

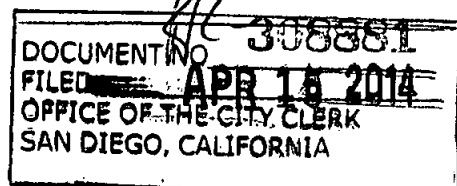
DUPLICATE

N6247314RP00031



THE CITY OF SAN DIEGO

Flat Rate Lease



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**CITY OF SAN DIEGO
FLAT RATE LEASE**

THIS LEASE AGREEMENT (Lease) is executed between THE CITY OF SAN DIEGO, a California municipal corporation (CITY), and United States of America - the Navy (LESSEE), to be effective upon execution of the parties and approval by the City Attorney.

SECTION 1: USES

1.1 Premises.

CITY hereby leases to LESSEE, and LESSEE leases from CITY, all of that certain real property, commonly known as "Camp Morena", situated in the City of San Diego, County of San Diego, State of California, as described in "**Exhibit "A" - Legal Descriptions**", and further depicted on "**Exhibit "B" - Premises**" (exhibits are attached hereto and by this reference made part of this Lease), along with three (3) wells located on the leasehold (hereafter cumulatively referred to as the "premises" or "leased premises"). LESSEE acknowledges that the leasehold area has not been surveyed; however, CITY and LESSEE agree that the premises leased is the approximate acreage as shown on "Exhibit B".

The leasing of the premises shall include the right to use the water which may be available underneath the premises for the purposes provided for in Section 1.2 Uses, subject to the provisions of Section 7.14 Water Rights, hereof. Although the Lease of the premises includes water wells and the right to use water there from, CITY assumes no liability for the continuation of the wells and/or for the provision of water there from, or for any claims, costs, damages or other liability associated with the wells, provision of water there from, or the maintenance and repair thereof.

IT IS SPECIFICALLY AGREED BY LESSEE, THAT BY THIS LEASE, LESSEE IS NOT BEING GRANTED, NOR IS GRANTED, THE RIGHT TO GO UPON CITY-OWNED AND/OR THIRD-PARTY OWNED PROPERTIES ADJACENT TO THE LEASED PREMISES. Any and all entries on to any City-owned and/or third-party owned properties adjacent to the premises are subject to separate authorization, and in the case of CITY, subject to prior written authorization in every instance. Any unauthorized entry by LESSEE on to any City-owned and/or third-party owned properties adjacent to the premises, shall subject LESSEE to possible violations of California State law, and all resulting claims and damages shall be acknowledged by LESSEE to have been caused, created, and maintained solely by LESSEE without CITY's participation or knowledge.

Notwithstanding the immediately above-stated paragraph, CITY acknowledges LESSEE's use of water holding/pumping facilities and lines (Adjacent Water Facilities), reached by use of a dirt road leading out from the leased premises, all

of which are located over adjacent property to the northeast of the premises owned by the United States Forest Service (Forest Service). The Forest Service has notified the CITY and the LESSEE, via email dated January 11, 2013, that the Forest Service will work directly with the LESSEE to establish a Special Use Permit that will allow LESSEE to legally access and use Forest Service property for the purposes of using and maintaining the Adjacent Water Facilities, or any other terms that may be agreed upon in the Special Use Permit. LESSEE specifically agrees that CITY claims no interest in the Adjacent Water Facilities and shall have no responsibilities to, or liability for or associated with, LESSEE's use of the Forest Service's adjacent property or any of the activities conducted under any Special Use Permit between the Forest Service and LESSEE or the removal of the Adjacent Water Facilities.

While the premises currently has fencing upon it, the fencing does not accurately encapsulate the entirety of the premises that is being leased to LESSEE. As a condition of this Lease, LESSEE agrees, within one (1) year of the effective date of this Lease, to reposition and/or add fencing to/on the premise to better demark the borders of the premises, secure the premises, and afford better use of the premises by LESSEE.

1.2 Uses.

It is expressly agreed that the premises are leased to LESSEE solely and exclusively for administrative, berthing, non-live fire training, warehousing and storage, and rally point purposes. LESSEE may use existing buildings, utilities, roads, walkways, fences and trails located on the premises for the purposes listed above, and for other directly-related uses to meet the military mission, and for such other related or incidental purposes as may be first approved in writing by the Mayor or his designee, and for no other purpose whatsoever.

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

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not 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 re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.4 Quiet Possession.

LESSEE, paying the 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 if during the Lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, then and in either of such events, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting there from, but there shall be determined and stated in writing by the Mayor of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 Easements and Reservations.

1.5.1 CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises, together with the right to store and recapture water from the soils beneath the surface of the premises. City's exercise of such rights shall not unreasonably interfere with LESSEE's use of leased premises.

1.5.2 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. City's exercise of such rights shall not unreasonably interfere with LESSEE's use of leased premises.

1.5.3 CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services. City shall provide LESSEE with 24-hour notice of its intention to enter the Leased Premises. In addition, LESSEE shall provide access to well(s) on the leased premises for the CITY to conduct tests, such as, but not limited to, aquifer tests, groundwater level measurements and water quality sampling. City's exercise of such rights shall not unreasonably interfere with LESSEE's use of leased premises.

Any injury that may result from the percolation, storage and/or recapture of water from the soil beneath the surface of the premises shall not be considered unreasonable or substantial interference, provided, however, that the City will reimburse LESSEE for physical damages or operational damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage or operational damage as determined by CITY, provided, however, that rent reimbursement shall not constitute LESSEE's sole legal remedy. CITY will pay

the costs for maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.6 Competent Management.

Throughout the term of this Lease, LESSEE shall provide competent management of the leased premises to the satisfaction of the Mayor. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a military training facility and related activities in a fiscally responsible manner

SECTION 2: TERM

2.1 Commencement.

The initial one-year term of this Lease shall commence on the first day of the calendar month following execution by the Mayor and approval by the City Attorney, subject to the availability of appropriated funds. LESSEE shall have eighteen (18) options to extend this Lease for an additional one-year period, subject to the availability of appropriated funds. LESSEE may exercise each of these options automatically, unless a termination notice is provided to the CITY no less than six (6) months prior to the termination of the then current term. "Lease year" as used in this Lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the Mayor or his designee and approval by the City Attorney.

2.2 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 Lease constitutes a month to month tenancy, provided, however, LESSEE shall pay as rent the fair market rental value of the premises during the time of Holdover, subject to the availability and appropriation of funds for that purpose. CITY shall have the right to terminate the holdover tenancy at will.

2.3 Surrender of LESSEE's Interest.

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

SECTION 3: RENT**3.1 Time and Place of Payment.**

Rent for each option year shall be paid annually, in arrears. CITY shall be registered in the System for Award Management (SAM) registration (www.sam.gov) and shall be paid through the Electronic Funds Transfer. Rent for a lesser period shall be prorated on the basis of a 30-day month.

3.2 Rent.

- a. **Rent Amount.** Rent shall be paid annually, in arrears. The initial annual rent is \$34,400.00 per year. Rent is subject to a three percent (3%) increase effective in the third year of the Lease and every two years thereafter as follows:

Initial 1-yr term of Lease:	\$34,400.00	06/01/14-05/31/15	Option
Option period one:	\$34,400.00	06/01/15-05/31/16	1
Option period two:	\$35,432.00	06/01/16-05/31/17	2
Option period three:	\$35,432.00	06/01/17-05/31/18	3
Option period four:	\$36,494.96	06/01/18-05/31/19	4
Option period five:	\$36,494.96	06/01/19-05/31/20	5
Option period six:	\$37,589.81	06/01/20-05/31/21	6
Option period seven:	\$37,589.81	06/01/21-05/31/22	7
Option period eight:	\$38,717.50	06/01/22-05/31/23	8
Option period nine:	\$38,717.50	06/01/23-05/31/24	9
Option period ten:	\$39,879.03	06/01/24-05/31/25	10
Option period eleven:	\$39,879.03	06/01/25-05/31/26	11
Option period twelve:	\$41,075.40	06/01/26-05/31/27	12
Option period thirteen:	\$41,075.40	06/01/27-05/31/28	13
Option period fourteen:	\$42,307.66	06/01/28-05/31/29	14
Option period fifteen:	\$42,307.66	06/01/29-05/31/30	15
Option period sixteen:	\$43,576.89	06/01/30-05/31/31	16
Option period seventeen:	\$43,576.89	06/01/31-05/31/32	17
Option period eighteen:	\$44,884.20	06/01/32-05/31/33	18

3.3 Delinquent Rent.

If LESSEE fails to pay the rent within fifteen (15) days of due date, LESSEE will pay, in addition to the unpaid rents, ten percent (10%) of the delinquent rent. If the rent is still unpaid at the end of twenty (20) days, LESSEE shall pay an additional five percent (5%) [being a total of fifteen percent (15%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than

Twenty-five Dollars (\$25). Any and all fees will be paid subject to the availability of appropriated funds.

3.4 Payment for Right to Use Water.

As provided in Section 1.1, Premises, it is understood and agreed by CITY and LESSEE that the rent includes and covers LESSEE's right to pump and use water from the well(s) located on the premises, for the uses set forth in Section 1.2 Uses, which right is subject to the provisions of Section 7.14, Water Rights.

LESSEE shall be solely responsible to maintain and pay any and all costs associated with the wells located on the premises, the provision of water from the wells, the maintenance and repair of the wells and systems used to provide water on the premises. LESSEE shall also be solely responsible to maintain and pay all costs associated with all Water Supply Permit(s) required for the well(s) servicing 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 and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the Mayor or his designee in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the Mayor.

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

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby

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

4.3 Defaults and Remedies.

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

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

4.3.2 "Claim", as used in this clause, means a written demand or written assertion by the CITY or the LESSEE seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a Lease clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the CITY seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph 4.4(c) below. A voucher, invoice, or other routine request for payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable manner.

4.3.3 A claim by the CITY shall be made in writing and submitted to the Commanding Officer, Naval Facilities Engineering Command, Southwest, for a written decision. A claim by the LESSEE against the CITY shall be subject to a written decision by the Commanding Officer, Naval Facilities Engineering Command, Southwest.

4.3.4 The CITY shall provide the certification specified in subparagraph 4.3(f) of this clause when submitting any claim:

- (1) Exceeding \$100,000; or

- (2) Regardless of the amount claimed, when using—
 - (a) Arbitration conducted pursuant to 5 U.S.C. 575-580; or
 - (b) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).
- 4.3.5 The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- 4.3.6 The certification shall state as follows: "I certify that the claim is made in good faith: that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the CITY believes the LESSEE is liable; and that I am duly authorized to certify the claim on behalf of the CITY."
- 4.3.7 The certification may be executed by any person duly authorized to bind the CITY with respect to the claim.
- 4.3.8 For CITY claims of \$100,000 or less, the Commanding Officer, Naval Facilities Engineering Command, Southwest, must, if requested in writing by the CITY, render a decision within 60 days of the request. For CITY-certified claims over \$100,000, the Commanding Officer, Naval Facilities Engineering Command Southwest must, within 60 days, decide the claim or notify the CITY of the date by which the decision will be made.
- 4.3.9 The Commanding Officer, Naval Facilities Engineering Command, Southwest decision shall be final unless the CITY appeals or files a suit as provided in the Act.
- 4.3.10 At the time a claim by the CITY is submitted to the Commanding Officer, Naval Facilities Engineering Command, Southwest or a claim by the LESSEE is presented to the CITY, the parties, by mutual consent may agree to use ADR. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in paragraph 4.3(f) of this clause, and executed in accordance with paragraph 4.3(g).
- 4.3.11 The LESSEE shall pay interest on the amount found due and unpaid by the LESSEE from (1) the date the Commanding Officer, Naval Facilities Engineering Command, Southwest receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment, subject to the availability of appropriated funds. With regard to claims having defective certifications, as defined in

FAR 33.201, interest shall be paid from the date that the Commanding Officer, Naval Facilities Engineering Command Southwest initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the Commanding Officer, Naval Facilities Engineering Command Southwest receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

4.3.12 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 Mayor 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 Mayor 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 Mayor to take action or require the cure of any default after such default is brought to the attention of the City Council by the Mayor or by any concerned citizen.

4.4 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:

- 4.4.1 In the event the entire premises are taken, this Lease shall terminate on the date of the transfer of title possession to the condemning authority, whichever first occurs.
- 4.4.2 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.
- 4.4.3 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. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.

- 4.4.4 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 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.
- 4.3.5 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.
- 4.4.6 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.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Federal Tort Claims Act

If the death or injury to any person, or the loss of damage to any property, is caused by the LESSEE in the course of its use of the facilities described herein; the liability, if any, of the LESSEE therefor shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. 2671-2680).

5.2 Insurance

City is acknowledges that LESSEE is self-insured.

5.3 Waste, Damage, or Destruction

LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at

CITY's option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, in accordance with Section 5.1, FEDERAL TORT CLAIMS ACT.

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, subject to the availability of appropriated funds. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

6.1 Acceptance of Premises.

By signing this Lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. LESSEE further acknowledges that the premises are in the condition called for by this Lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous wastes.

6.2 Entry and Inspection.

CITY reserves and shall always have the right, but not the obligation, to enter said premises, subsequent to providing LESSEE with at least forty-eight (48) hours prior notification, for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ninety (90) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition, subject to the availability of appropriated funds.

6.3 Maintenance.

LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises including water wells, all aspects of the water supply system, perimeter fencing, access roads and any building improvements throughout the Lease term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY. LESSEE is responsible for compliance with applicable Federal and State regulations such as, but not limited to, Administrative Code, Title 14, Section 4307; and Penal Code, Title 14, Section 622.5 which deal with the protection of cultural resources.

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 Mayor and Commanding Officer, Naval Base Coronado in accordance with applicable regulations. 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 Mayor 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. All improvements will be performed in accordance with applicable regulations.

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

6.6 Liens.

If the death or injury to any person, or the loss of damage to any property, is caused by the LESSEE in the course of its use of the facilities described herein, the liability, if any, of the LESSEE therefor shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. 2671-2680).

6.7 Ownership of Improvements and Personal Property.

Subject to Section 6.4 above, LESSEE shall have the right during the term of this Lease, to make alterations, attach fixtures and erect additions, structures or signs in or upon the premises, which fixtures, additions or structures so placed in, upon or attached to the said premises shall be and remain the property of the LESSEE and may be removed or otherwise disposed of by the LESSEE. If LESSEE chooses to abandon any personal property, it thereby becomes, at CITY's option, CITY's property free of all liens and claims, except as otherwise provided in this Lease.

However, if CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations located on the premises, whether installed by LESSEE or not, CITY shall so notify LESSEE ninety (90) days prior to termination of the Lease or one hundred eighty (180) days prior to expiration of the Lease, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE's sole cost on or before the 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, subject to the availability of appropriated funds.

- 6.7.1 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, subject to the availability of appropriated funds.
- 6.7.2 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, subject to the availability of appropriated funds.
- 6.7.3 Any necessary removal by either CITY or LESSEE which takes place beyond the expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination, subject to the availability of appropriated funds.
- 6.7.4 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, and subsequent to LESSEE complying with Federal laws and regulations with respect to disposal of property, CITY then shall have the first right to acquire or purchase said personal property.

6.8 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.

7. GENERAL PROVISIONS

7.1 Notices.

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 and CITY as follows:

LESSEE:

Commanding Officer
Naval Facilities Engineering Command, Southwest
Asset Management (AM1)
1220 Pacific Highway
San Diego, CA 92132

CITY:

The City of San Diego
Attn: Real Estate Assets Department
1200 Third Avenue, Suite 1700
M. S. 51A
San Diego, CA 92101

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

7.2 Compliance with Law.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE's sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the Mayor or his authorized representative under the authority of any such applicable 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 Mayor unless otherwise specified, without need for further resolution or action by the City Council.

7.4 Nondiscrimination.

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

7.5 Equal Opportunity Clause.

LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; and any other applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth.

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 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.

7.8 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.

7.9 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.

7.10 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:

7.10.1 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.

7.10.2 Establishing a drug-free awareness program to inform employees about all of the following:

7.10.2.1 The dangers of drug abuse in the workplace.

7.10.2.2 The LESSEE's policy of maintaining a drug-free workplace.

7.10.2.3 Any available drug counseling rehabilitation, and employees assistance programs.

7.10.2.4 The penalties that may be imposed upon employees' for drug abuse violations.

7.10.3 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.

7.11 Standard of Employees.

LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

7.12 Supersedure.

It is mutually agreed that this Lease, upon execution, supersedes and annuls any and all previous agreements or understandings which are hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

7.13 Relocation Payments.

LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Lease.

7.14 Water Rights.

There is hereby reserved to CITY, and LESSEE herein expressly agrees that in addition to the reservations made in Section 1.5, Easements and Reservations, hereof, CITY shall have the right throughout said term, subsequent to providing ninety (90) days' advance notice to LESSEE and not unreasonably interfering with LESSEE's use of premises, to divert, impound, store and transport by means of dams, reservoirs, or by pumping any and all water, both surface and underground, which flows over, under or across the leased premises, together with the right to divert, inject, spread or percolate water in or through the soils beneath the surface of the leased premises. Nothing in this Lease shall result in the transfer of the CITY's rights, title or interest in the water on the leased premises to any other person or entity.

7.14.1 LESSEE has been expressly advised and acknowledges that:

7.14.1.1 The leased premises are located within the Lake Morena groundwater basin.

7.14.1.2 The CITY intends to take any and all steps necessary to fully protect its water rights in the Lake Morena basin, including but not limited to, the possible adoption of a groundwater management plan and groundwater management ordinance;

7.14.1.3 Protection of the CITY's water rights in the Lake Morena Basin is an essential element of the CITY's long term plan to ensure a reliable and cost-effective water supply for CITY residents;

7.14.2 LESSEE shall have the right, at LESSEE's sole cost , to develop and use on the leased premises only the amount of water available and necessary to carry out the purpose of this Lease, as follows:

7.14.3 As to any existing well(s), LESSEE shall have the right to operate the well(s) and use the water on the leased premises. LESSEE shall be responsible for the compliance and costs associated to the Water Supply Permit (Permit 3705061) and County Well Nos. W02181, W02184.

7.14.4 LESSEE may only make material modifications to existing well(s) or construct new well with the express written approval of CITY and according to CITY specifications. Said approval shall not be unreasonably withheld and CITY shall respond within 30 days of a written request for approval from LESSEE. Upon completion of construction of

any such new well, to be at LESSEE's sole cost, the well shall be dedicated to and operated by the CITY, provided, however, that the CITY may, in its sole discretion agree to some other plan of operation.

- 7.14.5 CITY has made no representations or guarantees to LESSEE as to the quantity or quality of water which may be available to LESSEE.
- 7.14.6 LESSEE agrees that upon termination of this Lease, they will leave any active wells developed or used on the leased premises during the term of this lease in good order and condition and that the casing shall be left in place. All abandoned wells shall be disposed of in accordance with applicable provisions of San Diego County Health Department standards.
- 7.14.7 CITY shall at all times have the right to reasonable access to the leased premises to protect its water rights and water quality; for monitoring the level and quality of natural surface and ground waters over and under the leased premises; and, for purposes necessary to the implementation of any groundwater management plan that may be adopted by CITY. Should monitoring indicate surface and/or groundwater degradation, the CITY shall in its sole discretion have the right to require alteration of any irrigation or other practices by LESSEE which may cause such water quality degradation as determined by the CITY. CITY shall provide LESSEE with a minimum of twenty-four (24) advance notification.
- 7.14.8 CITY shall have the right in its sole discretion to construct over and under the leased premises its own wells, pipelines, and other facilities necessary to develop the maximum water yield potential of the leased premises. CITY shall provide LESSEE advance notification prior to any construction.

8. SPECIAL PROVISION

8.1 LESSEE Responsible for Preserving Environmental, Historical and Cultural Resource Sites.

LESSEE agrees that it shall be responsible for protecting sensitive resource sites as well as environmental, historical, and cultural resources that may be identified on the leased premises. If required by CITY, protection would include lease boundary fencing.

8.2 Hazardous/Toxic Waste.

Other than approved agricultural chemicals, i.e., insecticides, pesticides, herbicides, and fungicides applied in accordance with all applicable regulations, LESSEE will not allow the installation 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 substance. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the applicable State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's office as City Clerk Document 769704-1.

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 applicable rules and regulations of governmental authorities, subject to the availability of appropriated funds.

If the death or injury to any person, or the loss or damage to any property, is caused by the LESSEE in the course of its use of the facilities described herein; the liability, if any, of the LESSEE therefor shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. 2671-2680).

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 Mayor 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 Mayor immediately upon receipt of this knowledge or belief and shall take all acts necessary to alleviate such danger. LESSEE will notify the Mayor immediately of any notice of violation received or initiation of environmental action 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 the CITY.

9. SIGNATURES**9.1 Signatures of all Parties.**

IN WITNESS WHEREOF, this Lease is executed by CITY, acting by and through its Mayor or his designee, and by LESSEE, acting by and through its lawfully authorized officer(s).

THE CITY OF SAN DIEGO

Date 5/6/14

By: [Signature]
 Name: Kristin Geitz
 Title: Interim Director, Real Estate Assets Dept.

LESSEE:

Date 1/14/14

By: [Signature]
 Name: Greg Magnuson
 Title: Real Estate Contracting Officer

Date 5/5/14

By: [Signature]
 Name: NICOLE A. MCGINNIS
 Title: SENIOR PLANNER

APPROVED as to form and legality
 this 7th day of May, 2014.
 JANI GOLDSMITH, CITY ATTORNEY

By: [Signature]
 Debra J. Beyler
 Deputy City Attorney

Environmental Analysis Section Environmental Clearance

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301 (Existing Facilities).

Date: 5-5-14
 By: [Signature]
 Name: NICOLE A. MCGINNIS
 Title: SENIOR PLANNER

NAVY ACCOUNTING DATA

A. ACR	B. APPROPR	C. SUB-HEAD	D. OBJ CLASS	E. BU. CONTROL	F. SA	G. AAA	H. TT	I. PAA	J. COST CODE	K. AMOUNT
AA	1714141804	52FA	0252	00052	0	068732	2D	C019AG	002464RL001Q	\$34,400.00

10. EXHIBITS

EXHIBIT “A”

Legal Descriptions

City of San Diego

62.49 acres of land known as Camp Morena

APN 605-080-04

All that portion of Tract 70 of the Morena Reservoir Basin, in the County of San Diego, State of California according to the U.S. Government, Department of the Interior Survey dated January 20, 1928 and filed in the Office of the County Assessor of said San Diego County more particularly described as follows:

Beginning at the northwesterly corner of Tract 71 of said U.S. Government Survey and being a point on the Easterly line of said Tract 70, thence North 2,632.74 feet along said Easterly line of Tract 70 to the Northeasterly corner thereof, thence West 1,320.00 feet to the Northwesterly corner of said Tract 70, thence South 1,491.55 feet along the Westerly line of said Tract 70 to a point, thence South 49°09'00" East a distance of 1,745.06 feet to the Point of Beginning.

Containing 62.49 acres, more or less.

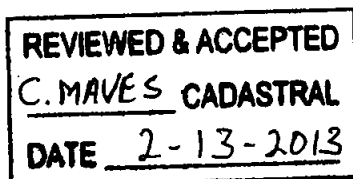


EXHIBIT (A)

N6247.314RP00031

TRACT 37
CITY

USFS

T 17 S

R 4 E
R 5 E

LOT 3
U.S.F.S.

SOUTH

C.D.C.
SITE
62.49
Acres

TRACT 43
CITY
SEC 12

SET 2 X 2 HUB
SW COR C.D.C. SITE

3/4" PIPE BR CAP
W 1/4 COR.
SEC. 7

FND
3/4" I.P. & BR. CAP
E 1/4 COR. SEC 12

TRACT
70
CITY

LOT 4
U.S.F.S.

25,000 G. Stor Tank
30' x 30' Area

30' Pipeline
R/W

30' Service
Road R/W

SEC 7

LOT 8
U.S.F.S.

TRACT 71 CITY

SEC. 12 and 7
T 17 S, R 4 and 5 E
SBB & M

PROPOSED LEASE

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FORESTRY

MORENA CDC
SAN DIEGO COUNTY

SURVEYED BY

DRAWN BY B.G.D. DEC. 1952. FIELD BOOK

SCALE 1" = 500'

DEWITT H. COOK, DISTRICT FORESTER

APPROVED BY *W.D. Dyer* RE 732

SHEET NO.

OF

SHEETS

PLAN NO.

FILE NO.

DATE OF SURVEY

EXHIBIT A

Exhibit “B”
Premises

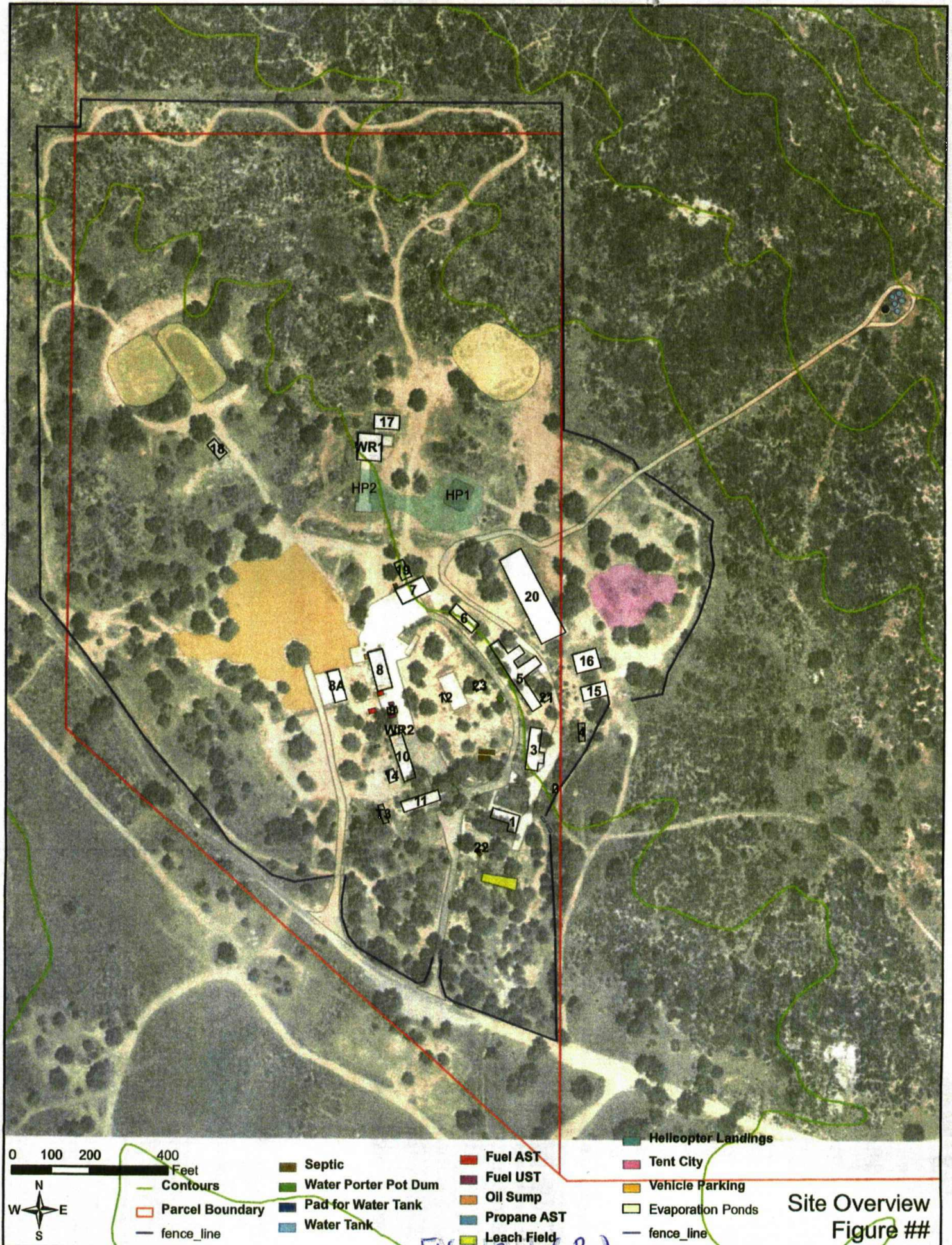


EXHIBIT (B)

Sub Item 'A'

RESOLUTION NUMBER R- 308881DATE OF FINAL PASSAGE APR 30 2014

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO ENTER INTO A ONE (1) YEAR LEASE, WITH EIGHTEEN (18) ONE-YEAR OPTIONS TO EXTEND, BETWEEN THE CITY OF SAN DIEGO AND THE UNITED STATES OF AMERICA – THE NAVY, TO LEASE THE LAND COMMONLY KNOWN AS CAMP MORENA.

WHEREAS, the City of San Diego (City) currently licenses the use of approximately 62.49 acres of City-owned land located at 3080 Buckman Springs Road, Camp, California (Premises), to the United States of America – the Navy (the Navy), for administrative, berthing, non-live fire training, warehousing, storage and rally point purposes; and

WHEREAS, the Navy originally entered into a license agreement for use of the Premises on December 31, 2004; said agreement expires on December 31, 2014; and

WHEREAS, the Premises is located in a portion of the Morena Reservoir Basin commonly known as Camp Morena, and is located on Public Utilities Department managed property; and

WHEREAS, the Navy would like to enter into a new one-year lease, with eighteen (18) one-year options to extend, for the Premises, in order to use the Premises for the Navy's continued same purposes (Lease); and

WHEREAS, the proposed initial annual rent for the Premises would be \$34,400; the rent would thereafter be subject to a three percent (3%) increase commencing at the beginning of the third (3rd) year of the proposed Lease and additional three percent (3%) increases every two (2)

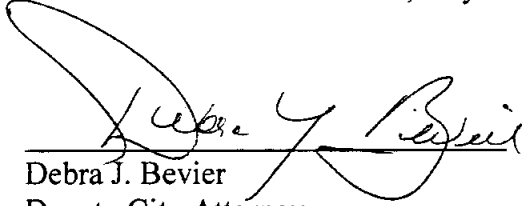
years thereafter. Rent would be paid annually in arrears and would be deposited into Water Utility Operating Fund No. 700011; and

WHEREAS, the market value of the Premises, as appraised by an independent fee appraiser, is \$344,000; NOW, THEREFORE,

BE IT RESOLVED, that the Mayor, or his designee, is authorized and directed to execute that certain Flat Rate Lease between the City of San Diego and the United States of America – the Navy, for administrative, berthing, non-live fire training, warehousing, storage and rally point purposes, as more fully set forth in Document No. 308881 on file with the City Clerk.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Debra J. Bevier
Deputy City Attorney

DJB:mm
03/06/2014
Or.Dept:Real Estate Assets Dept.
PL#741075

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 15 2014.

ELIZABETH S. MALAND
City Clerk

By Kam Orr
Deputy City Clerk

Approved: 4/29/14
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on APR 15 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☒	☐	☐	☐
Ed Harris	☒	☐	☐	☐
Todd Gloria	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☐	☐	☒	☐
Marti Emerald	☒	☐	☐	☐

Date of final passage APR 30 2014

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Karen C. L., Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 308881

Passed by the Council of The City of San Diego on April 15, 2014 by the following vote:

YEAS: **LIGHTNER, HARRIS, GLORIA, COLE, KERSEY, ZAPF, SHERMAN, EMERALD.**

NAYS: **NONE.**

NOT PRESENT: **ALVAREZ.**

RECUSED: **NONE.**

VACANT: **NONE.**

AUTHENTICATED BY:

KEVIN FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

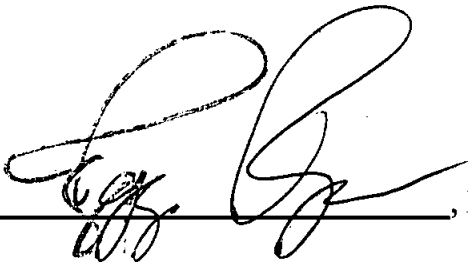
By: Peggy Rogers, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-308881 approved by the Council of the City of San Diego, California on
April 15, 2014 and approved by the Mayor of the City of San Diego on April 30, 2014.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By:  _____, Deputy