



Real Estate Assets Department
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Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



DUPLICATE ORIGINAL



THE CITY OF SAN DIEGO

THE SAN DIEGO REGIONAL PUBLIC SAFETY TRAINING INSTITUTE

LEASE

LEASE OUTLINE

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**CITY OF SAN DIEGO
RPSTI LEASE**

THIS LEASE AGREEMENT ("lease" or "lease agreement") is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and the SAN DIEGO REGIONAL PUBLIC SAFETY TRAINING INSTITUTE, a Joint Powers Authority public agency, hereinafter called "LESSEE" or "RPSTI," based upon the following:

- A. CITY is the owner of the parcel known as Camp Nimitz, formerly a portion of the Naval Training Center; and,
- B. The CITY is a member RPSTI, and the Joint Powers Authority (JPA) consisting of the City of San Diego (Police and Fire Departments), the County of San Diego, and the San Diego Community College District; and,
- C. The RPSTI is governed by the JPA, with a Board of Directors composed of the City Manager, the County's Chief Administrative Officer, and the Chancellor of the Community College District; and,
- D. The JPA approved the City's Metropolitan Wastewater Department (MWWD) proposal to construct an underground Wet Weather Storage Facility to be co-located with RPSTI; and,
- E. RPSTI desires to establish a training facility on approximately 24.7 acres of the Camp Nimitz site, which will be designed to meet virtually all entry level as well as advanced training needs of the San Diego region's law enforcement, fire, paramedic, communications, and other safety personnel; and,
- F. RPSTI intends to conduct a capital improvement program in an amount estimated to be at least \$30 million, to commence upon lease execution; and,
- G. The Metropolitan Wastewater Department of the City (MWWD) desires to construct a Wet Weather Storage Facility on the RPSTI site; and will enter into a Memorandum Of Understanding (MOU) with CITY and RPSTI; and,
- H. CITY and RPSTI agree to enter into a long-term lease at nominal rent to facilitate the RPSTI capital improvement program on the leased premises, and to facilitate the MWWD Wet Weather Storage Facility project on a portion of the same premises.

NOW, THEREFORE, CITY and RPSTI agree as follows:

SECTION 1: USES

- 1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property containing approximately 24.7 acres, situated on Camp Nimitz, in the City of San Diego, County of San Diego, State of California, described in Section 9.1, Legal Description, hereof. 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 construction, operation, and maintenance of a Regional Public Safety Training Institute, in accordance with the General Development Plan referenced in Section 6.12 hereof, to include such activities as training for law enforcement, fire and life safety, emergency medical, lifeguard, and security guard, all of which may include classroom and outdoor field training, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever. LESSEE agrees to co-locate with the Metropolitan Wastewater Department (MWWD) under the terms of the Memorandum Of Understanding, referenced in Section 9.5 hereof, to facilitate construction of the underground Wet Weather Storage Facility, which will serve as a vehicle parking lot for RPSTI, and a foundation for an indoor firing range for RPSTI.

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 throughout the term hereof for the above-specified purposes and to diligently conduct the business thereon. Failure to use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

- 1.3 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.

LESSEE shall be solely responsible for processing all land use, development, and construction approvals required for the use and occupancy of the RPSTI premises. Consistent with the MOU, MWWD will be responsible for processing all environmental, land use, development, and construction approvals required for the use and occupancy of MWWD premises. This lease shall not be interpreted by

any decision maker on any City-issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.

- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or within 90 days thereafter, or if during the lease term LESSEE is temporarily dispossessed for 90 days or less, 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. If CITY cannot deliver possession of the premises to LESSEE for more than 90 days after the commencement of the term, or if during the lease term LESSEE is dispossessed for more than 90 days through claim of title superior to CITY'S, then LESSEE may elect to either terminate the lease or receive from CITY a proportionate reduction of the minimum or flat rate rent.

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 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 shall include a reduction in the rent proportionate to the amount of physical damage. 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 regional

public safety training institute and related activities in a fiscally responsible manner.

1.7 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public, as set forth in Section 9.4, Schedule of Days and Hours of Operation, hereof. Any substantial changes in this schedule shall be subject to the prior written approval of the City Manager or his authorized representative, and the schedule shall be reviewed at least annually by LESSEE and the City Manager.

1.8 Rates and Charges. All charges associated with use of the facilities on the premises shall be in accordance with the schedule set forth in Section 9.3, Schedule of Rates and Charges, hereof. Any substantial changes in this schedule shall be subject to prior written approval by the City Manager or his authorized representative, and the schedule shall be reviewed at least annually by LESSEE and the City Manager.

1.9 CITY Use. Where premises can be reasonably used by the public, the premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs. After every CITY use, CITY shall leave the premises in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use.

LESSEE agrees to arrange for a formal dedication ceremony for the Mayor and City Council of CITY to break ground to commence construction of the facility.

1.10 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1.2, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

1.11 Public Use. The general public shall not be wholly or permanently excluded from the premises. LESSEE may develop reasonable restrictions for public use of portions of the premises or certain facilities provided they do not interfere with LESSEE'S use of the premises for the purposes specified herein. LESSEE agrees that all of its activities conducted on the premises will be as stated in Section 1.2, Uses, hereof. Public use of the premises or facilities does not have to comply with Section 1.2 Uses.

LESSEE shall, at all times during the lease term, maintain a prominent CITY-approved sign identifying the property as City-owned and available for

public use consistent with the terms of this lease. The sign shall be installed by LESSEE at a location approved by CITY.

- 1.12 Parking. LESSEE shall maintain the parking lot within the leased premises, in accordance with the General Development Plan described in Sections 6.12 and 9.2 hereof.

SECTION 2: TERM

- 2.1 Commencement. The term of this lease shall be sixty-six (66) years commencing on the first day of the calendar month following execution by the City Manager or his designee. "Lease year" as used in this lease shall mean the twelve (12)-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager or his designee.
- 2.2 Use Review Period. On the tenth anniversary of the commencement date of this Lease, and every tenth anniversary thereafter, CITY shall have the right to review the compliance of LESSEE with Section 1.2 Uses of this 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 rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.4 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within thirty (30) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

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

SECTION 3: RENT

- 3.1 Rent The annual rent is One Dollar (\$1) per lease year, receipt of which is hereby acknowledged by CITY.
- 3.2 Inspection of Records. LESSEE agrees to make any and all records and accounts related to use and operation of 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.
- 3.3 Unauthorized Use Charge. LESSEE shall pay CITY fifty percent (50%) of the gross receipts for any service or use that is not permitted by this lease. The existence of the fifty percent (50%) 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.
- 3.4 Annual Budget. LESSEE shall submit to the City Manager by September 1 of each year copies of documents evidencing the proposed programs and financial status of LESSEE for the fiscal year commencing July 1. Without limiting the generality of the foregoing, such documents shall include (i) a copy of LESSEE'S proposed programs; (ii) a copy of a detailed operating budget showing expected sources of revenue and the nature of all proposed expenditures, including compensation for the director and staff of LESSEE; and (iii) an adequate reserve account, in the reasonable opinion of the City Manager, for maintenance and capital improvements to the premises.

SECTION 4: ASSIGNMENT

- 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 during the term of this lease. LESSEE 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 subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent subletting, occupation, or use by another person. Any such subletting without such consent shall be void and shall, at the option of CITY, terminate this lease.

"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 sublease shall be conditioned upon the sublessee agreeing in writing that it will assume the rights and obligations thereby 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 may require, as a condition to approval of any sublease of the majority portion of the leasehold, that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. The City Manager may also require, as a condition to approval of any sublease of a commercial nature (e.g., food vending or telecommunications installations), that LESSEE pay CITY market rents for such uses. 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.

- 4.3 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may 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, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with Section 6.12, General Development Plan, hereof. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. LESSEE understands and specifically agrees that

the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then-current rents and provisions.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges, and duties granted and imposed in this lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease.

4.4 Defaults and Remedies.

A. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within sixty (60) days following written notice thereof from CITY; or if any such default is not curable within sixty (60) days, and LESSEE shall fail to commence to cure the default(s) within said sixty (60) 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.

Provided, however, in the event that any default described in Subsection 4.4a.(1), above is not curable within sixty (60) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have sixty (60) days from such notice to cure the default(s) or, if any such default is not curable within sixty (60) days, to commence to cure the default(s) and diligently pursue such cure to completion. The sixty (60)-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- B. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the sixty (60)-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.
- C. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- D. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is

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

- 4.5 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:
- A. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - B. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - C. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken.
 - D. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled but limited to any award attributable to the taking of, or damages to, LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
 - E. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever

interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.

- F. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.
- G. Airport Expansion. In the event Lindbergh Field Airport is expanded to include the premises, LESSEE may be eligible for relocation payments from the condemning authority. Upon expiration of the first twenty five (25) years of this Lease, LESSEE agrees and understands that it shall not be entitled to any relocation payment from CITY whatsoever. In the event of airport expansion leading to condemnation, the value of the improvements shall be determined by independent appraisal as of the date of Final Order of Condemnation.

- 4.6 Additional Consideration to CITY. LESSEE acknowledges that CITY expends considerable sums for maintenance of the Esplanade and other Park areas adjacent to the leasehold. LESSEE further acknowledges that the expenditure of such funds enhances the value of the leasehold. LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the continued maintenance of adjacent park areas. Therefore, LESSEE and CITY agree that in the event of a subletting of the majority portion of the leasehold, or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the General Development Plan as described in Section 6.12 hereof, LESSEE shall pay to CITY two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any majority subletting or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed sublessee or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it a sublease or a

refinancing. Any subletting or refinancing in violation of the terms and conditions of this paragraph shall be void.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity.

- A. 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.
- B. As to any civic event or special program by CITY, pursuant to Section 1.9, CITY Use, hereof, CITY shall indemnify and hold harmless LESSEE from any claim, suit, action, or judgment against LESSEE arising from or out of CITY'S negligence or willful misconduct.

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, or provide certification(s) that it is self-insured in the following amounts for public liability and property damage claims in compliance with applicable laws.
 - (1) Public liability and property damage insurance in the amount of not less than Five Million Dollars (\$5,000,000) 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 CITY as an additional insured, 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 reasonable and for the purpose of assuring protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of

property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.

- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

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

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on or to 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. For purposes of this section, "preliminary steps" include LESSEE'S notification of its insurance carrier of the loss.

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 the 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 the premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, but not the obligation, 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 the premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that the 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, and any extensions thereto. LESSEE shall 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.

6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities, including service and installation charges in connection with the development and operation of the leased premises. All utilities shall be installed underground.

6.6 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, or LESSEE'S contractor shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of one hundred percent (100%) 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 deposited with the CITY by LESSEE or LESSEE'S contractor 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 attorneys' 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.

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. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within twenty-four (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.

- A. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.
- B. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE one hundred eighty (180) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- C. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- D. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage at its expense.

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

- 6.11 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 General Development Plan. LESSEE agrees to develop the leased premises in one or more phases in accordance with the 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 9.2 hereof. The General Development Plan, upon approval by the City Manager, shall be attached hereto and made part of this lease. The City Manager shall have the authority to authorize subsequent changes to the approved General Development Plan provided that the proposed changes are consistent with the terms and conditions of this lease and with any required development permit conditions and CEQA mitigation measures. Failure by LESSEE to comply with the requirements of this section or with the approved General Development Plan shall constitute a major default and subject this lease to termination by CITY. Provided LESSEE obtains construction financing and an appropriate conditional use permit, construction of the improvements, estimated at \$30 million, shall commence within one (1) year after the effective date of its Coastal Development Plan. Furthermore, the completion date estimated in the General Development Plan for completion of the construction of Phase One facilities, as defined in the General Development Plan, shall be no later than three (3) years after the effective date of this lease. The City Manager shall have the discretion to extend either period for up to one (1) additional year, without further City Council approval, provided LESSEE submits a prior written request, which shall include a reasonable basis for such an extension.

No sooner than one (1) year and no later than six (6) months prior to the twenty-fifth anniversary of this lease and within that time frame every ten (10) years thereafter, LESSEE shall submit a Facilities Program Plan to CITY describing the investment that LESSEE will make to construct new improvements and refurbish

existing ones on the premises during the next ten (10) years. Each Facilities Program Plan shall be subject to review and approval by the City Manager as to sufficiency of investment to ensure that good quality improvements are maintained on the premises at all times to satisfy LESSEE'S program requirements and the terms of this lease.

- 6.13 Hazardous/Toxic Waste. Except as provided in Section 9.6, List of Hazardous Substances Used On Premises, which list shall be reviewed and approved by CITY prior to commencement of this Lease, 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. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704-1 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, 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; provided, however, LESSEE'S duty to defend and indemnify CITY under Section 6.13 hereof shall not extend to or include any environmental liabilities resulting from the construction, maintenance or operation of the MWWD We Weather Storage Facility.

Except for those uses of hazardous substances as previously approved by CITY and listed in Section 9.6, List of Hazardous Substances Used On Premises, if LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger.

LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY, except for those uses of hazardous substances as provided for in Section 9.6, List Of Hazardous Substances Used On Premises.

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 a Phase 1 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. If in the City Manager's opinion, the Phase 1 results so warrant, CITY may require further environmental assessment of the premises, which shall establish what, if any, hazardous substances exist on, in, or under the premises, which did not exist at the commencement of this agreement, and in what quantities. All environmental assessments shall be obtained at the sole cost and expense of LESSEE. If any hazardous substances which did not exist in, on, or under the premises at the commencement of this agreement 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. Except for any hazardous substances which existed in, on, or under the premises at the commencement of this agreement, 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 Asbestos Disclosure. CITY discloses to LESSEE that portions of the structural components of the premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the leased premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the leased premises.

6.15 Best Management Practices. CITY and LESSEE acknowledge that the preservation of the Esplanade for the enjoyment of the public is influenced by the continued protection of land and water quality in the Esplanade. To further this goal, LESSEE agrees to implement an approved Stormwater Pollution Prevention Program (SWPPP) to manage LESSEE'S activities in a manner which aids in the protection of land and water resources. LESSEE shall observe Best Management Practices (BMP) in order to control erosion and reduce the amount of pollutants

and other sediments discharged from the leased premises into other areas of Camp Nimitz. LESSEE shall also inform its employees, contractors, subcontractors, sublessees, agents, and vendors of the BMP and SWPPP and shall include in each applicable contract the requirement for compliance with BMP for maintenance of land and water quality within the leasehold.

- A. Stormwater Pollution Prevention Program. Within 90 days of the effective date of this Lease, LESSEE shall submit a comprehensive Stormwater Pollution Prevention Program (SWPPP) for review by CITY.
- B. Other BMP. The foregoing SWPPP may be modified, or new BMP required pursuant to Section 7.2, Compliance with Law, hereof.

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.
- C. Notice served pursuant to the terms of this Section 7.1 shall be effective upon personal service or two (2) days after service by mail.

- 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. No future approval, consent, opinion, or agreement of either party shall be unreasonably refused or delayed.

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

7.5 Compliance with CITY'S Equal Opportunity Contracting Program. Pursuant to San Diego Municipal Code Section 22.2703, CITY's, EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, does not apply to LESSEE, since it is a joint powers authority.

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.

7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

7.8 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 (12) 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 shall, to the extent applicable to the construction, maintenance, occupancy, and operation of the premises comply with the 1990 Americans with Disabilities Act and Title 24 of the California Code of Regulations (Building Code) as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.
- 7.14 Joint Powers 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 joint powers authority, in accordance with a duly adopted resolution of the Board of Directors of the joint powers authority or in accordance with the bylaws of the joint powers authority, and that this lease is binding upon the joint powers authority in accordance with its terms, and that LESSEE is a joint powers authority duly formed to operate under California Government Code Sections 6500 et seq., with the power to enter into this Lease.
- 7.15 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.16 Survival. Any obligation which accrues under this lease prior to its expiration or termination shall survive the expiration or termination of the lease.

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 City Council ^{ORDINANCE} Resolution No. 0-19209, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

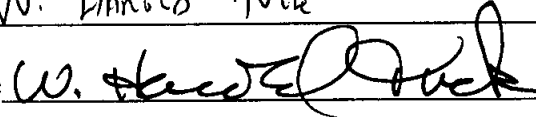
Date 9/10/07

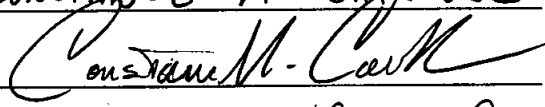
By 
Name James F. Barwick, CCIM
Title Director, Real Estate Assets

SAN DIEGO REGIONAL PUBLIC SAFETY
TRAINING INSTITUTE, a Joint Powers Authority
Public Agency

Date SEPT 5, 2007

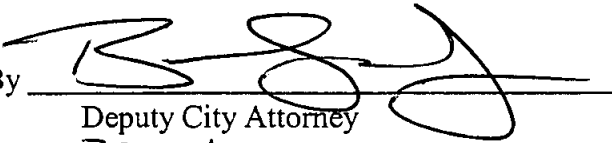
By 
Name JILL OLEN
Title DCOO, Public Safety, City of SD

By W. MANUEL TRICK
Name 
Title DCAO, Public Safety - County of San Diego

By CONSTANCE M. CARROLL
Name 
Title Chancellor, San Diego Community College District

APPROVED as to form and legality this 12th day of SEPTEMBER, 2007.

MICHAEL S. AGUIRRE
~~CASEY GWINN~~, CITY ATTORNEY

By 
Deputy City Attorney
BROCK LADEWIG

ACG/cdj

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SECTION 9: EXHIBITS

9.1 Legal Description.

LESSEE Shall provide a surveyed legal description and premises map satisfactory to CITY. Premises Map must NOT include the Esplanade area, a 50-foot wide strip along the boat channel which will be dedicated park. Two buildings (#608 & 609) on the PSTI premises encroach, and will be grandfathered in.

557

9.2 General Development Plan Outline.

The General Development Plan will consist of:

- A. Plot Plan
- B. Development Schedule
- C. Estimated Construction Costs
- D. Financial Plan
- E. Schematic Elevations
- F. Landscape Plan
- G. Signage Plan
- H. Others as applicable

and, upon approval by the City Manager, will be attached hereto and made part of this lease.

9.3 Schedule of Rates and Charges.

To be provided by LESSEE

9.4 Schedule of Days and Hours of Operation.

To be provided by LESSEE

9.5 Memorandum Of Understanding

The Memorandum Of Understanding will consist of:

1. Parties (*Metropolitan Wastewater Department and RPSTI*)
2. Boundaries (*Not to exceed RPSTI boundaries*)
3. Term (*Not to exceed RPSTI term*)
4. Permitted Uses (*Include provision for indoor pistol range*)
5. Rent (*If applicable*)
6. Capital Improvements (*Include timeline, who bears costs of construction, etc.*)
7. Contributions (*Roadway work, etc.*)
8. Design / Technical Requirements
8. Aesthetic Requirements (*Odor control, appearance, etc.*)
9. Maintenance (*MWWD bears all costs*)
10. Hold Harmless
11. Others as applicable

9.6. List Of Hazardous Materials Used On Premises

LESSEE shall provide a comprehensive all-inclusive list of any and all hazardous substances to be used, stored, or existing on Premises, consistent with the terms of Lease Section 6.13. Said list must be reviewed and approved by all appropriate CITY departments prior to commencement of this Lease.



"Poor Quality Document"

THE CITY OF SAN DIEGO

March 21, 2005

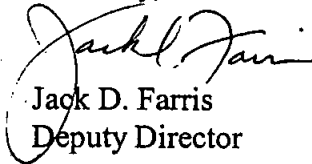
W. Harold Tuck Jr., Deputy Chief Administrative Officer
County of San Diego, Public Safety Group
734 West Beech Street, Suite 301
San Diego CA 92101

Reference: Request To Exercise Two-Year Option / RPSTI

Dear Mr. Tuck,

Your request dated March 11, 2005, (copy attached) to exercise the remaining two-year option to lease the Regional Public Safety Institute premises is hereby approved. Accordingly, the second and last option period will end on September 10, 2007.

Sincerely,



Jack D. Farris
Deputy Director

ACG/b

cc: John Trent, Sergeant, SDPD
Chris Hargett



Real Estate Assets

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

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



County of San Diego

W. HAROLD TUCK, JR., MBA MPH
DEPUTY CHIEF ADMINISTRATIVE OFFICER
(619) 531-4535
FAX (619) 232-2436

PUBLIC SAFETY GROUP

734 W. BEECH STREET, SUITE 301, SAN DIEGO, CALIFORNIA 92101

March 11, 2005

Jack Farris, Deputy Director
City of San Diego Real Estate Assets Department
1200 3rd Avenue Suite 1700
San Diego, CA 92101

Dear Mr. Farris:

The San Diego Regional Public Safety Training Institute is a Joint Powers of Authority public agency comprised of the City of San Diego, County of San Diego, and the San Diego Community College District. On September 10, 2003, the JPA entered into an option to lease 24.7 acres of the Camp Nimitz portion of the former Naval Training Center (NTC). This lease is consistent with the Precise Plan and Reuse Plan adopted by the City Council for the former NTC property. The option was for a two-year period, with an additional two-year extension. This four-year period was designed to allow the JPA time to complete consultant studies and file for a Planned Development Permit (PDP) with the City of San Diego.

The PDP is a necessary component for the JPA to exercise their option for a 66-year lease on the property. The consultants are currently working on the PDP and in negotiations with Development Services. We anticipate a completed PDP in early 2006.

At the JPA Board of Director's meeting on March 10, 2005, the Board voted unanimously to request the two-year extension on the option to lease at this time, and reestablishing the option date to September 10, 2007. As the President of the Board of Directors for the JPA, please accept this letter as our formal request to accept the two-year extension on the option to lease agreement signed September 10, 2003, and referenced by Ordinance 19209, dated September 2, 2003.

If you have any questions, please contact my office or Sergeant John Trent from the San Diego Police Department at 533-5729, who is the lead staff person assigned to this project.

Sincerely,

W. Harold Tuck, Jr., Deputy Chief Administrative Officer
County of San Diego
Public Safety Group

RECEIVED
CITY OF SAN DIEGO
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REAL ESTATE ASSETS DEPT.

DUPLICATE

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THE CITY OF SAN DIEGO

THE SAN DIEGO REGIONAL PUBLIC SAFETY TRAINING INSTITUTE

OPTION TO LEASE

EXP 9/10/07

LEASE

24.7 AC

DOCUMENT NO. 00-19209

FILED SEP 02 2003
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

**CITY OF SAN DIEGO
RPSTI**

OPTION TO LEASE

THIS OPTION TO LEASE (hereinafter referred to as the "Option"), is made and entered into this 10th day of September, 2003, by and between THE CITY OF SAN DIEGO, a municipal corporation, (hereinafter referred to as the "CITY") and the SAN DIEGO REGIONAL PUBLIC SAFETY TRAINING INSTITUTE, a Joint Powers Authority public agency, (hereinafter referred to as the "OPTIONEE" or "RPSTI"), based upon the following:

WHEREAS, CITY is the owner of the parcel known as Camp Nimitz, formally a portion of the Naval Training Center, in the CITY of San Diego, more fully described in the attached Exhibit "A" (the "Property");

WHEREAS, the CITY is a member of RPSTI, and the Joint Powers Authority (JPA) consisting of the City of San Diego (Police and Fire Departments), the County of San Diego, and the San Diego Community College District; and,

WHEREAS, the RPSTI is governed by the JPA, with a Board of Directors composed of the City Manager, the County's Chief Administrative Officer, and the Chancellor of the Community College District; and,

WHEREAS, RPSTI desires to establish a training facility, on approximately 24.7 acres of the Camp Nimitz site, which will be designed to meet virtually all entry level as well as advanced training needs of the region's law enforcement, fire, paramedic, communications, and other safety personnel; and,

WHEREAS, RPSTI intends to conduct a capital improvement program in an amount estimated to be at least \$30 million, to commence upon lease execution; and,

WHEREAS, the Metropolitan Wastewater Department of the City desires to construct a Wet Weather Storage Facility on the RPSTI site; and will enter into a Memorandum Of Understanding with CITY and RPSTI; and,

WHEREAS, the JPA approved the City's Metropolitan Wastewater Department (MWWD) proposal to construct an underground Wet Weather Storage Facility to be co-located with RPSTI; and,

WHEREAS, if the Property is deemed by RPSTI during the term of this Option to be appropriate for the proposed training facility use, CITY and RPSTI agree to enter into a long-term ground lease, a copy of which is attached as Exhibit "B" (The Lease), at nominal rent, to facilitate the RPSTI capital improvement program on the Property, and facilitate the MWWD Wet Weather Storage Facility project on a portion of the Property.

WHEREAS, RPSTI desires to obtain an option for up to twenty-four (24) months in order to determine the feasibility of the proposed project siting at the Property and subsequent leasing of the Property from the CITY:

NOW THEREFORE, the parties agree as follows:

1. OPTION: CITY hereby grants to OPTIONEE the right and option to lease the Property, shown on Exhibit "A."
2. TERM: The term of this Option shall be for up to twenty-four (24) months from the date of execution of this Option on a month to month basis; thereafter, an additional twenty-four (24) month term may be permitted by CITY, which permission shall not be unreasonably withheld, and thereafter, it shall terminate automatically.
3. CONSIDERATION: One Dollar (\$1.00) and providing a valuable public benefit will be the consideration charged in connection with this Option under the following general conditions:
 - A. The OPTIONEE agrees to pay all costs for any due diligence studies, reviews, testing, engineering, surveying or planning work performed in connection with the proposed lease and development of the Property.
 - B. In the event OPTIONEE elects not to exercise this Option, at the option of CITY, the Property will be brought back to its original condition at OPTIONEE's expense.
4. EXERCISE OPTION: OPTIONEE shall exercise the Option granted herein by giving written notice to the City Manager of its intention to do so and delivering at the same time an executed lease agreement. Contract execution by the CITY Manager is contingent upon CITY Council approval of the terms of the lease agreement.
5. CITY COUNCIL APPROVAL REQUIRED: CITY represents that the City Council has approved this Option Agreement and has authorized its execution by the City Manager. CITY further represents that City Council has approved the terms and conditions of the attached Lease Agreement and has delegated authority to the City Manager to execute the lease agreement upon receipt of written notice of exercising the option from OPTIONEE ,

subject to OPTIONEE'S compliance with Section six (6) of this Option Agreement. Said Council approval is contained in Ordinance #0-19209.

6. LEASE CONTINGENCIES: The execution of the lease agreement by the City Manager is contingent upon the OPTIONEE's submittal or provision of the following documents:

- A. A survey and plat with legal description of the Property, satisfactory to CITY.
- B. OPTIONEE's submittal of a Development Plan and obtaining development entitlements on the Property.
- C. OPTIONEE'S evidence of adequate and timely funding for the development
- D. A fully-executed Memorandum Of Understanding between OPTIONEE and MWWD, which has been previously approved by CITY.

7. RIGHT OF ENTRY: Immediately after execution of this Option by all parties hereto, OPTIONEE shall have the right during the term of this Option to enjoy access to and over the Property, and to make surveys, determine soil conditions including subsurface borings and ground water analysis, and make any other studies or investigations in connection with any proposed use and development of said property; provided, however, OPTIONEE shall not damage the land, and all such activities shall be carried out at the sole risk and liability of OPTIONEE. The CITY shall provide OPTIONEE and/or third parties with such written permissions, authorizations and the like in the form of a Right of Entry Permit such as that attached as Exhibit "C," and join in any applications for zoning relief or permits as necessary to enable OPTIONEE to undertake and complete its investigations or city development review.

8. INDEMNIFICATION: OPTIONEE agrees to defend, indemnify protect and hold the CITY, its officers, agents 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 OPTIONEE's employees, invitees, guests, agents, or officers which arise out of, or are in any manner directly or indirectly connected with the use or development of the Premises or the operation of any equipment or facilities thereon, and all expenses of investigating and defending against same; provided, however, that OPTIONEE'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.

9. NOTICES: All notices required or permitted under this Option shall be given (i) by hand or by recognized overnight courier to the parties at the addresses set forth below, effective upon receipt or refusal of delivery, or (ii) by facsimile (fax) transmission to the

parties at their fax numbers set forth below, effective upon electronic confirmation of transmission by sender.

Address for OPTIONEE:

John C. Gaines
San Diego Regional Public Safety Training Institute
9621 Ridgehaven Court
San Diego, CA 92142-9000
Tel: (858) 974-2274 Fax: (858) 974-2150

Damon Schamu
San Diego Community College District
3375 Camino Del Rio South
San Diego, CA 92108-3883
Tel: (619) 388-6546 Fax: (619) 388-6509

Address for CITY:

The CITY of San Diego
Attn: Real Estate Assets Director
202 C Street - 9th Floor
San Diego, CA 92101
Tel: (619) 236-6144 Fax: (619) 236-7003

10. RELATIONSHIP OF PARTIES: Notwithstanding anything to the contrary contained herein, the relationship of CITY and OPTIONEE shall be solely that of lessee candidate and lessor respectively, and nothing contained herein shall be deemed to create a partnership or joint venture between them.
11. RECORDATION: OPTIONEE shall have the right to record this Option.
12. HEADINGS: The captions and paragraph headings are inserted for convenience of reference only and are not intended to define, limit or affect the interpretation or construction of any term or provision hereof.
13. COUNTERPARTS: This document may be executed in multiple copies, each of which shall be deemed an original, and in such event, the Option shall be effective at such time as all parties have signed counterpart copies.
14. ENTIRE AGREEMENT: This document constitutes the entire agreement between the parties with respect to the matters set forth herein.
15. MODIFICATION, WAIVER: No modification, waiver, amendment or discharge shall be valid unless in writing and signed by the parties.

16. SEVERABILITY: If any provision is held invalid, void or unenforceable, the remainder of this document shall not be affected thereby.

17. SUCCESSORS, ASSIGNS: This Option shall inure to the benefit of, and be binding against the parties hereto and their respective successors and assigns.

18. GOVERNING LAW: This document shall be governed, construed and enforced in accordance with the laws of the State of California.

19. OPTION LANGUAGE: The language of this Option is not to be construed against either party because such party drafted the document or the language in question. The language of this Option is to be construed according to its fair meaning.

20. ATTORNEY'S FEES: Should legal action be required to enforce any provision of this Option, the prevailing party shall be entitled, in addition to such other relief as may be granted, to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs for the services rendered to such prevailing party.

21. GENERAL: During the Option Term, OPTIONEE shall have the right to seek and obtain such permits and approvals as the OPTIONEE deems desirable for development of the Property, including without limitations, building permits, zoning relief and other matters.

22. GOVERNMENTAL APPROVALS. By the granting of this Option, 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 Property. 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 Property.

23. NO WARRANTIES. CITY makes no express or implied warranties as to the physical condition of said lands. CITY makes no representations that the Property is suitable for any particular use

IN WITNESS WHEREOF, the parties hereto have executed this Option to lease the day and year first above written.

OPTIONEE: SAN DIEGO REGIONAL PUBLIC
SAFETY TRAINING INSTITUTE, a Joint Powers
Authority public agency,

Dated: 4/25/03

By: Walter F. Ekard

Name: Walter F. Ekard
Chief Administrative Officer, County of San Diego

Title: Chair, Regional Public Safety Training Institute
Board of Directors

Dated: 5/1/03

By: A. P. Gallego

Name: A. P. Gallego
Chancellor, San Diego Community College District

Title: Member, Regional Public Safety Training Institute
Board of Directors

Dated: 9/10/03

By: Michael Uberuaga

Name: Michael Uberuaga
City Manager, City of San Diego

Title: Member, Regional Public Safety Training Institute
Board of Directors

CITY: THE CITY OF SAN DIEGO

Dated: 9/10/03

By: [Signature]

Name: _____

Title: Real Estate Assets Director

This activity is statutorily exempt from CEQA pursuant to State CEQA Guidelines, Section 15262.

ENVIRONMENTAL ANALYSIS SECTION
ENVIRONMENTAL CLEARANCE:

By Kenneth Tinsley

Approved as to Form and Legality this 10th Day of September, 2003.

Casey G. Gwinn, CITY Attorney

By [Signature]
Deputy City Attorney

EXHIBIT "A" – THE PROPERTY:

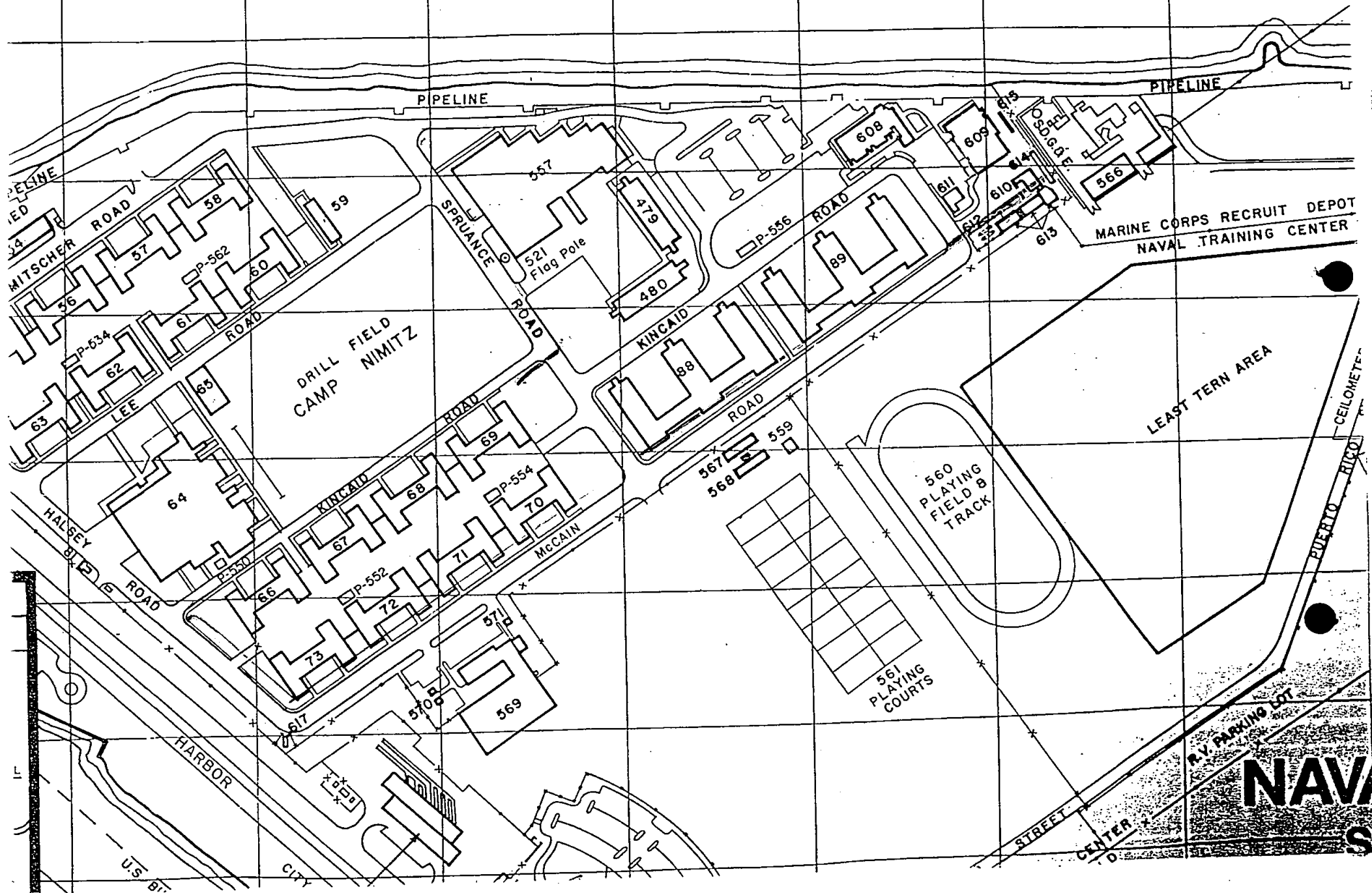
Legal Description.

Area Designated 4.1 on NTC Reuse Plan, attached.

LESSEE Shall provide a surveyed legal description and premises map. Premises Map must NOT include the Esplanade area, a 50-foot wide strip along the water which will be dedicated park. Two buildings (#608 & 609) on the RPSTI premises encroach, and will be grandfathered in.

BOAT

CHANNEL





15.123 acres

8.095 acres



COPY

THE CITY OF SAN DIEGO

THE SAN DIEGO REGIONAL PUBLIC SAFETY TRAINING INSTITUTE

LEASE

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**CITY OF SAN DIEGO
RPSTI LEASE**

THIS LEASE AGREEMENT ("lease" or "lease agreement") is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and the SAN DIEGO REGIONAL PUBLIC SAFETY TRAINING INSTITUTE, a Joint Powers Authority public agency, hereinafter called "LESSEE" or "RPSTI," based upon the following:

- A. CITY is the owner of the parcel known as Camp Nimitz, formerly a portion of the Naval Training Center; and,
- B. The CITY is a member RPSTI, and the Joint Powers Authority (JPA) consisting of the City of San Diego (Police and Fire Departments), the County of San Diego, and the San Diego Community College District; and,
- C. The RPSTI is governed by the JPA, with a Board of Directors composed of the City Manager, the County's Chief Administrative Officer, and the Chancellor of the Community College District; and,
- D. The JPA approved the City's Metropolitan Wastewater Department (MWWd) proposal to construct an underground Wet Weather Storage Facility to be co-located with RPSTI; and,
- E. RPSTI desires to establish a training facility on approximately 24.7 acres of the Camp Nimitz site, which will be designed to meet virtually all entry level as well as advanced training needs of the San Diego region's law enforcement, fire, paramedic, communications, and other safety personnel; and,
- F. RPSTI intends to conduct a capital improvement program in an amount estimated to be at least \$30 million, to commence upon lease execution; and,
- G. The Metropolitan Wastewater Department of the City (MWWd) desires to construct a Wet Weather Storage Facility on the RPSTI site; and will enter into a Memorandum Of Understanding (MOU) with CITY and RPSTI; and,
- H. CITY and RPSTI agree to enter into a long-term lease at nominal rent to facilitate the RPSTI capital improvement program on the leased premises, and to facilitate the MWWd Wet Weather Storage Facility project on a portion of the same premises.

NOW, THEREFORE, CITY and RPSTI agree as follows:

SECTION 1: USES

- 1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property containing approximately 24.7 acres, situated on Camp Nimitz, in the City of San Diego, County of San Diego, State of California, described in Section 9.1, Legal Description, hereof. 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 construction, operation, and maintenance of a Regional Public Safety Training Institute, in accordance with the General Development Plan referenced in Section 6.12 hereof, to include such activities as training for law enforcement, fire and life safety, emergency medical, lifeguard, and security guard, all of which may include classroom and outdoor field training, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever. LESSEE agrees to co-locate with the Metropolitan Wastewater Department (MWWD) under the terms of the Memorandum Of Understanding, referenced in Section 9.5 hereof, to facilitate construction of the underground Wet Weather Storage Facility, which will serve as a vehicle parking lot for RPSTI, and a foundation for an indoor firing range for RPSTI.

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 throughout the term hereof for the above-specified purposes and to diligently conduct the business thereon.

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

- 1.3 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.

LESSEE shall be solely responsible for processing all land use, development, and construction approvals required for the use and occupancy of the RPSTI premises. Consistent with the MOU, MWWD will be responsible for processing all environmental, land use, development, and construction approvals required for the use and occupancy of MWWD premises. This lease shall not be interpreted by

any decision maker on any City-issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.

- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or within 90 days thereafter, or if during the lease term LESSEE is temporarily dispossessed for 90 days or less, 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. If CITY cannot deliver possession of the premises to LESSEE for more than 90 days after the commencement of the term, or if during the lease term LESSEE is dispossessed for more than 90 days through claim of title superior to CITY'S, then LESSEE may elect to either terminate the lease or receive from CITY a proportionate reduction of the minimum or flat rate rent.

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 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 shall include a reduction in the rent proportionate to the amount of physical damage. 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 regional

public safety training institute and related activities in a fiscally responsible manner.

- 1.7 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public, as set forth in Section 9.4, Schedule of Days and Hours of Operation, hereof. Any substantial changes in this schedule shall be subject to the prior written approval of the City Manager or his authorized representative, and the schedule shall be reviewed at least annually by LESSEE and the City Manager.
- 1.8 Rates and Charges. All charges associated with use of the facilities on the premises shall be in accordance with the schedule set forth in Section 9.3, Schedule of Rates and Charges, hereof. Any substantial changes in this schedule shall be subject to prior written approval by the City Manager or his authorized representative, and the schedule shall be reviewed at least annually by LESSEE and the City Manager.
- 1.9 CITY Use. Where premises can be reasonably used by the public, the premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs. After every CITY use, CITY shall leave the premises in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use.

LESSEE agrees to arrange for a formal dedication ceremony for the Mayor and City Council of CITY to break ground to commence construction of the facility.

- 1.10 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1.2, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.11 Public Use. The general public shall not be wholly or permanently excluded from the premises. LESSEE may develop reasonable restrictions for public use of portions of the premises or certain facilities provided they do not interfere with LESSEE'S use of the premises for the purposes specified herein. LESSEE agrees that all of its activities conducted on the premises will be as stated in Section 1.2, Uses, hereof. Public use of the premises or facilities does not have to comply with Section 1.2 Uses.

LESSEE shall, at all times during the lease term, maintain a prominent CITY-approved sign identifying the property as City-owned and available for

public use consistent with the terms of this lease. The sign shall be installed by LESSEE at a location approved by CITY.

- 1.12 Parking. LESSEE shall maintain the parking lot within the leased premises, in accordance with the General Development Plan described in Sections 6.12 and 9.2 hereof.

SECTION 2: TERM

- 2.1 Commencement. The term of this lease shall be sixty-six (66) years commencing on the first day of the calendar month following execution by the City Manager or his designee. "Lease year" as used in this lease shall mean the twelve (12)-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager or his designee.
- 2.2 Use Review Period. On the tenth anniversary of the commencement date of this Lease, and every tenth anniversary thereafter, CITY shall have the right to review the compliance of LESSEE with Section 1.2 Uses of this 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 rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.4 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within thirty (30) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

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

SECTION 3: RENT

- 3.1 Rent The annual rent is One Dollar (\$1) per lease year, receipt of which is hereby acknowledged by CITY.
- 3.2 Inspection of Records. LESSEE agrees to make any and all records and accounts related to use and operation of 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.
- 3.3 Unauthorized Use Charge. LESSEE shall pay CITY fifty percent (50%) of the gross receipts for any service or use that is not permitted by this lease. The existence of the fifty percent (50%) 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.
- 3.4 Annual Budget. LESSEE shall submit to the City Manager by September 1 of each year copies of documents evidencing the proposed programs and financial status of LESSEE for the fiscal year commencing July 1. Without limiting the generality of the foregoing, such documents shall include (i) a copy of LESSEE'S proposed programs; (ii) a copy of a detailed operating budget showing expected sources of revenue and the nature of all proposed expenditures, including compensation for the director and staff of LESSEE; and (iii) an adequate reserve account, in the reasonable opinion of the City Manager, for maintenance and capital improvements to the premises.

SECTION 4: ASSIGNMENT

- 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 during the term of this lease. LESSEE 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 subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent subletting, occupation, or use by another person. Any such subletting without such consent shall be void and shall, at the option of CITY, terminate this lease.

"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 sublease shall be conditioned upon the sublessee agreeing in writing that it will assume the rights and obligations thereby 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 may require, as a condition to approval of any sublease of the majority portion of the leasehold, that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. The City Manager may also require, as a condition to approval of any sublease of a commercial nature (e.g., food vending or telecommunications installations), that LESSEE pay CITY market rents for such uses. 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.

- 4.3 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may 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, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with Section 6.12, General Development Plan, hereof. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. LESSEE understands and specifically agrees that

the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then-current rents and provisions.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges, and duties granted and imposed in this lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease.

4.4 Defaults and Remedies.

A. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within sixty (60) days following written notice thereof from CITY; or if any such default is not curable within sixty (60) days, and LESSEE shall fail to commence to cure the default(s) within said sixty (60) 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.

Provided, however, in the event that any default described in Subsection 4.4a.(1), above is not curable within sixty (60) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have sixty (60) days from such notice to cure the default(s) or, if any such default is not curable within sixty (60) days, to commence to cure the default(s) and diligently pursue such cure to completion. The sixty (60)-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- B. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the sixty (60)-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.
- C. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- D. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is

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

- 4.5 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:
- A. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - B. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - C. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken.
 - D. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled but limited to any award attributable to the taking of, or damages to, LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
 - E. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever

interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.

- F. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.
- G. Airport Expansion. In the event Lindbergh Field Airport is expanded to include the premises, LESSEE may be eligible for relocation payments from the condemning authority. Upon expiration of the first twenty five (25) years of this Lease, LESSEE agrees and understands that it shall not be entitled to any relocation payment from CITY whatsoever. In the event of airport expansion leading to condemnation, the value of the improvements shall be determined by independent appraisal as of the date of Final Order of Condemnation.

- 4.6 Additional Consideration to CITY. LESSEE acknowledges that CITY expends considerable sums for maintenance of the Esplanade and other Park areas adjacent to the leasehold. LESSEE further acknowledges that the expenditure of such funds enhances the value of the leasehold. LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the continued maintenance of adjacent park areas. Therefore, LESSEE and CITY agree that in the event of a subletting of the majority portion of the leasehold, or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the General Development Plan as described in Section 6.12 hereof, LESSEE shall pay to CITY two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any majority subletting or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed sublessee or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it a sublease or a

refinancing. Any subletting or refinancing in violation of the terms and conditions of this paragraph shall be void.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity.

- A. 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.
- B. As to any civic event or special program by CITY, pursuant to Section 1.9, CITY Use, hereof, CITY shall indemnify and hold harmless LESSEE from any claim, suit, action, or judgment against LESSEE arising from or out of CITY'S negligence or willful misconduct.

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, or provide certification(s) that it is self-insured in the following amounts for public liability and property damage claims in compliance with applicable laws.
 - (1) Public liability and property damage insurance in the amount of not less than Five Million Dollars (\$5,000,000) 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 CITY as an additional insured, 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 reasonable and for the purpose of assuring protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of

property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.

- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

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

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on or to 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. For purposes of this section, "preliminary steps" include LESSEE'S notification of its insurance carrier of the loss.

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 the 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 the premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, but not the obligation, 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 the premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that the 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, and any extensions thereto. LESSEE shall 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.

6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities, including service and installation charges in connection with the development and operation of the leased premises. All utilities shall be installed underground.

6.6 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, or LESSEE'S contractor shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of one hundred percent (100%) 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 deposited with the CITY by LESSEE or LESSEE'S contractor 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 attorneys' 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.

- 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. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within twenty-four (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.

- A. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.
- B. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE one hundred eighty (180) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- C. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- D. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage at its expense.

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

6.11 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 General Development Plan. LESSEE agrees to develop the leased premises in one or more phases in accordance with the 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 9.2 hereof. The General Development Plan, upon approval by the City Manager, shall be attached hereto and made part of this lease. The City Manager shall have the authority to authorize subsequent changes to the approved General Development Plan provided that the proposed changes are consistent with the terms and conditions of this lease and with any required development permit conditions and CEQA mitigation measures. Failure by LESSEE to comply with the requirements of this section or with the approved General Development Plan shall constitute a major default and subject this lease to termination by CITY. Provided LESSEE obtains construction financing and an appropriate conditional use permit, construction of the improvements, estimated at \$30 million, shall commence within one (1) year after the effective date of its Coastal Development Plan. Furthermore, the completion date estimated in the General Development Plan for completion of the construction of Phase One facilities, as defined in the General Development Plan, shall be no later than three (3) years after the effective date of this lease. The City Manager shall have the discretion to extend either period for up to one (1) additional year, without further City Council approval, provided LESSEE submits a prior written request, which shall include a reasonable basis for such an extension.

No sooner than one (1) year and no later than six (6) months prior to the twenty-fifth anniversary of this lease and within that time frame every ten (10) years thereafter, LESSEE shall submit a Facilities Program Plan to CITY describing the investment that LESSEE will make to construct new improvements and refurbish

existing ones on the premises during the next ten (10) years. Each Facilities Program Plan shall be subject to review and approval by the City Manager as to sufficiency of investment to ensure that good quality improvements are maintained on the premises at all times to satisfy LESSEE'S program requirements and the terms of this lease.

- 6.13 Hazardous/Toxic Waste. Except as provided in Section 9.6, List of Hazardous Substances Used On Premises, which list shall be reviewed and approved by CITY prior to commencement of this Lease, 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. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704-1 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, 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; provided, however, LESSEE'S duty to defend and indemnify CITY under Section 6.13 hereof shall not extend to or include any environmental liabilities resulting from the construction, maintenance or operation of the MWWd We Weather Storage Facility.

Except for those uses of hazardous substances as previously approved by CITY and listed in Section 9.6, List of Hazardous Substances Used On Premises, if LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger.

LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY, except for those uses of hazardous substances as provided for in Section 9.6, List Of Hazardous Substances Used On Premises.

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 a Phase 1 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. If in the City Manager's opinion, the Phase 1 results so warrant, CITY may require further environmental assessment of the premises, which shall establish what, if any, hazardous substances exist on, in, or under the premises, which did not exist at the commencement of this agreement, and in what quantities. All environmental assessments shall be obtained at the sole cost and expense of LESSEE. If any hazardous substances which did not exist in, on, or under the premises at the commencement of this agreement 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. Except for any hazardous substances which existed in, on, or under the premises at the commencement of this agreement, 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 Asbestos Disclosure. CITY discloses to LESSEE that portions of the structural components of the premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the leased premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the leased premises.
- 6.15 Best Management Practices. CITY and LESSEE acknowledge that the preservation of the Esplanade for the enjoyment of the public is influenced by the continued protection of land and water quality in the Esplanade. To further this goal, LESSEE agrees to implement an approved Stormwater Pollution Prevention Program (SWPPP) to manage LESSEE'S activities in a manner which aids in the protection of land and water resources. LESSEE shall observe Best Management Practices (BMP) in order to control erosion and reduce the amount of pollutants

and other sediments discharged from the leased premises into other areas of Camp Nimitz. LESSEE shall also inform its employees, contractors, subcontractors, sublessees, agents, and vendors of the BMP and SWPPP and shall include in each applicable contract the requirement for compliance with BMP for maintenance of land and water quality within the leasehold.

- A. Stormwater Pollution Prevention Program. Within 90 days of the effective date of this Lease, LESSEE shall submit a comprehensive Stormwater Pollution Prevention Program (SWPPP) for review by CITY.
- B. Other BMP. The foregoing SWPPP may be modified, or new BMP required pursuant to Section 7.2, Compliance with Law, hereof.

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.
- C. Notice served pursuant to the terms of this Section 7.1 shall be effective upon personal service or two (2) days after service by mail.

- 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. No future approval, consent, opinion, or agreement of either party shall be unreasonably refused or delayed.
- 7.4 Nondiscrimination. LESSEE agrees not to unlawfully discriminate against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, or marital status, in LESSEE'S use of the premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 7.5 Compliance with CITY'S Equal Opportunity Contracting Program. Pursuant to San Diego Municipal Code Section 22.2703, CITY's, EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, does not apply to LESSEE, since it is a joint powers authority.
- 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.
- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 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 (12) 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 shall, to the extent applicable to the construction, maintenance, occupancy, and operation of the premises comply with the 1990 Americans with Disabilities Act and Title 24 of the California Code of Regulations (Building Code) as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.
- 7.14 Joint Powers 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 joint powers authority, in accordance with a duly adopted resolution of the Board of Directors of the joint powers authority or in accordance with the bylaws of the joint powers authority, and that this lease is binding upon the joint powers authority in accordance with its terms, and that LESSEE is a joint powers authority duly formed to operate under California Government Code Sections 6500 et seq., with the power to enter into this Lease.
- 7.15 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.16 Survival. Any obligation which accrues under this lease prior to its expiration or termination shall survive the expiration or termination of the lease.

SECTION 8: SIGNATURES

8.1 Signature Page.

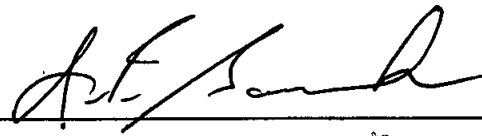
IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager pursuant to City Council ^{ORDINANCE} Resolution No. 0-19209, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date

9/10/07

By



Name

James F. Barwick, CCIM
Director, Real Estate Assets

Title

SAN DIEGO REGIONAL PUBLIC SAFETY
TRAINING INSTITUTE, a Joint Powers Authority
Public Agency

Date

SEPT 5, 2007

By



Name

JILL OLEN

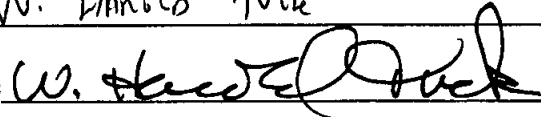
Title

DCOO, Public Safety, City of SD

By

W. Harold Truck

Name



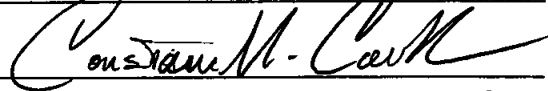
Title

DCAO, Public Safety - County of San Diego

By

CONSTANCE M. CARROLL

Name

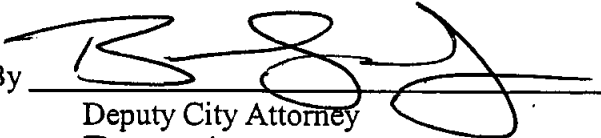


Title

Chancellor, San Diego Community College District

APPROVED as to form and legality this 12TH day of SEPTEMBER, 2007.

MICHAEL S. AGUIRRE
CASEY GWNN, CITY ATTORNEY

By 
Deputy City Attorney
BROCK LADEWIG

ACG/cdj

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SECTION 9: EXHIBITS

9.1 Legal Description.

LESSEE Shall provide a surveyed legal description and premises map satisfactory to CITY. Premises Map must NOT include the Esplanade area, a 50-foot wide strip along the boat channel which will be dedicated park. Two buildings (#608 & 609) on the PSTI premises encroach, and will be grandfathered in.

557

9.2 General Development Plan Outline.

The General Development Plan will consist of:

- A. Plot Plan
- B. Development Schedule
- C. Estimated Construction Costs
- D. Financial Plan
- E. Schematic Elevations
- F. Landscape Plan
- G. Signage Plan
- H. Others as applicable

and, upon approval by the City Manager, will be attached hereto and made part of this lease.

9.3 Schedule of Rates and Charges.

To be provided by LESSEE

9.4 Schedule of Days and Hours of Operation.

To be provided by LESSEE

9.5 Memorandum Of Understanding

The Memorandum Of Understanding will consist of:

1. Parties (*Metropolitan Wastewater Department and RPSTI*)
2. Boundaries (*Not to exceed RPSTI boundaries*)
3. Term (*Not to exceed RPSTI term*)
4. Permitted Uses (*Include provision for indoor pistol range*)
5. Rent (*If applicable*)
6. Capital Improvements (*Include timeline, who bears costs of construction, etc.*)
7. Contributions (*Roadway work, etc.*)
8. Design / Technical Requirements
8. Aesthetic Requirements (*Odor control, appearance, etc.*)
9. Maintenance (*MWWD bears all costs*)
10. Hold Harmless
11. Others as applicable

9.6. List Of Hazardous Materials Used On Premises

LESSEE shall provide a comprehensive all-inclusive list of any and all hazardous substances to be used, stored, or existing on Premises, consistent with the terms of Lease Section 6.13. Said list must be reviewed and approved by all appropriate CITY departments prior to commencement of this Lease.

ORDINANCE NUMBER O- 19209 (NEW SERIES)

ADOPTED ON SEP 02 2003

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AN OPTION TO LEASE AND LEASE BETWEEN THE CITY OF SAN DIEGO AND THE SAN DIEGO REGIONAL PUBLIC SAFETY TRAINING INSTITUTE FOR CONSTRUCTION OF A TRAINING FACILITY AT CAMP NIMITZ.

WHEREAS, the City is the owner of that certain real property consisting of approximately 24.7 acres located within the former Camp Nimitz portion of the San Diego Naval Training Center [NTC] designated as area 4.1 on the NTC Reuse Plan [the Property]; and

WHEREAS, the San Diego Regional Public Safety Training Institute [RPSTI] is a Joint Powers Authority public agency consisting of the City, the County of San Diego, and the San Diego Community College District; and

WHEREAS, RPSTI desires to establish a public safety training facility on the Property to meet the expanding training needs of the region's law enforcement, fire, paramedic, communications, and other safety personnel; and

WHEREAS, construction of the proposed public safety training facility will greatly benefit safety personnel in the region, including the City's safety personnel; and

WHEREAS, RPSTI requires an Option to Lease with the City to determine the feasibility of the proposed project prior to leasing the Property; and

WHEREAS, if the Property is deemed by RPSTI during the Option term to be appropriate for the proposed training facility use and RPSTI fulfills the conditions of the Option, RPSTI desires to enter into a long-term lease of the Property with the City; and

WHEREAS, in the event RPSTI exercises the proposed Option, RPSTI has also approved a proposal by the Metropolitan Wastewater Department of the City to construct a Wet Weather Storage Facility on the RPSTI site; NOW, THEREFORE,

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

Section 1. That the City Manager is authorized to execute, for and on behalf of the City of San Diego, an Option to Lease between the City and RPSTI for an option to lease the Property for twenty-four months on a month to month basis, with an option for an additional twenty-four months, in consideration for the valuable public benefit to be provided to the City by the development of a regional public safety training facility, under the terms and conditions set forth in that certain Option to Lease, on file in the office of the City Clerk as Document No.

OO- 19209

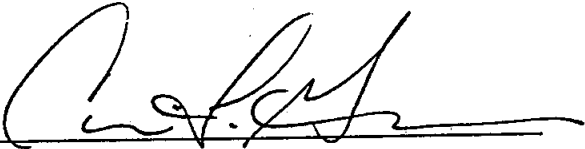
Section 2. That, upon fulfillment of the conditions set forth in the Option to Lease for exercise of the option, the City Manager is authorized to execute, for and on behalf of the City of San Diego, the Lease of the Property for a term of sixty-six years, in consideration for capital improvements to be made on the Property by RPSTI and the public benefit of a regional public

safety training institute, under substantially the terms and conditions set forth in the Lease,
attached as Exhibit B to the Option to Lease.

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage,
a written or printed copy having been available to the City Council and the public a day prior to
its final passage.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and
after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Carrie L. Gleeson
Deputy City Attorney

CLG:mm
07/15/03
Or.Dept:READ
Aud.Cert:N/A
O-2004-11
Form=devagro.frm

Passed and adopted by the Council of The City of San Diego on **September 2, 2003** by the following vote:

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

NAYS: NONE

NOT PRESENT: NONE

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: Manuel E. Ketcham, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O-19209 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the **July 28, 2003** and on **September 2, 2003**.

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

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: Manuel E. Ketcham, Deputy