHEREAS, the NTC Precise Plan and Local Coastal Program, adopted by the San Diego City Council on July 17, 2001 (Resolution No. R-295164) and approved by the California Coastal Commission on August 7, 2001, effective September 17, 2001, contemplates that the total gross square footage for the building space of the lab facilities will be 130,000 square feet (100,000 square feet for MWWD's facility and 30,000 square feet for SDSU's facility); and

WHEREAS, MWWD's laboratory as currently constructed consists of approximately 90,000 square feet of building space and SDSUF proposes to construct a laboratory facility consisting of approximately 40,000 square feet of building space for a total of 130,000 square feet; and

WHEREAS, the NTC Precise Plan also contemplates development of a 50 to 150 foot wide public esplanade along the boat channel (Esplanade Park); and

WHEREAS, although the CITY'S application and Precise Plan contemplated the construction of a dock facility along 150 feet of waterfront on the boat channel to be used by MWWD and SDSUF, the boat channel has not yet been conveyed, and the proposed dock facility has not been built; and

WHEREAS, SDSUF and MWWD have previously entered into an agreement dated October 24, 2002, setting forth SDSUF's and MWWD's understanding of each party's respective obligations regarding the development of the property including development of Esplanade Park [the 2002 Agreement] (a copy of which is attached to this lease as Exhibit 9.8); and

WHEREAS, SDSUF has obtained the funds necessary for construction of the proposed laboratory complex; and

WHEREAS, the laboratory use of the site contemplated by this lease conforms to the use identified in the Naval Training Center San Diego Reuse Plan, and the related environmental documents, certified by the City Council on October 20, 1998, the Record of Decision issued by the Navy on March 10, 1999, and the NTC Precise Plan and Local Coastal Program;

NOW THEREFORE, the CITY and LESSEE agree:

## SECTION 1: USES

- 1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, containing approximately two (2) acres of vacant land located on City-owned property at 2392 Kincaid Rd., within Metropolitan Wastewater Department Area of the former Naval Training Center, shown on the exhibit attached at Section 9.1, Description of Premises, of this agreement. Said real property is hereinafter called the "premises" or "leased premises."
- 1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of the construction, operation and maintenance of a two-story building containing a minimum of 30,000 square feet and a maximum of 40,000 square feet including a laboratory, related offices, conference rooms, a parking lot containing approximately 30,400 square feet, plus an outdoor Seawater Lab containing approximately an additional 11,500 square feet and landscaping in accordance with a City-approved Development Plan, referenced in Section 6.12., in compliance with the General Plan for NTC Park, approved by City Council. as amended, on May 03, 2003, Resolution No. R-297943, on file in the office of the City Clerk.

The premises shall be used for studying the environmental and public health effects in local coastal waters and surrounding area through earth sciences, public health research, water resource management, monitoring the ocean eco-system, creation of wetlands, mitigation, using Coastal Zone Geographic Information Systems, collaborative research with United States Geological Survey (USGS) and San Diego's Metropolitan Wastewater Department (MWWD).

LESSEE expressly acknowledges that use of the premises shall be limited to the above-stated purposes and other activities approved by the City Manager and consistent with the afore-mentioned Public Benefit Conveyance Deed as a term of this lease and as a condition of the Quitclaim Deed and Application for Public Benefit Conveyance of Property for Public Health Purposes, pursuant to which the City has obtained title to the premises. All other uses must be first approved in writing by the City Manager and the U.S. Department of Health and Human Services.

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

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof.

Failure to continuously use the premises for said purposes, or the use thereof for purposes not authorized herein, shall be grounds for termination by CITY.

1.3 Related Council Actions. By the granting of this lease, neither CITY nor the council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.4 Quiet Possession. LESSEE, paying the administration fees stated in Section 3.3 herein, and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises, excluding the buildings, for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the fee proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a laboratory, and related activities as specified in Section 1.2 Uses. above in a responsible manner consistent with all applicable laws and regulations.
- 1.7 Operation of Facilities. In its operation of the laboratory and other facilities constructed on the premises, LESSEE shall encourage opportunities for joint research and collaboration with MWWD.
- 1.8 CITY Use of Conference Facilities. LESSEE shall allow MWWD's use of conference facilities on the premises, free of charge, at mutually agreeable dates and times, provided that the frequency of MWWD's use of the conference facilities shall not unreasonably interfere with LESSEE's use of such facilities.
- 1.9 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1.2, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by two or more candidates of different parties such as occurs at a "candidate forum" and similar events.
- 1.10 Public Use. LESSEE may, in its discretion, allow access to the premises by the general public for purposes specified consistent with those stated in Section 1.2, Uses.
- 1.11 Parking. LESSEE shall construct and maintain an adequate number of parking spaces on its leasehold, in accordance with an approved General Development Plan described in Section 6.12 below.

## **SECTION 2: TERM**

- 2.1 Commencement. The term of this agreement shall commence upon approval by City Council and execution by the City Manager and terminate concurrently with the termination of the conditions imposed in the Quitclaim Deed on January 18, 2031. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.2 Right to Extend. LESSEE has a conditional right to extend the lease for an additional period negotiated between CITY and LESSEE upon similar terms and

conditions as in the original lease, and the following additional terms and conditions have been fulfilled.

- a. LESSEE and CITY have negotiated and agreed upon the terms for an extension, and have obtained the necessary approvals therefor, prior to the expiration of the lease; and
- b. LESSEE is not in default of the lease.
- c. The original circumstances have not materially changed that would require significant modifications to the lease.

2.3 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided; however, CITY shall have the right to apply a reasonable increase in the fee and to terminate the holdover tenancy at will.

2.4 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe, and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

2.5 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this lease provision, and the notice will be conclusive evidence of the termination of this lease and all LESSEE'S rights to the premises.

### SECTION 3: ADMINISTRATION FEE AND CONSIDERATION

- 3.1 Consideration. In consideration for this lease, LESSEE shall, at its expense, develop a marine sciences research and educational laboratory complex as described in Section 6.12 below; operate and maintain the facility, and facilitate joint research projects and the collaborative exchange of information between scientists and technicians at MWWD and researchers and students at CMI and USGS/WRD for the benefit of all participants.
- 3.2 Time and Place of Payment. The administrative fee defined in Section 3.3 b. below is due annually in advance on or before the first day of each lease year. All rents or fees required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California, 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California.

The place of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.3 Rent and Fees.

- a. Percentage Rent. LESSEE shall pay the CITY twenty percent (20%) of the gross income it earns from subletting all or any portion of the premises. This section does not apply to the allocation of space to USGS/WRD.
- b. Administrative Fee. LESSEE shall pay a fee of Two Thousand Six Hundred Twenty-One Dollars (\$2,621) per lease year ("Administrative Fee" or "Fee"), payable annually, to partially offset CITY'S costs of administering this lease. The Administrative Fee is subject to annual adjustments based on percentage increases in the Consumer Price Index ("CPI") as hereinafter provided.
- c. (1) CPI Adjustments. On the anniversary date of each lease year following the commencement date of this lease, the Fee shall be adjusted to reflect the percentage increase in the CPI based on the average of the indices for the third quarter (July, August, and September) of the calendar year prior to each adjustment.

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's Comprehensive Official Index most comparable to the aforesaid index. If a Fee adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to CPI in any event.

In no event shall the adjusted Fee as established by the CPI be less than the Fee in existence immediately prior to the adjustment date. The failure of CITY to deliver timely notice of any Fee adjustment shall not constitute a waiver by CITY of its rights hereunder.

- ii) CPI Adjustment Computation. The Fee adjustment for each one (1) year period shall be calculated by CITY as follows:

The "adjustment multiplier" shall be established by dividing the "current index" by the "base index" as defined below.

The "base index" denominator for the calculation is 182.86. This is a fixed number representing the three (3) month average of index figures published by the CPI using the months of July, August, and September of 2002.

The "current index" numerator for the calculation is a variable number that shall be the three (3)-month average of index figures published by the CPI using the months of July, August, and September of the calendar year preceding the adjustment date.

The "base figure" for purposes of calculating the annual adjustment shall be a fixed amount of Two Thousand Five Hundred, Sixty-Two Dollars (\$2,562), which was the fee for 2003.

Example Calculation for Calendar Year 2004 Fee Adjustment

|                                    |        |                     |
|------------------------------------|--------|---------------------|
| Current Index (Third Quarter 2003) | 187.13 |                     |
|                                    | -----  | = 1.023 (Adjustment |
| Base Index (Third Quarter 2002)    | 182.86 | Multiplier)         |

The "base figure" is then multiplied by the adjustment multiplier to determine the new Fee. Using the foregoing example, the adjusted Fee is calculated as follows:

|         |                            |
|---------|----------------------------|
| \$2,562 | (Base Figure)              |
| x 1.023 | (Adjustment Multiplier)    |
| \$2,621 | (Adjusted Fee, rounded up) |

- (3) Maximum Increase. Notwithstanding the foregoing, the Fee adjustments shall not increase the Fee in excess of six percent (6%) per calendar year.
- 3.4 Delinquent Charges. If LESSEE fails to pay the Administrative Fee or Percentage Rent when due, LESSEE will pay, in addition to the unpaid amount, five percent (5%) of the delinquent amount due CITY. If the delinquent amount is still unpaid at the end of the fifteen (15) days, LESSEE shall pay in addition to the unpaid amount an additional ten percent (10%) being a total of fifteen percent (15%), which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from the delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments be less than Twenty-five Dollars (\$25).
- 3.5 Inspection of Records. LESSEE agrees to make any and all records and accounts relating to the premises available to CITY for inspection at all reasonable times so that CITY can determine LESSEE'S compliance with this lease. These records and accounts will be made available by LESSEE at the leased premises and will be complete and accurate showing all income and receipts from use of the premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.
- 3.6 Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this lease. This payment is subject to the due date provided in this lease for rental payments and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any

CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.

- 3.7 Fair Share Cost of Future Esplanade Park Improvements and Other Shared Improvements. In the 2002 Agreement (Exhibit 9.8), LESSEE agreed to reimburse CITY for costs associated with site improvements constructed by CITY that will support or benefit LESSEE's facility. LESSEE further agreed to share equally in the costs of designing and constructing the adjacent Esplanade Park, including the cost of undergrounding the steam line. LESSEE further agreed to share the cost of providing utilities to the site.

In furtherance of the 2002 Agreement, LESSEE agrees that it shall promptly pay its pro-rata share of the design and construction costs for Esplanade Park, and its pro-rata share of CITY'S costs to construct, maintain, remove or replace common areas shared between CITY and LESSEE. These reimbursable costs may include, but are not limited to costs for: (1) installing and maintaining private roads used to access the premises; (2) exterior lighting; (3) sprinkler systems; (4) landscaping; (5) hardscape; (6) pathways; (7) parking lots; (8) undergrounding, removing or rerouting steamlines; (9) driveways; (10) boat dock; and (11) future fees, licenses and improvements required by law that are attributable to shared areas. These costs do not include infrastructure improvements to Spruance Road, or installation of utilities in Spruance Road, that are required as part of LESSEE's development. Those costs shall be borne by LESSEE.

CITY shall invoice LESSEE for any reimbursable costs it owes CITY for the approximate prior one year on each lease anniversary date, and CITY shall include copies of all invoices or other documentation used in calculating the amount of each invoice for LESSEE's review. All invoices shall be due and payable within sixty (60) days after the invoice date. Payments received by the CITY more than (10) ten days after the due date are subject to a late charge in the amount of (10%) ten percent of the delinquent balance.

**The parties agree and acknowledge that LESSEE owes CITY Three Hundred, Sixty-Four Thousand, Five Hundred, Thirty-Seven Dollars and Fifty-Seven Cents (\$364,537.57), for reimbursable costs approved by the parties prior to execution of this lease, including \$55,000 for removal of the steam vault, and LESSEE shall pay the CITY the total amount of \$364,537.57 owed within (60) sixty days following execution of this lease.**

Unless otherwise specifically agreed in writing between LESSEE and CITY, LESSEE'S pro-rata share of shared costs, as described above, shall be one-third of the total cost, and CITY'S pro-rata share shall be two-thirds of the total cost. This includes the Esplanade.

## **SECTION 4: ASSIGNMENT, DEFAULT AND OTHER PROVISIONS**

4.1 **Time is of Essence; Provisions Binding on Successors.** Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

4.2 **Assignment and Subletting.** LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager and U.S. Department of Health and Human Services, in accordance with the restrictions in the Quit Claim Deed, discussed further in Section 1.2 Uses. herein.

“Assignment” for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The City Manager shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, commencing on the effective date of such proposed sublease of the entire or portion of the leasehold or assignment, and may further require that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.3 **Encumbrance.** LESSEE may not encumber this Lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other

security instrument to assure the payment of a promissory note or notes of LESSEE.

4.4 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall fail to perform any covenant or condition required by this Lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors; then

CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises.

b. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the property, this Lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

c. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any administrative fee or Unauthorized Use Charge is not a waiver of any default preceding the administrative fee or Unauthorized Use Charge

payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

- d. In the event the Lease is terminated early by CITY and LESSEE and USGS is occupying space on the premises as part a cooperative scientific research agreement with LESSEE, then: (i) USGS shall attorn to CITY and CITY shall become the "sublessor" in the place and stead of LESSEE, and (ii) CITY shall recognize and honor the rights of the USGS to continue to occupy space under and pursuant to LESSEE's agreement with USGS but subject to the terms of the lease.

## **SECTION 5: INSURANCE RISKS/SECURITY**

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

- 5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:
  - (1) Public liability and property damage insurance in the amount of not less than Two Million Dollars (\$2,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party

or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.

- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
- b. LESSEE'S responsibility to maintain said insurance also includes the following:
- (1) Additional Insured. All insurance policies will name "The City of San Diego, its elected officials, officers, representatives, agents and employees" as additional insureds, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
  - (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by

CITY for new improvements, in order to meet the requirements of this lease.

- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- c. Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the

operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

## **SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS**

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the General Development Plan described in Section 6.12, General Development Plan, hereof and with all applicable laws.
- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations. **CITY and LESSEE agree that the Esplanade Park will be developed in compliance with the General Development Plan for NTC Park, adopted by Council on May 6, 2003 and on file in the office of the City Clerk (Document R-297943).**
- 6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground and come from stubs or off Spruance Street.
- 6.6 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.7 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.8 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY. Nothing herein shall prevent LESSEE, USGS, or any other occupant from seeking exemptions from all such taxes on the basis of their status.

6.9 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY by obtaining necessary permits. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.10 Ownership of Improvements and Personal Property.

Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.

If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If

LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.

LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.

If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.

Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property as provided in Section 7.15, CITY Option to Purchase.

- 6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.
- 6.12 Development Plan. LESSEE agrees to develop the leased premises, at its sole expense in the approximate amount of \$7.6 million dollars, in accordance with a General Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the General Development Plan are described in Section 9.3 hereof. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY. The City Manager, in his sole discretion, may approve an

extension to the date specified for completion in the Development Plan of up to one (1) year without further City Council approval.

- 6.13 Hazardous/Toxic Waste. As used in this lease, "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.

LESSEE will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, under, or from the premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances.

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

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the premises, other than those customarily associated with the operations contemplated by this lease, without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE, at CITY'S sole option, shall cause an

environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 6.14 Failure to Meet Development Schedule. LESSEE shall commence development of the premises within 120 days following the lease commencement date and complete development of the premises within 26 months following the lease commencement date, in accordance with Section 6.12 above. If LESSEE is more than six months late in complying with the Development Plan schedule for reasons unrelated to CITY actions or inactions, then, CITY may, at its option, terminate this lease. The City Manager, in his sole discretion, may approve an extension to the development schedule of up to one (1) year without further City Council approval.
- 6.15 Coastal Commission Approval. LESSEE shall comply with the California Coastal Act, at its sole cost, and apply to the San Diego Coast Regional Commission or other such authorized state body for any necessary coastal development permit authorizing the construction of improvements in the Coastal Zone. LESSEE will proceed with diligence to obtain such permit, but if unable to do so within twelve (12) months after the effective date of this lease, this lease will, terminate at either CITY'S or LESSEE'S option expressed by written notice to the other party.

## **SECTION 7: GENERAL PROVISIONS**

### **7.1 Notices**

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

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

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

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

7.3 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council. Such approval or consent shall not be unreasonably withheld

7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

Further, LESSEE agrees to comply with the following federal laws at all time in its use of the premises in accordance with the conditions of the Quitclaim Deed: Section 606 of the Administrative Services Act of 1949 (40 U.S.C. § 484(k); the Fair Housing Act (42 U.S.C. §§ 3601-3619) and implementing regulations; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d to d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107) and implementing

regulations; the prohibitions against discrimination against otherwise qualified individuals with handicaps under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and implementing regulations; and applicable federal regulations (45 CFR Parts 12, 80, 84, and 91); all to the end that no person shall, on the ground of race, color, national origin, gender, age, or handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in the course of LESSEE's, its successors or assigns, use of the premises.

7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

- b. LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court costs and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.
- The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.
- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
  - (1) The dangers of drug abuse in the workplace.
  - (2) The LESSEE'S policy of maintaining a drug-free workplace.
  - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
  - (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

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

LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.

No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.

LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.

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

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

- 7.14 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.
- 7.15 CITY Option to Purchase. In the event LESSEE desires to dispose of its interest in this lease, together with any of its interest in improvements, trade fixtures, and furnishings owned by LESSEE on the leased premises, CITY shall be given the first right to purchase said interest and improvements at a mutually agreeable price. If CITY does not exercise such right to purchase, LESSEE shall not then sell or offer to sell its interest at a lower price without first reoffering to CITY the right to purchase at such lower price. If CITY does not give written, unconditional notice of acceptance to LESSEE within thirty (30) days of its receipt of any offer made under this Section 7.15, CITY shall be deemed to have rejected such offer.
- 7.16 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.17 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.

- 7.18 Water Quality - Best Management Practices and Stormwater Pollution Prevention Plan. CITY and LESSEE are committed to the implementation of programs to manage activities on the Leased Premises in a manner which aides in the protection of San Diego's previous water resources. LESSEE shall comply with the Best Management Practices ("BMP") including the Stormwater Pollution Prevention Plan ("SWPPS") approved by CITY's Stormwater Management Program. LESSEE shall submit for review and approval by City Manager or its designee, within ninety (90) days of the execution of this Lease, BMP and SWPPS that will control erosion and reduce the amount of pollutants and other sediments discharged from the Leased Premises. The BMP and SWPPS will be reviewed periodically by CITY. Upon written notice from the City Manager requesting an update of the BMP, LESSEE shall submit updated BMP and SWPPS for City Manager review and approval within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the BMP and SWPPS as a result of any review by CITY to ensure compliance with any changes in laws or regulations.

When the BMP and SWPPS have been developed and implemented by the LESSEE, it is crucial that the practices be enforced and maintained. It is LESSEE's responsibility to inform employees, contractors, subcontractors, agents and vendors of the BMP and SWPPS. The City-approved BMP and SWPPS will be filed with this Lease.

- 7.19 2002 Agreement Between CITY'S MWWD and LESSEE. The 2002 Agreement between the City's Metropolitan Wastewater Department (MWWD) and LESSEE is attached to this lease as Exhibit 9.8 and incorporated by this reference. Where the terms of the 2002 Agreement and this lease are inconsistent, the terms of the lease shall supersede the terms of the 2002 Agreement.
- 7.20 Memorandum of Agreement Between LESSEE and USGS. CITY acknowledges the Memorandum of Agreement between LESSEE and the USGS/WRD [MOA] for collaborating in research at the leased premises, including use of the premises by USGS/WRD, and the City agrees to such use as contemplated by the MOA. CITY and LESSEE agree that the terms of the MOA shall be subordinate to the terms and conditions of the lease, and that the CITY's acknowledgment of the MOA in no way relieves LESSEE of its obligation to comply with the terms of this lease in its and USGS/WRD's use of the premises. A copy of the MOA is attached to this lease as Exhibit 9.7.
- 7.21 Reports to the U.S. Department of Health and Human Services. LESSEE acknowledges that a condition of the Quitclaim Deed requires CITY, throughout the term of this lease, to report annually to the U.S. Department of Health and Human Services on the operation and maintenance of the property conveyed to the

City, including the leased premises, and to provide, as requested, information demonstrating continuous use of the property for the purposes set forth in the Application for Public Benefit Conveyance. LESSEE agrees to assist the CITY in meeting this annual reporting requirement by providing information, as requested by either CITY or the Department of Health and Human Services, regarding the use of the leased premises.

## SECTION 8: SIGNATURES

### 8.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, pursuant to Resolution R- 299424, adopted by the City Council on JUL 12, 2004 and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 7/19/04

By 

LESSEE:

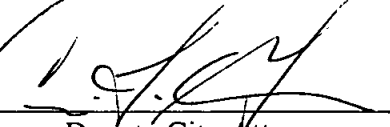
Date 5-20-04

By   
Steven A. Bloom  
Chief Operating Officer

By   
Freya E. Sladek  
Chief Executive Officer

APPROVED as to form and legality this 29th day of July, 2004.

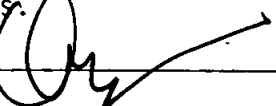
CASEY GWINN, CITY ATTORNEY

By   
Deputy City Attorney

### ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This lease is not considered a "project" and therefore exempt from CEQA. PUR pursuant to State CEQA Guidelines Section 15060(c)(3). Development or use of the site will require further review under the provisions of CEQA as referenced in Section 15004 of the Guidelines.

Date 7/28/04

By 

DLD/cj

5/17/04

H:\SDSUF.fina15.17.04.wpd

## SECTION 9: EXHIBITS

### 9.1 Legal Description of Premises and Site Data.

EXHIBIT 'A'

LEGAL DESCRIPTION FOR

LEASE AREA EXHIBIT

BEING A PORTION OF PARCEL 3 OF RECORD OF SURVEY IN THE CITY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO R.O.S. NO. 16556, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, APRIL 25, 2000, SAID AREA IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ALONG THE WESTERLY BOUNDARY LINE OF PARCEL 3 OF R.O.S. NO. 16556, THENCE;

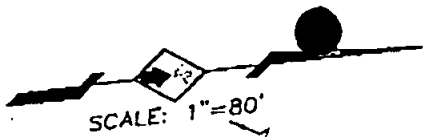
1. NORTH 36°44'14" EAST 186.15 FEET TO THE TRUE POINT OF BEGINNING, THENCE; CONTINUING
2. NORTH 36°44'14" EAST 89.95 FEET THENCE;
3. NORTH 27°04'19" EAST 28.19 FEET TO THE BEGINNING OF A NON TANGENT 60.00-FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, RADIAL TO SAID POINT BEARS NORTH 82°29'17" WEST; THENCE ALONG THE ARC OF SAID CURVE
4. NORTHEASTERLY 148.74 FEET THROUGH A CENTRAL ANGLE OF 142°02'01", TO THE BEGINNING OF A TANGENT 18.00-FOOT RADIUS REVERSE CURVE CONCAVE SOUTHWESTERLY; THENCE ALONG THE ARC OF SAID CURVE
5. SOUTHERLY 16.34 FEET THROUGH A CENTRAL ANGLE OF 52°01'12"; THENCE
6. SOUTH 82°29'41" EAST 394.65 FEET TO THE BEGINNING OF A TANGENT 25.00-FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE ALONG THE ARC OF SAID CURVE
7. SOUTHERLY 39.28 FEET THROUGH A CENTRAL ANGLE OF 90°01'00"; THENCE
8. SOUTH 07°31'19" WEST 306.37 FEET; THENCE
9. NORTH 82°55'10" WEST 6.89 FEET; THENCE
10. SOUTH 41°24'00" WEST 4.94 FEET; THENCE
11. NORTH 48°36'00" WEST 12.12 FEET; THENCE

Lot name: AREA1

North: 1847479.5603 East: 6265896.1374  
Line Course: N 36-44-14 E Length: 89.95  
North: 1847551.6450 East: 6265949.9406  
Line Course: N 27-04-11 E Length: 28.19  
North: 1847576.7469 East: 6265962.7692  
Curve Length: 148.74 Radius: 60.00  
Delta: 142-02-00 Tangent: 174.42  
Chord: 113.47 Course: S 63-30-17 E  
Course In: S 82-29-17 E Course Out: S 44-31-17 E  
RP North: 1847568.9029 East: 6266022.2542  
End North: 1847526.1236 East: 6266064.3248  
Curve Length: 16.34 Radius: 18.00  
Delta: 52-01-12 Tangent: 8.78  
Chord: 15.79 Course: N 71-29-31 E  
Course In: S 44-31-17 E Course Out: N 07-30-19 E  
RP North: 1847513.2898 East: 6266076.9459  
End North: 1847531.1356 East: 6266079.2970  
Line Course: S 82-29-41 E Length: 394.65  
North: 1847479.5874 East: 6266470.5660  
Curve Length: 39.28 Radius: 25.00  
Delta: 90-01-00 Tangent: 25.01  
Chord: 35.36 Course: S 37-29-11 E  
Course In: S 07-30-19 W Course Out: S 82-28-41 E  
RP North: 1847454.8016 East: 6266467.3006  
End North: 1847451.5289 East: 6266492.0854  
Line Course: S 07-31-19 W Length: 306.37  
North: 1847147.7953 East: 6266451.9798  
Line Course: N 82-55-10 W Length: 6.89  
North: 1847148.6446 East: 6266445.1423  
Line Course: S 41-24-00 W Length: 4.94  
North: 1847144.9391 East: 6266441.8755  
Line Course: N 48-36-00 W Length: 12.12  
North: 1847152.9542 East: 6266432.7841  
Line Course: N 33-28-19 W Length: 27.90  
North: 1847176.2271 East: 6266417.3965  
Line Course: N 48-39-15 W Length: 387.36  
North: 1847432.1181 East: 6266126.5914  
Line Course: N 82-20-35 W Length: 138.64  
North: 1847450.5907 East: 6265989.1876  
Line Course: N 52-58-39 W Length: 48.11  
North: 1847479.5591 East: 6265950.7766  
Line Course: N 90-00-00 W Length: 54.64  
North: 1847479.5591 East: 6265896.1366

Perimeter: 1704.11 Area: 92,924.56 sq.ft. 2.133 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.0014 Course: S 34-55-22 W  
Error North: -0.00118 East: -0.00082  
Precision 1: 1,182,692.57



ASSESSOR'S PARCEL NO.  
450-790-08

REFERENCE DRAWINGS  
R.O.S. NO. 16556

**BASIS OF BEARINGS**

THE BASIS OF BEARING FOR THIS DRAWING  
IS THE WESTERLY LINE OF PARCEL 3 OF  
R.O.S. NO. 16556 I.E. N 36°44'14"E

**LEGEND**

- INDICATES LEASE AREA AGREEMENT  
AREA= 92,925 SF (2.133 AC)
- INDICATES PARCEL BOUNDARY
- INDICATES LOT LINE
- P.O.B. = INDICATES THE POINT OF BEGINNING
- T.P.O.B. = INDICATES THE TRUE POINT OF BEGINNING
- (R) = INDICATES RADIAL BEARING

VICINITY MAP  
NOT TO SCALE

PARCEL 1  
R.O.S. NO. 16556

PARCEL 10  
R.O.S. NO. 16556

N82°29'41"W

PARCEL 8  
R.O.S. NO. 16556

N48°36'00"W 12.12'  
N41°24'00"E 4.94'  
N33°52'52"W 27.90'

N82°55'10"W 6.89'  
N07°31'19"E

N48°39'16"W

387.36'

KINCAID RD

PARCEL 10  
R.O.S. NO. 16556

476.30'

N52°58'39"W 48.11'  
N82°29'17"W (R) 89.95'  
N27°04'11"E 28.19'  
D=142°02'01"  
R=60.00'  
L=148.74'

N44°31'17"W (R) 138.64'  
D=52°01'12"  
R=18.00'  
L=16.34'

N82°29'35"W 138.64'

SPRUANCE RD

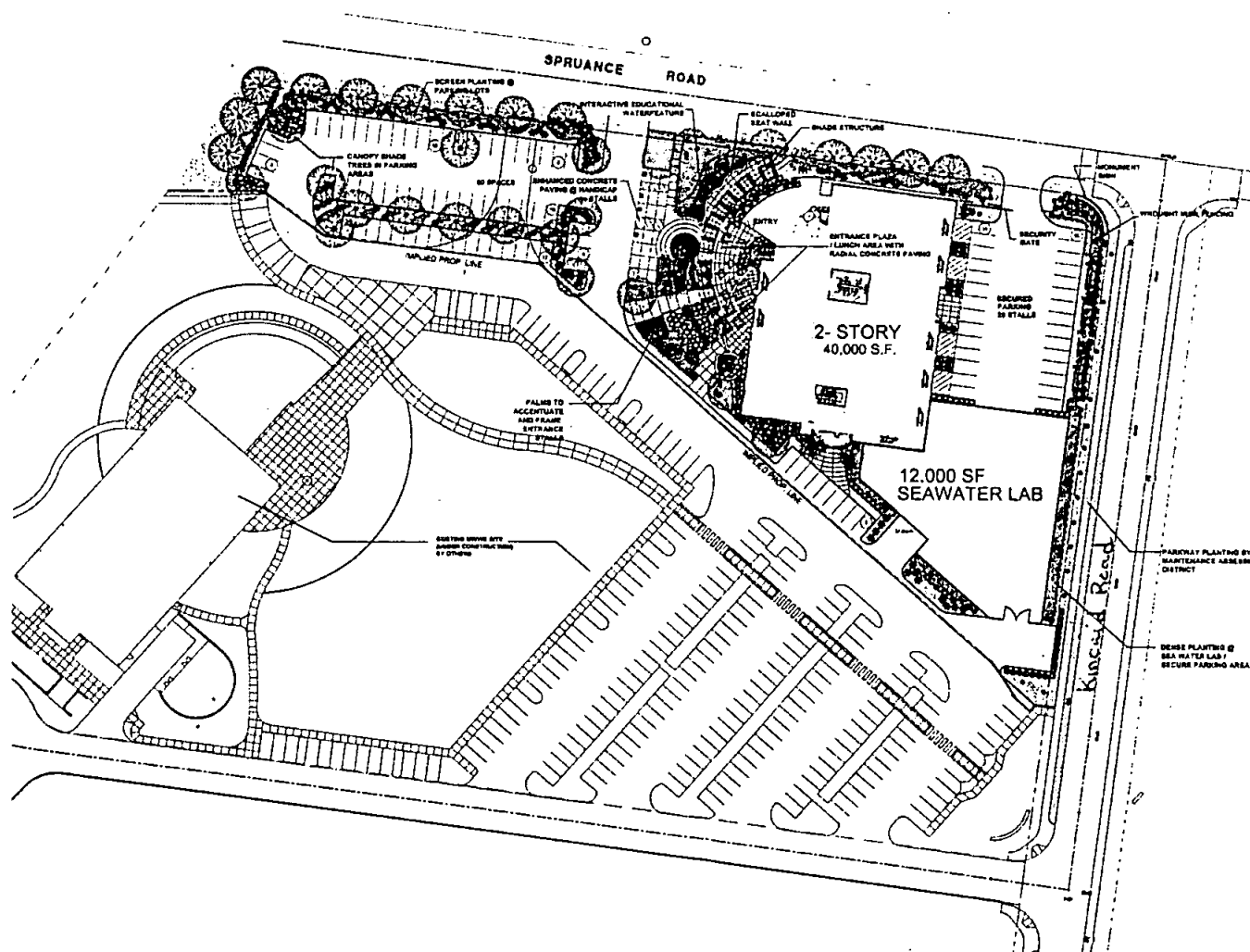
N82°29'41"W

PARCEL 10  
R.O.S. NO. 16556



MIGUEL A. MARTINEZ P.L.S. 7443  
EXP. 06-30-06

DATE



## SITE DATA

|                          |                                             |
|--------------------------|---------------------------------------------|
| SITE AREA<br>GROSS       | 21 ACRES = 91,476 SF.                       |
| BUILDING AREA:           | 40,000 SF.                                  |
| 1ST FLOOR:               | +/- 18,000 SF.                              |
| 2ND FLOOR:               | +/- 22,000 SF.                              |
| COVERAGE                 | TYPE III NON-RATED FULLY SPRINKLERED<br>44% |
| CONSTRUCTION TYPE:       |                                             |
| OCCUPANCY:               | B1/A3, F-1, AND S-1                         |
| AREA INCREASE            |                                             |
| BUILDING                 |                                             |
| BASIC ALLOWABLE          | 12,000 SF.                                  |
| 2-STORY INCREASE ( 100%) | 24,000 SF.                                  |
| FIRE SPRINKLERS ( 100%)  | 48,000 SF.                                  |
| 2 YARD INCREASE ( 50%)   | 96,000 SF.                                  |
| ACTUAL PROVIDED          | 40,000 SF.                                  |
| PARKING                  |                                             |
| STANDARD STALLS          | 105 CARS (97%)                              |
| HANDICAP STALLS          | 4 CARS (3%)                                 |
| TOTAL:                   | 109 CARS= 275/ 1000                         |

### PLANT MATERIALS LEGEND

[illegible]

**LANDSCAPE CONCEPT:**

[illegible]

9.2 Parcel Map(s). A portion of APN 450-790-08



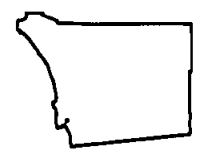
# Legend

- Parcels
- Sangis rd all shp id



1:2150

## Vicinity Map



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Plot Date 05/18/04

9.3 General Development Plan.

The General Development Plan consists of:

- a. Plot Plan
- b. Development Schedule
- c. Estimated Construction Costs
- d. Financial Plan
- e. Schematic Elevations
- f. Landscape Plan
- g. Others as applicable

and is filed in the Office of the City Clerk referenced in this lease.

9.4 Schedule of Days and Hours of Operation.

Open daily from 8:00 a.m. to 5:00 p.m. and additional hours as required by LESSEE'S approved programs, and closed weekends and national holidays.

9.5 Memorandum of Understanding Between U.S. Geological Survey and San Diego State University Foundation

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
U.S. GEOLOGICAL SURVEY  
AND  
SAN DIEGO STATE UNIVERSITY FOUNDATION**

**I. INTRODUCTION**

The purpose of this Memorandum of Understanding (hereinafter referred to as the "Memorandum") is to establish a mechanism for scientific, educational, and technical cooperation in earth sciences between the U.S. Geological Survey (also referred to as USGS) and San Diego State University (also referred to as SDSU) with the San Diego State University Foundation (SDSUF) acting on behalf of and as the agent of San Diego State University. The USGS, SDSU and SDSUF (also referred to as the "Parties") agree that this cooperation will be beneficial to both Parties, and hereby state their intentions to pursue scientific, educational, and technical cooperation in the earth sciences.

This Memorandum of Understanding will serve as the basis for developing procedures for cooperation between the USGS, SDSU, and SDSUF.

**II. COOPERATIVE ACTIVITIES**

The Parties agree that cooperative activities covered by this Memorandum may include but are not limited to:

- Exchanges of technical and educational information;
  - Cooperative research between USGS and SDSU scientists engaged in research activities of mutual interest that are within the scope of the missions and programs of the Parties;
  - Cooperative research between the USGS, SDSU and other parties as mutually agreed upon;
  - Cooperative establishment, operation, and support of research, technical support and laboratory facilities which may include major equipment installations or space;
-

- Cooperative training of teachers, students, and scientists in the disciplines included in or related to the earth sciences, and assistance in the transfer of knowledge, methods, and techniques of earth science;
- Other forms of cooperative activities as mutually agreed upon.

### III. IMPLEMENTING AGREEMENTS

The USGS, SDSU, and SDSUF intend to execute certain agreements as may be necessary to carry out the purposes of this Memorandum. Each activity under such agreements shall be described in regard to its objectives, scope, schedule, and cooperative entities in an individual Project Implementation Plan (PIP), which shall be made part of any such agreement. Such agreements must be approved and signed by the officials of the USGS, SDSU, and SDSUF.

### IV. FINANCIAL COMMITMENTS

This Memorandum and subsequent PIPs do not constitute a financial commitment on the part of any of the Parties. Financial support for each of the agreements described in the PIPs must be covered in separate documents among the Parties and subject to ordinary budgetary and administrative procedures. Any documents that involve funds coming from the USGS must be accomplished via a grant, cooperative agreement, lease agreement, purchase order, or contract. Issues of patents, intellectual property, and potential conflicts of interest shall be governed by applicable Federal laws and regulations, and SDSU policies.

### V. TERMS OF THE MEMORANDUM OF UNDERSTANDING

This Memorandum is effective as of the date of signature by all Parties and will continue in force until terminated. Any of the Parties may terminate upon twelve months' written notice to the other Parties.

## MODIFICATION OF THE MEMORANDUM OF UNDERSTANDING

Any Party can propose a modification to the terms of this Memorandum. Such modification shall be initiated in writing and is not effective until approved in writing by each of the Parties. Other research themes may be introduced at any time by written agreement of all Parties.

### VI. INDEMNIFICATION CLAUSE

Each Party to this Agreement shall be responsible for damages to persons or property resulting from the negligence on the part of itself, its employees, or its officers, and with respect to the USGS such responsibility is subject to the Federal Tort Claims Act. Neither Party assumes any responsibility to the other Party for the consequences of any act or omission of any person, firm, or corporation not a Party to this Agreement.

Done at San Diego, California and Reston, Virginia

For San Diego State University:

  
SIGNATURE

Provost and Vice President for Academic Affairs

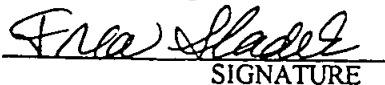
TITLE DATE

  
SIGNATURE

Vice President for Business & Financial Affairs

TITLE DATE

For San Diego State University Foundation:

 10/24/01  
SIGNATURE

General Manager

TITLE DATE

For the United States Geological Survey:

  
SIGNATURE

District Chief

TITLE DATE

  
SIGNATURE

Western Regional Executive for Hydrology

TITLE DATE

  
SIGNATURE

Regional Director, Western Region

TITLE DATE

9.6 2002 Agreement Between CITY'S MWWD and LESSEE.

**AGREEMENT BETWEEN****METROPOLITAN WASTEWATER DEPARTMENT  
AND  
SAN DIEGO STATE UNIVERSITY FOUNDATION**

**WHEREAS**, the Naval Training Center Plan designates an eight-acre parcel for use by the Metropolitan Wastewater Department (MWWD) and the San Diego State University Foundation (SDSUF) to conduct marine and environmental sciences research including environmental monitoring of San Diego Bay, Mission Bay, and the ocean from Point Loma to the Mexican Border; and,

**WHEREAS**, the joint research activities between MWWD and SDSUF will benefit the citizens of San Diego through the creation of the premier water quality laboratory in Southern California; and,

**WHEREAS**, the SDSU Foundation has entered into a cooperative agreement with the Water Resources Division of the United States Geological Survey (USGS/WRD) to enable USGS/WRD to join with MWWD and SDSUF on the site to further enhance their combined research capabilities and allow the MWWD to leverage its resources with the national leader in earth sciences and water resource management; and,

**WHEREAS**, it is envisioned that a Coastal Waters Laboratory will be constructed on the site that will provide an integrated research approach for addressing the complex problems posed by rapid urbanization that has produced public health and environmental hazards due to deteriorating coastal water quality standards; and,

**WHEREAS**, the Coastal Waters Laboratory, jointly operated by SDSUF and USGS/WRD, will be a world-class facility engaged in research to address San Diego and Southern California's environmental issues; and,

**WHEREAS**, the Coastal Waters Laboratory will also collaborate with the City of San Diego in ocean eco-system monitoring, wetlands creation and mitigation, and Coastal Zone Geographic Information Systems; and,

**WHEREAS**, the Naval Training Center Precise Plan specifies an entitlement to construct a maximum of 130,000 square feet of building space on the site with 100,000 square feet allocated to MWWD and 30,000 square feet allocated to the SDSUF; and,

**WHEREAS**, MWWD has reviewed its needs and has concluded that 90,000 square feet of building space is adequate for its present and immediate future needs; and,

**WHEREAS**, development of the Coastal Waters Laboratory will require 40,000 square feet of the total of 130,000 square feet entitlement for the site;

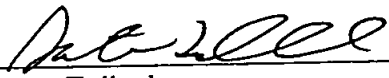
**NOW THEREFORE**, in order for the construction of the Coastal Waters Laboratory to go forward and critical research activities to proceed, MWWD and SDSUF agree to the following terms and conditions:

1. MWWD agrees to shift 10,000 square feet of its entitlement to SDSUF, providing SDSUF with a new total of 40,000 square feet and leaving MWWD with 90,000 square feet. It is the intent of MWWD and SDSUF to jointly take the necessary actions to increase the total site entitlement by at least 10,000 square feet at such time as there is a need for such action.
2. SDSUF agrees to reimburse MWWD for costs incurred by MWWD as a result of the SDSUF's expanded entitlement. These increased costs may include the costs of redesigning the site plan including revised landscape design, infrastructure design, the removal of storm drain facilities already installed, the cost of the stormceptor already purchased that was to be located in the new SDSUF lab footprint, additional costs to MWWD resulting from work stoppage because of the impending redesign, and also the costs of producing and processing any Substantial Conformance Applications required as a result of the redesign. MWWD agrees to use its best efforts to accomplish any required redesign in the most cost-effective manner possible. All additional costs incurred shall be documented by MWWD and the documents shall accompany any reimbursement invoice.
3. SDSUF agrees to reimburse MWWD for costs associated with site improvements constructed by MWWD which support or benefit SDSUF's future facility. Such costs will be mutually agreed upon by MWWD and SDSUF.
4. SDSUF agrees that it will share equally with MWWD in the cost of improving the adjacent Esplanade (park) to be designed and constructed by the Park and Recreation Department, including the required undergrounding of the steam line. MWWD agrees to consult with SDSUF on the design of the Esplanade where appropriate.
5. SDSUF agrees to notify Department of Health and Human Services (DHHS) in writing of the cooperative agreement between SDSUF and the USGS and that USGS researchers will occupy a portion of the SDSUF facility. The purpose of this notification is to advise the conveyor of the land, DHHS, of the details of the land use and that SDSUF and MWWD believe that the USGS presence is consistent with the intent and terms of the conveyance. SDSUF will request that MWWD's signed concurrence be indicated on the written notification to DHHS. SDSUF will provide MWWD with a copy of the notification and will share with MWWD any response received.

6. SDSUF agrees to share the cost of providing utilities to the site. This includes the extension of gas and electric service to the site. SDSUF shall be required to perform all infrastructure improvements to Spruance Road and utilities in that portion of the road as part of their future building permit.
7. The joint use of a boat dock in the future is not part of this agreement. That issue will be addressed in the future in a separate written agreement.

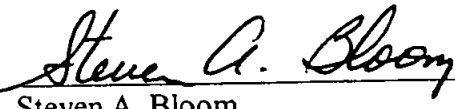
MWWD and SDSUF indicate their agreement with the above terms and conditions with the signatures of their authorized representatives below:

**Metropolitan Wastewater Department**

  
\_\_\_\_\_  
Scott Tulloch  
Director

10/24/02  
\_\_\_\_\_  
Date

**San Diego State University Foundation**

  
\_\_\_\_\_  
Steven A. Bloom  
Chief Operating Officer

9/24/2002  
\_\_\_\_\_  
Date

ADOPTION AGENDA, CONSENT ITEMS (Continued)

RESOLUTIONS: (Continued)

- \* ITEM-108: Lease Agreement with San Diego State University Foundation (SDSUF) for the Development, Operation, and Maintenance of a Laboratory Research Facility.

(Peninsula Community Area. District-2.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-1404)

Authorizing the City Manager to execute a lease agreement with San Diego State University Foundation for the development, operation, and maintenance of a laboratory research facility, for a term expiring January 18, 2031, at no rent plus administrative cost recovery.

CITY MANAGER SUPPORTING INFORMATION:

On January 18, 2001, the U. S. Department of Health and Human Services deeded a 7.9 acre parcel at the Naval Training Center (NTC) to the City via a Public Benefit Conveyance. The City developed its new Metropolitan Wastewater Department (MWWD) Environmental Monitoring & Technical Services Lab on a portion of the parcel, and the City wishes to lease approximately two acres of the remaining parcel to SDSUF to develop and operate a research complex (40,000 sq. ft.) and an outdoor Seawater Lab (11,500 sq. ft.). SDSUF's costs for developing the premises will be approximately \$7.6 million, which is its consideration to City for executing the lease. SDSUF and USGS will conduct collaborative research on the premises and share information with MWWD.. The approved uses are in compliance with the deed restrictions of the public conveyance and the Council-approved San Diego Reuse Plan for NTC.

The lease is for approximately 26.5 years, expiring on January 18, 2031, with an option for SDSUF to negotiate an extension for an additional unspecified term with the City, with similar terms and conditions of the original term, providing the original circumstances of the lease have not changed that would require modification of the lease.

SDSUF will pay its share of all costs for developing and maintaining improvements shared with MWWD and for developing Esplanade Park, during the lease term, which will result in SDSUF paying the City's Clean Water Program Fund 41509, \$364,537.57 in 2004 with future additional payments, as required.

ADOPTION AGENDA, CONSENT ITEMS (Continued)

RESOLUTIONS: (Continued)

\* ITEM-108: (Continued)

**CITY MANAGER SUPPORTING INFORMATION:** (Continued)

City staff estimates the current annual market rent is approximately \$237,600, which was determined by updating the data in a 2003 appraisal of the premises performed by an independent MAI appraiser. Based on the new proposed Nonprofit Policy, SDSUF will be charged an annual Administration Fee of \$2,621, with annual CPI adjustments.

**FISCAL IMPACT:**

FY 2005, \$364,537.57 to Fund 41509; and a minimum of \$2,621 annually to Fund 100.

Herring/Griffith/DLD

RESOLUTION NUMBER R- 299424

ADOPTED ON JUL 12 2004

WHEREAS, the Naval Training Center San Diego Reuse Plan, adopted by the City Council, sitting as the Local Redevelopment Authority on October 20, 1998, designates an eight-acre parcel for use by the City of San Diego's Metropolitan Wastewater Department [MWWD] and the San Diego State University's [SDSU] Coastal and Marine Institute [CMI] to conduct marine and environmental sciences research including environmental monitoring of San Diego Bay, Mission Bay, and the ocean from Point Loma to the Mexican Border and beyond; and,

WHEREAS, by application dated September 24, 1999, the City applied to the federal government for a public benefit conveyance of approximately eight acres of land at Camp Nimitz adjacent to the boat channel [the site]; and

WHEREAS, in its application, the City proposed that the site be developed with two technical and marine sciences laboratories: an Environmental Monitoring and Technical Services Laboratory and Administration Facility to be constructed by the City on six acres and to be operated by MWWD; and a marine sciences research and educational laboratory complex to be constructed by San Diego State University in conjunction with San Diego State University Foundation on two acres to be leased from the City; and

WHEREAS, SDSUF is a private non-profit corporation organized to further the educational, research and community service mission of San Diego State University by acquiring and managing real property for that purpose; and

WHEREAS, the proximity of the two laboratories will facilitate joint research and the exchange of information between scientists and technicians at MWWD and researchers and students at CMI in many areas including, for example, pollution remediation, storm water and ground water contaminants, water circulation and contaminant distribution models, community structure of benthic organisms, statistical analysis and sampling design, watershed analysis, and protection of estuarine marine and subtidal habitats; and

WHEREAS, SDSUF has entered into a cooperative agreement with the Water Resources Division of the United States Geological Survey [USGS/WRD] to enable USGS/WRD to join with MWWD and SDSUF on the site to further enhance their combined research capabilities and allow MWWD to leverage its resources with the national leader in earth sciences and water resource management; and,

WHEREAS, the research activities between MWWD, CMI, and USGS/WRD will benefit the citizens of San Diego through improved water quality research and testing capabilities; and

WHEREAS, by quitclaim deed dated January 8, 2001, the federal government acting through the Secretary of Health and Human Services accepted the City's application and conveyed the site to the City subject to restrictions on the use of the property including that the site be used continuously for thirty years for health purposes consistent with the proposal set forth in the City's application; and

WHEREAS, MWWD's laboratory as currently constructed consists of approximately 90,000 square feet of building space and SDSUF proposes to construct a laboratory facility consisting of approximately 40,000 square feet of building space for a total of 130,000 square feet; and

WHEREAS, SDSUF has obtained the funds necessary for construction of the proposed laboratory complex; and

WHEREAS, the use of the site contemplated by the proposed lease conforms to the use identified in the Naval Training Center San Diego Reuse Plan, and the related environmental documents, certified by the City Council on October 20, 1998, the Record of Decision issued by the Navy on March 10, 1999, and the NTC Precise Plan and Local Coastal Program, adopted by City Council on July 17, 2001; and

WHEREAS, SDSUF and the City have negotiated a lease for approximately two acres of vacant land at the site for the construction, operation, and maintenance of a marine sciences research and laboratory complex including a maximum 40,000 square foot building housing a laboratory, offices, and conference rooms, a parking lot, and an outdoor seawater lab; and

WHEREAS, the facility will be used for studying environmental and public health effects in local coastal waters and surrounding area through earth sciences, public health research, water resource management, monitoring the ocean eco-system, creation of wetlands, mitigation, using Coastal Zone Geographic Information Systems, and for collaborative research with USGS/WRD and MWWD; and

WHEREAS, the term of the proposed lease is approximately 26.5 years (expiring on January 18, 2031), with an option for SDSUF to negotiate an extension for a mutually agreeable

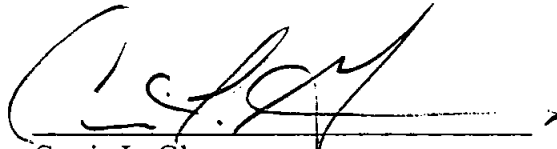
term on like terms and conditions, at no rent plus an initial annual administrative fee of \$2,621 per year, adjusted annually; and

WHEREAS, SDSUF will pay its share of all costs for developing and maintaining improvements shared with MWWD and for developing the adjacent portion of Esplanade Park; and

WHEREAS, the City's valuation staff has determined the annual fair market rental value for the premises to be approximately \$237,600; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City of San Diego, a lease agreement with San Diego State University Foundation for the development, operation, and maintenance of a laboratory research facility, for a term expiring January 18, 2031, at no rent plus administrative cost recovery, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 299424.

APPROVED: CASEY GWINN, City Attorney

By   
Carrie L. Gleeson  
Deputy City Attorney

CG:mm  
06/21/04  
Or.Dept:READ  
Job Order:223272  
R-2004-1404

Passed and adopted by the Council of San Diego  
on July 12, 2004, by the following vote:

**YEAS: PETERS, ZUCCHET, LEWIS, MAIENSCHIN, FRYE, MADAFFER, AND  
MAYOR MURPHY.**

**NAYS: NONE.**

**NOT PRESENT: ATKINS & INZUNZA.**

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)

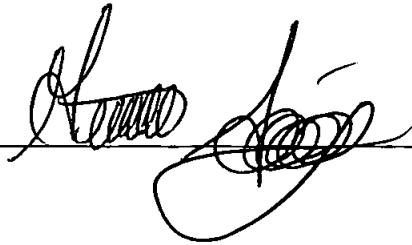
By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and  
correct copy of RESOLUTION NO. R-299424, passed and  
adopted by the Council of The City of San Diego, California on  
July 12, 2004.

**CHARLES G. ABDELNOUR**

City Clerk of The City of San Diego, California

(SEAL)

By:  \_\_\_\_\_, Deputy

CUP RESPONSE ATTACHMENT 11  
(10)

Recording requested by:

SAN DIEGO UNIFIED PORT DISTRICT

and when recorded mail to:

District Clerk  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488

DOC # 2001-0462160

JUL 06, 2001 9:12 AM

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

FEES: 0.00  
DC: NA

5248  
Space above  
Recorder's



2001-0462160

## GRANT OF AVIGATION EASEMENT

## WHEREAS:

1. The City of San Diego, a governmental entity organized under the laws of the United States of America and possessing political authority ("Grantor"), is the owner of the fee simple estate in and to that certain real property situated in the County of San Diego, State of California commonly described as a portion of the former Naval Training Center ("NTC") San Diego and more particularly described and depicted as Parcel 11/III-A in Exhibit A attached to this avigation easement and incorporated by this reference ("the Subject Property").

2. It is the desire of Grantor to grant to the San Diego Unified Port District ("the District"), a governmental entity organized under the laws of the State of California and possessing political authority, and the federally certificated owner and operator of San Diego International Airport ("SDIA" or "the Airport"), an air and avigation easement, also known as a perpetual air, flight or noise easement, on, upon, over, across, above the Subject Property, and to all of the airspace above the Subject Property, whereby Grantor relinquishes certain rights relative to the Subject Property, as described in this grant of avigation easement;

3. The purpose of this grant of easement, and its acceptance by the District, includes granting the District, its successors and assigns, an avigation easement permitting the unencumbered and unrestricted flight of aircraft to or from SDIA, owned and operated by the District without liability to the District, to the aircraft operator, or to any other person lawfully operating aircraft to or from SDIA in the navigable airspace of the United States (as defined at 49 U.S.C.S. 40102(a)(30), and as that section of the United States Code (and the referenced regulations) existed on the effective date of this grant of easement, and in accordance with relevant regulations of the United States of America and the State of California, pursuant to the authority granted to the District by the people and the State of California; and

Filed  
Designated No. 422432  
Office of the District Clerk

5249

4. The avigation easement shall be based upon the 1998 annual 65 dB Community Noise Equivalent Level ("CNEL") contours for SDIA plus 2 dB as more particularly described and depicted in Exhibit B to this avigation easement and hereby incorporated by this reference ("the restricted property").

5. The grant of avigation easement shall be recorded in the chain of title in the County Recorder's Office and shall be in favor of the District under which SDIA is the dominant tenement.

6. Separate avigation easements shall be recorded in favor of SDIA for those portions of NTC San Diego and more particularly described and depicted as Parcels IV, V, VI, and VII in Exhibit A as those parcels are conveyed to the Grantor consistent with Board Resolution No. ~~63-43~~

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged:

#### WARRANTIES AND COVENANTS

1. Grantor, for itself, its heirs, administrators, executors, successors, and assigns, does hereby warrant and covenant to the District that as of the date hereof:
2. Grantor holds the entire fee simple interest in the Subject Property as more particularly described and depicted as Parcels II/III-A in Exhibit A to this grant of avigation easement.
3. Grantor shall not convey its interest in the property, or execute, deliver, comply or permit recordation of any interest in the property, or any lien or encumbrance against the property (or any interest therein) until this grant of avigation easement has been properly executed by Grantor, accepted by the District, and recorded by the San Diego County Recorder.

#### GRANT OF AVIGATION EASEMENT

Grantor, for itself, its heirs, administrators, executors, successors and assigns, does hereby grant to the District, its heirs, administrators, executors, successors and assigns, a perpetual air, flight or noise easement, commonly referred to as an avigation easement, on, upon, over, across, above the restricted property, and to all airspace which overlies the restricted property.

This easement conveys to the District the use of such airspace above the surface of the restricted property to permit the operation of aircraft above, or in the air space of the restricted property, the imposition upon the restricted property, and its use by any person for any and all purposes, of all noise, vibration, fumes, dust, fuel particles, discomfort,

5250

Inconvenience, interference with the use and enjoyment and any consequent reduction of market value of restricted property due directly or indirectly to the operation of aircraft to and from SDIA.

This grant of easement is for the use of such airspace by any aircraft, present or future, in whatever form or type, during operations at, on, to or from SDIA, including any future change or increase in the boundaries, volume or pattern of aircraft traffic or aircraft noise, by all existing or future types of aircraft, up to and including a full calendar year Community Noise Equivalent Level ("CNEL") value of 65 dB CNEL, based on the 1999 annual contours for SDIA plus 2 dB (as defined in Section 5000 et seq. of Title 21 of the CALIFORNIA CODE OF REGULATIONS, and as that methodology is defined by such regulations on the date this easement is executed by the Grantor).

This grant of easement and all rights appertaining to Grantee, its successors, assigns, lessees, sublessees, licensees and invitees, shall be effective until SDIA shall be abandoned and shall cease to be used for public airport purposes, it being understood and agreed that these covenants and agreement shall run with the land.

This easement constitutes an enforceable restriction pursuant to the provisions of California law, including, but not limited to, Section 21652 of the CALIFORNIA PUBLIC UTILITIES CODE, and shall bind Grantor, Grantor's successors and assigns, and each and all of them, and shall be appurtenant to, and for the benefit of the real property commonly known as SDIA, which is more particularly described in Exhibit C attached to this aviation easement and hereby incorporated by this reference.

Executed this 1<sup>st</sup> day of March 2001

GRANTOR:

  
(Name)

Real Estate Assets Director  
(Title)

The City of San Diego

(Grantor Acknowledgement)

(Title)

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

88.

5251

On MARCH 1, 2001

before me,

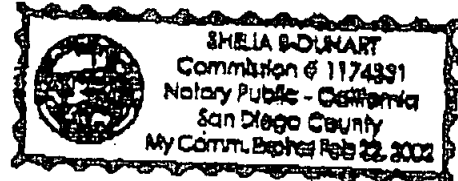
SHELIA B-DUHART

personally appeared

WILLIAM T. GRIFFITHpersonally known to me ~~or~~

~~proved to me on the basis of satisfactory evidence~~ to be the person~~s~~ whose name~~s~~  
~~he~~ subscribed to the within instrument and acknowledged to me that ~~he~~ ~~she~~ ~~they~~  
executed the same in ~~his~~ ~~her~~ ~~its~~ authorized capacity~~(ies)~~, and that by ~~his~~ ~~her~~ ~~its~~  
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.



Signature

Shelia B Duhart

5252

## CERTIFICATE OF ACCEPTANCE

In accordance with Section 27281 of the California Government Code, this is to certify that the interest in real property conveyed by this Grant of Right and Use Easement, dated MARCH 1, 2001, from THE CITY OF SAN DIEGO to the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, is hereby accepted by the undersigned officer on behalf of the Board of Port Commissioners of the San Diego Unified Port District pursuant to authority conferred by Resolution No. 83-43 of said Board adopted February 18, 1983, and the Grantee consents to recordation thereof by its duly authorized officer.

DATED: 7/5 2001 SAN DIEGO UNIFIED PORT DISTRICT

By Bruce Hollingsworth  
Senior Director, Business and  
Financial Services/Treasurer



5253

(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT)

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

On 3 JULY 2001

before me,

CYNTHIA E. HOLDER

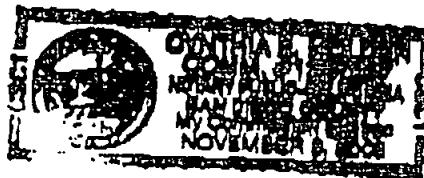
personally appeared

BRUCE HOLLINGSWORTH

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.



Signature

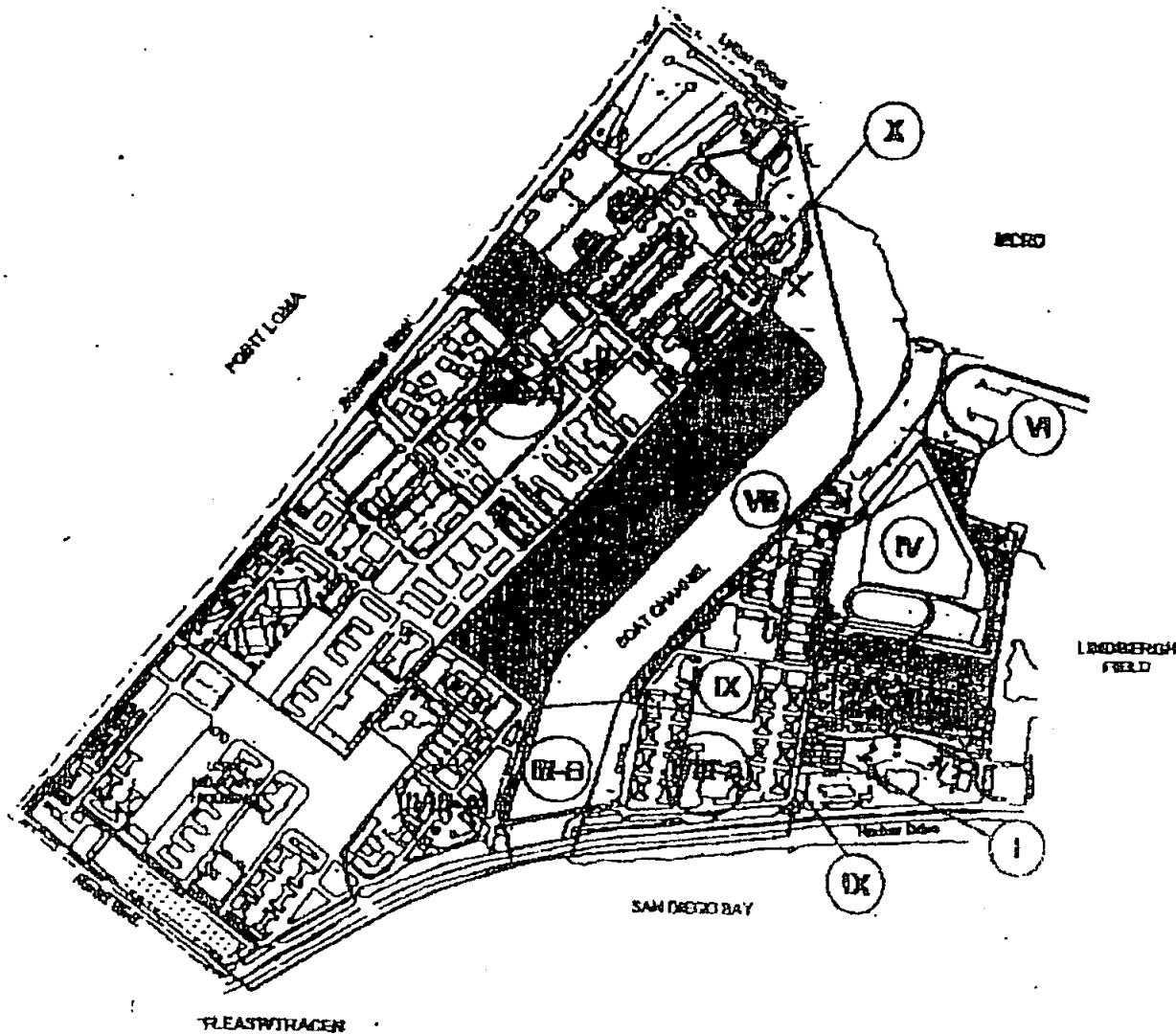
Cynthia E. Holder

5254

## EXHIBIT C

All those lands lying between the line of mean high tide of San Diego Bay and the pierhead line of said bay, and between an irregular westerly boundary being an irregular line beginning at Government Station 488 on the combined pierhead and bulkhead line and proceeding northerly; thence easterly; thence northerly; thence easterly, thence northeasterly along the boundary of the United States Marine Corps Base to the point where such boundary intersects the mean high tide line in the vicinity of Washington Street and Pacific Highway, and the northwesterly boundary lines of the United States Naval Station between the mean high tide line and the United States Pierhead line being an irregular line, omitting therefrom, the United States Coast Guard Base lying southerly of North Harbor Drive and in the vicinity of SDIA; and the Civic Center lying between North Harbor Drive and Pacific Highway and between Grape and Ash Streets; and the United States Naval Supply Center consisting of four parcels, (1) the block between Broadway and "E" Street and between North Harbor Drive and Pacific Highway, (2) the block lying between "B" and "F" Streets and between North Harbor Drive and Pacific Highway, (3) a portion of a block between "F" and Market Streets and North Harbor Drive and Pacific Highway, (4) the United States Naval Pier at the foot of "E" Street; and adding No. 456, lying above the mean high tide line; such boundaries, roadways, easements and omissions being shown in detail upon engineering drawings Nos. 4, 5, 6, 8a, 8b, 8c, 7, 8, 8a, 8b, 9, 9a, 9b, 9c, 9d, 9e, 10, 10a, 10b, 10c, 10d, 10e, 10f, 10g, 10h, 11, 12, 12a, 13, 13a, 13b, 13c, 14c, 14d, 14e, 14f, 15c, 15d, 15e, 15f, 16e, 16f, 14g, 15g, 16c, 16d, and 16g.

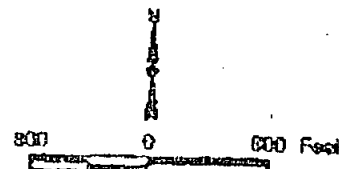
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**LEGEND**

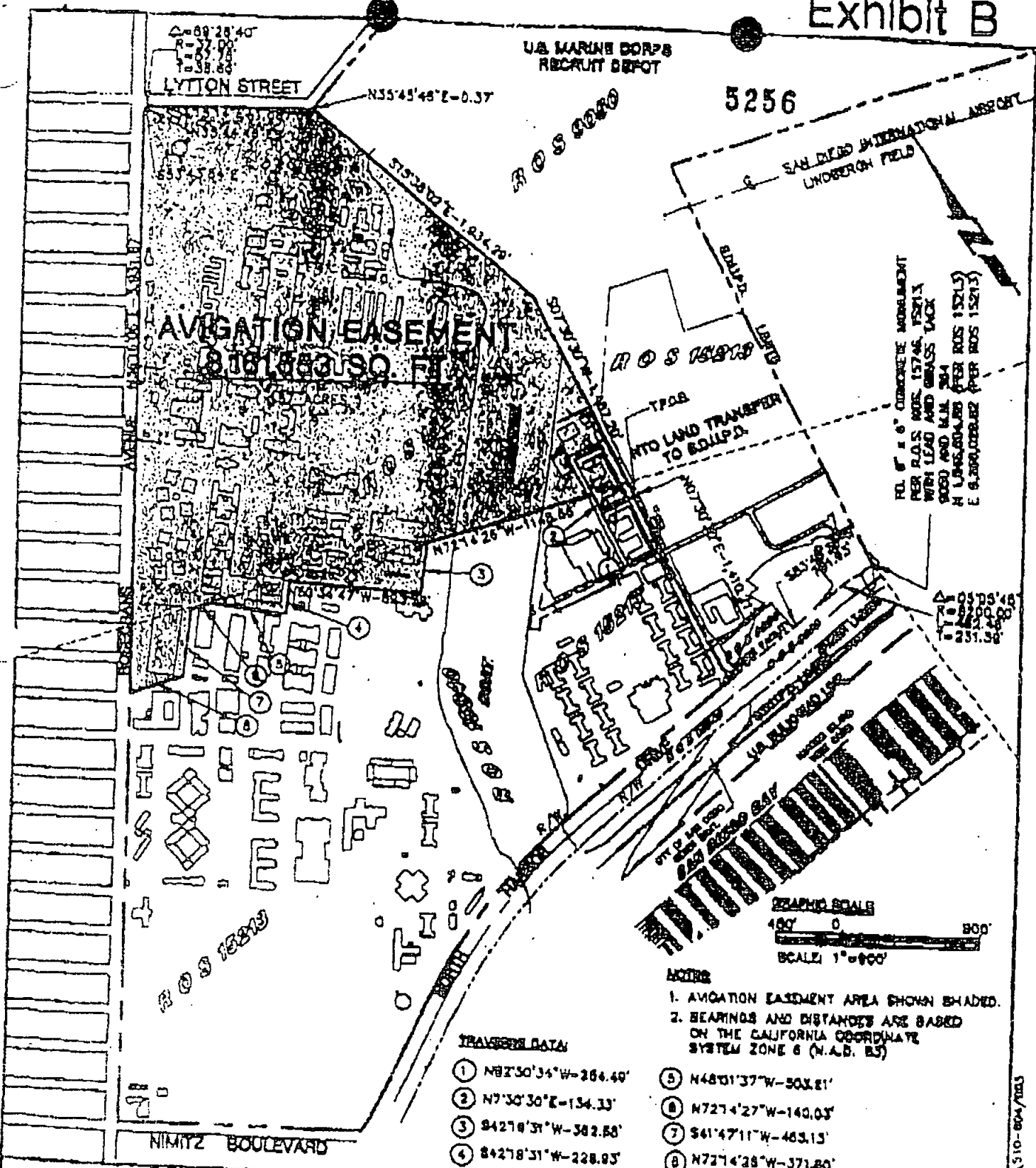
- BUILDING
- PUBLIC HIGHWAY
- RAILROAD
- COMBINED DEVELOPMENT CORP.
- FEDERAL RESERVE
- PUBLIC SERVICE CORP.
- PARCEL DESIGNATION

Scale  
1 inch = 1000 feet



|                                                                                                       |    |     |
|-------------------------------------------------------------------------------------------------------|----|-----|
| Southwest Division<br>Naval Facilities Engineering Command<br>Former Naval Training Center, San Diego |    |     |
| Map of Disposal Parcels                                                                               |    |     |
| File No.                                                                                              | NA | DA  |
| NOV 1999                                                                                              |    | AND |

# Exhibit B



DRAWN ASHOF SANTONIL  
CHECKED  
REVIEWED  
APPROVED  
CPL DIRECTOR / PUBLIC WORKS

**SAN DIEGO UNIFIED PORT DISTRICT**  
AVIGATION EASEMENT  
WITHIN CORPORATE LIMITS OF SAN DIEGO  
**SAN DIEGO UNIFIED PORT DISTRICT**

DATE: 4 AUGUST 2003  
SCALE: 1" = 600'  
PER: 800 PER 1000  
DRAWING NO.  
SHEET 1 OF 1  
**810-003**

S:\Drawing\800\810-003\810-004\8103

5257

Commencing at the 6"x 6" concrete Monument being at a corner on the easterly boundary of the U.S. Naval Training Center and the northerly right-of-way line of North Harbor Drive as shown on Record of Survey 15213, filed in the Office of the County Recorder of San Diego County, June 14, 1996; said Monument also being an angle point on the boundary between United States Navy Land and the San Diego Unified Port District as shown on Miscellaneous Map No. 564 filed in the Office of the San Diego County Recorder May 28, 1976; thence leaving said Monument, as said monument also is the beginning of a curve concave to the south having a radius of 5,200.00 feet, the center of which bears south 1°05'39" east; thence westerly along the arc of said curve through a central angle of 5°05'45", an arc distance of 462.48 feet to a point which bears north 6°11'24" west from the center of said curve; thence continuing westerly south 83°48'36" west a distance of 791.93 feet; thence north 7°30'30" east a distance of 1,410.21 feet to the TRUE POINT OF BEGINNING; thence north 82°30'34" west a distance of 254.49 feet; thence north 7°30'30" east a distance of 134.33 feet; thence north 72°14'26" west a distance of 1,148.66 feet; thence south 42°19'31" west a distance of 362.58 feet; thence north 50°34'47" west a distance of 893.39 feet; thence south 42°19'31" west a distance of 226.93 feet; thence north 48°01'37" west a distance of 503.21 feet; thence north 72°14'27" west a distance of 140.03 feet; thence south 41°47'11" west a distance of 465.13 feet; thence north 72°14'26" west a distance of 371.80 feet to a point on the northeasterly right-of-way line of Rosecrans Avenue; thence continuing along said right-of-way north 36°16'06" east a distance of 3,931.87 feet to the beginning of a curve concave to the south having a radius of 37.00 feet, the center of which bears south 53°43'54" east; thence easterly along the arc of said curve through a central angle of 89°28'40", an arc distance of 57.78 feet to a point on the southwesterly right-of-way line of Lytton Street; thence tangentially along said right-of-way south 54°15'14" east a distance of 1,087.60 feet; thence leaving said right-of-way north 35°45'46" east a distance of 0.37 feet; thence south 15°38'02" east a distance of 1,934.29 feet; thence south 7°30'30" west a distance of 1,487.20 feet to the TRUE POINT OF BEGINNING of herein described avigation easement containing 8,161,553 square feet or 187.00 acres of land area.

The above described avigation easement area is that delineated on Drawing No. 510-003, dated 4 August 2000, and made a part of this agreement.

Courses referred to in the above description are based upon the California Coordinate System, Zone 6 (N.A.D. 83).

|                             |      |
|-----------------------------|------|
| RAWN                        | ASMR |
| CHECKED                     |      |
| REVIEWED                    |      |
| APPROVED                    |      |
| DR. DIRECTOR / PUBLIC WORKS |      |

**SAN DIEGO UNIFIED PORT DISTRICT**  
 AVIGATION EASEMENTS  
 WITHIN CORPORATE LIMITS OF SAN DIEGO  
 SAN DIEGO UNIFIED PORT DISTRICT

|             |               |
|-------------|---------------|
| DATE        | 4 AUGUST 2000 |
| SCALE       |               |
| REV         | 7/01/00       |
| DRAWING NO. |               |
| 510-003     |               |

**SAN DIEGO COUNTY  
REGIONAL AIRPORT AUTHORITY**P.O. BOX 82776, SAN DIEGO, CA 92138-2776  
619.400.2400 WWW.SAN.DICGO*Received 11-7-03*VIA FACSIMILE - (619) 446-5499

November 4, 2003

Ms. Cathy Cibit  
Environmental Review Manager  
City of San Diego  
Development Services Dept  
1222 First Avenue, MS-501  
San Diego, CA 92101

Re: **Mitigated Negative Declaration for the Proposed SDSU/USGS Environmental Monitoring Laboratory Phase I at 2392 Kincaid Road (APN 450-790-08) in the CC-5-5 Zone of the Naval Training Center (NTC) Precise Plan in the Airport Environs Overlay and Airport Approach Overlay Zone, San Diego International Airport CLUP**

Dear Ms. Cibit:

The San Diego County Regional Airport Authority (the "Authority") appreciates this opportunity to comment on the Mitigated Negative Declaration ("MND"), for the referenced project. We have prepared the following comments for review and consideration.

**1. Submittal to Airport Land Use Commission**

The proposed project is located within the Airport Influence Area for the San Diego International Airport ("SDIA") Comprehensive Land Use Plan ("CLUP"), and according to State Public Utilities Code Section 21670, is required to be submitted to the Airport Land Use Commission ("ALUC") for a consistency determination.

The proposed project must be submitted directly to the ALUC using the attached application. The ALUC will notify you of receipt of the proposed project, and will complete its review and consistency determination within sixty (60) days of the project application being deemed complete.

**2. Comments on Mitigated Negative Declaration**

**Land Use.** Beginning on page 4, the MND states "construction of the laboratory at this location would therefore not present a hazard or obstruction to airport operations or noise issue pursuant to the analysis required by CEQA Section 2106.b."

**SAN DIEGO  
INTERNATIONAL  
AIRPORT**

Ms. Cathy Cibit  
City of San Diego  
November 4, 2003  
Page 2 of 2

The MND does not adequately address the potential impacts of airport noise on the proposed project. The proposed project is located within the 60-65 decibel (dB) Community Noise Equivalent Level ("CNEL") noise contour and, therefore, may expose occupants/users of the laboratory to inappropriate noise levels. The MND should be revised to adequately address the impacts of exposing occupants/users to airport noise. In addition, the MND should require interior levels to be attenuated to 45 dB, and require that an aviation easement be recorded for the project in favor of the Authority, as airport proprietor for SDIA.

If you have any questions, please e-mail them to [tanasis@san.org](mailto:tanasis@san.org).

Sincerely,



TED ANASIS, AICP  
Manager, Airport Planning  
San Diego County Regional Airport Authority

TA/ljt

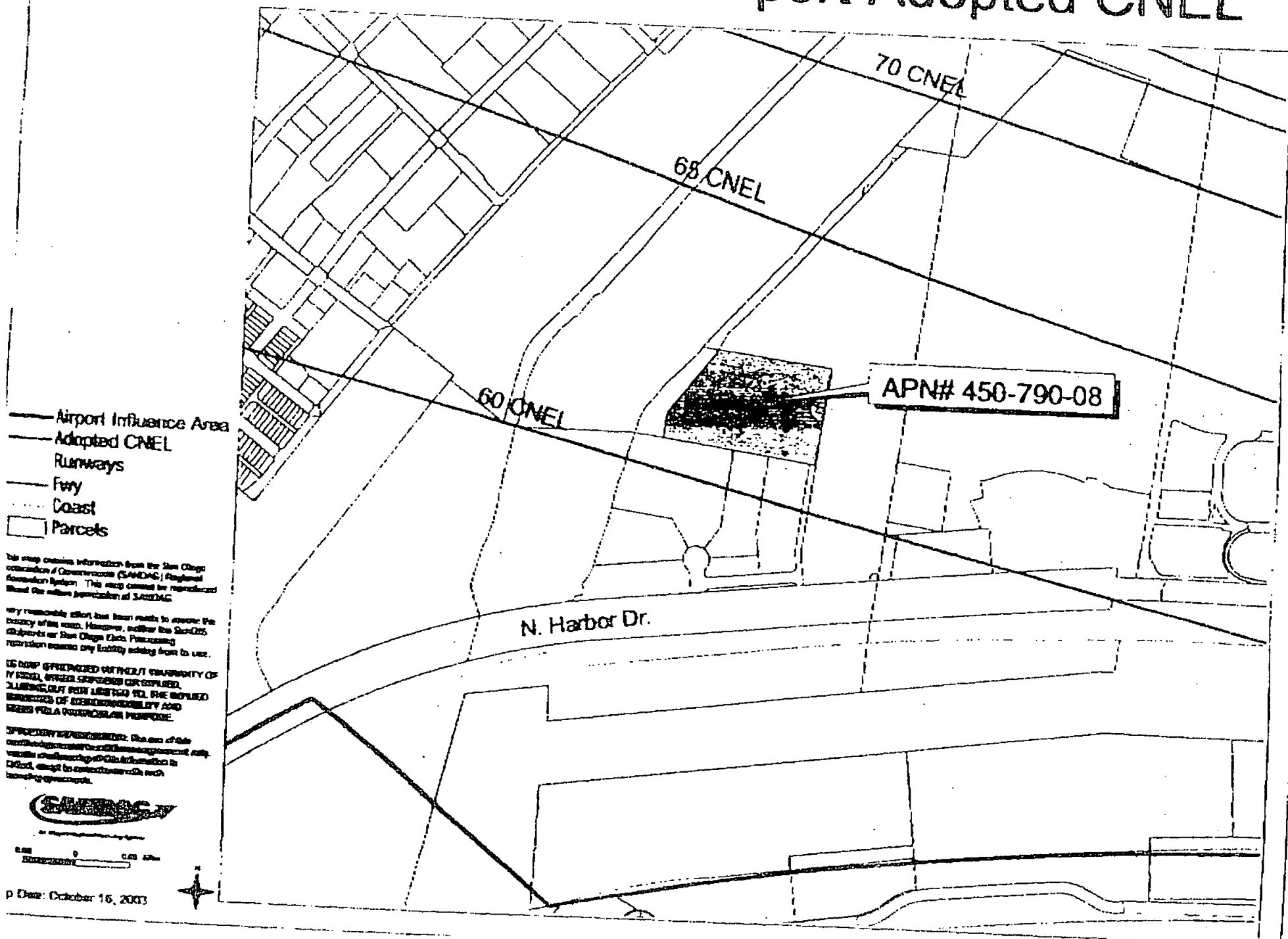
Attachments: APN Map, ALUC Policies, Guidelines, and Application

cc: Lori Ballance, Gatzke Dillon & Ballance LLP (w/o attachments)  
R. Austin Wiswell, Caltrans - Division of Aeronautics (w/o attachments)

# San Diego International Airport Adopted CNEL

JUN-04-2004 09:29AM FROM-

T-192 P.015/020 F-407



This Initial Study and the associated Mitigated Negative Declaration were prepared in accordance with the "tiering" concept described in Section 15152 of the State CEQA Guidelines, whereby the additional environmental effects of a proposal which were not fully addressed through previously certified environmental documents are now addressed.

This Initial Study and proposed Mitigated Negative Declaration tier off the following previously-certified environmental document which fully addressed noise impacts, therefore, no additional discussion on noise impacts is required:

Mitigated Negative Declaration NTC Precise Plan and Local Coastal Plan & Related Entitlements/MWWD Environmental Monitoring and Technical Services Laboratory. LDR No. 99-1076, SCH No. 2000081037. September 14, 2000.

The previous EIRs recognized that noise was a significant, unmitigable land use impact for which Findings and a Statement of Overriding Considerations were issued. As defined in the Precise Plan MND, any new structure would be required to meet applicable interior noise standards to comply with the provisions of the Comprehensive Land Use Plan for Lindbergh Field.

Mitigation was specified in the Precise Plan MND that interior noise for residential structures were required to be attenuated to 45 dBA CNEL. However, because the proposed use is institutional, not residential, the 45 dBA CNEL level does not apply.

Interior occupational noise is subject to regulation and oversight of the California Division of Occupational Safety and Health (DOSH) through requirements such as CA Code of Regulations, Title 8, Section 5096, "Exposure Limits for Noise" and Section 142.3 of the Labor Code which specifies occupational Permissible Noise Exposure limits.

The San Diego State University (SDSU) Foundation agrees to pursue granting of an Avigation Easement as appropriate.

*Proposed  
response  
to be incorporated  
into Initial Study  
(not as mitigation)*



# County of San Diego

GARY W. ERBECK  
DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH  
P.O. BOX 129281, SAN DIEGO, CA 92112-9281  
(619) 338-2222 FAX (619) 338-2098  
1-800-253-0933  
www.sdcdeh.org

RICHARD HAAS  
ASSISTANT DIRECTOR

Received  
EMS  
11/6/03

October 31, 2003

Cathy Cibit  
City of San Diego  
Land Development Review Division  
1222 First Ave, Fifth Floor  
San Diego, CA 92101

Dear Ms. Cibit,

This letter is in response to your request for comments regarding the draft Mitigated Negative Declaration for the SDSU/USGS Environmental Monitoring Lab Project. Department of Environmental Health staff have reviewed the subject Notice of Mitigated Negative Declaration.

Jim Lang, Senior Vector Ecologist, Community Health Division, provided the following comments:

The construction of any BMPs related to the above draft EIR project should include a mosquito surveillance, prevention, and control plan to be approved by a Vector Ecologist, Community Health Division, Department of Environmental Health Division. Please contact Dr. Lang at (619)-694-2364 if you have specific questions or concerns.

Jim Henderson, Environmental Health Specialist III, Hazardous Materials Division, provided the following comments:

Page 3 of 6, Item 8 - Should be modified as follows

8. If contaminated soil is encountered during excavation, follow normal procedures and notification process for a hazardous material spill or release to include at a minimum, notification of the local emergency response agency, (911, and / or the Hazardous Materials Division at 619-338-2284), and the Governor's Office of Emergency Services (1-800-852-7550 or 916-282-1821). Additional notifications may be required depending on the nature of the contamination. If after the initial notification it is determined that there is no imminent threat, coordinate with the Hazardous Materials Division for information about site remediation. Depending on the source and extent of the contamination, remediation may be coordinated through the Department of Environmental Health, the Regional Water Quality Control Board or the Department of Toxic Substances Control.

Cathy Cibit

- 2 -

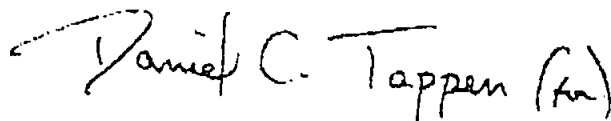
October 31, 2003

Page 3 of 6, Add Item 10 (this could / should also be added under the Health and Safety Section in the Initial Study)

10. Requirements for management of hazardous materials during both construction and operation should be addressed as a normal part of the building permit process. All activities requiring a building permit are required to complete a Hazardous Materials Questionnaire. This Questionnaire will identify any special requirements and / or permits related to hazardous materials.

Please contact Mr. Henderson at 619-338-2458 if you have specific questions or concerns.

Sincerely,



JACK MILLER, Chief  
Land and Water Quality Division  
Department of Environmental Health

cc: Jim Lang, Senior Vector Ecologist, CHD  
Jim Henderson, EHS III, HMD

*Proposed  
changes to  
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*based on letter from County* Page 3 of 8

3. During the rainy season (October 1 to April 30), construction debris, trash, and waste materials will be stored in a covered container, emptied as needed to prevent overflow.
4. On-site construction vehicles shall be regularly inspected and maintained in a state of good repair to ensure proper maintenance and operations.
5. Spill prevention control equipment shall be maintained on-site and deployed as needed for clean-up.
6. A concrete waste management plan shall be incorporated as part of the Water Pollution Control Plan and specified on the grading plans.
7. Dewatering - Prior to issuance of any permit that would allow excavation which requires dewatering, a plan for disposal of the dewatering effluent and a permit, if needed, from the Regional Water Quality Control Board shall be provided to the City of San Diego Land Development Review Division by the applicant. A National Pollutant Discharge Elimination System (NPDES) permit may be required for disposal of dewatering effluent as specified by the Regional Water Quality Control Board (RWQCB).
8. ~~If contaminated soil is encountered during excavation, the County of San Diego Hazardous Materials Division (HMD) shall be notified. HMD shall prescribe the method of treatment. Contaminated soils shall be managed and disposed appropriately as directed by HMD. Site environmental cleanup shall be completed to the satisfaction of the County of San Diego Department of Environmental Health.~~  
  
If contaminated soil is encountered during excavation, follow normal procedures and notification process for a hazardous material spill or release to include at a minimum, notification of the local emergency response agency (911), and/or the Hazardous Materials Division at (619) 385-7849, and the Governor's Office of Emergency Services (800) 452-7350 or (916) 262-6720. Additional notifications may be required depending on the nature of the contamination. If after the initial notification, it is determined that there is no imminent threat, coordinate with the Hazardous Materials Division for information about site remediation. Depending on the source and extent of the contamination, remediation may be coordinated through the Department of Environmental Health, the Regional Water Quality Control Board, or the Department of Toxic Substances Control.
9. Prior the issuance of the first construction permit, the applicant shall provide verification that a Storm Water Pollution Prevention Plan (SWPPP) has been prepared and approved by the City Engineer.

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10. Requirements for management of hazardous material during both construction and operation should be addressed as a normal part of the building permit process. All activities requiring a building permit are required to complete a Hazardous Materials Questionnaire. This Questionnaire will identify any special requirements and/or permits related to hazardous materials.

Post-Construction BMPs

1. Stormwater runoff from the project site would be discharged through structural treatment devices. Drainage collection points would contain a hydro-cartridge filter and/or grass-lined swales.
2. Filters shall be inspected according to manufacture recommendations and an Operations and Maintenance program as specified in a long-term agreement with the City of San Diego.
3. Prior to the issuance of any construction permit, the City Engineer shall verify that comprehensive permanent post-construction water quality best management practices (BMPs), consistent with those shown on Exhibit "A," are incorporated into the construction drawings to reduce the amount of pollutants (e.g., oil, grease) and sediments discharged from the site, satisfactory to the City Engineer. BMPs shall include the use of vegetated bio-filter areas and catch basins with filters as shown on Exhibit "A" and detailed in Water Pollution Control Plan and Water Quality Technical Report as prepared by Partners Planning and Engineering dated May 5, 2003 or as revised and accepted by the City Engineer. Equivalent alternative available technologies may be approved as BMPs by the City Engineer in lieu of, or in addition to, those shown on Exhibit "A." All permanent BMPs shall be maintained in accordance with the applicable manufacturer specifications. Spot checks may be made by the City Engineer to ensure that BMPs are being properly maintained.
4. Develop a mosquito surveillance, prevention, and control plan approved by a Vector Ecologist, Community Health Division, Department of Environmental Health, County of San Diego.

VI. PUBLIC REVIEW DISTRIBUTION:

Draft copies or notice of this Mitigated Negative Declaration were distributed to:

U.S. Government  
U.S. Fish and Wildlife Service (23)  
U.S. Army Corps of Engineers (26)  
Dept. of the Navy, Southwest Division, Naval Facilities Engineering Command  
U.S. Navy Environmental Planning Division (12)  
U.S. Navy Real Estate Division (8)