

THE CITY OF SAN DIEGO

REQUEST FOR PROPOSALS



NTC PARK AQUATIC CENTER – BUILDING 619

LIBERTY STATION, SAN DIEGO, CA 92106

PROPOSAL DEADLINE: 4:00 p.m. Friday
June 13, 2014

LOCATION: Real Estate Assets Department
17th Floor, Civic Center Plaza
1200 Third Avenue, Suite 1700
San Diego, CA 92101

CONTACT PERSON: Patti Phillips
TELEPHONE: (619) 236-6766

The City of San Diego (City) is inviting proposals from qualified firms or individuals, hereafter referred to as Proposers, to redevelop and operate an aquatic facility at the Naval Training Center Park. The project would consist of a renovate/remodel and utilization of the City-owned property known as Building 619, San Diego, CA 92106 in Liberty Station (Property). The City is seeking proposals that will serve the needs of the local and regional community in the best interest of the public. Redevelopment, operation, and maintenance of the Property shall be in accordance with the terms and conditions of this Request for Proposals (RFP).

A. BACKGROUND

The Property consists of 3.6 acres of land with a 19,650 square foot building built in 1992 (former daycare center); landscaping, and common parking (see attached Exhibit “A”). The 3.6 acres is a portion of 49 acres acquired by the City on July 6, 2001 from the United States Department of Interior as surplus property known as parcel VI, Naval Training Center (NTC) by quitclaim deed (Deed).

The City is seeking a concessionaire to provide an aquatic center on the former NTC site for the use and benefit of the general public. In 2002 the General Development Plan (Plan) for the NTC Park was approved by the City Park and Recreation Board (see attached Exhibit “C”). The park design includes an aquatic center complex with a 50-meter pool, a 25-meter instruction pool, and a family area with interactive water play elements. The Plan also includes locker rooms, offices, restrooms, storage and a concession stand. In February 2004 the NTC Park Plan was approved by the State Coastal Commission.

Community stakeholders have been actively supportive of this project including “Families for a Point Loma Swimming Pool” and the Peninsula Community Planning Board. Other possible uses/programs proposed by the community include:

- Swim lessons, wellness & exercise programs
- Competitive programs for swim and diving
- Masters Swim
- Water Polo
- Regional Training Center for:
 - a. Lifeguard Instruction
 - b. Water Safety Instruction
 - c. Kayak Training
 - d. Scuba/snorkel training.

Condition No. 3 of the Deed conveying the property to the City (see attached Exhibit “D”) provides that the property “shall not be sold, leased, assigned or otherwise disposed of except to another eligible governmental agency without the prior approval of the Secretary of the Interior in writing. . . . However, nothing in this provision shall preclude the [City] from providing related recreational facilities and services compatible

with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing by the Secretary of the Interior.” Attached is a draft concession agreement (Exhibit “E”) which has been approved by the Department of the Interior.

B. TYPE OF PROPOSALS SOUGHT

The City's Real Estate Assets Department, acting on behalf of the City’s Park and Recreation Department, is seeking proposals to redevelop, operate and maintain the Property. The proposed facility would include, but not limited to, recreational and competitive pools; a leisure pool with playground features for small children; supporting facility and associated site improvements. It would be to each Proposer’s advantage to inspect the Property. A pre-proposal inspection, as further set forth below in Section H, is scheduled for this purpose with a representative of the City's Real Estate Assets Department present to answer questions and tour the Property.

Each proposal should reflect the City's desire to have an operator who provides a high level of service to the public while operating, managing and maintaining the Property and related activities in a fiscally responsible manner.

Each Proposer in preparing his/her proposal should consider all applicable laws and available industry guidelines as applicable to historical resources, liability, public health standards, recreational operations, Americans with Disabilities Act (ADA) access, and the highest standards of maintenance of all facilities and equipment.

C. OPERATING PLAN

Proposals must include a conceptual plan for the Property, along with any proposed changes or additions to the existing facilities on the Property. Proposals shall include, at a minimum, detailed responses for the following requirements:

1. A preliminary site and floor plan showing the general location of all of the existing and any proposed capital improvements and/or major equipment on the Property, including a development schedule, a description of any demolition proposed, and a projection of development and construction costs. All uses, improvements, and demolition are subject to approval by the City.
2. A Program Plan providing a description of the planned programs and activities and/or services for the Property, including hours of operation, proposed fees and charges.
3. A proposed term of the concession agreement.
4. A financing plan.

The selected Proposer must be prepared to provide the necessary trade fixtures and equipment needed to provide a sufficient level of service. Title to trade fixtures shall be deemed to be part of the Property and be City's property free of all liens and claims. Title to equipment (other than trade fixtures) would remain vested in the selected Proposer until the end of the concession agreement.

D. PROPOSAL ELEMENTS AND ADDITIONAL CONCESSION AGREEMENT PROVISIONS

The City anticipates entering into a concession agreement, in substantially the form of Exhibit "E," to memorialize in detail the elements of the selected proposal. The following terms and conditions shall be incorporated into the concession agreement to be negotiated and executed between the selected Proposer and the City, subject to modification and deletion as determined by the City in City's sole discretion:

1. Uses. The proposed primary use of the Property shall be the operation and maintenance of an aquatic center complex and incidental purposes as approved by the City.
2. Term. The proposed term must be justified by the Proposer on the basis of capital investment in improvements, equipment, facilities and in promoting the Property and services thereon to the general public.
3. Concession Payment. Concessionaire shall pay to CITY a concession payment ("Concession Payment") in the amount of Three Thousand Two Hundred and Fifty Dollars (\$3,250.00) per Agreement year paid annually in advance for the use of the Property to offset administrative costs incurred for CITY staff services that are of benefit to Concessionaire. Concessionaire shall pay Concession Payment within thirty (30) days after the Effective Date, and thereafter on each annual anniversary of the Effective Date. The Concession Payment shall be adjusted upward annually, based on increases in the Consumer Price Index as provided below ("Adjusted Concession Payment"). In no event shall the Adjusted Concession Payment be less than the Concession Payment in existence on the immediately prior Agreement Year.
 - a. CPI Adjustments. On each annual anniversary of the Effective Date, the Concession Payment shall be adjusted to reflect any net increase in the Consumer Price Index for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California ("CPI") based on the average of the then three most recently published monthly indices just prior to each adjustment. If the CPI is no longer published, the index for adjustment shall be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the CPI.

- i. If Concession Payment adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used shall first be converted under a formula supplied by the U.S. Department of Labor's Bureau of Labor Statistics or its successor.
- ii. If Department of Labor indices are no longer published, CITY in its sole and absolute discretion may use another index deemed by CITY to be reasonably comparable to the CPI, which shall then constitute the CPI under this Agreement.
- iii. CITY's failure to deliver timely notice of any Concession Payment adjustment shall not constitute a waiver by CITY of its rights hereunder.

b. CPI Adjustment Computation. Each year Concession Payment shall be calculated as follows:

The "adjustment multiplier" shall be calculated by dividing the "current index" by the "base index" as defined below:

- i. The "current index" shall be the average of the three monthly indices most recently published before the adjustment date ("Current Indices").
- ii. The "base index" shall be the average of the same months' indices published a year prior to the Current Indices.

The "base figure" for calculating Concession Payment shall be the dollar amount of Concession Payment for the year immediately preceding the adjustment date. The "base figure" is then multiplied by the "adjustment multiplier" to determine the Adjusted Concession Payment:

(CURRENT INDEX ÷ BASE INDEX) X BASE FIGURE = ADJUSTED CONCESSION PAYMENT

c. Delinquent Concession Payment. If Concessionaire fails to pay all or any part of the Concession Payment or ANY other payments when due, Concessionaire shall pay, in addition to the unpaid amount, five percent (5%) of the unpaid amount. If the Concession Payment is still unpaid at the end of fifteen (15) days, Concessionaire shall pay an additional five percent (5%) of the unpaid amount [for a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from the delinquency, including lost interest, lost opportunities, legal costs, and the cost of servicing the

delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payment of Concession Payment be less than Twenty-Five Dollars (\$25) each time.

- d. Time and Place of Payment. All payments to be paid by Concessionaire under this Agreement shall be made payable to the City Treasurer and be mailed to:

San Diego City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to Concessionaire. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt

4. Records. The selected Proposer shall keep complete and accurate accounting records, from which the City may, at reasonable times, determine the nature and amounts of income from the operation of the premises. The records may be periodically audited by the City.
5. Right to Assign and Sublet. The selected Proposer may not assign the agreement or any interest therein and may not sublet any portion thereof without prior written approval from the City and the Department of the Interior. The approval, however, may be conditioned upon the proposed assignee agreeing to revisions to the agreement to reflect market conditions or City requirements that are then current. Also, no assignee will be approved who is not at least comparable to the original selected operator in financial and professional capabilities to operate premises.
6. Compliance with Laws. The selected Proposer shall secure and maintain full compliance with all applicable municipal, county, state, and federal laws and regulations at its own cost.
7. Performance Bond. The selected Proposer shall provide to City, prior to commencement of any construction, a faithful performance bond in the amount of

one hundred percent (100%) of the estimated design and construction costs 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 to be commenced by the selected Proposer 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 shall be held in trust by City for the purpose specified above, or at City's option may be placed in an escrow approved by City. This requirement is not intended to be duplicative of a construction bond otherwise required of the selected Proposer.

8. Prevailing Wage Rates: Prevailing wage rates apply to the concession agreement. Proposers shall provide the hourly wage rate to be paid to covered employees for work performed under the concession agreement in accordance with the State prevailing wage requirements.

REQUIREMENTS FOR CONTRACTS SUBJECT TO STATE PREVAILING WAGE REQUIREMENTS.

In accordance with California Labor Code (Labor Code) sections 1770, et seq., as amended, the Director of the Department of Industrial Relations (DIR) has determined the general prevailing rate of per diem wages (Prevailing Wage Rate) in accordance with the standards set forth in sections for the locality in which the work is to be performed. Concessionaire may review the Prevailing Wage Rate at the City's Purchasing and Contracting Department or Equal Opportunity Contracting (EOC) Office or on-line at http://www.dir.ca.gov/dlsr/statistics_research.html. Concessionaire shall post a copy of the Prevailing Wage Rate at each job site and make copies available to any interested party on request.

Pursuant to Labor Code sections 1720 et seq., and 1770 et seq., Concessionaire and all subcontractors shall pay not less than the Prevailing Wage Rate to all persons employed by them in the execution of the work. Concessionaire and any subcontractor shall comply with Section 1775 (Penalties for Violations) in the event workmen are paid less than said specified rates.

The wage rates determined by the DIR and published in the Department of Transportation publication entitled "General Prevailing Wage Rates" refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, said published wage rate shall be in effect for the life of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had

been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the contract.

The successful bidder intending to use a craft or classification not shown on the prevailing rate determinations may be required to pay the rate of the craft or classification most closely related to it.

Concessionaire and subcontractors must comply with Labor Code section 1776 by keeping accurate payroll records that show the name, address, social security number, work classification, straight time, and overtime hours worked each day and week by each worker, and the actual per diem wages paid to each worker employed by Concessionaire or subcontractor in connection with the public works project. Each payroll record shall contain or be verified by a written declaration signed by Concessionaire or subcontractor under penalty of perjury that states that: 1) the information contained in the payroll record is true and correct; and 2) Concessionaire or subcontractor has complied with the requirements of Labor Code sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project. The payroll records must be certified. Concessionaire and subcontractor(s) shall submit weekly certified payrolls online via the City's web-based labor compliance program. Concessionaire shall be responsible for the compliance with these provisions by its subcontractors. City will withhold contract payments when payroll records are delinquent or deemed inadequate by City or another governmental entity, or when it is established after investigation by City or another governmental entity that underpayment has occurred.

You must abide by the requirements of Labor Code sections 1777.5, 1777.6, and 1777.7 concerning the employment of apprentices by contractors and subcontractors performing public works contracts.

9. Utilities. The selected Proposer must pay for all utility installations and services required for its operation. All utilities shall be installed underground.
10. Nondiscrimination. The selected Proposer shall not discriminate in any manner against any person by reason of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in selected Proposer's use of the premises. Selected Proposer shall comply with the City adopted program for equal employment opportunities. This program includes requiring the selected Proposer to submit a Workforce Report (see attached Exhibit "F"), and in some cases an Equal Opportunity Plan. The selected

Proposer shall comply with the San Diego Municipal Code sections 22.4301-22.4308, which requires lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. Proposer shall certify that it will maintain such equal benefits throughout the term of the concession agreement.

11. Insurance. The selected Proposer shall be required to carry public liability and property damage insurance, naming the City as an additional insured, in the amount of not less than Five Million Dollars (\$5,000,000) combined single limit liability. The selected Proposer shall also release, indemnify, defend, and hold the City harmless from liability in connection with any and all operations and activities on the Property. The selected Proposer is required to carry a policy of fire, extended and special form insurance with replacement cost coverage on all permanent property of an insurable nature located upon the premises in an amount equal to the full replacement of all improvements. Liability limits are to be per site and not a cumulative limit.
12. Taxes. The selected Proposer must pay any and all taxes and assessments, including possessory interest taxes levied by reason of its possession, development, or use of the Property.
13. Default. The City will reserve the right to terminate the concession agreement or to cure any curable default or breach within thirty (30) days of legal notice thereof.
14. Permits and Licenses. The selected Proposer will be required to obtain all necessary permits and licenses for this type of operation at his/her sole cost and expense. Selection of a proposal or execution of a concession agreement shall not be construed as a waiver by City of any legal or lawful requirement necessary to the issuance of such permits or licenses, nor of any other legal requirement whatsoever.
15. Non-responsibility. The City hereby disclaims any responsibility, liability, or obligation to issue any permits or licenses or to waive any legal requirement by reason of selecting a Proposer or executing a concession agreement with the selected Proposer.
16. Improvements and Alterations. All improvements, demolition, or alterations to the Property shall be in accordance with plans and specifications approved in writing by the City in advance and shall be at the sole cost and expense of the selected Proposer.
17. Maintenance. The Property is offered in an "as is" and "where is" condition, and all maintenance and repairs shall be the responsibility of the selected Proposer throughout the entire term of the concession agreement without expense to the

City. The selected Proposer shall maintain the Property and all improvements thereon in a clean, safe and well-maintained condition throughout the term of the concession agreement, to the satisfaction of the City and in compliance with all applicable laws.

18. Ownership of Improvements. Title to trade fixtures shall be deemed to be part of the Property and be City's property free of all liens and claims. Title to those fixtures and equipment (other than trade fixtures) would remain vested in the selected operator Proposer until the end of the concession agreement. The selected Proposer must remove all personal property upon termination or expiration without cost to the City or damage to the Property.
19. Hours of Operation. A regular schedule of days and hours of operation shall be established by the selected Proposer to best serve the public. The schedule shall provide a minimum of 30 un-programmed hours each week for public open swim. The schedule shall be subject to approval by the City.
20. Criminal Background Screenings. The City may require background investigations on all employees of the selected Proposer assigned to the concession agreement when information becomes available that indicates a potential breach in safety or security.
21. Gratuities. The concession agreement may be terminated by written notice if the City determines that the selected Proposer, its agent, or another representative:
 - a. Offered or gave a gratuity (e.g. an entertainment or gift) to an officer, or employee of the City; and
 - b. Intended by the gratuity to obtain a contract or favorable treatment under a contract.

If the concession agreement is terminated under this section, the City is entitled to pursue breach of contract remedies and all other remedies available at law or in equity.

22. Business Tax Certificate. Any company doing business with the City of San Diego is required to have a business tax certificate. For more information please visit the City of San Diego website at www.sandiego.gov/treasurer/ or call (619) 615-1500. The City requires that each Proposer provide a copy of their business tax certificate, or a copy of their application receipt with their proposal. Failure to provide the required business tax certificate or application within ten (10) business days of the City's request may result in a bid being declared non-responsive and rejected.

E. RESPONSIBILITY OF PROPOSERS

1. Each Proposer is responsible for making all investigations and examinations necessary for developing and operating the Property. The selected Proposer will be responsible for obtaining all necessary approvals and permits to the satisfaction of the City. Proposers shall understand that the submission of a proposal to this RFP shall be considered evidence that the Proposer has made such investigations and examinations.
2. Proposers may withdraw their proposals at any time prior to the selection of proposer, upon written notice to the City's Real Estate Assets Department.
3. By submission of a Proposal, Proposer guarantees that the offer is firm for ninety (90) calendar days, commencing the day following the due date for proposal submission set forth below. If an award is not made during that period, the Proposal shall automatically extend for another ninety (90) days, unless the Selected Proposer indicates otherwise to the contact person listed on the cover page of this RFP in writing thirty (30) days prior to expiration of the current ninety (90) days period.
4. Unless otherwise specified, the Proposer shall pay all royalties, license and patent fees. In submitting a Proposal, the Proposer warrants that the materials to be supplied do not infringe upon any patent, trademark or copyright and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, whether general, exemplary or punitive, as a result of any actual or claimed infringement asserted against the City, the Proposer or those furnishing material to the Proposer pursuant to the concession agreement. The Proposer, without exception, shall defend, indemnify and hold harmless the City, its elected officials, officers, and employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the concession agreement, including its use by the City. If the Proposer uses any design, device, or materials covered by letters, patent, or copyright, it is mutually understood and agreed without exception that the concession agreement prices shall include all royalties or cost arising from the use of such design, device or materials in any way involved in the concession agreement.

F. PROPOSAL CONTENTS

All proposals must include as a minimum the information specified below. Failure to include this information will seriously detract from a proposal and may be cause for its complete rejection. The inclusion of any additional information that will assist the City in the evaluation is encouraged. The adequacy, depth and clarity of the proposal will influence, to a considerable degree, its evaluation. The proposal submitted must be complete, and evaluation and selection of proposals shall be strictly based on the material

contained in the proposals alone. Proposers are advised to submit thorough, complete proposals, since there will be no auction or competitive negotiation and the City reserves the right to make a selection based solely on the information contained in submitted proposals.

The City will not be responsible for any costs incurred by proposers in the preparation and submission of proposals. All materials submitted to City become the property of the City of San Diego and may not be returned.

Each proposal **MUST** include the following items:

1. **Identification and Signature.** The complete identity, including social security number, address, daytime phone number, and current employment of the Proposer; or the name of the organization, the organization's Federal Tax ID number and the names and addresses of the principals who will be responsible for the operation of the business and their position in the firm. If the business is a privately-held corporation, a listing of all stockholders, their interest in the company as related to percentage of ownership, and their interest, if any, in the operations of the entity must be included.

A Proposal by a corporation must be signed by a duly authorized officer, employee or agent, with his or her title. The representative signing on behalf of a corporation, partnership, sole proprietorship, joint venture or entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, sole proprietorship, joint venture, or entity and agrees to hold the City harmless, if it is later determined that such authority does not exist. An original signature, in ink, is required. Copies and facsimiles are not acceptable.

2. **Summary of Experience.** A resume or summary of the Proposer's experience and qualifications to operate the facility. If the Proposer is not going to be involved in the day-to-day operation of the Property, then the Proposer must include qualifications and verification that all persons to be employed in management capacity at the Property are well qualified.
3. **Financial Statements.** Current financial statements, audited or prepared by CPA, or tax returns for the preceding three years is required. Each Proposer shall submit a full and detailed statement of their true financial condition as of April 1, 2013, or as recent as possible if that date is not available. The statement shall include the Proposer's assets, liabilities and net worth, including the availability of operation capital and its source. If the Proposer plans to use borrowed capital, then the amount of borrowed capital proposed for the improvements and operation of the Property, and its source and terms of repayment, must be included in the financial statement.

4. Proposed Improvements. The proposal must include a preliminary development plan for the Property, including a narrative description of all proposed improvements and alterations, plot plan, estimated construction costs and proposed schedule of development.
5. Proposed Term. Proposed term of the concession agreement and the justification therefore in terms of the amount of investment.
6. Concessionaire Questionnaire. Proposer shall submit with its proposal a completed Concessionaire Questionnaire. Copy of Concessionaire Questionnaire is attached as Exhibit "G".
7. Certification. By submission of a proposal, the Proposer certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal, State or Local departments or agencies. Proposer shall submit with its proposal a completed Certification regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters. Copy of the Certification is attached as Exhibit "H".

G. NONCONFORMING PROPOSALS

The City anticipates entering into a concession agreement, substantially in the form of Exhibit "E," for this Request for Proposals. Proposers should bear in mind the competitive nature of the proposal process and the fact that the City will be looking for the proposal which offers the best advantage to the City and to the public.

However, the City may also consider proposals offering alternate terms. Proposers requesting deviations from the provisions of this RFP should specifically address the requested changes in their proposals. The City is not obligated to accept any proposal, whether conforming or nonconforming.

H. PRE-PROPOSAL INSPECTION

To give prospective Proposers an opportunity to view the site and ask questions about the concession agreement, proposal submittal, and related matters, a pre-proposal inspection of the Property will be scheduled. It is strongly suggested that all Proposers attend the pre-proposal inspection. While attendance is not mandatory, it is the sole responsibility of the Proposer to become familiar with the scope of City's requirements prior to submitting a proposal. Submission of a Proposal will be considered evidence that the Proposer has familiarized themselves with the nature and extent of the requirements.

Date of Pre-Proposal Inspection:

Wednesday April 30, 2014

Time: 9:00 a.m. to 10:00 a.m.

Place: Building 619 Liberty Station, San Diego, CA 92106 (at 9:00 a.m. at building entrance).

Contact: Please contact the proposal coordinator, Patti Phillips by Thursday April 24, 2014, at pPhillips@san Diego.gov, phone (619) 236-6766; fax (619) 236-7606, if you are planning to attend.

I. PROPOSAL SUBMISSION

1. Due Date

Proposals must be received at the address listed below no later than 4:00 p.m. on Friday, June 13, 2014.

Proposals received after that time will not be considered.

2. Place of Delivery

All proposals should be delivered to:

City of San Diego
Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Patti Phillips

3. Performance Deposits

All proposals **MUST** include a cashier's check or certified check in the amount of Five Thousand Dollars (\$5,000), payable to City Treasurer, as a faithful performance deposit to assure that, if the proposal is selected by the City, that the Proposer will negotiate in good faith for a concession agreement containing substantially the same terms and conditions as set out in this RFP and in the selected proposal. No personal checks will be accepted and no interest will be paid on deposits.

4. Number of Copies

Proposers are requested to submit five (5) complete copies of their proposals. All materials submitted by Proposers become the property of the City of San Diego and may not be returned, with the exception of financial information as stated below. Financial documents, upon request, will be removed from each proposal and returned to the Proposer upon completion of City's review.

5. Contact Person

The proposal coordinator is Patti Phillips, Supervising Property Agent, City of San Diego. She can be reached at pPhillips@sanDiego.gov, phone (619) 236-6766, fax (619) 236-6706, between 8:00 a.m. and 5:00 p.m., Monday through Friday.

6. Contact during and after Proposer's Submittal

All Proposers who are considering submitting a proposal for this RFP are prohibited from having any communication concerning this RFP with any City employee (excluding elected officials and their staff), or any evaluation committee member, after issuance of the RFP, and prior to the concession agreement being awarded, with the exception of communications with the contact person listed on the cover page of this RFP. A proposal from any Proposer will be disqualified when the Proposer violates this condition of the RFP.

J. PROPOSAL EVALUATION AND SELECTION

The City reserves the right to award this RFP and the prospect of a concession agreement to the Proposer who will best serve the interests of the City. The City reserves the right, based upon its deliberations and in its opinion, to accept or reject any or all proposals. The City also reserves the right to waive minor irregularities or variations to the specifications stated herein and in the bidding process.

Proposals are usually evaluated in a two-step process by an evaluation committee of qualified City staff, and if necessary other persons selected by the City.

In step one, the committee will evaluate all responsive proposals based upon the information and references contained in the proposals as submitted. The committee will score and rank all responsive proposals and determine a minimum of three (3), if more than three (3) proposals are responsive, to be finalists for further consideration. If less than three (3) responsive proposals are received, the committee will give further consideration to all responsive proposals received.

In step two, if the City deems it necessary, all finalists will be required to provide an oral presentation by appearing before the evaluation committee or by conference telephone call, for the sole purpose of providing clarification to the finalist Proposals only. The committee may inspect finalists' facilities and perform other due diligence as it may determine. The committees will then re-score and re-rank the finalists proposals.

The first-ranked Proposer resulting from this process will be recommended to the City Council for award. The recommended Proposer may be required to appear before the City Council for award of the concession agreement. Award of the concession agreement will be based on the evaluation criteria listed below:

1. **Responsiveness (Maximum 25 points):**

The extent to which a proposal clearly addresses the elements of this RFP is a key factor in selection. Some of the elements which will be considered are: quality, attractiveness, and thoroughness of the proposal; responsiveness to requirements described in the RFP; and understanding the needs, goals and objectives of the City while providing highest and best use of the Property.

2. **Facility Plan (Maximum 20 points):**

The Facility Plan should include a preliminary plot plan showing the general location of all existing and proposed improvements on the Property; identify and describe the project components for any indoor and outdoor facilities (site plan); and present schematic drawings showing the proposed improvements and alterations to the Property and facilities thereon. Drawings do not need to be detailed construction drawings but should be drawings to a consistent scale in sufficient detail to clearly show the types, dimensions and locations of all proposed improvements and facilities.

3. **Professional Experience (Maximum 20 points):**

The experience of the Proposer in successfully managing an operation of this type, and the Proposer's demonstrated ability to implement the components of the proposal will be significant factors in the proposal evaluation. The Proposer should have at a minimum three (3) years experience in the past five (5) years operating similar operations.

4. **Financial Capability (Maximum 25 points):**

The Proposer must exhibit the necessary financial capability and strength to successfully develop and operate the Property in accordance with the Proposal and the concession agreement. The Proposer must have the means to adequately staff the proposed operation during the term of the concession agreement.

5. **Community/Public Service (Maximum 10 points):**

The Proposal will be evaluated based on the Proposer's overall ability to best serve the needs of the public by providing the most benefits which are accessible to all community members and the general public; promoting healthy physical activity and enjoyment of NTC Park Aquatic Center.

6. **(Optional) Oral Presentation and other Due Diligence (Maximum 10 points).**

Total Points: 100 points + 10 points (optional) = 110 points

K. ADDITIONAL INFORMATION FROM PROPOSERS

The City reserves the right to request information from Proposers beyond that specified in this RFP. As stated above, Proposers may be requested to appear before an evaluation committee, but will not be obligated to do so.

L. INCURRED COSTS

The City will not be responsible for any costs, expense, or burden incurred by Proposers in the preparation and submission of proposals.

M. REVIEW OF PROPOSALS BY THE GENERAL PUBLIC

All proposals received shall be considered confidential until the City's Real Estate Assets Department recommends a proposal to the City Council, at which time all proposals shall become public information and available to the public for review. However, all financial statement portions of each proposal SHALL BE permanently considered confidential and, therefore, not available for public review.

N. CITY RIGHT TO REJECT ALL PROPOSALS

The City reserves the right to reject all offers and proposals regarding this RFP and the Property, including those submitted by the Proposers who have any outstanding debt with the City.

O. QUALIFICATION OF PROPOSAL

THIS IS NOT A BID SOLICITATION AND THE CITY IS NOT OBLIGATED TO ACCEPT ANY PROPOSAL OR TO NEGOTIATE WITH ANY PROPOSER. THE CITY COUNCIL RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS WITHOUT CAUSE OR LIABILITY. ALL TRANSACTIONS ARE SUBJECT TO FINAL APPROVAL BY THE CITY COUNCIL.

P. PROTESTS

If an unsuccessful Proposer wants to dispute the award of the concession agreement, the protest must be submitted in writing to the Contact Person no later than ten (10) calendar days after Announcement of the Apparent Successful Proposer/Notice of Intent to Award, detailing the grounds, factual basis and providing all supporting information. Failure to submit a timely written protest to the Contact Person will bar consideration of the protest. Protests will be processed in accordance with San Diego Municipal Code Section 22.3017.

Q. REQUIREMENTS PRIOR TO CONCESSION AGREEMENT EXECUTION

Prior to concession agreement execution, the Selected Proposer will be required to provide the additional materials as referenced below within ten (10) calendar days from the date of the City's request, if not already on file. Failure to provide the required submittals within the time period specified may be cause for the provisional award to be voided and the Selected Proposer to be rejected as non-responsive. Required submittals include:

- a. Insurance requirements.
- b. Taxpayer Identification number (W-9).
- c. San Diego Business Tax Certificate, if not currently on file.

R. NON-DISCRIMINATION NOTICE

It is the policy of the City not to discriminate against the disabled in employment or provision of services. The information contained in this RFP will be made available in alternative formats to disabled persons upon request. It is the policy of the City to encourage equal opportunity in its professional service contracts. The City endeavors to do business with firms sharing the City's commitment to equal opportunity and will not do business with any firm that discriminates on the basis of race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth.

S. COMPLIANCE WITH CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM

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

Proposer shall 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. Proposer will not discriminate against any employee or applicant for employment on any basis prohibited by law.

Proposer submitted and City acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan, as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that Proposer will take to achieve the City's commitment to equal employment opportunities. Copy of Work Force Report is attached as Exhibit "F".

Proposer shall insert the foregoing provisions in all subcontracts for any work covered by the proposal so that such provisions will be binding upon each subcontractor. Proposer agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the City's Equal Opportunity Contracting Program staff.

- b. Equal Benefits. Proposer shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. Proposer shall certify that it will maintain such equal benefits throughout the term of the concession agreement.
- c. Local Business and Employment. Proposer acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all City contracts. Proposer shall, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with the proposal from local residents and firms as opportunities occur. Proposer shall hire qualified local residents and firms whenever feasible.

Proposer understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in rejection of the proposal by the City and debarment of the proposer from participating in City contracts for a period of not less than one (1) year.

T. RETURN OF FAITHFUL PERFORMANCE DEPOSIT

All good faith deposits will be returned to unsuccessful Proposer(s) within thirty days of final City Council approval of the selected Proposer. For the selected Proposer, the deposit will be applied to the concession agreement deposit upon completion of negotiations and execution of the concession agreement between Proposer and the City. Should the selected Proposer unilaterally withdraw from negotiations, the deposit shall be forfeited to the City.

U. ASBESTOS DISCLOSURE

City discloses that portions of the structural component of the Property may contain asbestos. Proposer acknowledged having received notice from City of the presence of such asbestos in accordance with Health and Safety Code Section 25915. Proposer shall indemnify and hold City harmless from any loss or claim which may result from existence of asbestos on the Property.

V. REAL ESTATE BROKER'S COMMISSION

The City will not pay a brokerage commission in this RFP.

W. SCHEDULE OF EXHIBITS

1. Exhibit "A" - Aerial View of the Property
2. Exhibit "B" - Photos of the Property
3. Exhibit "C" - General Development Plan Park Map Schematic
4. Exhibit "D" - Quitclaim Deed
5. Exhibit "E" - Draft Concession Agreement
6. Exhibit "F" - Work Force Report
7. Exhibit "G" - Concessionaire Questionnaire
8. Exhibit "H" - Certification

I:\Support Staff Group\WPO\2014\PHILLIPS\RFP- AQUATIC CENTER.docx

EXHIBIT "A" - AERIAL VIEW OF THE PROPERTY



 Lease Area

EXHIBIT "A"



Map Date: 06/27/12
Aerial Image Date: 2011













Parcel VI, Naval Training Center San Diego
San Diego County, California

NO DOCUMENT TAX DUE
R & T 11922 (Amended)
Presented for record by the City of San Diego

QUITCLAIM DEED

and

Environmental Restriction Pursuant to Civil Code Section 1471

THE UNITED STATES OF AMERICA, acting by and through the Secretary of the Interior, acting by and through the Director, National Park Service, under and pursuant to the power and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 337), as amended, and particularly as amended by Public Law 485, 91st Congress, and regulations and orders promulgated thereunder (hereinafter designated "Grantor"), for and in consideration of the perpetual use of the hereinafter described premises as and for public park and public recreation area purposes, by the City of San Diego (hereinafter designated "Grantee"), does hereby release and quitclaim to Grantee, and to its successors and assigns, all Grantor's right, title and interest in and to Property, including improvements appurtenant thereto, located in San Diego County, California, containing approximately ~~49~~ acres and more particularly described as follows; Parcels 1, 2, 5, and 6 as depicted on Record of Survey Map No. 16556 filed April 25, 2000 in the Book of Record of Survey in the Office of the County Recorder for the County of San Diego, State of California, hereinafter designated "Property".

The hereinbefore described Property is granted by the Grantor to the Grantee subject to valid and existing easements of record for streets, utility systems, rights-of-way, railroads, pipelines, and/or covenants, restrictions, reservations, conditions, licenses, and agreements which now exist affecting the foregoing described premises, and further subject to the reservations, exceptions, restrictions, conditions and covenants herein expressed and set forth unto the Grantee, its successors and assigns, forever.

The United States of America has constructed and installed structures, facilities, land lines, pipelines and conduits on the Property, including those used for water, gas, electricity, steam, communications, heating and cooling to serve and support continuing activities of the Department of Navy, its successors and assigns, off of the Property. Grantor hereby reserves the easements depicted and described in Exhibits A through E for the purposes described therein. Said easements shall be non-exclusive and the Grantee may make use of the underlying Property, provided it does so in a manner consistent with the Grantor's rights under the easements. Said easements shall include the right, upon a minimum of twenty-four (24) hour advance notice, except in the case of an emergency, to enter upon, above or below the Property to construct, operate, maintain, repair, or replace, or modify Grantor's improvements, provided the surface is restored to the condition previously existing and provided that interference with the Grantee's use of the Property is minimized to the extent practicable. Grantee agrees, on behalf of itself and its successors and assigns, as a covenant running with the land, that it shall protect or relocate improvements within the reserved easement depicted and described in Exhibits A through E in a manner satisfactory to the Department of Navy, its successors or assigns, should such protection or relocation be required as result of the Grantee's, its successors or assigns use of the Property. Such protection or relocations shall be accomplished at no expense to the Grantor. Any proposed use requiring such protection or relocation of improvements shall not begin or proceed prior to obtaining the written consent of the Department of Navy, successors or assigns and all reasonable requirements and conditions of the grant of consent are complied with. Consent shall not be unreasonably withheld or delayed.

Said reserved easements are subject to the express condition subsequent that they shall remain in effect for so long as required by the United States of America. In the event, and at such time, as it shall determine in writing that such easements are no longer so required, said easements shall thereupon terminate. The

Grantor, the Department of Navy, successor, or assigns shall have no obligation to remove any of the improvements or restore the land subject to said easements unless such removal or restoration is required by applicable law or subsequent agreement.

The Grantor expressly excepts and reserves any remaining oil, gas, and mineral rights and deposits in said land, without rights of surface entry, to the Grantor or to such person(s) as may be authorized by the Grantor to prospect, mine, and remove such deposits from the hereinbefore described Property under applicable laws.

The Grantee by its acceptance of this deed does acknowledge its understanding of the agreement, and does covenant and agree for itself, and its successors and assigns, forever, as follows:

1. This Property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in an application submitted by the Grantee on October 15, 1999 and subsequent amendments thereto, which program and plan may be amended from time to time at the written request of either the Grantor or Grantee, with the written concurrence of the other party, and such amendments will be added to and become a part of the original application.
2. The Grantee shall, within 6 months of the date of the deed of conveyance, erect and maintain a permanent sign or marker near the point of principal access to the conveyed area indicating that the Property is a park or recreation area and has been acquired from the Federal Government for use by the general public.
3. The Property shall not be sold, leased, assigned or otherwise disposed of except to another eligible governmental agency without the prior approval of the Secretary of the Interior in writing. Any such disposition shall assure the continued use and maintenance of the Property for public park or public recreational purposes subject to the same terms and conditions in the original instrument of conveyance. However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior.
4. From the date of this conveyance, the Grantee, its successors and assigns, shall submit biennial reports to the Secretary of the Interior, setting forth the use made of the Property during the preceding two-year period, and other pertinent data establishing its continuous use for the purposes set forth above, for ten consecutive reports and as further determined by the Secretary of the Interior.
5. The Grantee further agrees to comply with the requirements of Public Law 90-480 (82 Stat. 718) the Architectural Barriers Act of 1968 as amended by Public Law 91-205 of 1970 (84 Stat. 49) to assure that facilities developed on this Property are accessible to the physically handicapped; and, further assure in accordance with Public Law 93-112, the Rehabilitation Act of 1973 (87 Stat. 394) that no otherwise qualified handicapped individual shall solely by reasons of his handicap be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity in effect on this Property; and agrees to comply with the provisions of Title III of the Age Discrimination Act of 1975, as amended (Public Law 94-135; 45 C.F.R. Part 90) prohibiting discrimination on the basis of age in programs and activities conducted on this Property.
6. Portions of the subject Property have been determined to be located within a 100-year floodplain. In order to minimize damage to facilities constructed within floodprone areas, the Grantee covenants and

agrees to comply, where applicable, with the provisions of the Flood Disaster Protection Act of 1973 (87 Stat. 975) and the National Flood Insurance Act of 1968 (42 U.S.C. 4102) and local laws which implement these Acts.

7. As part of the consideration for this Deed, the Grantee covenants and agrees for itself, its successors and assigns, that: (1) the program for or in connection with which this Deed is made will be conducted in compliance with, and the Grantee, its successors and assigns, will comply with all requirements imposed by or pursuant to the regulations of the Department of the Interior as in effect on the date of this Deed (43 C.F.R. Part 17) issued under the provisions of Title VI of the Civil Rights Act of 1964, except where California law is contrary; (2) this covenant shall be subject in all respects to the provisions of said regulations; (3) the Grantee, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant; (4) the United States shall have the right to seek judicial enforcement of this covenant; (5) the Grantee, its successors and assigns, will (a) obtain from each other person (any legal entity) who, through contractual or other arrangements with the Grantee, its successors or assigns, is authorized to provide services or benefits under said program, a written agreement pursuant to which such other person shall, with respect to the services or benefits which he is authorized to provide, undertake for himself the same obligations as those imposed upon the Grantee, its successors and assigns, by this covenant, and (b) furnish a copy of such agreement to the Secretary of the Interior or his successor; (6) this covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the Grantor and enforceable by the Grantor against the Grantee, its successors and assigns; and (7) the Grantor expressly reserves a right of access to, and entrance upon, the above described Property in order to determine compliance with the terms of this conveyance.
8. Except as otherwise provided herein, the Grantee, its successors and assigns, shall hold harmless, defend and indemnify the United States, its employees, agents, and representatives from and against any suit, claim, demand or action, liability, judgement, cost or other fee arising out of any claim for personal injury or Property damage (including death, illness, or loss of or damage to Property or economic loss) that relates to the Grantee's failure to comply with the terms of this deed or from the use or occupancy of the Property by the Grantee and/or the Grantee's successors and assigns, transferees, or agents.
9. In accordance with Section 120(h)(3)(A)(i) of Comprehensive Environmental Response and Liability Act (CERCLA) (42 U.S.C. 9620) and implementing regulations, the Grantor herein provides the attached notice of hazardous substances which were stored for one year or more, released, or disposed of on the Property. Based upon a search of records and to the extent such information is available, the type, quantity and date of such storage, release, or disposal of hazardous substances and a description of remedial actions taken, if any, is contained in Exhibit F, attached hereto and made a part hereof.
10. Pursuant to Section 120(h)(3)(A)(ii) of CERCLA, the Grantor, by the Department of the Navy, covenants and warrants that all remedial action or corrective action found to be necessary to protect human health and the environment with respect to described hazardous substance(s) has been taken prior to the date of this deed on herein described Property and any additional remedial action or corrective action found to be necessary after the date of this deed regarding such hazardous substance(s), including releases or threats of releases resulting from actions of the Grantor or the Department of Navy as of the date of this deed shall be conducted by the United States.
11. Pursuant to Section 120(h)(3)(A)(iii) of CERCLA (42 U.S.C. 9620), the Grantor, through and for the Department of the Navy and on behalf of the State of California, their agencies officers, agents,

employees, contractors, and subcontractors reserves a right of access to the Property in any case in which remedial action or correction action is found to be necessary, after the date of this conveyance for the purpose of, but not limited to monitoring, investigation, sampling, testing, or removal of any hazardous substance(s). In addition, a right of access to and entry upon all of the hereinabove described Property in any case in which a remedial action or corrective action is determined to be necessary on any Property adjoining the hereinabove described Property, including but not limited to monitoring, investigation, sampling, testing or removal of any hazardous substance(s). The Grantee shall be provided reasonable notice of action requiring access to the Property and endeavor to minimize the disruption of the Grantee's use of the Property.

- 11.1. The right to enter described in this section shall include the right to conduct tests, investigations and surveys, including where necessary, drilling, testpitting, boring and other similar activities. Such right shall also include the right to construct, operate, maintain, or undertake any other necessary remedial or corrective action including, but not limited to monitoring wells, extraction wells, and treatment facilities.
- 11.2. In connection with remedial or corrective action conducted under this section, the Grantee agrees on behalf of itself, its successors and assigns, as a covenant running with the land to comply with the provisions of any health or safety plan approved by appropriate regulatory authorities and in effect during the course of such action.
- 11.3. In accordance with, and to the extent required by applicable federal, state, and local laws, and to the extent that Grantee or its successors or assigns have not caused or contributed to any release or threat of release, Navy will timely:
 - 11.3.1. Assess, inspect, investigate, study, and remove or remediate, as appropriate, the release or threat of release of a hazardous substance, pollutant, or contaminant from or on the Property caused by Department of Defense activities at the Property.
 - 11.3.2. Settle or defend any claim, demand, or order made by federal, state, or local regulators or third parties in connection with any release or threat of release of a hazardous substance, pollutant or contaminant from or on the Property caused by Department of Defense activities at the Property.
- 11.4. Grantee agrees, on behalf of itself and its successors and assigns, as a covenant running with the land, that it shall:
 - 11.4.1. Notify Navy in writing within ninety (90) days after learning of any previously unidentified condition on the Property that suggests a response action is necessary, or within ninety days after receiving notice of a claim by federal, state, or local regulators, or other third parties, of the existence of any condition on the Property that suggests a response action is necessary. If Grantee, or its successors and assigns is served with a complaint or written notice of a claim by federal, state, or local regulators, the served party shall provide the Navy with a copy of such document not later than fifteen (15) days following service of such document; and
 - 11.4.2. Furnish Navy copies or pertinent papers Grantee, or any successor or assigns receives, and
 - 11.4.3. Provide, upon written request of the Navy, reasonable access to the records and personnel of Grantee, or any successor or assign, for the purposes of defending or resolving the need for additional response action.
- 11.5. Neither Grantee, nor its successors and assigns shall have any claim solely on account of the exercise of any reserved right of entry against the United States of the State of California, or any of their agencies, officers, agents, employees, contractors, or subcontractors.

12. With regard to the release or threat of release of petroleum or a petroleum derivative from or on the Property caused by Department of Defense activities;

- 12.1. In accordance with and to the extent required by applicable federal, state, or local law, Navy will timely:
 - 12.1.1. Assess, inspect, investigate, study, and remove or remediate, as appropriate, the release or threat of release of petroleum or a petroleum derivative from or on the Property caused by the Department of Defense activities at the Property; and
 - 12.1.2. Settle or defend any claim, demand, or order made by federal, state, or local regulators or third parties in connection with a release or threat of release of petroleum derivative, form or on the Property caused by the Department of Defense activities at the Property.
 - 12.2. Grantee agrees, on behalf of itself and its successor and assigns, as a covenant running with the land, that upon learning of any previously unidentified release or threat of release of petroleum or a petroleum derivative from or on the Property, that may have been caused by Department of Defense activities at the Property, will notify Navy as provided for in Section 11.4.1 above.
13. Pursuant to Section 330 of P.L. 102-484, as amended, and subject to the provisions of this section, Navy shall hold harmless, defend, and indemnify in full Grantee, and other persons or entity that acquires ownership or control of the Property and any successor, assignee, transferee, lender, or lessee or Grantee or of any other person or entity that acquires ownership or control of the Property (collectively and individually "Indemnitee(s)") from and against any suit, claim, demand or action, liability, judgement, cost or other fee arising out of any claim for personal injury or Property damage (including death, illness, or loss of or damage to Property or economic loss) that result from, or is in any manner predicated upon, the release or threat of release of any hazardous substance, pollutant, contaminant, petroleum, or petroleum derivative from or on the Property as a result of Department of Defense activities at the Property.
 - 13.1. Navy will not indemnify an Indemnitee to the extent said Indemnitee caused or contributed to any release or threat of release of any hazardous substance, pollutant, contaminant, petroleum, or petroleum derivative at the Property. Navy shall be entitled to contribution from Indemnitees to the extent Navy shows that such Indemnitees caused or contributes to any release. However, the availability of contribution shall not affect the requirement of Navy to defend Indemnitees, unless such Indemnitees are solely responsible for the release or threat of release giving rise to the claim for indemnify, in which case Navy shall have no duty to defend as to said claim.
 - 13.2. In any case in which Navy determines Navy may be required to indemnify an Indemnitee for any suit, claim, demand, or action, liability, judgement, cost, or other fee arising out of any claim for personal injury, or Property damage, Navy may settle or defend, on behalf of Indemnitee, the claim for personal injury or Property damage. Prior to taking any action or reaching any final settlement under this section that could adversely impact any Indemnitee, Navy shall consult with such Indemnitee to minimize any such impact.
 - 13.3. If any Indemnitee refused to allow Navy to settle or defend any claim, then Indemnitee shall not be afforded indemnification with respect to such claim.
 - 13.4. Indemnification shall not be afforded by Navy to an Indemnitee unless:
 - 13.4.1. Such Indemnitee notifies Navy in writing within ninety (90) days after such an indemnification claim accrues. If an Indemnitee is served with a complaint or written notice of a claim by a private party or by Federal, State, or local regulators, Indemnitee will provide Navy with a copy of such document not later than fifteen (15) days following service of such complaint or written notice. A claim for indemnification accrues when the Indemnitee receives written notice of any suit, claim, demand or action, that the Indemnitee knows, or reasonably should have known, may have been caused or contributed to by Department of Defense activities. The right of an Indemnitee to indemnification shall not expire due to late notice on the part of Indemnitee unless the Navy's ability to defend or settle is materially and adversely affected.

- 13.4.2. Such Indemnitee provides Navy copies of pertinent papers Indemnitee receives;
 - 13.4.3. Such Indemnitee provides to Navy, to the extent such is in the possession or control of such Indemnitee, evidence or proof of any claim, loss, or damage covered by this indemnity obligation; and
 - 13.4.4. Such Indemnitee provides, upon request of Navy, reasonable access to records and personnel of such Indemnitee for purposes of defending or settling the claim or action.
 - 13.5. Any Indemnitee may implement or enforce the terms of this section in its own right at its own discretion without obtaining permission from, or joining, any of the other Indemnitees.
 - 13.6. Nothing in this section creates rights of any kind in any person or entity other than United States and Indemnitees.
14. For the purposes of Sections 11, 12, and 13 above and subsections therein, the following terms have meanings indicated below;
- 14.1. "Release", "threat of release", "remedial action", "remove", "response", "hazardous substance", "pollutant", and "contaminant" have meaning given such terms under CERCLA and U.S. Environmental Protection Agency Regulations implementing CERCLA.
 - 14.2. "Department of Defense activities" means the construction, installation, placement, operation, maintenance, misuse, abandonment, or failure to maintain the buildings, equipment and land at the Property or the failure to satisfy any otherwise legally applicable obligation to investigate or remediate any environmental conditions existing at the Property. "Department of Defense activities" does not mean the release or threat of release of a hazardous substance, pollutant, contaminant, petroleum or petroleum derivative, to the extent Navy shows that the release or threat of release is caused or contributed by the Indemnitee(s).
 - 14.3. "Demand or action...arising out of any claim for..Property damage" includes, but is not limited to, any judicial, administrative, or private cost recovery proceeding brought against an Indemnitee (a) for response costs arising under CERCLA, (b) for costs incurred to enjoin or abate the presence or migration of contamination from or on the Property under the Resource Conservation and Recovery Act (RCRA), or (c) for costs incurred to comply with requirements with the requirements of other federal or state laws or regulations (or laws of any political subdivision of the state) which arise from the environmental conditions at the Property.
 - 14.4. "Environmental Conditions" means any hazardous substance, pollutant or contaminant, including hazardous waste or hazardous constituent, petroleum or petroleum derivative, disposed of, released, or existing in environmental media such as surface soil, subsurface soil, air, groundwater, surface water or subsurface geological formations at levels above background.
15. The Grantor agrees that for purposes of 42 U.S.C. Section 9620(h)(3), the acquisition of ownership or control of the Property by the Grantee or its successors or assigns will not make such person a potential responsible party or relieve Navy or its obligations herein unless activities by the Grantor, successors, or assigns cause a release or threat of a release resulting in a response cost to Navy.
16. Nothing in this deed shall diminish or waive rights which parties might otherwise have under common law or any Federal or State law or regulation, except that provisions of this deed shall be deemed to fully set forth the parties statutory rights under Section 330 of P.L. 102-484 and under 42 U.S.C. Section 9620(h)(3).
17. The Grantee is hereby informed and does acknowledge nonfriable asbestos and asbestos containing materials have been found on the Property. The Grantee acknowledges the receipt of reports that identify the location and presence of asbestos. The Grantee covenants and agrees, on behalf of it, its successors and assigns, that it will prohibit occupancy and use of building and structures containing known asbestos or asbestos containing materials hazards prior to abatement. In connection with use and

occupancy of the Property, including but not limited to demolition of buildings and structures containing asbestos or asbestos containing materials, the Grantee covenants it will comply with all applicable Federal, State and local laws relating to asbestos and asbestos containing materials; and that Grantor assumes no liability for damages for personal injury, illness, disability or death, to the Grantee, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether Grantee, its successors or assigns have properly warned or failed properly to warn the individual(s) injured. The Grantee agrees to be responsible for any future remediation of asbestos found to be necessary on the Property.

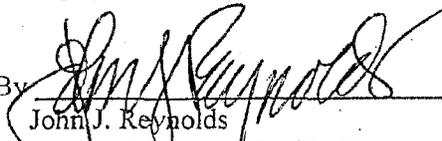
18. The Grantee is hereby informed and does acknowledge buildings and structures on the Property constructed prior to 1980 have been found to contain lead based paints. Lead based paints present an exposure risk to young children and pregnant women. The presence of lead based paints within these structures effects their use for residential purposes, including but not limited to non-dwelling facility use commonly used by children under 6 years of age (i.e. childcare center or playground). In the event buildings or structures containing lead based paints are not demolished, as provided for under the approved program of utilization, the Grantee covenants and agrees to take all necessary actions to evaluate and abate lead based paint hazards prior to the use of said buildings or structures. The Grantee further covenants and agrees to adhere with all applicable federal, state, or local laws regarding lead based paint hazards as a part of any demolition or renovation of structures containing lead based paints and prior to occupancy or use of said structures for residential purposes, including non-dwelling facility use commonly used by children under 6 years of age.
19. The Grantee agrees to indemnify, defend, save, and hold harmless the United States of America and their respective employees, officers, representatives, attorneys and agents, from and against any and all debts, duties, obligations, liabilities, law suits, claims, demands, causes of action, damages, losses, costs, and expenses (including, without limitation, costs associated with any investigation, monitoring, sampling, testing, or removal of hazardous substance(s), attorney fees and expenses, and court costs) in any way related to, connected with, or arising out of discovery of any hazardous substance(s) or other contaminant(s) which is found to have contaminated the Property after the date of this deed.
20. The Grantee acknowledges that the said Property is located within the vicinity of a commercial service airport and covenants and agrees to obtain a determination of no hazard to air navigation issued by the Federal Aviation Administration (FAA) by submitting an FAA Form 7460-1 "Notice of Proposed Construction or Alteration" to FAA, as required by 14 CFR 77, for any proposed structure exceeding the elevation profile of the existing improvements.
21. The Grantee expressly agrees for itself, its successors and assigns to prevent any use of the herein described real Property which would interfere with the landing or taking off of aircraft at the International Airport at Lindbergh Field, or otherwise constitute an airport hazard. Such hazards include interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in anyway endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport. The Grantor reserves the right to enter upon the land released hereunder, and to remove the offending structure or object, and to cut the offending growth, all at the expense of the grantee, in the event the aforesaid covenant is breached.

intending to use the airport. The Grantor reserves the right to enter upon the land released hereunder, and to remove the offending structure or object, and to cut the offending growth, all at the expense of the grantee, in the event the aforesaid covenant is breached.

22. In the event that there is a breach by the Grantee, its successors or assigns, of any of the conditions and covenants, whether caused by the legal or other inability of the Grantee, its successors or assigns, to perform said conditions and covenants, the Grantor will give written notice, with a reasonable time stated therein, that the Grantee shall eliminate, rectify, cure, or commence action to cure said breach. Upon failure to eliminate, rectify, cure, or commence action to cure said breach within the time set forth in the notice, all right, title, and interest in and to said premises shall, at the Grantor's option revert to and become the Property of the Grantor. In addition to all other remedies for such breach, the Grantee, its successors and assigns, at the Grantor's option, shall forfeit all right, title, and interest in any and all of the tenements, hereditaments, and appurtenances thereunto belonging. With regard thereto, the Grantee shall execute a deed, as directed by the Grantor, covering all interest in the premises and improvement thereon to the Grantor. The failure of the Grantor to require in any one of more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment or such future performance, but obligation of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect.
23. The Grantee, by its acceptance of this deed, covenants and agrees for itself, and its successors and assigns, that in the event the Grantor exercises its option to revert all right, title, and interest in the Property to the Grantor, or the Grantee voluntarily returns title to the Property in lieu of a reverter, then the Grantee shall provide protection to and maintenance of said Property at all times until such time as the title is actually reverted or returned to and accepted by the Grantor, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed by the General Services Administration in its regulations FPMR 101-47.402 in effect as of the date of this deed.
24. The conditions, restrictions, reservation, and covenants set forth herein are a binding servitude of the Property, shall inure to the benefit of Grantor and Grantee and their respective successors and assigns, and will be deemed to run with the land in perpetuity, pursuant to California Civil Code Section 1462 and 1471 and other applicable authority.

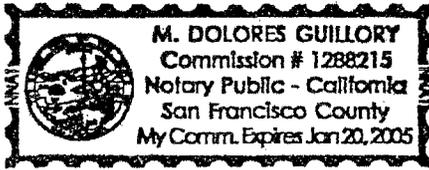
IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name and on its behalf on this 6 day of JULY, 2001.

UNITED STATES OF AMERICA
Acting by and through the Secretary of the Interior

By 
John J. Reynolds
Regional Director, Pacific West
National Park Service

(STATE OF CALIFORNIA)
) SS.
(COUNTY OF SAN FRANCISCO)

On this 6th day of July, 2001, before me, M. Dolores Guillory, Notary Public, personally appeared John J. Reynolds, Regional Director, Pacific West, National Park Service, of the United States of America, acting by and through the Secretary of the Interior, a governmental agency of the United States of America, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to within the instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person of entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal.

M. Dolores Guillory
NOTARY PUBLIC

The foregoing conveyance is hereby accepted and the undersigned agrees, by this acceptance, to assume and be bound by all the obligations, conditions, covenants and agreements therein contained.

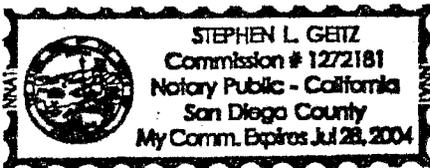
City of San Diego, California

By Michael R. Steffen

Date 9-17-2001

(STATE OF CALIFORNIA)
) SS.
(COUNTY OF SAN DIEGO)

On this 17th day of September, 2001 before me, Stephen L. Geitz, Notary Public, personally appeared Michael R. Steffen, Deputy Director, Acquisition Services, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person whose name is subscribed to within the instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person of entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal.

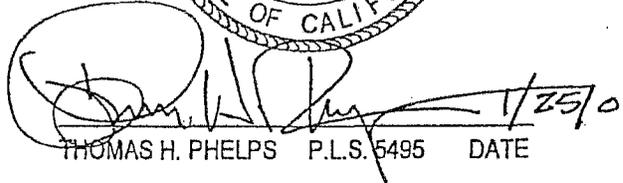
Stephen L. Geitz
NOTARY PUBLIC

EASEMENT FOR STEAM DISTRIBUTION LINE

In accordance with the reservation contained in the deed to which this exhibit is attached, the United States of America reserves an easement, which varies in width, for purposes of construction, installation, operation, maintenance, repair, modification or replacement of a steam distribution and other utility distribution systems, together with ancillary improvements, such easement being on, in, over and under the Property described in the deed. Said easement is described in Attachment (1) and depicted in Attachment (2).

Modifications or replacements shall not be limited to the size or capacity of the line or lines in place on the date of the reservation, provided that the burden on the Property is not unreasonably increased.



 1/25/01
THOMAS H. PHELPS P.L.S. 5495 DATE

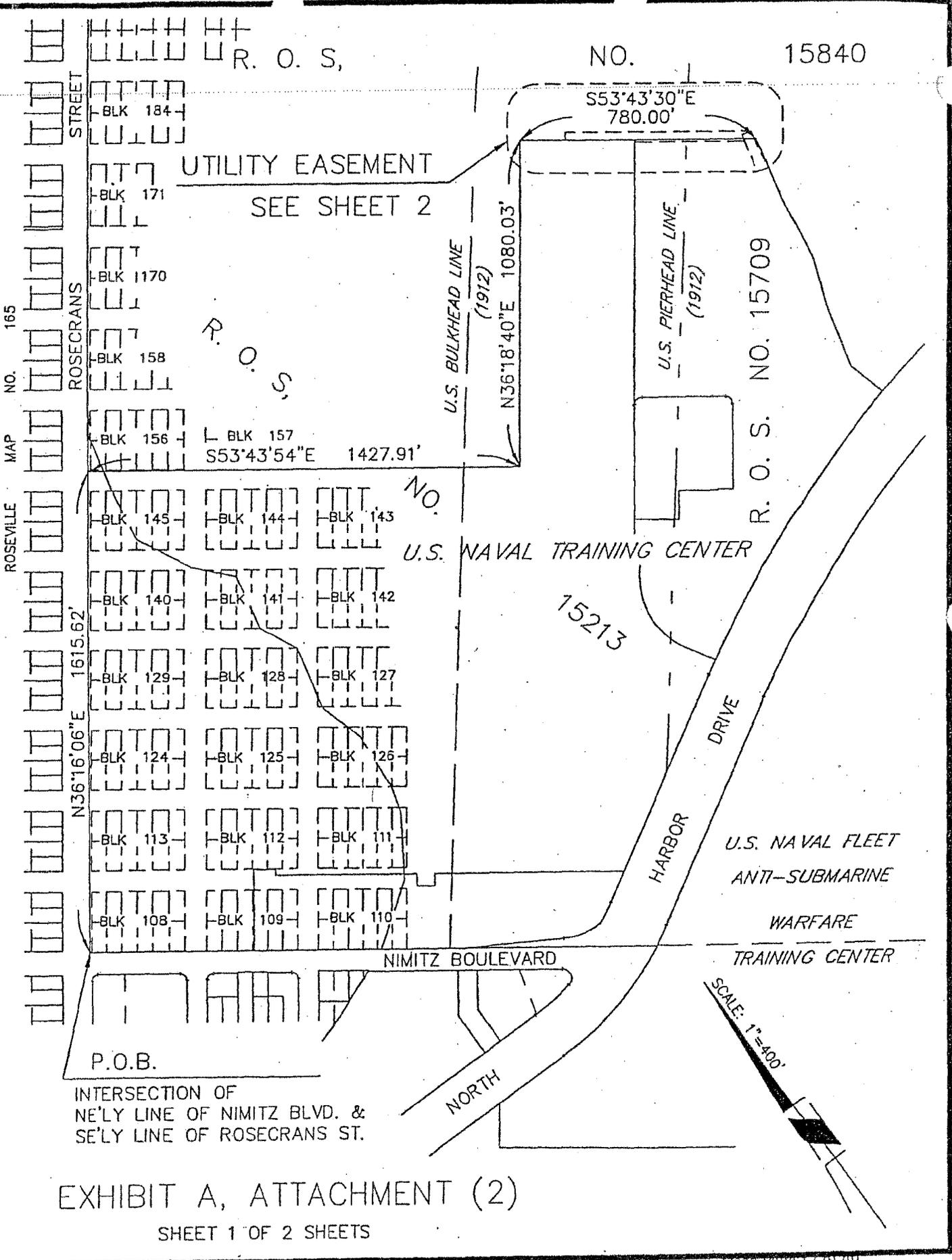
Note that the legal description contained in Attachment (1) extends beyond the Property and to that extent is not relevant to this easement.

UTILITY EASEMENT

All that portion of the U.S. Naval Training Center as shown on Record of Survey Map No. 15213, filed in the Office of the County Recorder of San Diego County, June 14, 1996, and being a portion of the Tidelands of the Bay of San Diego, as described in document recorded June 6, 1921 in Book 853, Page 126 of Deeds and a portion of the Tidelands of the Bay of San Diego as described in document recorded October 25, 1933 in Book 239, Page 408 of Official Records, all in the City of San Diego, County of San Diego, State of California, described as follows:

COMMENCING at the most Westerly corner of the U.S. Naval Training Center, being the intersection of Northeasterly line of Nimitz Boulevard (formerly Lowell Street) and the Southeasterly line of Rosecrans Street (formerly Main Street), said Southeasterly line being the Southeasterly line of the Northwesterly 10.50 feet of the Southeasterly 20.00 feet of Rosecrans Street as closed and vacated to public use by Resolution No. 25281 by the Council of the City of San Diego, February 18, 1920 and described in deed to the City of San Diego recorded March 16, 1942 in Book 1312, Page 396 of Official Records; thence along said Southeasterly line of Rosecrans Street, North 36°16'06" East, 1615.62 feet; thence leaving said Southeasterly line, South 53°43'54" East, 1427.91 feet; thence North 36°18'40" East, 1080.03 feet; thence South 53°43'30" East, 148.65 feet to the TRUE POINT OF BEGINNING; thence North 36°16'30" East, 25.84 feet; thence South 53°43'30" East, 615.61 feet to the northeast corner of that certain steam line easement shown as Parcel 9 on sheet 7 of Record of Survey Map No. 15840, filed in the Office of the County Recorder of San Diego County, June 12, 1998; thence along the northerly and westerly line of said steam line easement, the following two (2) courses: North 76°40'08" West, 35.00 feet; thence South 13°19'52" West, 21.93 feet; thence leaving said westerly line, North 53°43'30" West, 364.77 feet to that certain course shown on Record of Survey Map No. 15709, filed in the Office of the County Recorder of San Diego County, January 9, 1998, as having a bearing and distance of "N 36°16'00" E, 1307.97 feet"; thence along said certain course, North 36°16'00" East, 8.00 feet to that certain course shown on Record of Survey Map No. 15213, filed in the Office of the County Recorder of San Diego County, June 14, 1996, as having a bearing and distance of "N 53°43'30" W, 780.00 feet"; thence along said certain course, North 53°43'30" West, 227.16 feet to the TRUE POINT OF BEGINNING.

CONTAINS: 0.419 Acres, more or less.



ROSEVILLE MAP NO. 165

ROSECRANS

N36°16'06"E 1615.62'

STREET

BLK 184
BLK 171
BLK 1170
BLK 158
BLK 156
BLK 157
BLK 145
BLK 144
BLK 143
BLK 140
BLK 141
BLK 142
BLK 129
BLK 128
BLK 127
BLK 124
BLK 125
BLK 126
BLK 113
BLK 112
BLK 111
BLK 108
BLK 109
BLK 110

UTILITY EASEMENT
SEE SHEET 2

R. O. S.

NO.

U.S. NAVAL TRAINING CENTER

15213

NIMITZ BOULEVARD

HARBOR DRIVE

U.S. NAVAL FLEET
ANTI-SUBMARINE
WARFARE
TRAINING CENTER

P.O.B.
INTERSECTION OF
NE'LY LINE OF NIMITZ BLVD. &
SE'LY LINE OF ROSECRANS ST.

NO. 15840

S53°43'30"E
780.00'

U.S. BULKHEAD LINE
(1912)
N36°18'40"E 1080.03'

U.S. PIERHEAD LINE
(1912)

R. O. S. NO. 15709

SCALE: 1"=400'

EXHIBIT A, ATTACHMENT (2)

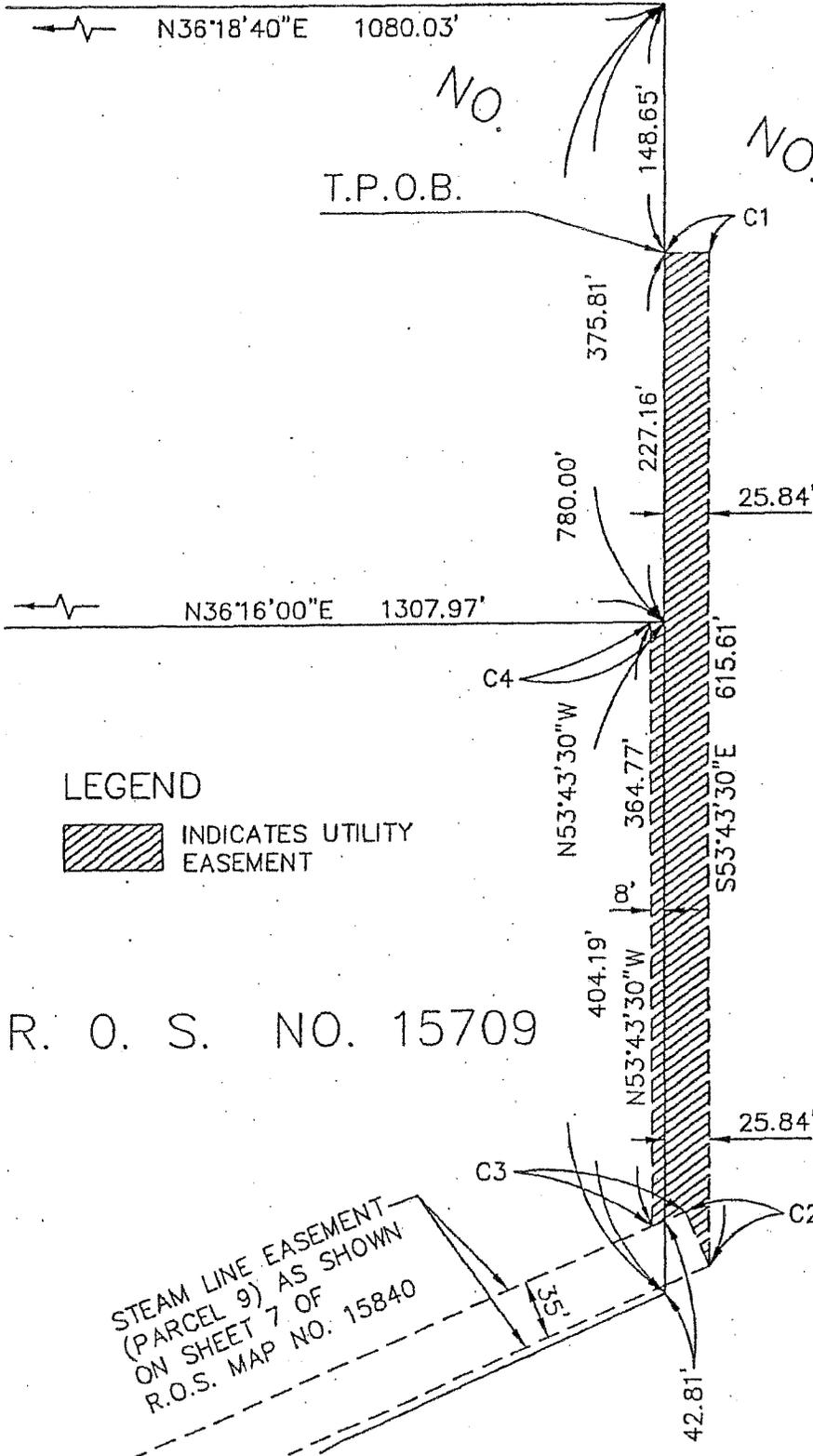
SHEET 1 OF 2 SHEETS

R. O. S. R. O. S.

EXHIBIT A, ATTACHMENT (2)

SHEET 2 OF 2 SHEETS

U.S. NAVAL TRAINING CENTER



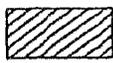
15840

15213

DATA TABLE

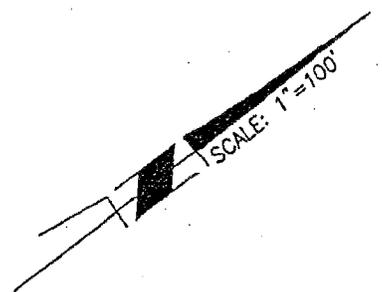
NO.	BEARING	LENGTH
C1	N36°16'30\"E	25.84'
C2	N76°40'08\"W	35.00'
C3	S13°19'52\"W	21.93'
C4	N36°16'00\"E	8.00'

LEGEND

 INDICATES UTILITY EASEMENT

R. O. S. NO. 15709

STEAM LINE EASEMENT
(PARCEL 9) AS SHOWN
ON SHEET 7 OF
R.O.S. MAP NO. 15840



EASEMENT FOR TELECOMMUNICATIONS DISTRIBUTION SYSTEM

In accordance with the reservation contained in the deed to which this exhibit is attached, the United States of America reserves an easement, approximately twelve (12) feet in width, for purposes of construction, installation, operation, maintenance, repair, modification or replacement of conduits for a telecommunications distribution system or systems, together with ancillary improvements, such easement being on, in, over and under the Property described in the deed. Said easement is described in Attachment (1) and is depicted on Record of Survey Map No. 15840 filed on June 12, 1998 in the Book of Record of Survey Maps in the office of the County Recorder for the County of San Diego.

Modifications or replacements shall not be limited to the number, size or capacity of the conduit or conduits in place on the date of the reservation, provided that the burden on the Property is not unreasonably increased.



THOMAS H. PHELPS P.L.S. 5495 DATE 1/25/01

Note that the legal description contained in Attachment (1) extends beyond the Property and to that extent is not relevant to this easement.

PARCEL 1

A 628.00 foot by 47.20 foot rectangular parcel on the westerly extension of Halsey Road, being the bridge and appurtenances thereto crossing the boat channel, the horizontal limits of said parcel being described as follows:

Commencing at the northerly end of that certain course shown on sheet 4 of 13 sheets of Record of Survey Map No. 15213 on file in the office of the County Recorder of San Diego, County, California, as having a bearing and distance of NORTH 13°53'35" WEST, 132.20 feet; thence southerly along said course SOUTH 13°53'35" EAST, 4.43 feet to the True Point of Beginning; thence NORTH 78°07'25" EAST, a distance of 627.81 feet; thence SOUTH 11°52'35" EAST, a distance of 47.20 feet; thence SOUTH 78°07'25' WEST, a distance of 628.00 feet; thence NORTH 11°52'35" WEST, a distance of 47.20 feet; thence NORTH 78°07'25" EAST, a distance of 0.19 feet to the True Point of Beginning.

Subject to covenants, conditions, reservations, restrictions, rights of way and easements of record, if any.

All as more particularly shown on Record of Survey Map No. 15840 on file in the office of the County Recorder of San Diego County, California and by this reference, made a part hereof.

The above-described parcel contains 0.68 acres, more or less.

PARCEL 2

A strip of land 12.00 feet in width, the centerline of which is described as follows: Beginning at a point in that certain course shown on sheet 6 of 13 sheets of Record of Survey Map No. 15213 on file in the office of the County Recorder of San Diego County, California, as having a bearing and distance of NORTH 12° 25'55" WEST, 36.79 feet, said point being NORTH 12° 25'55" WEST, 26.84 feet along said line from the southerly terminus of said line, thence S 82°41'08" WEST, a distance of 67.09 feet; thence SOUTH 84° 05' 08" WEST, a distance of 97.59 feet to a point in that certain course shown on sheet 1 of 1 sheet of Record of Survey Map No. 15710 on file in the office of the County Recorder of San Diego County, California, as having a bearing and distance of NORTH 07° 17' 01" EAST, 338.80 feet; said point being NORTH 07°17'01" EAST 26.57 feet along said last mentioned certain course from the southerly terminus of said course; thence continuing SOUTH 84° 05' 08" WEST, a distance of 2.05 feet; thence SOUTH 79° 11' 44" WEST, a distance of 44.86 feet; thence SOUTH 83° 42' 03" WEST, a distance of 66.84 feet to a point in

that certain course shown on said Record of Survey Map No. 15710 as having a bearing and distance of NORTH 82° 17' 51" WEST, 275.39 feet, said point being NORTH 82° 17' 51" WEST, 92.10 feet along said course from the easterly terminus of said course; thence continuing SOUTH 83° 42' 03" WEST, a distance of 36.98 feet; thence SOUTH 87° 44' 07" WEST, a distance of 77.71 feet to a point hereinafter referred to as point "G", thence SOUTH 83° 14' 10" WEST, a distance of 29.71 feet; thence SOUTH 76° 03' 43" WEST, a distance of 36.40 feet to a point hereinafter referred to as point "H", thence SOUTH 16° 50' 02" WEST, a distance of 11.75 feet; thence SOUTH 07° 46' 16" WEST, a distance of 76.48 feet; thence SOUTH 08° 01' 19" WEST, a distance of 124.82 feet; thence SOUTH 33° 08' 48" WEST, a distance of 4.38 feet to a point in that certain course shown on sheet 13 of 13 sheets of said Record of Survey Map No. 15213 as having a bearing and distance of N 81° 55' 00" WEST, 25.85 feet, said point being NORTH 81° 55' 00" WEST, 5.65 feet along said line from the easterly terminus of said line.

The sidelines of said strip are to be prolonged or shortened to meet at angle points and to terminate easterly in said certain course having a bearing and distance of NORTH 12° 25' 55" WEST, 36.79 feet, and to terminate southerly in said certain course having a bearing and distance of NORTH 81° 55' 00" WEST, 25.85 feet and the easterly prolongation thereof.

Subject to conditions, reservations, restrictions, rights of way and easements of record, if any.

All as more particularly shown on Record of Survey Map No 15840 on file in the office of the County Recorder of San Diego County, California and by this reference, made a part hereof.

The above-described parcel contains 0.19 acres, more or less.

PARCEL 3

A strip of land 12.00 feet in width, the centerline of which is described as follows:

Beginning at point "G" as described in aforescribed parcel 2; thence NORTH 37°20'34" WEST, a distance of 31.70 feet to a point on that certain course shown on Record of Survey Map No. 15789 on file in the office of the County Recorder of San Diego County, California as having a bearing and distance of NORTH 82°17'51" WEST, 275.39 feet, said point being 48.43 feet easterly along said course from the westerly terminus of said course; thence NORTH 09°23'28" WEST, a distance of 21.56 feet; thence NORTH 07°01'00" WEST, a distance of 29.62 feet; thence NORTH 00°42'38" WEST, a distance of 17.58 feet; thence NORTH 04°15'18" EAST, a distance of 28.46 feet; thence NORTH 07°30'55" EAST, a distance of 90.23 feet; thence NORTH 07°15'53"

EAST, a distance of 63.63 feet; thence NORTH 05°35'06" EAST, a distance of 39.23 feet to a point on that certain course shown on said Record of Survey Map No. 15789 as having a bearing and distance of NORTH 82°35'20" WEST, 291.54 feet, said point being 28.81 feet easterly along said last mentioned course from the westerly terminus of said course; thence continuing NORTH 05°35'06" EAST, a distance of 10.53 feet; thence NORTH 06° 47'17" EAST, a distance of 44.49 feet; thence NORTH 07°50'40" EAST, a distance of 71.53 feet; thence N 09°39'54" EAST, a distance of 67.17 feet; thence N 08°45'28" EAST, a distance of 39.21 feet; thence NORTH 11°47'32" EAST, a distance of 32.13 feet; thence NORTH 09°45'53" EAST, a distance of 145.46 feet; thence NORTH 01°35'52" EAST, a distance of 117.13 feet; thence NORTH 05°58'24" EAST, a distance of 136.22 feet; thence N 12°22'40" EAST, a distance of 70.79 feet; thence NORTH 05°06'15" EAST, a distance of 22.69 feet; thence NORTH 08°09'30" EAST, a distance of 128.11 feet; thence NORTH 08°03'25" EAST, a distance of 230.55 feet; thence NORTH 10°15'04" EAST, a distance of 123.50 feet; thence NORTH 07°56'49" EAST, a distance of 99.64 feet; thence NORTH 10°08'01" EAST, a distance of 50.28 feet; thence NORTH 20°10'29" EAST, a distance of 73.11 feet; thence NORTH 14°29'01" EAST, a distance of 18.52 feet; thence NORTH 11°17'05" EAST, a distance of 27.56 feet to a point on that certain course shown on sheet 6 of 13 sheets of Record of Survey Map No. 15213 on file in the office of the County Recorder of San Diego County, California as having a bearing and distance of NORTH 82°29'30" WEST, 355.45 feet, said point being 31.37 feet westerly along said last mentioned course from the easterly terminus of said course.

The sidelines of said strip to be prolonged or shortened to meet at angle points and at the crossing lines cited above and to terminate northerly in that certain course shown on sheet 6 of 13 sheets of said Record of Survey Map No. 15213 as having a bearing and distance of NORTH 82°29'30" WEST, 355.45 feet and southeasterly in the northerly line of aforescribed parcel 2.

Subject to covenants, conditions, reservations, restrictions, rights of way and easements of record, if any.

All as more particularly shown on Record Of Survey Map No. 15840 on file in the office of the County Recorder of San Diego County, California and by this reference, made a part hereof.

The above described parcel contains 0.50 acres, more or less.

PARCEL 4

A strip of land 12.00 feet in width, the centerline of which is described as follows:

Beginning at point "H" as described in aforescribed parcel 2; thence NORTH 05°07'13" EAST, a distance of 3.91 feet; thence NORTH 84°33'15" WEST, a distance of 118.05 feet; thence NORTH 82°43'22" WEST, a distance of 68.03 feet to a point hereinafter referred to as point "I"; thence continuing

NORTH 82°43'22" WEST, a distance of 13.07 feet to the POINT OF TERMINUS.

The sidelines of said strip to be prolonged or shortened to meet at angle points and to terminate southerly in the westerly and northwesterly line of aforescribed parcel 2.

Subject to covenants, conditions, reservations, restrictions, rights of way and easements of record, if any.

All as more particularly shown on Record of Survey Map No. 15840 on file in the office of the County recorder of San Diego County, California and by this reference, made a part hereof.

The above described parcel contains 0.05 acres, more or less.

PARCEL 5

A strip of land 12.00 feet wide, the centerline of which is described as follows:

Beginning at point "I" as described in aforescribed parcel 4; thence NORTH 06°20'39" EAST, a distance of 7.51 feet; thence NORTH 82°46'11" WEST, a distance of 174.78 feet; thence N 87°42'00" WEST, a distance of 27.44 feet; thence SOUTH 55°44'02" WEST, a distance of 14.20 feet thence SOUTH 00°48'49" WEST, a distance of 16.00 feet; thence SOUTH 18°37'26" EAST, a distance of 25.03 feet; thence SOUTH 06°45'10" WEST, a distance of 77.47 feet; thence SOUTH 18°22'10" WEST, a distance of 42.97 feet; thence SOUTH 11°25'51" WEST, a distance of 96.10 feet; thence SOUTH 74°43'55" WEST, a distance of 25.65 feet; thence SOUTH 83°54'53" WEST, a distance of 401.22 feet; thence SOUTH 85°44'14" WEST, a distance of 174.18 feet; thence NORTH 86°06'15" WEST, a distance of 32.02 feet; thence SOUTH 82°35'25" WEST, a distance of 44.91 feet; thence NORTH 88°48'33" WEST, a distance of 50.91 feet; thence SOUTH 66°29'32" WEST, a distance of 27.18 feet; thence N 89°43'28" WEST, a distance of 61.50 feet; thence SOUTH 78°03'35" WEST a distance of 173.44 feet; thence NORTH 11°52'35" WEST, a distance of 11.94 feet to a point in the southerly line of aforescribed parcel 1, said point being SOUTH 78°07'25" WEST, 27.14 feet along said southerly line from the southeast corner of said parcel 1.

The sidelines of said strip to be prolonged or shortened to meet at angle points and to terminate in the southerly line of aforescribed parcel 1 and in the northerly line of aforescribed parcel 4.

Subject to covenants, conditions, reservations, restrictions, rights of way and easements of record, if any.

All as more particularly shown on Record of Survey Map No. 15840 on file in the office of the County Recorder of San Diego County, California and by this

reference, made a part hereof.

The above described parcel contains 0.41 acres, more or less.

PARCEL 6

A strip of land 12.00 feet in width, the centerline of which is described as follows:

Beginning at a point in that certain course shown on sheet 4 of 13 sheets of Record of Survey Map No. 15213 on file in the office of the County Recorder of San Diego County, California as having a bearing and distance of NORTH 36°18'40" EAST, 1080.03 feet, said point being 84.65 feet southwesterly along said line from the northeasterly terminus of said line; thence SOUTH 53°36'16" EAST, a distance of 104.72 feet; thence NORTH 37°20'23" EAST, a distance of 64.75 feet; thence SOUTH 53°19'54" EAST, a distance of 58.32 feet; thence SOUTH 53°32'11" EAST, a distance of 211.62 feet to a point on that certain course shown on Record of Survey Map No. 15709 on file in the office of the County Recorder of San Diego County, California as having a bearing and distance of NORTH 36°16'00" EAST, 1307.97 feet, said point being 21.23 feet southwesterly along said line from the northeasterly terminus of said line; thence continuing SOUTH 53°32'11" EAST, a distance of 322.57 feet; thence SOUTH 41°22'08" EAST, a distance of 10.78 feet; thence SOUTH 56°35'44" EAST, a distance of 33.53 feet; thence SOUTH 13°15'54" WEST, a distance of 653.35 feet; thence SOUTH 14°19'16" WEST, a distance of 83.81 feet; thence SOUTH 15°35'34" WEST a distance of 83.79 feet; thence SOUTH 16°44'15" WEST, a distance of 91.40 feet; thence SOUTH 13°00'21" WEST, a distance of 18.71 feet; thence SOUTH 03°45'50" WEST, a distance of 46.10 feet to a point hereinafter referred to as point "J"; thence SOUTH 06°00'29" EAST, a distance of 28.56 feet; thence SOUTH 11°04'38" EAST, a distance of 47.21 feet; thence SOUTH 15°37'23" EAST, a distance of 96.81 feet; thence SOUTH 01°26'10" EAST, a distance of 35.89 feet, to a point in the southerly R/W line of Harbor Drive (200' wide) as shown on sheet 12 of 13 sheets of said Record of Survey Map No. 15213, said point being SOUTH 16°49'46" WEST, 237.60 feet along said line from the southerly terminus of that certain course shown on sheet 4 of 13 sheets of said Record Of Survey Map No. 15213 as having a bearing and distance of NORTH 13°53'35" WEST, 132.20 feet.

The sidelines of said strip to be prolonged or shortened to meet at angle points and at the line crossing cited above and to terminate southerly in said southerly R/W line of Harbor Drive (200' wide) and northwesterly in that certain course cited above as having a bearing and distance of NORTH 36°18'40" EAST, 1080.03 feet.

Subject to covenants, conditions, reservations, restrictions, rights of way and easements of record, if any.

All as shown on Record of Survey Map No. 15840 on file in the office of the County Recorder of San Diego County, California and by this reference, made a

EXHIBIT B, ATTACHMENT (1)

part hereof.

The above described parcel contains 0.55 acres, more or less.

PARCEL 7

A strip of land 12.00 feet in width, the centerline of which is described as follows.

Beginning at a point in the westerly line of aforescribed parcel 1, said point being NORTH 11°52'35" WEST, 6.25 feet along said westerly line from the southwest corner of said parcel 1; thence SOUTH 61°11'57" WEST, a distance 5.29 feet; thence SOUTH 17° 25'53" EAST, a distance of 17.99 feet; thence SOUTH 09° 43'22" EAST, a distance of 25.30 feet; thence SOUTH 25°30'15" EAST, a distance of 15.77 feet; thence SOUTH 70°37'40" WEST, a distance of 20.75 feet; thence SOUTH 55°46'16" WEST, a distance of 70.45 feet; thence SOUTH 83°49'42" WEST, a distance of 19.49 feet to point "J" as described in aforescribed parcel 6.

The sidelines of said strip to be prolonged or shortened to meet at angle points and to terminate easterly in the westerly line of aforescribed parcel 1 and westerly in the easterly line of aforescribed parcel 6.

Subject to covenants, conditions, reservations, restrictions, rights of way and easements of record, if any.

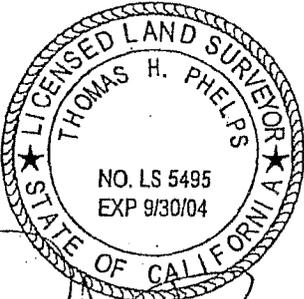
All as shown on Record of Survey Map No. 15840 on file in the office of the County Recorder of San Diego County, California and by this reference, made a part hereof.

The above described parcel contains 0.05 acres, more or less.

EASEMENT FOR 69 KV ELECTRIC DISTRIBUTION LINE

In accordance with the reservation contained in the deed to which this exhibit is attached, the United States of America reserves an easement, approximately twenty-four (24) feet in width, for purposes of construction, installation, operation, maintenance, repair, modification or replacement of a 69 kilovolt electric distribution line or lines, together with ancillary improvements, such easement being on, in, over and under the Property described in the deed. Said easement is described in Attachment (1) and is depicted on Record of Survey Map No. 15840 filed on June 12, 1998 in the Book of Record of Survey Maps in the office of the County Recorder for the County of San Diego.

Modifications or replacements shall not be limited to the size, number or capacity of the line or lines in place on the date of the reservation, provided that the burden on the Property is not unreasonably increased.



THOMAS H. PHELPS P.L.S. 5495 DATE 1/25/01

Note that the legal description contained in Attachment (1) extends beyond the Property and to that extent is not relevant to this easement.

A STRIP OF LAND 24.00 FEET WIDE FOR 69 KV ELECTRICAL UTILITY PURPOSES WITHIN THE BOUNDARIES OF THE UNITED STATES NAVAL TRAINING CENTER, SAN DIEGO COUNTY, CALIFORNIA AS SAID NAVAL TRAINING CENTER EXISTED AS OF JANUARY 01, 1997, SAID STRIP OF LAND RUNS BETWEEN THE NORTHWESTERLY BOUNDARY LINE OF THE U. S. NAVAL TRAINING CENTER TO THE CO-GENERATION PLANT ADJACENT TO THE U.S. MARINE CORPS BASE, THE CENTERLINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

Beginning at a point in the northwesterly boundary line of the United States Naval Training Center as said boundary line is shown on sheets 4 and 10 of 13 sheets of Record of Survey Map No. 15213 on file in the office of the County Recorder of San Diego County, California, said point being, NORTH 36°16'06" EAST, 271.35 feet along said northwesterly boundary line from an angle point in said boundary, said angle point being marked with a ¾" diameter iron pipe with plastic plug stamped "LS 6929", said angle point also being at the easterly corner of Nimitz Boulevard and Rosecrans Street, all as shown on said Record of Survey; thence from said **Point of Beginning**; SOUTH 55°06'51" EAST, 17.58 feet to the beginning of a curve concave northerly having a radius of 27.00 feet; thence southeasterly, easterly and northeasterly along said curve through a central angle of 84°51'11", an arc length of 39.99 feet; thence the following courses; NORTH 40°01'58" EAST, 26.80 feet; NORTH 32°13'05" EAST, 38.77 feet; NORTH 08° 53'30" EAST, 16.48 feet and, NORTH 36°13'07" EAST, 1238.58 feet to the intersection with that certain course shown on sheet 4 of 13 sheets of said Record of Survey as having a bearing and distance of, "NORTH 53°43'54" WEST, 1427.91 feet", said point being, SOUTH 53°43'54" EAST, 34.23 feet along said course from the northwesterly terminus of said course; thence continuing, NORTH 36°13'07" EAST, 295.08 feet; thence, NORTH 21°58'00" EAST, 31.72 feet; SOUTH 70°26'03" EAST, 11.89 feet; NORTH 37°05'09" EAST, 267.00 feet and, NORTH 36°05'23" EAST, 383.21 feet to the beginning of a tangent curve concave southerly having a radius of 65.00 feet, thence northeasterly, easterly, and southeasterly along said curve through a central angle of 90°10'18", an arc length of 102.30 feet; thence, SOUTH 53°44'19" EAST, 756.17 feet; SOUTH, 69°20'00" EAST, 82.58 feet; SOUTH 37°14'32" EAST, 18.38 feet; SOUTH 74°53'21" EAST, 16.46 feet and, SOUTH 53°31'47" EAST, 454.89 feet, to an intersection with that certain course shown on sheet 4 of 13 sheets of said Record of Survey Map No. 15213 as having a bearing and distance of, NORTH 36°18'40" EAST, 1080.03 feet; said point being, SOUTH 36°18'40" WEST, 13.99 feet along said course from the northeasterly terminus of said course; thence continuing, SOUTH 53°31'47" EAST, 39.36 feet; thence, SOUTH 53°41'14" EAST, 336.46 feet to that certain course shown on Record of Survey Map No. 15709 on file in the office of the County Recorder of San Diego, County, California as having a bearing and distance of NORTH 36° 16' 00" EAST, 1307.97 feet, said point being, SOUTH 36°16'00" WEST, 14.35 feet along said course from the northeasterly terminus of said course; thence continuing, SOUTH 53°41'14"

EAST, 175.96 feet; thence, NORTH 74°10'16" EAST, 18.33 feet to an intersection with that certain course shown on sheet 4 of 13 sheets of said Record of Survey Map No. 15213 as having a bearing and distance of, NORTH 53°43'30" WEST, 780.00 feet, said point being, NORTH 53°43'30" WEST, 216.97 feet along said course from the southeasterly terminus of said course; thence, continuing, NORTH 74°10'16" EAST, 12.58 feet; NORTH 58°58'41" EAST, 15.88 feet; NORTH 05°31'56" EAST, 13.54 feet; NORTH 45°07'02" EAST, 350.53 feet; NORTH 41°52'02" EAST, 383.36 feet; NORTH 48°01'37" EAST, 37.06 feet; NORTH 22°38'57" EAST, 13.36 feet; NORTH 41°56'24" EAST, 1207.57 feet; SOUTH 70°26'30" EAST, 14.83 feet; thence, over, across and through the boat channel, SOUTH 70°26'30" EAST, 599.37 feet; thence, SOUTH 81°25'27" EAST, 242.78 feet; thence, NORTH 44°57'07" EAST, 38.27 feet more or less to that certain course shown on said Record of Survey Map No. 15213 as having a bearing and distance of, NORTH 82°29'30" WEST, 355.45 feet, said point being, NORTH 82°29'30" WEST, 101.24 feet along said last mentioned course from the easterly terminus of said course. The sidelines of said strip to be prolonged or shortened to meet at angle points and at the crossing courses cited above and to terminate northerly in that certain course shown on sheet 6 of 13 sheets of said Record of Survey Map No. 15213 as having a bearing and distance of, "NORTH 82°29'30" WEST, 355.45 feet and westerly in the northwesterly boundary line of the U.S. Naval Training Center as shown on sheets 4 and 10 of 13 sheets of said Record of Survey Map No. 15213 as having a bearing and distance of, NORTH 36°16'06" EAST, 6903.50 feet. Subject to covenants, conditions, reservations, restrictions, rights of way and easements of record, if any.

All as more particularly shown on Record of Survey Map No. 15840 on file in the office of the County Recorder of San Diego, County, California and by this reference, made a part hereof.

The above described parcel contains 4.01 acres, more or less

EASEMENT FOR RUNWAY APPROACH LIGHTING SYSTEM

In accordance with the reservation contained in the deed to which this exhibit is attached, the United States of America reserves an easement, approximately one-hundred (100) feet in width, for the purposes of construction, installation, operation, maintenance, repair, modification or replacement of a runway approach lighting system for San Diego International Airport, together with ancillary improvements, such easement being on, in, over and under the Property described in the deed. Said easement is described in Attachment (1)* and depicted in Attachment (2) hereof.

Modifications or replacements shall not be limited to the number, size or configuration of the lights in place on the date of the reservation, provided that the burden on the Property is not unreasonably increased.

Said easement is over land presently subjected to a lease from the United States of America to the San Diego Unified Port District with a term ending May 31, 2020. This reservation of easement shall become effective at the end of the term or earlier termination of the lease.



Robert W. Schmidt 1/25/01
ROBERT W. SCHMIDT P.L.S. 7444 DATE

* Note that the legal description contained in attachment (1) extends beyond the Property and to that extent is not relevant to this easement.

REVISED 01/24/2001
REVISED 12/13/2000
11/15/2000
JN C01-002
PAGE 1 OF 2

LEGAL DESCRIPTION

ALL THAT PORTION OF THE U.S. NAVAL TRAINING CENTER AS SHOWN ON RECORD OF SURVEY MAP NO. 15213, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JUNE 14, 1996 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING A STRIP OF LAND 100.00 FEET IN WIDTH, THE SIDELINES BEING DESCRIBED AS FOLLOWS.

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF HARBOR DRIVE AND THE EASTERLY BOUNDARY OF THE U.S. NAVAL TRAINING CENTER FORMALLY KNOWN AS U.S. MARINE CORPS TRAINING DEPOT, SAID EASTERLY LINE ALSO BEING THE MOST WESTERLY LINE OF THE SAN DIEGO INTERNATIONAL AIRPORT, LINDBERGH FIELD; THENCE NORTH 07°30'04" EAST, 1911.18 FEET (NORTH 06°59'20" EAST, 1911.18 FEET RECORD PER UNFILLED LEASE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SAN DIEGO UNIFIED PORT DISTRICT, COMMENCING ON JUNE 1, 1970 APPROVED APRIL 17, 1972, U.S. NAVY DOCUMENT NUMBER NF(R)-14841, SAN DIEGO UNIFIED PORT DISTRICT DOCUMENT NUMBER 6060) ALONG THE COMMON BOUNDARY LINE OF SAID U.S. NAVAL TRAINING CENTER AND OF THE SAN DIEGO INTERNATIONAL AIRPORT, TO THE SOUTHERLY BOUNDARY OF PARCEL 1 OF SAID LEASE AGREEMENT; THENCE CONTINUING ALONG SAID SOUTHERLY BOUNDARY OF PARCEL 1 NORTH 73°29'16" WEST, 414.57 FEET (NORTH 74°00'00" WEST, 414.57 FEET RECORD); THENCE CONTINUING ALONG SAID PARCEL 1 BOUNDARY NORTH 16°30'44" EAST, 411.60 FEET (NORTH 16°00'00" EAST, 411.60 FEET RECORD); THENCE CONTINUING ALONG SAID PARCEL 1 BOUNDARY NORTH 73°29'16" WEST, 407.08 FEET (NORTH 74°00'00" WEST, 407.08 FEET RECORD); THENCE CONTINUING ALONG SAID PARCEL 1 BOUNDARY NORTH 16°30'44" EAST, 501.90 FEET (NORTH 16°00'00" EAST, 501.90 FEET RECORD) TO THE MOST EASTERLY CORNER OF PARCEL 3 OF SAID LEASE AGREEMENT; THENCE ALONG THE MOST NORTHERLY LINE OF PARCEL 3 NORTH 73°29'16" WEST, 191.90 FEET (NORTH 74°00'00" WEST, 191.90 FEET RECORD); THENCE CONTINUING ALONG SAID PARCEL 3 BOUNDARY SOUTH 16°30'44" WEST, 100.00 FEET (SOUTH 16°00'00" WEST, 100.00 FEET RECORD); THENCE CONTINUING ALONG SAID PARCEL 3 BOUNDARY NORTH 73°29'16" WEST, 496.38 FEET

EXHIBIT D, ATTACHMENT (1)

Page 1 of 2

Deed Page 25 of 40

REVISED 01/24/2001
REVISED 12/13/2000
11/15/2000
JN C01-002
PAGE 2 OF 2

(NORTH 74°00'00" WEST, 496.41 FEET RECORD) TO THE MOST NORTHERLY CORNER OF PARCEL 5 OF SAID LEASE AGREEMENT, SAID POINT BEING ON THE JURISDICTIONAL BOUNDARY LINE BETWEEN U.S. NAVAL TRAINING CENTER AND U.S. MARINE CORPS RECRUIT DEPOT, SAID POINT BEING SOUTH 15°38'02" EAST, 1574.91 FEET FROM THE NORTHWEST CORNER OF U.S. MARINE CORPS RECRUIT DEPOT AS SHOWN ON RECORD OF SURVEY 15746, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, FEBRUARY 26, 1998 SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID JURISDICTIONAL BOUNDARY LINE AND CONTINUING ALONG THE NORTHERLY BOUNDARY OF PARCEL 5 OF SAID LEASE AGREEMENT NORTH 73°29'16" WEST, 671.62 FEET (NORTH 74°00'00" WEST RECORD) TO THE NORTHEASTERLY BOUNDARY LINE OF PARCEL 6 AS SHOWN ON RECORD OF SURVEY 16556, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, APRIL 25, 2000, SAID POINT BEING SOUTH 48°09'28" EAST, 43.54 FEET FROM THE MOST NORTHERLY CORNER OF SAID PARCEL 6; THENCE LEAVING SAID BOUNDARY LINE OF PARCEL 6 AND CONTINUING ALONG THE NORTHERLY BOUNDARY OF PARCEL 5 OF SAID LEASE AGREEMENT NORTH 73°29'16" WEST, 432.00 FEET (NORTH 74°00'00" WEST RECORD) TO THE WESTERLY LINE OF PARCEL 5 OF SAID LEASE AGREEMENT; THENCE ALONG SAID WESTERLY LINE OF PARCEL 5 SOUTH 16°30'44" WEST 100.00 FEET (SOUTH 16°00'00" WEST 100.00 FEET RECORD) TO THE SOUTHERLY BOUNDARY OF SAID PARCEL 5; THENCE ALONG SAID SOUTHERLY BOUNDARY OF PARCEL 5 SOUTH 73°29'16" EAST, 1166.46 FEET (SOUTH 74°00'00" EAST 1166.43 FEET RECORD) TO THE SAID JURISDICTIONAL BOUNDARY LINE BETWEEN U.S. NAVAL TRAINING CENTER AND U.S. MARINE CORPS RECRUIT DEPOT; THENCE ALONG SAID JURISDICTIONAL BOUNDARY LINE NORTH 15°38'02" WEST 118.10 FEET (NORTH 16°08'40" WEST 118.10 FEET RECORD) TO THE TRUE POINT OF BEGINNING.

CONTAINS 2.61 ACRES MORE OR LESS

J:\RECORDS\244\BASES\NTCSD\BRAC\LEGAL\FAAREV2.DOC

EXHIBIT D, ATTACHMENT (1)

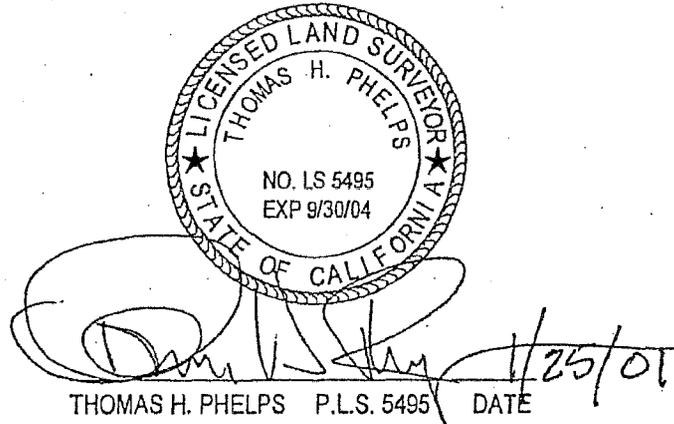
Page 2 of 2

Deed Page 26 of 40

EASEMENT FOR CABLE TELEVISION DISTRIBUTION SYSTEM

In accordance with the reservation contained in the deed to which this exhibit is attached, the United States of America reserves a ten (10) foot wide easement for purposes of construction, installation, operation, maintenance, repair, modification or replacement of conduits for a cable television distribution system and ancillary improvements, such easement being on, in, over and under the Property described in the deed. Said easement is described in Attachment (1)*and depicted in Attachment (2).

Modifications or replacements shall not be limited to the number, size or capacity of the conduit or conduits in place on the date of the reservation, provided that the burden on the Property is not unreasonably increased.



THOMAS H. PHELPS P.L.S. 5495 DATE 1/25/01

*Note that the legal description and depiction contained in Attachment (1) extends beyond the Property and to that extent is not relevant to this easement.

All that portion of the U.S. Naval Training Center as shown on Record of Survey Map No. 15213, filed in the Office of the County Recorder of San Diego County, June 14, 1996, in the City of San Diego, County of San Diego, State of California, being a strip of land 10.00 feet in width, the centerline of which is described as follows:

COMMENCING at the Northwest corner of the U.S. Marine Corps Recruit Depot as shown on Record of Survey No. 9050; thence along the Jurisdictional Boundary between U.S. Marine Corps Recruit Depot and the U.S. Naval Training Center, South 15°38'02" East, 88.00 feet to the TRUE POINT OF BEGINNING; thence leaving said Jurisdictional Boundary, South 82°13'15" West, 34.22 feet; thence South 68°14'08" West, 48.53 feet; thence South 41°04'56" West, 182.06 feet; thence South 33°18'58" West, 51.67 feet; thence South 05°38'57" West, 90.73 feet; thence South 85°13'22" East, 14.54 feet; thence South 05°48'10" West, 128.68 feet; thence South 13°16'49" West, 51.53 feet; thence South 02°53'14" West, 84.98 feet; thence South 42°12'52" West, 122.07 feet; thence South 40°07'50" East, 15.50 feet; thence South 38°22'37" West, 47.56 feet; thence North 85°39'34" West, 17.00 feet; thence South 42°02'09" West, 229.71 feet; thence South 02°09'41" West, 55.75 feet; thence South 43°40'43" West, 263.08 feet; thence South 41°52'57" West, 271.29 feet; thence South 56°08'30" West, 50.50 feet; thence South 42°27'06" West, 68.77 feet; thence South 00°35'30" East, 15.00 feet; thence South 38°16'19" West, 118.28 feet; thence North 79°30'39" West, 20.09 feet; thence South 69°59'56" West, 20.17 feet; thence South 40°17'33" West, 241.27 feet; thence South 45°59'35" West, 155.93 feet; thence South 20°53'10" West, 31.34 feet; thence South 30°36'36" East, 12.20 feet; thence South 44°51'45" West, 209.37 feet; thence South 60°42'21" West, 21.00 feet; thence South 35°26'00" West, 22.00 feet; thence South 17°45'34" West, 29.37 feet; thence South 41°40'20" West, 174.57 feet; thence South 51°19'20" West, 42.50 feet; thence South 25°10'00" West, 16.57 feet; thence South 41°48'44" West, 425.05 feet; thence South 61°09'24" West, 16.34 feet; thence South 43°30'00" West, 22.50 feet; thence South 11°05'00" West, 13.70 feet; thence South 40°51'00" West, 59.91 feet to POINT "A"; thence South 36°20'25" East, 33.04 feet; thence South 49°20'00" East, 275.00 feet; thence South 50°42'22" East, 59.89 feet; thence South 47°58'42" East, 218.00 feet; thence South 49°15'43" West, 56.08 feet; thence North 47°27'35" West, 135.00 feet; thence North 75°52'00" West, 15.00 feet; thence South 53°19'07" West, 40.27 feet; thence South 41°33'30" West, 490.00 feet; thence South 37°06'40" West, 214.00 feet; thence South 10°34'20" West, 24.50 feet; thence South 20°29'00" East, 25.00 feet; thence South 39°38'25" West, 66.60 feet; thence South 53°00'00" East, 174.35 feet; thence South 55°40'40" East, 431.00 feet; thence South 35°59'00" East, 25.75 feet; thence North 40°26'20" East, 40.72 feet; thence South 51°00'34" East, 74.13 feet; thence South 13°27'08" West, 731.14 feet; thence South 15°56'45" West, 198.75 feet; thence South 02°18'53" West, 42.43 feet; thence North 73°42'22" East, 29.91 feet; thence North 52°14'00" East, 76.00 feet; thence South 37°46'00" East, 10.00 feet; thence South 52°14'00" West, 26.01 feet; thence South 11°57'20" West, 53.29 feet; thence South 23°08'08"

West, 51.04 feet; thence South 08°51'00" East, 118.00 feet; thence South 24°50'00" West, 16.13 feet to the southerly line of Harbor Drive, said point being on the arc of a 3900.00 foot radius curve, concave to the South, a radial to said point bears North 16°13'57" West; thence South 24°50'00" West, 53.87 feet thence South 44°28'20" West, 24.15 feet.

The sidelines of said 10-foot wide easement to be extended or shortened so as to terminate northeasterly in said Jurisdictional boundary between the Marine Corps Recruit Depot and the Naval Training Center.

TOGETHER with a strip of land 10.00 feet in width, the centerline of which is described as follows:

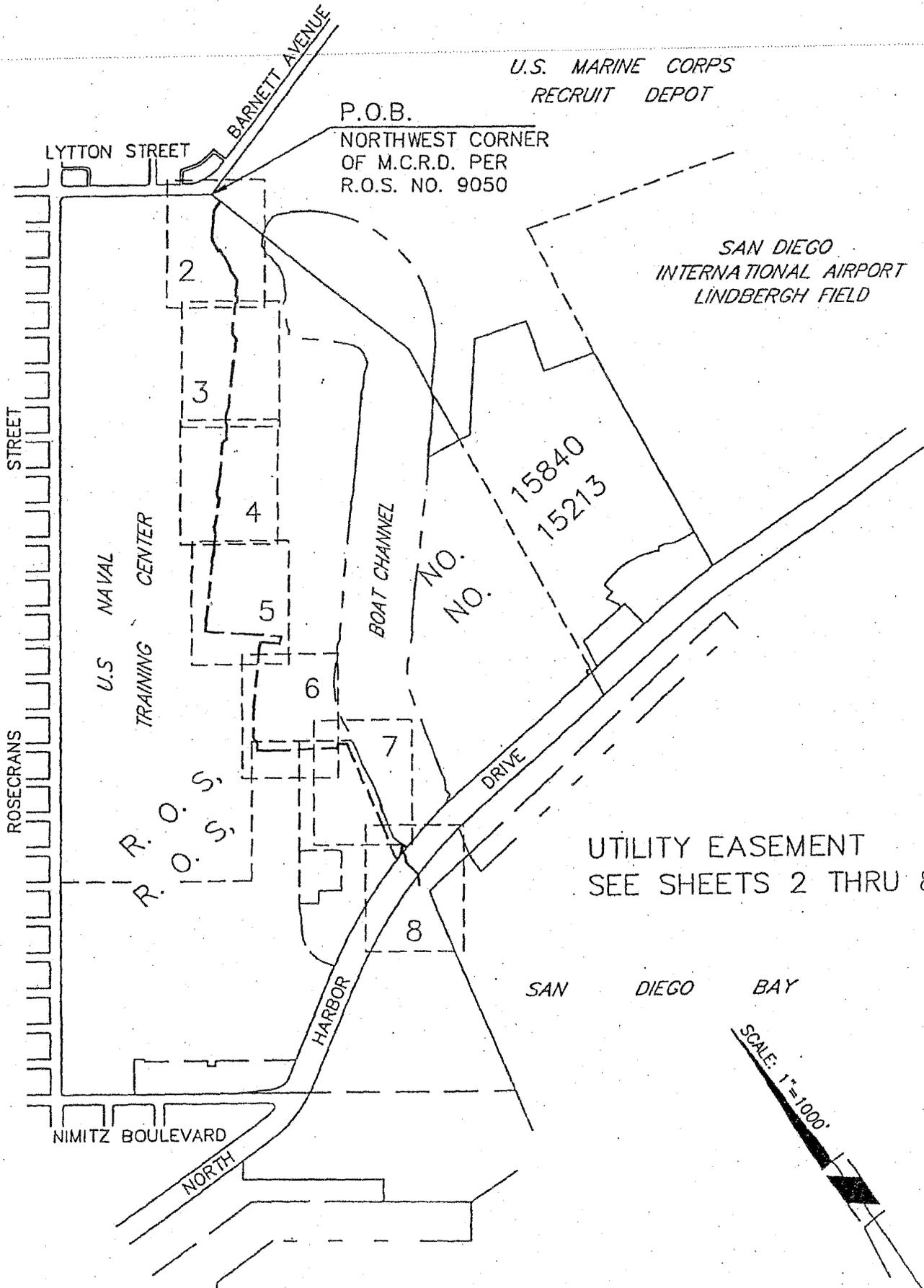
BEGINNING at the hereinabove described POINT "A"; thence North 54°18'00" West, 17.00 feet.

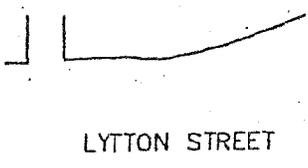
CONTAINS: 1.679 Acres, more or less.

U.S. MARINE CORPS
RECRUIT DEPOT

P.O.B.
NORTHWEST CORNER
OF M.C.R.D. PER
R.O.S. NO. 9050

SAN DIEGO
INTERNATIONAL AIRPORT
LINDBERGH FIELD





BARNETT AVENUE

P.O.B.
NORTHWEST CORNER
OF M.C.R.D. PER
R.O.S. NO. 9050

LYTTON STREET

88.00'

T.P.O.B.

S82°13'15"W 34.22'
S68°14'08"W 48.53'

U.S. MARINE CORPS
RECRUIT DEPOT

R. O. S., NO. 15213
R. O. S., NO. 15840

N15°38'02"W 1934.29'

S33°18'58"W 51.67'

S85°13'22"E 14.54'

S05°38'57"W 90.73'

LEGEND

 INDICATES UTILITY EASEMENT

U.S. NAVAL TRAINING CENTER

S13°16'49"W 51.53'

S02°53'14"W 84.98'

EXHIBIT E, ATTACHMENT (2)

SHEET 2 OF 8 SHEETS

SCALE: 1"=100'

S40°07'50"E 15.50'
S38°22'37"W 47.56'
N85°39'34"W 17.00'

MATCH LINE

SEE SHEET Page 33 of 40

MATCH LINE
SEE SHEET 2

R. O. S,
R. O. S,

NO. 15213
NO. 15840

S02°09'41"W 55.75'
U.S. NAVAL

TRAINING CENTER

LEGEND

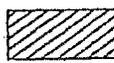
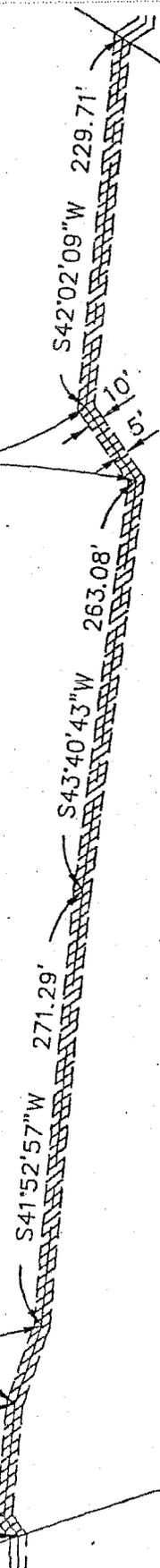
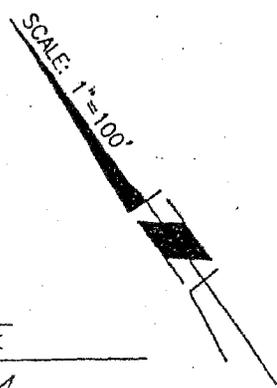
 INDICATES UTILITY EASEMENT

EXHIBIT E, ATTACHMENT (2)
SHEET 3 OF 8 SHEETS

S56°08'30"W 50.50'
S42°27'06"W 68.77'
S00°35'30"E 15.00'



MATCH LINE
SEE SHEET 4



MATCH LINE
SEE SHEET 3

N79°30'39"W 20.09'
S69°59'56"W 20.17'

118.28'
S38°16'19"W

R. O. S,
R. O. S,

NO. 15213
NO. 15840

U.S. NAVAL

TRAINING CENTER

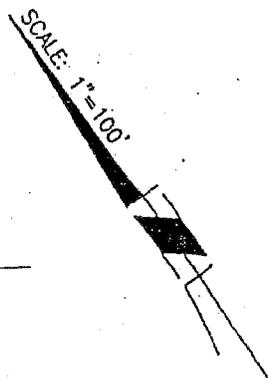
S20°53'10"W 31.34'
S30°36'36"E 12.20'

LEGEND
 INDICATES UTILITY EASEMENT

S44°51'45"W 209.37'
5.10'

S60°42'21"W 21.00'
S35°26'00"W 22.00'
S17°45'34"W 29.37'

MATCH LINE
SEE SHEET 5



SCALE: 1"=100'

MATCH LINE
SEE SHEET 4

S51°19'20"W 42.50'

S25°10'00"W 16.57'

U.S. NAVAL

TRAINING CENTER

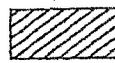
R. O. S,

NO. 15213

R. O. S,

NO. 15840

LEGEND

 INDICATES UTILITY EASEMENT

S61°09'24"W 16.34'

S43°30'00"W 22.50'

S11°05'00"W 13.70'

S40°51'00"W 59.91'

N54°18'00"W 17.00'

POINT "A"

S36°20'25"E 33.04'

S49°20'00"E 275.00'

MATCH LINE
SEE SHEET 6

EXHIBIT E, ATTACHMENT (2)

SHEET 5 OF 8 SHEETS

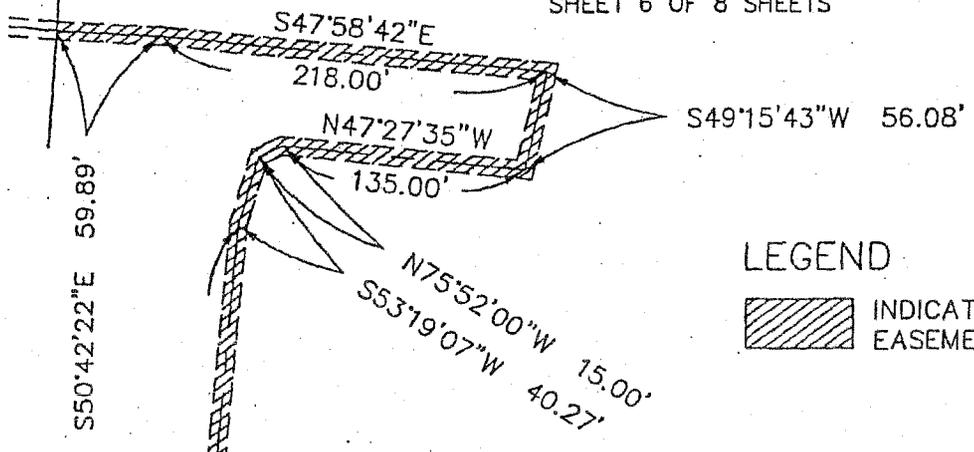
Deed Page 36 of 40

MATCH LINE
SEE SHEET 5

EXHIBIT E, ATTACHMENT (2)

SHEET 6 OF 8 SHEETS

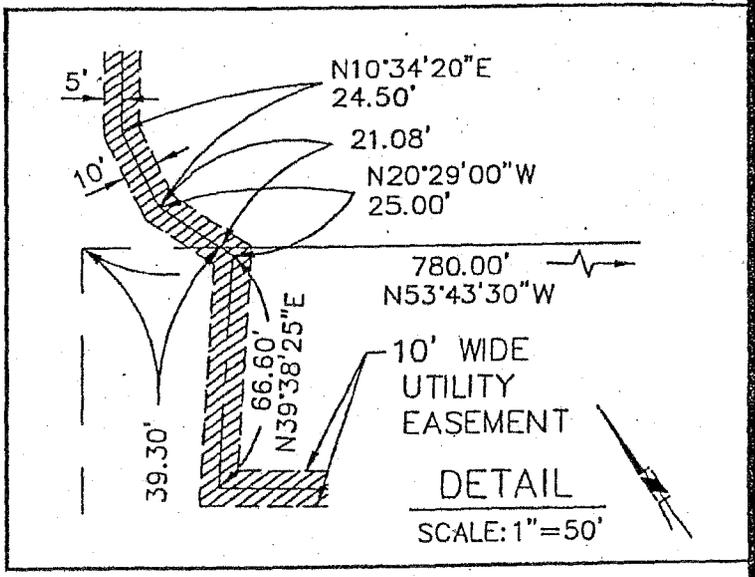
SCALE: 1"=100'



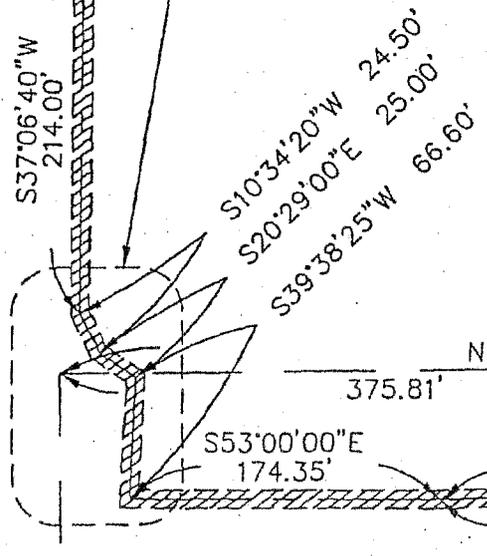
LEGEND

 INDICATES UTILITY EASEMENT

U.S. NAVAL TRAINING CENTER
 R. O. S, NO. 15213
 R. O. S, NO. 15840

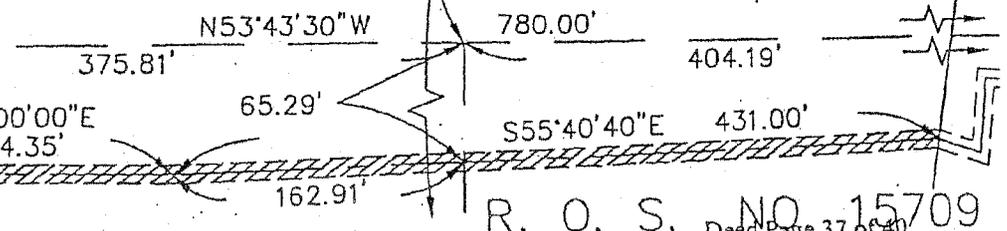


SEE DETAIL
AT RIGHT



N36°16'00"E
1307.97'

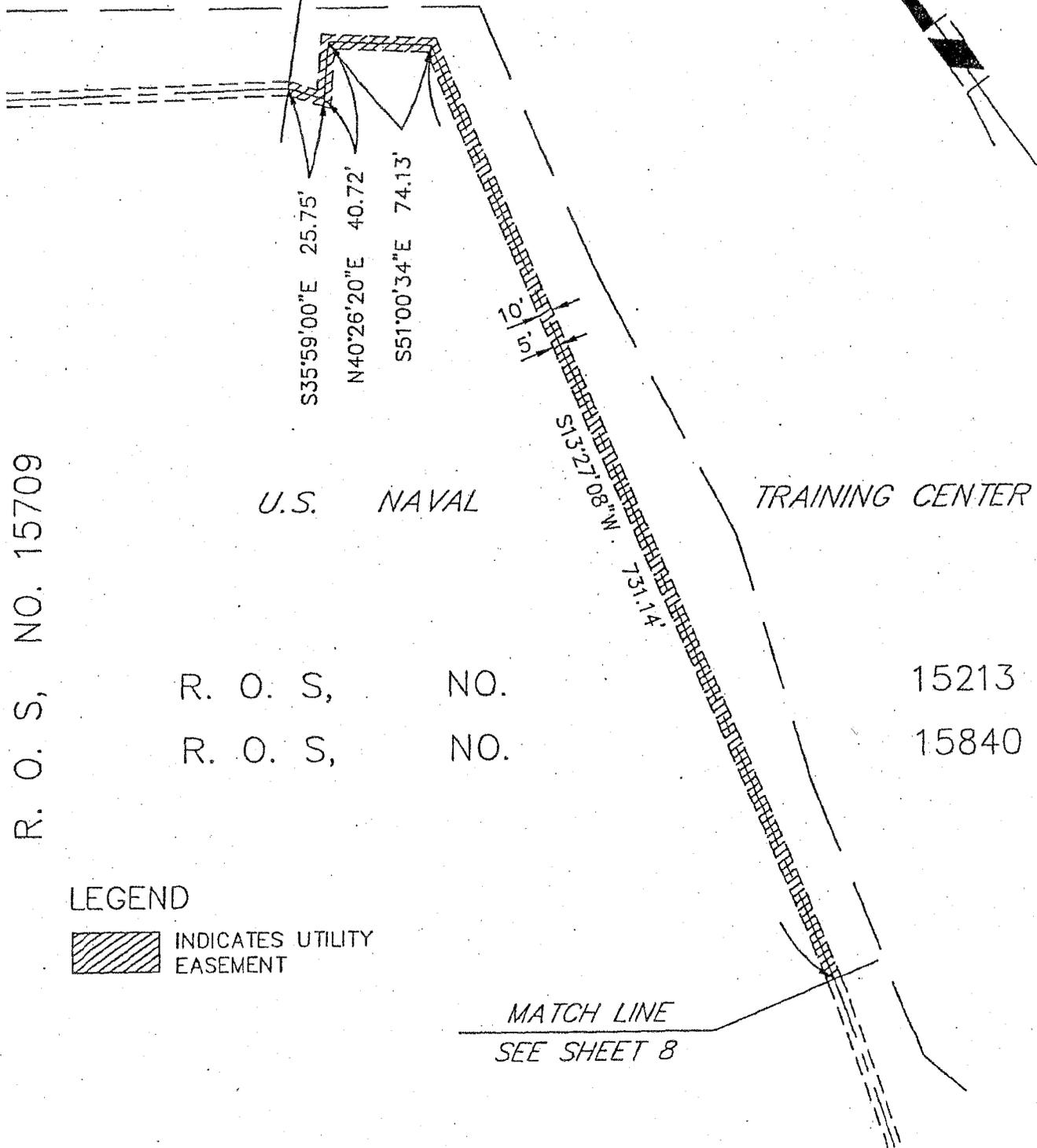
MATCH LINE
SEE SHEET 7



R. O. S, NO. 15709
 Decd Page 37 of 40

MATCH LINE
SEE SHEET 6

SCALE: 1"=100'



U.S. NAVAL

TRAINING CENTER

R. O. S., NO. 15709

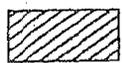
R. O. S., NO.

15213

R. O. S., NO.

15840

LEGEND

 INDICATES UTILITY EASEMENT

MATCH LINE
SEE SHEET 8

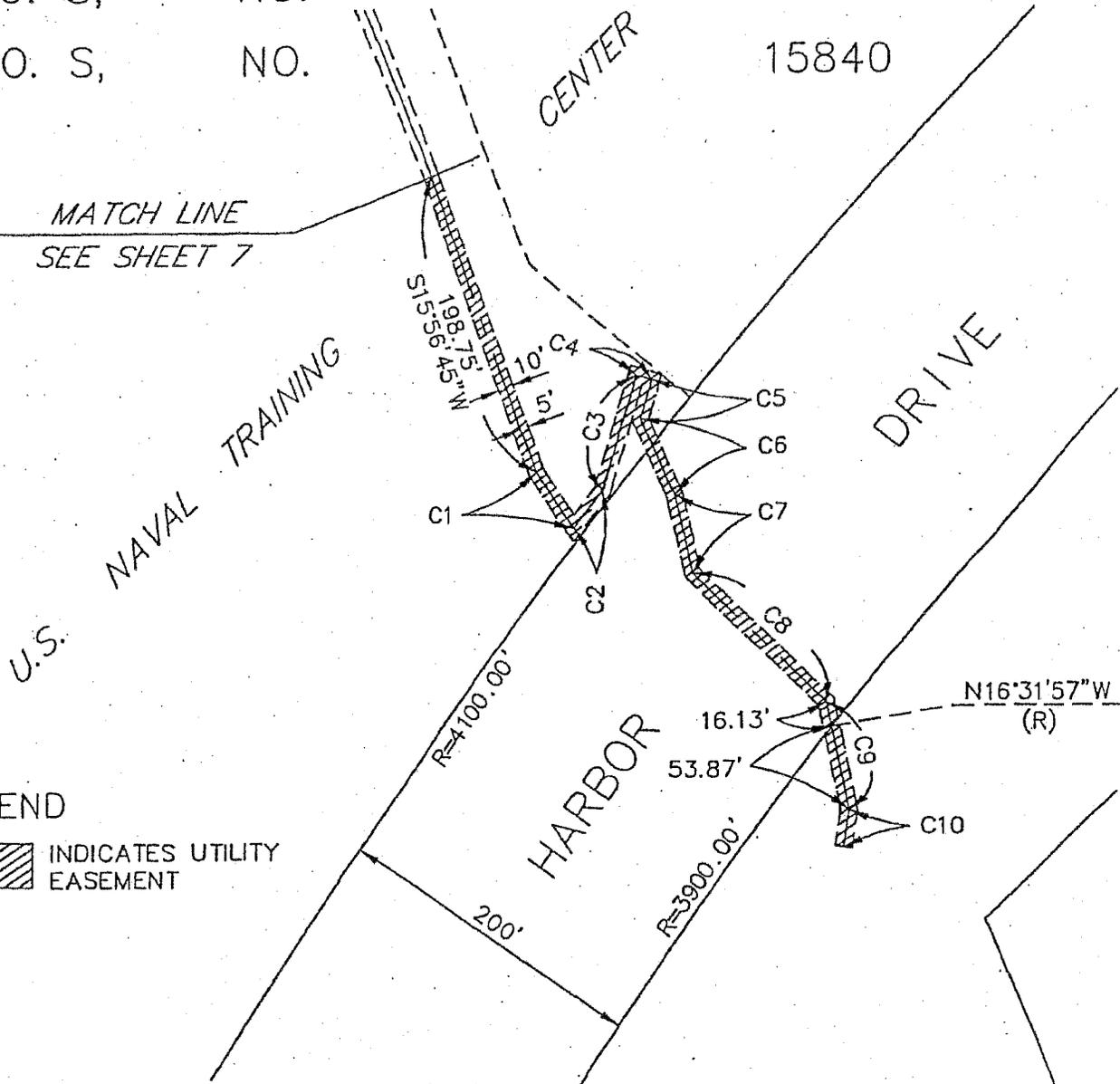
EXHIBIT E, ATTACHMENT (2)

EXHIBIT E, ATTACHMENT (2)

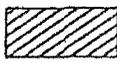
SHEET 8 OF 8 SHEETS

R. O. S, NO. 15213
 R. O. S, NO. 15840

R. O. S, NO. 15709



LEGEND

 INDICATES UTILITY EASEMENT

DATA TABLE

NO.	BEARING	LENGTH
C1	S02°18'53"W	42.43'
C2	N73°42'22"E	29.91'
C3	N52°14'00"E	76.00'
C4	S37°46'00"E	10.00'
C5	S52°14'00"W	26.01'
C6	S11°57'20"W	53.29'
C7	S23°08'08"W	51.04'
C8	S08°51'00"E	118.00'
C9	S24°50'00"W	70.00'
C10	S44°28'20"W	24.15'

U.S. NAVAL FLEET
 ANTI-SUBMARINE
 WARFARE TRAINING CENTER

SCALE: 1"=100'

EXHIBIT F – HAZARDOUS SUBSTANCES NOTIFICATION¹ – PARCEL VI

The information contained within this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund" 42 U.S.C. section 9620(h)).

Site Name	Hazardous Substance ¹	CAS No. ²	Regulatory Synonym	RCRA ³ Waste No.	Reportable Quantity (Pounds) ⁴	Quantity	Date(s) of Storage and/or Operation	Stored (S), Released (R), or Disposed (D) of	Reference
IRP Site 14 / POI 29	Lead	7439921	N/A	N/A	1	Unknown	1942-1993	R	B, 2-24
IRP Site 14 / POI 29	Antimony	7440360*	N/A	N/A	1	Unknown	1942-1993	R	A, 1-7
IRP Site 14 / POI 29	Copper	7440508*	N/A	N/A	1	Unknown	1942-1993	R	A, 1-7
IRP Site 14 / POI 29	Arsenic	7440382*	N/A	N/A	N/A	Unknown	1942-1993	**	D, 4-44; E, App. M
IRP Site 14 / POI 29	Beryllium	7440417*	N/A	N/A	N/A	Unknown	1942-1993	R	D, 4-44
POI 38	Lead	7439921	N/A	N/A	1	Unknown	1947-1997	R	C, 3-2
POI 38	Copper	7440508	N/A	N/A	1	Unknown	1947-1997	R	C, 3-2
POI 59	Boat fuel	N/A	N/A	N/A	N/A	Unknown	1943-1965	S	D, 4-66
POI 62	Arsenic	7440382*	N/A	N/A	1	Unknown	1934-1942	**	D, 4-80; E, App. M
POI 62	Spent ordnance	N/A	N/A	N/A	N/A	Unknown	1934-1942	S	D, 4-74
Facilitywide	Asbestos	1332214	N/A	P036	1	Unknown	Approx. 1922-present	Used	
Facilitywide	Lead-based paint	N/A	N/A	N/A	N/A	Unknown	Approx. 1922-present	Used to approx. 1980/S	

¹ – This table was prepared in accordance with 40 CFR 373 and 40 CFR 302.4 and contains the required categories (a "Reference" column has been added to the format). None of the materials listed are known to meet reportable quantities.

² – CAS - Chemical Abstracts Services

³ – RCRA - Resource Conservation and Recovery Act

⁴ – N/A – The reported substance is not listed on the 40 CFR 302.4 table and therefore has no corresponding reportable quantity.

* – Data from NIOSH website <http://www.siri.uvm.edu.niosh>

** – Reported levels of arsenic may be attributable to natural (background) levels of arsenic in the soil

References: A- Removal Action Site Closeout Report, CERCLA NTCRA, IR Site 14, dated November 1999.

B- Final Engineering Evaluation/Cost Analysis (EE/CA), Non-Time-Critical Removal Action for IR Site 14, dated December 1998.

C- Final Comprehensive Report on the Site Assessment for the Steam Tunnels (POI 38), NTC, dated May 1997.

D- Final Comprehensive Site Assessment Report for Points of Interest, dated July 1996.

E- Final Site Assessment/Extended Site Assessment Report for 18 Points of Interest, dated May 1998.

This CONCESSION AGREEMENT (Agreement) is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation (CITY) and _____, a [California corporation, limited liability corporation, nonprofit, etc.] (CONCESSIONAIRE) to be effective upon execution by the parties and approval by the San Diego City Attorney (Effective Date), but in no event effective prior to concurrence of this Agreement in writing by the Secretary of Interior, as follows:

RECITALS

- A. Whereas, the CITY owns certain land consisting of approximately 49 acres, obtained by the CITY from the United States of America (USA), as surplus property, known as Parcel VI, Naval Training Center San Diego (NTC) and deeded to the CITY on July 6, 2001, (USA Deed) attached as **Exhibit A**.
- B. Whereas, the USA Deed sets forth restrictions and covenants and conditions (Conditions).
- C. Whereas, Condition 3 of the USA Deed provides as follows: "The Property shall not be sold, leased, assigned or otherwise disposed of except to another eligible governmental agency without the prior approval of the Secretary of the Interior in writing. Any such disposition shall assure the continued use and maintenance of the Property for public park or public recreational purposes subject to the same terms and conditions in the original instrument of conveyance. However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior."
- C. Whereas, the CITY and CONCESSIONAIRE desire to provide an aquatic center as further described below (Aquatic Center) on a portion of the NTC site consisting of approximately 3.6 acres of land, including a 19,650 square foot building, (Premises) for the use and benefit of the general public.
- D. Whereas, the CITY is satisfied that provision of additional services and facilities at the Premises is in the CITY's best interest.

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual covenants and agreements as hereinafter set forth, the CITY agrees to allow CONCESSIONAIRE to design and construct the Aquatic Center (Project) and provide aquatic center services and facilities (Services) hereinafter to be mentioned upon the Premises described in **Exhibit B** attached hereto and incorporated herein by this reference and located at the NTC site.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. Premises. The Premises consists of 3.6 acres of land including a 19,650 square foot building, commonly referred to as Building 619, at the NTC site, as described in **Exhibit B**.
2. Scope of Work of the Project. The Project shall consist of those improvements described in the Scope of Work as set forth in **Exhibit C-1** and General Development Plan, approved by the San Diego Park and Recreation Board on _____, 2002, as set forth in **Exhibit C-2**.
3. Design and Construction of the Project. CONCESSIONAIRE agrees to design and construct, at its sole cost and expense, a complete and operational Project fully suited to the purpose for which it was designed and in accordance with all federal, state and local laws, rules and regulations, this Agreement, the Construction Requirements set forth in **Exhibit D**, and within the timeframe as established by the parties.

CONCESSIONAIRE shall provide to CITY, prior to commencement of any construction of the Project, a faithful performance bond in the amount of one hundred percent (100%) of the estimated design and construction costs 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 to be commenced by CONCESSIONAIRE 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 shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY. This requirement is not intended to be duplicative of a construction bond otherwise required of CONCESSIONAIRE.

4. Authorized Uses of the Premises. Upon acceptance of the Project evidenced by recordation of Notice of Completion with the San Diego County Recorder, CONCESSIONAIRE shall use, occupy and maintain the Premises for the operation of the Aquatic Center in strict accordance with this Agreement, the USA Deed, and the operating plan approved in writing by the CITY (Operating Plan), attached as **Exhibit E**. The Services CONCESSIONAIRE shall provide on the Premises shall include, but not limited to, providing swim lessons, locker rooms, offices, water safety instruction, wellness and exercise programs, lifeguard instruction, kayak training, and scuba/snorkel training. Concessionaire may operate a snack bar. CONCESSIONAIRE shall not sell alcoholic beverages without the prior written approval of the CITY. CONCESSIONAIRE shall not operate or permit to be operated on or from the Premises a general purpose child care or day care facility. CONCESSIONAIRE shall conduct its operations continuously throughout the Term and shall keep the Premises open for business as set forth in this Agreement except for approved, in advance by the CITY, closures for remodeling, repair or renovation.

CONCESSIONAIRE shall serve the general public under the terms and conditions of this Agreement. Written approval by the CITY and written concurrence by the Secretary of the Interior or his/her delegated representative, the National Park Service (NPS), shall be

required for other proposed use in conjunction with or in addition to the Services as specified in this Agreement.

5. Conditions in USA DEED and Program of Utilization. This Agreement and the obligations of the parties hereto are subject to the terms and conditions set forth in the USA Deed and the current Program of Utilization which governs the use of the Premises. CONCESSIONAIRE shall use the Premises in strict accordance with all terms and conditions imposed by the USA as set forth in the USA Deed that pertain to the use of the Premises including, but not limited to, the terms and conditions regarding hazardous materials, lead based paint, and asbestos contained in Conditions 9, 10, 11, 12, 13, 17 and 18 of the USA Deed. In the event of any conflict between the terms and conditions of the USA Deed and any provision of this Agreement, the terms of the USA Deed shall control. Violations of any terms and conditions of the USA deed may be grounds for termination of this Agreement and reversion of the Premises to the USA and with no compensation to either the CONCESSIONAIRE or the CITY from the USA.

CONCESSIONAIRE acknowledges that the Premises is subject to the possibility of reversion to the USA in accordance with the USA Deed in the event of a breach of noncompliance by the CITY or the CONCESSIONAIRE for not adhering to the covenants and agreements contained in the USA Deed. CONCESSIONAIRE agrees that the CITY is not liable to CONCESSIONAIRE or any third party as a result of termination of this Agreement or a reversion of the Premises to USA in accordance with the USA Deed.

6. Term. The term of this Agreement shall be twenty (20) years commencing on the Effective Date ("Initial Term"). "Agreement Year" as used in this Agreement shall mean the twelve (12) month period commencing on the first day of the calendar month following the Effective Date and each twelve (12) month period thereafter, prior to the expiration of the Agreement.

If CONCESSIONAIRE is in compliance with Section 4, above, and is not otherwise in default under this Agreement, CONCESSIONAIRE shall have the option to extend this Agreement for two (2) successive terms of five (5) years (each the "Extended Term"), on the same terms and conditions set forth herein except that the renewed Agreement shall contain no further renewal options. If CONCESSIONAIRE desires to extend this Agreement, CONCESSIONAIRE shall provide to CITY written notice of its intention to do so at least one (1) year prior to the beginning of each Extended Term. As used in this Agreement, "Term" means the Initial Term and any Extended Term.

7. CITY'S Right to Terminate for Public Convenience. The CITY shall have an option to terminate this Agreement for public convenience on the tenth (10th) anniversary of the Effective Date and once every five (5) years thereafter on the anniversary of the Effective Date during the Term of this Agreement. The CITY may exercise its termination option by written notice to CONCESSIONAIRE specifying the effective termination date which shall in no event be less than two (2) years from the date of said notice.

8. Concession Payment. CONCESSIONAIRE shall pay to CITY a concession payment in the amount of Three Thousand Two Hundred Fifty Dollars (\$3,250.00) per Agreement Year paid annually in advance for the use of the Premises to offset administrative costs incurred by CITY to administer this Agreement. CONCESSIONAIRE shall pay concession payment within thirty (30) days after the Effective Date, and thereafter no later than on each annual anniversary of the Effective Date. The concession payment shall be adjusted upward annually, based on increases in the Consumer Price Index as provided below (Adjusted Concession Payment). In no event shall the Adjusted Concession Payment, as established by the CPI, be less than the concession payment in existence on the immediately prior Agreement Year.

a. CPI Adjustments. On each annual anniversary of the Effective Date, the concession payment shall only be adjusted upward to reflect any increase in the Consumer Price Index for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California ("CPI") based on the average of the then three most recently published monthly indices just prior to each adjustment. If the CPI is no longer published, the index for adjustment shall be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the CPI.

i. If concession payment adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used shall first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

ii. If the Department of Labor indices are no longer published, CITY in its sole and absolute discretion may use another index deemed by CITY to be reasonably comparable to the CPI, which shall then constitute the CPI under this Agreement.

iii. CITY's failure to deliver timely notice of any concession payment adjustment shall not constitute a waiver by CITY of its rights hereunder.

b. CPI Adjustment Computation. Each year concession payment shall be calculated as follows:

The "adjustment multiplier" shall be calculated by dividing the "current index" by the "base index" as defined below:

i. The "current index" shall be the average of the three monthly indices most recently published before the adjustment date ("Current Indices").

ii. The "base index" shall be the average of the same months' indices published a year prior to the Current Indices.

The “base figure” for calculating concession payment shall be the dollar amount of concession payment for the year immediately preceding the adjustment date. The “base figure” is then multiplied by the “adjustment multiplier” to determine the new concession payment, as follows:

(CURRENT INDEX ÷ BASE INDEX) X BASE FIGURE = NEW CONCESSION PAYMENT

c. Delinquent Concession Payment. If CONCESSIONAIRE fails to pay all or any part of the concession payment or other payments, as discussed in Section 23, below, when due, CONCESSIONAIRE shall pay, in addition to the unpaid amount, five percent (5%) of the unpaid amount. If the concession payment is still unpaid at the end of fifteen (15) days, CONCESSIONAIRE shall pay an additional five percent (5%) of the unpaid amount [for a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from the delinquency, including lost interest, lost opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late concession payment be less than Twenty-Five Dollars (\$25) each time.

d. Time and Place of Payment. All payments to be paid by CONCESSIONAIRE under this Agreement shall be made payable to the City Treasurer and be mailed to:

San Diego City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

9. Inspection of Records. CONCESSIONAIRE shall keep and maintain accurate and complete records and accounts in accordance with generally accepted accounting principles consistently applied, showing all revenue derived from use of the Premises. CONCESSIONAIRE shall make such records and accounts available to CITY for inspection at all reasonable times and shall provide any and all documentation as may be needed to file compliance reports to the Secretary of the Interior or his/her delegated representative, NPS. Such records and accounts shall be made available to CITY at the Premises during the Term and in a location within San Diego County after the expiration

or earlier termination of this Agreement. CONCESSIONAIRE shall maintain such records and accounts and make them available to CITY for inspection for five (5) years after the date such records are produced.

10. Unauthorized Use Charge. In addition to the right to terminate this Agreement in accordance with Section 23, below, CONCESSIONAIRE shall pay CITY one hundred percent (100%) of the gross receipts from any use of the Premises that is not allowed by this Agreement, regardless of any related penalties charged CONCESSIONAIRE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after CONCESSIONAIRE receives such gross receipts. The unauthorized use charge shall be considered "concession payment" under this Agreement, but shall not be used to offset any concession payment otherwise required under this Agreement. The existence of such unauthorized use charge and CITY'S acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY'S rights under this Agreement.
11. Competent Management. CONCESSIONAIRE shall provide competent management of the Premises to CITY'S reasonable satisfaction. "Competent management" shall mean demonstrated ability in the management and operation of an aquatic center and related activities in a fiscally responsible manner to serve the greatest number of members of the community.
12. CITY'S Consent, Discretion. Whenever required under this Agreement, CITY'S consent or approval shall mean the written consent or approval of the San Diego Mayor or his or her designee ("Mayor"). CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise legally required or expressly provided in this Agreement.
13. Political Activities. CONCESSIONAIRE may make the Premises available for political activities by contracted users on a non-discriminatory basis at standard and established rates, terms, and conditions.
14. Public Use. The general public shall have access to the Premises for the uses allowed under this Agreement during CONCESSIONAIRE'S hours of operation and CONCESSIONAIRE shall not impose membership requirements for use of the Premises by the general public. A regular schedule of days and hours of operation shall be established by CONCESSIONAIRE to best serve the public in accordance with the Schedule of Days and Hours of Operation as set forth in **Exhibit F**. Any changes to CONCESSIONAIRE'S hours of operation shall be subject to the prior written approval of CITY, and CONCESSIONAIRE'S hours of operation shall be reviewed at least annually by CONCESSIONAIRE and CITY.

The general public shall not be wholly or permanently excluded from any portion of the Premises. However, CONCESSIONAIRE may apply reasonable restrictions for the general public's use of the Premises so long as such restrictions are consistent with the rights of the general public and do not conflict with CONCESSIONAIRE'S use of the

Premises as authorized by this Agreement (for example, staff offices for CONCESSIONAIRE).

15. Rates and Fees. All fees associated with the use of the facilities on the Premises shall be set forth in a schedule of rates and fees and approved in writing by CITY prior to imposing such rates and fees. All rates and fees charged shall be reasonable, in the opinion of CITY, so as not to deny participation by the general public and comparable with those charged at similar facilities in San Diego County. Any changes in the schedule of rates and fees shall be subject to the prior written approval of CITY, and the schedule shall be reviewed at least annually by CONCESSIONAIRE and CITY.

16. Public Signage. CONCESSIONAIRE shall, at all times during the Term, maintain a prominent CITY-approved sign identifying the property as CITY-owned and available for public use consistent with the terms of this Agreement. The sign shall be installed by CONCESSIONAIRE at a location approved by CITY.

CONCESSIONAIRE shall not erect or display any banners, pennants, flags, pennants signs, decorations, marquees, awnings, or similar devices or advertising on the Premises, without CITY's prior written consent. If any such unauthorized item is found on the Premises, CONCESSIONAIRE shall remove the item at its expense within twenty-four (24) hours notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE's cost.

17. CITY Use. The Premises shall be available to CITY for civic events and special programs, free of charge, except where CONCESSIONAIRE has scheduled events or programs. After every CITY use, CITY shall leave the Premises in the same condition found, and CONCESSIONAIRE shall not be required to incur any additional costs by reason of CITY use.

CONCESSIONAIRE acknowledges and agrees that the Premises may be used as an emergency shelter, free of charge, immediately upon notice by CITY.

18. Holdover. Any holding over by CONCESSIONAIRE after the expiration or earlier termination of this Agreement shall not be considered a renewal or extension of this Agreement. CONCESSIONAIRE's occupancy of the Premises after the expiration or earlier termination of this Agreement shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Agreement shall continue in full force and effect, except that CONCESSIONAIRE shall then pay to CITY fair market rent determined by an appraisal prepared by the CITY's Real Estate Assets Department (READ).

19. Surrender of Premises. Upon the expiration or earlier termination of this Agreement, CONCESSIONAIRE shall vacate the Premises and surrender the Premises to CITY free and clear of all liens and encumbrances, and in as good or better condition as the Premises were in at the Effective Date, except normal wear and tear. Prior to surrender of the Premises and in the City's discretion, CONCESSIONAIRE shall remove all

moveable trade fixtures and personal property without damage to the Premises at CONCESSIONAIRE's sole cost and expense, and shall repair at its sole cost and expense any damage resulting from the removal.

20. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
21. Assignment and Subconcession. CONCESSIONAIRE shall not assign this Agreement or any interest therein during the term of this Agreement. CONCESSIONAIRE shall not concession or subconcession the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of CONCESSIONAIRE, to use or occupy the Premises or any part thereof, without the prior written consent of both the CITY and NPS. Consent to concession, subconcession, occupation, or use by any other person shall not be deemed to be consent to any subsequent concession, subconcession, occupation, or use by another person or entity. Any concession or subconcession without consent shall be void and shall, at the option of CITY, terminate this Agreement or may result in possible reversion by the USA.

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

Approval of any subconcession shall be conditioned upon the subconcessionaire agreeing in writing that it will assume the rights and obligations thereby subconcession and that it will keep and perform all covenants, conditions, and provisions of this Agreement which are applicable to the rights acquired. The CITY may require, as a condition to approval of any subconcession of the majority portion of the Premises, that this Agreement or the requested subconcession otherwise be revised to comply with standard CITY agreement requirements that are then current. The CITY may also require, as a condition to approval of any subconcession of a commercial nature (e.g., food vending or telecommunications installations), that CONCESSIONAIRE pay CITY fair market rents for the uses. Pursuant to City Charter section 225, the CITY must review and approve every person or entity which will have an interest in this Agreement as a subconcessionaire.

22. Encumbrance and Liens. CONCESSIONAIRE shall keep the Premises free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE's occupancy, use, development, or maintenance of the Premises. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Premises, including without limitation CONCESSIONAIRE's failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons

referred to in section 3181 of the California Civil Code or other applicable sections thereof.

CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with construction, operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including, without limitation, reasonable attorney fees. If CONCESSIONAIRE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the property, CONCESSIONAIRE shall notify CITY of the lien within five (5) days after CONCESSIONAIRE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the 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.

23. Default and Remedies.

a. Default by CONCESSIONAIRE. Except for Safety Violations (as defined under subsection b., below) and major defaults (as set forth in this Agreement) which are grounds for immediate termination, in the event that:

- i. CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by CONCESSIONAIRE, including any covenant or condition in CONCESSIONAIRE's Operating Plan and shall fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
- ii. CONCESSIONAIRE shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or
- iii. CONCESSIONAIRE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate this Agreement and all rights of CONCESSIONAIRE and of all persons claiming rights through CONCESSIONAIRE and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided, however, in the event that any default described in this subsection "a." above is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY shall not terminate this Agreement pursuant to the default if CONCESSIONAIRE immediately commences to cure the default and diligently pursues cure to completion.

- b. Safety Violations by CONCESSIONAIRE. Notwithstanding subsection “a.” above, in the event CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by CONCESSIONAIRE, including any covenant or condition in CONCESSIONAIRE’s Operating Plan, and said default by CONCESSIONAIRE consists of any violation of municipal, state or federal law, or any covenants or conditions in CONCESSIONAIRE’s Operating plan that, in the CITY’s sole discretion, impinge on public safety [“Safety Violations”], CITY may, at its option, require CONCESSIONAIRE to immediately cure said default, or, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, terminate this Agreement:
- c. Abandonment by CONCESSIONAIRE. In the case that CONCESSIONAIRE breaches this Agreement and abandons the Premises, this Agreement shall continue in full force and effect for so long as CITY does not terminate this Agreement, and CITY may enforce all its rights and remedies under this Agreement, including, but not limited to, the right to recover any concession payment, rent, or other payments as set forth in Section 8, above, as they become due, plus damages. For purposes of this subsection, the following do not constitute a termination of CONCESSIONAIRE’s right to possession or operation:
- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Agreement.
 - ii. The appointment of a receiver upon initiative of CITY to protect CITY’s interest under this Agreement.
24. Indemnification & Hold Harmless. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE’s officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with CONCESSIONAIRE’s acts or omissions in the performance of its obligations under this Agreement or with CONCESSIONAIRE’s use, development, or maintenance of the Premises, including damages arising out of release of hazardous materials, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE’s duty to indemnify and hold CITY harmless shall not include any established liability arising from the gross negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. The City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the

City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE shall pay the City for all costs related thereto, including, without limitation, attorney's fees and costs.

25. Eminent Domain. If all the premises are taken by Eminent Domain, this Agreement shall terminate as of the date CONCESSIONAIRE is required to vacate the Premises and all concession payment shall be paid to that date. Exercise by the USA of its right to revert the property under the terms and conditions of the USA Deed shall not be construed as an exercise of Eminent Domain by the USA. The term "Eminent Domain" shall include the taking or damaging of property by, through or under any governmental or statutory authority, and any purchase or acquisition in lieu thereof, whether the damaging or taking is by government or any other person. If a taking of any part of the Premises by Eminent Domain renders the remainder thereof unusable for CONCESSIONAIRE's business, in the reasonable judgment of CONCESSIONAIRE, CONCESSIONAIRE may terminate this Agreement by written notice given to CITY not more than thirty (30) days after CITY gives CONCESSIONAIRE written notice of the taking, and such termination shall be effective as of the date when CONCESSIONAIRE is required to vacate the portion of the Premises taken. If this Agreement is terminated, all concession payment shall be paid to the date of termination. Whenever any portion of the Premises is taken by Eminent Domain and this Agreement is not terminated, the CITY, at its expense, shall proceed with all reasonable dispatch to restore, to the extent of available proceeds and to the extent it is reasonably prudent to do so, the remainder of the Premises to the condition they were in immediately prior to such taking, and CONCESSIONAIRE, at its expense, shall proceed with all reasonable dispatch to restore its personal property and all improvements made by it to the Premises to the same condition they were in immediately prior to such taking. Concession payment payable hereunder shall be reduced from the date CONCESSIONAIRE is required to partially vacate the Premises.

Except as otherwise provided below, CITY reserves all right to the entire damage award or payment for any taking by Eminent Domain, and CONCESSIONAIRE waives all claim whatsoever against CITY for damages for termination of any interest it may have, if any, in the Premises or for interference with its business. CONCESSIONAIRE hereby grants and assigns to CITY any right CONCESSIONAIRE may now have or hereafter acquire to such damages and agrees to execute and deliver such further instruments of assignment as CITY, from time to time, may request. CONCESSIONAIRE, however, shall have the right to claim from the condemning authority all compensation that may be recoverable by CONCESSIONAIRE on account of any loss incurred by CONCESSIONAIRE in moving CONCESSIONAIRE's merchandise, furniture, trade fixtures and equipment and the cost of restoring its personal property and improvements made by it to the Premises.

26. Insurance. CONCESSIONAIRE shall deliver to READ a current certificate of insurance and relevant endorsements for:

- (1) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Five Million Dollars (\$5,000,000) per occurrence, subject to an annual aggregate of at least Five Million Dollars (\$5,000,000);
 - (2) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Agreement. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage;
 - (3) Workers' Compensation Insurance, as required by the laws of the State of California for all of CONCESSIONAIRE's employees who are subject to this Agreement, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000); and
 - (4) Causes of Loss - Special Form Property Insurance on all of CONCESSIONAIRE's insurable property related to this Agreement or the Premises in an amount to cover 100 percent (100%) of the replacement cost. CONCESSIONAIRE shall deliver to CITY a certificate of such insurance.
- a. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 - b. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.
 - c. Qualified Insurer(s). All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
 - d. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
 - e. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on

commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement. CONCESSIONAIRE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, CONCESSIONAIRE shall immediately notify CITY and immediately obtain replacement insurance or do so as soon as required by CITY. Failure to do so constitutes a major default under this Agreement subject to immediate termination of the Agreement.

- f. Modification. To ensure protection from and against the kind and extent of risk existing with the Use of the Premises, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to this Agreement or the Premises.

- g. Accident Reports. CONCESSIONAIRE shall immediately report to the CITY any accident causing property damage or injury to persons and related to this Agreement or the Premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

- h. Failure to Comply. If CONCESSIONAIRE 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. CONCESSIONAIRE 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. The reimbursement and interest shall be paid by CONCESSIONAIRE on the first (1st) day of the month following the notice of payment by CITY. Notwithstanding any other provision of this Agreement to the contrary, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Agreement, or fails to provide proof of insurance at any time and from time to time as reasonably requested by CITY, CITY may terminate this Agreement after five (5) business days' prior written notice to CONCESSIONAIRE. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Premises and commence and diligently pursue the removal of its property from the Premises, in accordance with Section 19, above.

27. Property Insurance Costs. CITY shall obtain and maintain property insurance for fire, property, and extended coverage that includes coverage of the Premises.
28. Waste, Damage, or Destruction. CONCESSIONAIRE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy, and sanitary, CONCESSIONAIRE shall at its sole cost and expense restore the Premises to the condition which existed prior to the waste, damage, or destruction within a reasonable time.
29. Acceptance of Premises. CONCESSIONAIRE accepts the Premises in its present As-Is and Where-Is condition without warranty, expressed or implied. CONCESSIONAIRE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observation necessary to satisfy itself of the condition of the Premises. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations and observations in entering into this Agreement. CONCESSIONAIRE further acknowledges that the Premises are in the condition called for by this Agreement, that CITY has performed all work, if any, related to the Premises and required by this Agreement, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Premises, including without limitation the presence of any hazardous substances.
30. Entry and Inspection. CONCESSIONAIRE may quietly enjoy the Premises, free from unreasonable interference by CITY, except as reasonably required in emergency situations as determined in CITY's sole discretion. During such an emergency, CITY may at all times enter and inspect the Premises and the operations conducted on the Premises. For all non-emergency situations, CITY and/or the Secretary of Interior's designated representative, NPS, may at any and all reasonable times enter and inspect the Premises and the operations conducted on the Premises. In the event that 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 CONCESSIONAIRE, to have any necessary maintenance work done at the expense of CONCESSIONAIRE, and CONCESSIONAIRE hereby agrees to pay promptly any and all costs incurred by CITY in having the 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 CONCESSIONAIRE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. CONCESSIONAIRE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Agreement imposed on CITY.

31. Maintenance. CONCESSIONAIRE shall, at CONCESSIONAIRE's sole cost and expense and to the CITY's satisfaction, maintain the Premises in a decent, safe, healthy, and sanitary condition at all times and perform such repairs that become necessary from time to time during the term of this Agreement.
32. Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by CONCESSIONAIRE without prior written approval by CITY, which approval shall not be unreasonably delayed or withheld. Further, CONCESSIONAIRE 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 CITY and that the approval shall not be unreasonably delayed or withheld. This provision shall not relieve CONCESSIONAIRE of any obligation under this Agreement 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 Agreement to make or assume any expense for any improvements or alterations.
33. Utilities. CONCESSIONAIRE shall order, obtain and pay for all utilities and service installation charge in connection with operation of the Premises. All such service utilities shall be installed underground.
34. Taxes. Subject to the provisions of Article XIII, section 3(d) of the California Constitution and section 202.2 of the California Revenue and Taxation Code, CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE 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 CONCESSIONAIRE or levied by reason of the business or other CONCESSIONAIRE activities related to the Premises, including without limitation licenses and permits. CONCESSIONAIRE acknowledges that this Agreement may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on CONCESSIONAIRE's interest, and that CONCESSIONAIRE shall pay all possessory interest taxes. CONCESSIONAIRE's payment of taxes, fees, and assessments shall not reduce any concession payment due the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from CONCESSIONAIRE's possession, use, or occupancy of the Premises.
35. Ownership of Improvements and Personal Property.
 - a. Improvements. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or accepted Project improvements on the Premises by CONCESSIONAIRE shall be deemed to be part of the Premises and shall be CITY'S property free of all liens and claims.
 - b. Personal Property. CONCESSIONAIRE shall remove CONCESSIONAIRE-owned machines, appliances, equipment (other than trade fixtures), and other

items of personal property prior to the expiration of the Term, or as soon as reasonably practicable after a notice of termination, but in no event later than sixty (60) days after such notice of termination. Any such items which CONCESSIONAIRE fails to remove in accordance with this subsection b., shall be considered abandoned and will be processed and disposed of in accordance with applicable provisions of California law. If any removal of such personal property by CONCESSIONAIRE or CITY results in damage to the Premises, CONCESSIONAIRE shall repair or pay for the repair of all such damage at its sole cost and expense. Notwithstanding the foregoing, if CONCESSIONAIRE elects to dispose of any of its personal property used in its operations on the Premises, upon expiration or termination of this Agreement, CITY shall have the first right to acquire or purchase such personal property.

36. Unavoidable Delay. If the performance of an act required by this Agreement is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay concession payment. The party claiming a delay shall notify the other party in writing within five (5) calendar days after the beginning of any claimed delay.
37. Hazardous Substances. CONCESSIONAIRE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substances or otherwise regulated substances in, on, under, or from the Premises. CONCESSIONAIRE and CONCESSIONAIRE'S agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises without CITY' prior written consent. CONCESSIONAIRE shall, prior to initiating any design, construction, use or operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.
- a. Release. For all purposes of this Agreement, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances.
 - b. Hazardous Substance. For all purposes of this Agreement, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
 - c. Remediation. If CONCESSIONAIRE's construction, occupancy, use,

development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, CONCESSIONAIRE shall pay all costs of remediation and removal to CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules and regulations of governmental authorities.

- d. **Removal.** If CONCESSIONAIRE or CONCESSIONAIRE's agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Premises, CONCESSIONAIRE or CONCESSIONAIRE's agent shall remove all Hazardous Substances in any type of container, equipment or device from the Premises immediately upon or prior to the expiration or earlier termination of this Agreement. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Premises. CONCESSIONAIRE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- e. **Indemnity.** CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CONCESSIONAIRE's construction, occupancy, use, development, maintenance or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, CONCESSIONAIRE's officers, employees, invitees, guests, agents or contractors, or the public, and (vii) all costs of any health assessments or health effect studies.
- f. **Notice of Release.** If CONCESSIONAIRE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Premises, CONCESSIONAIRE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. CONCESSIONAIRE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent release or imminent substantial danger to public health and safety, CONCESSIONAIRE shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- g. **Environmental Assessment.** Upon reasonable cause to believe that

CONCESSIONAIRE's construction, occupancy, use, development, maintenance, or restoration of the Premises resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by CONCESSIONAIRE's construction, occupancy, use, development, maintenance, or restoration of the Premises, and in what quantities. If any Hazardous Substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause, or if CONCESSIONAIRE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that UNRESTRICTED REUSE OF THE Premises and compliance with environmental laws and regulations are achieved, and CONCESSIONAIRE shall pay all costs and expenses therefore.

38. Asbestos Disclosure. Portions of the structural components of the Premises may contain asbestos. If so, CONCESSIONAIRE acknowledges having received notice from CITY of the presence of asbestos in accordance with Health and Safety Code section 25915. CONCESSIONAIRE shall disclose the existence of asbestos on the Premises, as required by Health and Safety Code section 25915. CONCESSIONAIRE shall indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises.
39. Asbestos. Asbestos removal, management, or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations, or repairs to the Premises made by CONCESSIONAIRE. CITY may, at its discretion, station supervisory personnel at the work site to ensure that CONCESSIONAIRE's obligations under this section are fulfilled. Each party shall coordinate with the other regarding any improvement, alteration, or repair, and, except in the event of an emergency, the party responsible for such work shall provide written notice to the other party at least fifteen (15) days prior to commencing the work.
40. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to CONCESSIONAIRE:

If to CITY:

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700, MS 51A
San Diego, California 92101

41. Compliance with Law. CONCESSIONAIRE shall at its sole cost and expense comply with all local, state and federal rules, regulations, and laws, and all direction by competent authority, which now or hereafter pertain to CONCESSIONAIRE's occupancy, use, development, maintenance, and restoration of the Premises. In addition, CONCESSIONAIRE shall comply with any and all notices issued by CITY under the authority of any law, statute, ordinance, or regulation.
42. No Discrimination. CONCESSIONAIRE shall not 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 CONCESSIONAIRE'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. CONCESSIONAIRE shall not discriminate in accordance with Conditions 5 and 7 of the USA Deed.

Additionally, CONCESSIONAIRE shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of consultants, contractors, subcontractors, vendors or suppliers. CONCESSIONAIRE shall provide equal opportunity for contractors, subcontractors to participate in contracting and subcontracting opportunities. CONCESSIONAIRE understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in Agreement termination, debarment, and other sanctions. This language shall be in contracts between the CONCESSIONAIRE and any consultants, contractors, subcontractor's vendors and suppliers.

43. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. CONCESSIONAIRE shall hire qualified local residents and firms whenever feasible.

44. Drug-free Workplace. CONCESSIONAIRE shall comply with San Diego City Council Policy 100-17. "DRUG-FREE WORKPLACE", adopted by San Diego Resolution R-277952 and fully incorporated into this Agreement by this reference. CONCESSIONAIRE shall ensure that its contractors comply with the requirements of CITY's Council Policy 100-17. CONCESSIONAIRE shall adopt and enforce 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 Premises and specifying the actions that will be taken against employees for violations of the prohibition; and
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace;
 - (2) CONCESSIONAIRE's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs; and
 - (4) Penalties that may be imposed upon employees for drug abuse violations.
45. Compliance with CITY'S Equal Employment Opportunity Contracting Program. CONCESSIONAIRE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. CONCESSIONAIRE shall ensure that its contractors comply with CITY's Equal Opportunity Contracting Program. Nothing in this section shall be interpreted to hold CONCESSIONAIRE liable for any discriminatory practice of its contractors.
46. CITY Employee Participation Policy. Pursuant to City Council Policy 300-11, CITY, at its sole discretion, may unilaterally and immediately terminate the Agreement if CONCESSIONAIRE employs an individual who, within the twelve (12) months immediately preceding employment, did in his or her capacity as a CITY officer or employee participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council in connection with this Agreement or selection of CONCESSIONAIRE.
47. Disabled Access Compliance. CONCESSIONAIRE shall comply with all nondiscrimination laws of the United States, State of California and CITY, including but not limited to those laws set forth in Conditions 5 and 7 of the USA Deed; the California

Government Code sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations in effect or hereafter enacted protecting the rights of people with disabilities. CONCESSIONAIRE's compliance shall include but not necessarily be limited to the following:

- a. CONCESSIONAIRE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of CONCESSIONAIRE.
- c. CONCESSIONAIRE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, any improvements made to the Premises by CONCESSIONAIRE shall comply with municipal, state and federal disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of CONCESSIONAIRE.
 - i. CONCESSIONAIRE shall include language in each subagreement which indicates the subConcessionaire's agreement to abide by the foregoing provisions. CONCESSIONAIRE and subConcessionaires shall be individually responsible for their own ADA employment programs.
 - ii. CONCESSIONAIRE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Agreement.

48. Prevailing Wage Rates. Prevailing wage rates apply to this Agreement.

REQUIREMENTS FOR CONTRACTS SUBJECT TO STATE PREVAILING WAGE REQUIREMENTS.

In accordance with California Labor Code (Labor Code) sections 1770, et seq., as amended, the Director of the Department of Industrial Relations (DIR) has determined the general prevailing rate of per diem wages (Prevailing Wage Rate) in accordance with the standards set forth in sections for the locality in which the work is to be performed. CONCESSIONAIRE may review the Prevailing Wage Rate at the CITY's Purchasing and Contracting Department or Equal Opportunity Contracting (EOC) Office or on-line at http://www.dir.ca.gov/dlsr/statistics_research.html. CONCESSIONAIRE shall post a

copy of the Prevailing Wage Rate at each job site and make copies available to any interested party on request.

Pursuant to Labor Code sections 1720 et seq., and 1770 et seq., CONCESSIONAIRE and all subcontractors shall pay not less than the Prevailing Wage Rate to all persons employed by them in the execution of the work. CONCESSIONAIRE and any subcontractor shall comply with section 1775 (Penalties for Violations) in the event workmen are paid less than said specified rates.

The wage rates determined by the DIR and published in the Department of Transportation publication entitled "General Prevailing Wage Rates" refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, said published wage rate shall be in effect for the life of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the contract.

The successful bidder intending to use a craft or classification not shown on the prevailing rate determinations may be required to pay the rate of the craft or classification most closely related to it.

CONCESSIONAIRE and subcontractors must comply with Labor Code section 1776 by keeping accurate payroll records that show the name, address, social security number, work classification, straight time, and overtime hours worked each day and week by each worker, and the actual per diem wages paid to each worker employed by CONCESSIONAIRE or subcontractor in connection with the public works project. Each payroll record shall contain or be verified by a written declaration signed by CONCESSIONAIRE or subcontractor under penalty of perjury that states that: 1) the information contained in the payroll record is true and correct; and 2) CONCESSIONAIRE or subcontractor has complied with the requirements of Labor Code sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project. The payroll records must be certified. CONCESSIONAIRE and subcontractor(s) shall submit weekly certified payrolls online via the CITY's web-based labor compliance program. CONCESSIONAIRE shall be responsible for the compliance with these provisions by its subcontractors. CITY will withhold contract payments when payroll records are delinquent or deemed inadequate by CITY or another governmental entity, or when it is established after investigation by CITY or another governmental entity that underpayment has occurred.

You must abide by the requirements of Labor Code sections 1777.5, 1777.6, and 1777.7 concerning the employment of apprentices by contractors and subcontractors performing public works contracts.

49. Equal Benefits. CONCESSIONAIRE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require Concessionaires of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. CONCESSIONAIRE shall certify that it will maintain such equal benefits throughout the term of this Agreement.
50. Water Quality Assurances. CONCESSIONAIRE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System (“NPDES”) Permit No. R9-2007-0001, and any subsequent versions of this NPDES permit that become effective during the Term of this Agreement. CONCESSIONAIRE shall comply with San Diego Municipal Code Chapter 4, Article 3, Division 3: Storm Water Management and Discharge Control (the “Storm Water Code”), as amended from time to time, and employ “Best Management Practices” including a “Storm Water Pollution Prevention Plan” as those terms are defined by the Storm Water Code (collectively, “Prevention Plan”) and as approved by CITY under its Storm Water Management Program. Within the first thirty (30) days of the Term, CONCESSIONAIRE shall submit a Prevention Plan satisfactory to CITY that will control any “Pollutants,” as defined by the Storm Water Code, discharged from the Premises. CITY may review the Prevention Plan periodically. Within thirty (30) days after written notice from CITY requesting an update of the Prevention Plan, CONCESSIONAIRE shall submit an updated Prevention Plan to CITY’s satisfaction. CONCESSIONAIRE shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances, and regulations. CONCESSIONAIRE shall inform its employees, contractors, subcontractors, agents and vendors of the Prevention Plan and ensure their compliance therewith. CONCESSIONAIRE shall at all times keep and maintain Best Management Practices required by the Prevention Plan in a manner which controls and prevents discharge of Pollutants to the Maximum Extent Practicable. CONCESSIONAIRE understands and agrees that storm water pollution prevention requirements may change from time to time by regulation of the San Diego Regional Water Quality Control Board, and CONCESSIONAIRE expressly agrees that it will at its sole cost and expense maintain compliance with applicable regulations notwithstanding any change in law relating to storm water management.
51. Cumulative Remedies. CITY’s rights and remedies under this Agreement are cumulative and shall not limit or otherwise waive or deny any of CITY’s rights or remedies at law or in equity.
52. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.

53. Joint and Several Liability. If CONCESSIONAIRE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of CONCESSIONAIRE under this Agreement.
54. No Affiliation. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and CONCESSIONAIRE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of CONCESSIONAIRE or any other party or entity.
55. Entire Agreement. This Agreement constitutes the entire agreement between the parties and pertaining to this Agreement and CONCESSIONAIRE's occupancy, use, development, maintenance, and restoration of the Premises. Any modification, alteration, or amendment of this Agreement shall be in writing and signed by all the parties hereto with written concurrence by the Secretary of the Interior or his/her delegated representative, NPS.
56. Partial Invalidity. If any term, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
57. Governmental Approvals. By entering into this Agreement, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE's occupancy, use, development, or maintenance of the Premises. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE's occupancy, use, development, or maintenance of the Premises.
58. Standard of Employees. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner, as determined by CITY in its sole and reasonable discretion.
59. Criminal Background Screenings. CITY may require background investigations on all CONCESSIONAIRE employees assigned to this Agreement when information becomes available that indicates a potential breach in safety or security.
60. Gratuities. This Agreement may be terminated by written notice if CITY determines that CONCESSIONAIRE, its agent, or another representative:
- a. Offered or gave a gratuity (e.g. an entertainment or gift) to an officer, or employee of CITY; and
 - b. Intended by the gratuity to obtain a contract or favorable treatment under a contract.

If this Agreement is terminated under this section, CITY is entitled to pursue breach of contract remedies and all other remedies available at law or in equity.

61. Conflict of Interest. CONCESSIONAIRE is subject to all federal, state and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at section 27.3501 to 27.3595. CITY may determine that a conflict of interest code requires the CONCESSIONAIRE to complete one or more statements of economic interest disclosing relevant financial interests. Upon CITY's request, CONCESSIONAIRE shall submit the necessary documents to the CITY.
62. Product Endorsement. CONCESSIONAIRE is prohibited from indicating, either directly or by implication, that CITY has endorsed its goods or services without prior written authorization by CITY.
63. Confidentiality of Services. All services performed by CONCESSIONAIRE, and any subcontractors if applicable including but not limited to provision of all drafts, data, information, correspondence, proposals, reports or any nature, estimates compiled or composed by CONCESSIONAIRE, are for the sole use of CITY, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of CITY. This provision does not apply to information that (a) was publicly known, or otherwise known to the CONCESSIONAIRE, at the time that it was disclosed to the CONCESSIONAIRE by CITY, (b) subsequently becomes publicly known through no act or omission of the CONCESSIONAIRE, or (c) otherwise becomes known to the CONCESSIONAIRE other than through disclosure by CITY.
64. Public Records. This Agreement is a public document subject to the California Public Records Act, and as such may be subject to public review in accordance with the attached **Exhibit G.**
65. Conformity. The policies established by CONCESSIONAIRE for the operation of the Premises shall conform to the general policies established by CITY for the use and operation of CITY-owned properties like the Premises.
66. Use of Proceeds. CONCESSIONAIRE shall use all revenue received from the operation of the Premises exclusively for the continued operation, maintenance, and improvement of the Premises and purposes incidental thereto. CONCESSIONAIRE's compliance with this requirement shall be certified in CONCESSIONAIRE's annual financial report as required herein.
 - a. Annual Report. Within ninety (90) days after the last day of each of CONCESSIONAIRE's fiscal years during the Term, CONCESSIONAIRE shall deliver to CITY a preliminary, non-audited financial report for that fiscal year. The financial report shall include an operating statement and a report of net worth, and shall be in a form reasonably satisfactory to CITY, and shall be subject to

review and audit by the CITY and the San Diego City Auditor. Within one hundred fifty (150) days after the last day of each of CONCESSIONAIRE's fiscal years during the Term, CONCESSIONAIRE shall deliver to CITY audited financial reports that complies with the above requirements for an annual financial report certified by an independent certified public accountant.

- b. Financial Records. CONCESSIONAIRE shall keep or cause to be kept true, accurate, and complete accounting records using generally accepted accounting principles consistently applied, including double-entry books, a profit-and-loss statement, and a balance sheet, making it possible at all times to determine the nature and amount of revenue and expenditures. All of CONCESSIONAIRE's expenditures and transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices, and receipts. CONCESSIONAIRE shall retain documents supporting its profit-and-loss statements for a minimum period of five (5) years.
 - c. Inspection of Records and Audit. CONCESSIONAIRE shall make all of its books, statements, documents, records, and financial data open at all reasonable times for CITY's or Secretary of the Interior or his/her delegated representative, NPS inspection and audit upon reasonable notice. CITY may conduct an audit of CONCESSIONAIRE's books, statements, documents, records, and financial data, or demand and receive from CONCESSIONAIRE the results of a complete audit as conducted by an independent certified public accountant in the event that: (i) CONCESSIONAIRE's chief executive officer, executive director, or other such manager resigns, retires, or is discharged; (ii) a majority in the membership of CONCESSIONAIRE's governing body changes; or (iii) the purposes for which CONCESSIONAIRE was created are materially or substantially changed.
 - d. Proposed Budget. Upon CITY's request during the Term, CONCESSIONAIRE shall deliver to CITY copies of documents evidencing CONCESSIONAIRE's proposed programs and business plan for the next fiscal year. Such documents shall be in a form and content reasonably satisfactory to CITY.
67. Permits and Licenses. CONCESSIONAIRE shall obtain all licenses and permits necessary for the construction, operation and use of the Premises in accordance with Sections 3 and 4 of this Agreement, at CONCESSIONAIRE's sole cost and expense before commencement of construction and operation, as applicable.

CONCESSIONAIRE shall pay for all of CITY'S administrative costs (CITY's Administrative Costs) necessary for the construction of the Project. City's Administrative Costs shall consist of the costs and expenses incurred by CITY to: (i) implement, process, and administer the Project, (ii) review and approve the Plans and Specifications for the Project, and (iii) inspect and approve work performed on Project during construction until completion and acceptance of Project by CITY.

68. Implementation of Renovation Plan. CONCESSIONAIRE shall submit a general development plan (GDP), to the City for review and approval prior to any renovation or rehabilitation of the Premises. The GDP, upon approval by the CITY, shall be attached hereto and made a part of this Agreement.

CITY shall have the authority to authorize subsequent changes to the approved GDP provided that the proposed changes are consistent with the terms and conditions of this Agreement and are subject to any and all required development permit conditions and CEQA mitigation measures.

Failure by CONCESSIONAIRE to comply with the requirements of this Section 68 or with the approved GDP shall constitute a major default and subject this Agreement to immediate termination by CITY.

69. No Waiver. No failure of either CITY or CONCESSIONAIRE to insist upon the strict performance by the other of any covenant, term, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
70. Jurisdiction, Venue and Choice of Law. The venue for any suit or proceeding concerning this Agreement, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.
71. Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of the CITY as a chartered city of the State of California.
72. Third-Party Relationships. Nothing in this Agreement shall create a contractual relationship between CITY and any third-party; however, the Parties understand and agree that CITY, to the extent permitted by law, is an intended third-party beneficiary of all CONCESSIONAIRE's contracts, purchase orders and other contracts between CONCESSIONAIRE and third-party services. CONCESSIONAIRE shall incorporate this provision into its contracts, supply agreements and purchase orders.
73. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation,

limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

*****SIGNATURES ON FOLLOWING PAGE*****

DRAFT

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

BY: _____
Name: _____
Title: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
Name: _____
Title: _____

Approved as to Form and Legality:

JAN I. GOLDSMITH, City Attorney

BY: _____
Name: _____
Title: _____
Date: _____

- Exhibit A: USA Deed**
- Exhibit B: Premises**
- Exhibit C-1: Scope of Work**
- Exhibit C-2: Approved General Development Plan**
- Exhibit D: Construction Requirements**
- Exhibit E: Operating Plan**
- Exhibit F: Schedule of Days and Hours of Operation**
- Exhibit G: California Public Records Act**

PDP/cb
04-09-14
I:\Support Staff Group\WPO\2012\PHILLIPS\NTC Concession Agreement.doc

Exhibit A: USA Deed

DRAFT

Exhibit B: Premises

DRAFT



THE CITY OF SAN DIEGO

AND

CONCESSION AGREEMENT



Approx. 3.58 Acres

EXHIBIT B
NTC Park Aquatic Center
Concession Area

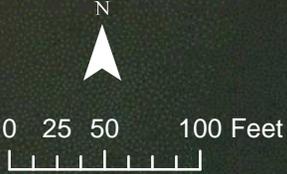


EXHIBIT C-1

NTC Park Aquatic Center Scope of Work

The following general scope of work for an aquatic center within NTC Park as defined in the Concession Agreement (Project) provides the minimum items to be constructed and provided by the Concessionaire. This scope of work is not intended to be a comprehensive list of requirements, and the Concessionaire is responsible for complying with all federal, state, and local laws, rules, regulations and requirements applicable to the Project.

Swimming Pool: The Concessionaire shall be responsible for providing at least one swimming pool with a minimum size of 25 yards by 25 meters. The swimming pool shall meet all requirements set forth in the Park and Recreation Department's Consultant's Guide to Park Design and Development (Consultant's Guide), Section 2.22.3. The Consultant's Guide can be found on the Park and Recreation Department web site at <http://www.sandiego.gov/park-and-recreation/general-info/documents/index.shtml>.

Aquatic Building: The Concessionaire shall be responsible for providing an aquatic building to support the swimming pool(s) that shall, at a minimum, meet the requirements identified in the Consultant's Guide, Section 2.22.2

Spectator Seating Area: The Concessionaire shall be responsible for providing a swimming pool spectator seating area which, at a minimum, shall meet the requirements identified in the Consultant's Guide, Section 2.22.4.

General Site Development Requirements: The Concessionaire shall be responsible for providing all general site development that shall meet the requirements identified in the Consultant's Guide or as may be approved by the Park and Recreation Department. These requirements shall include, but not be limited to, landscaping, irrigation systems, site amenities, security lighting, identification signs, building standards and graffiti protection.

Parking Requirements: The Concessionaire shall be responsible for evaluating and determining the parking requirements related to the Project, and identify and provide on-site parking and parking alternatives. The parking alternatives may include off-site parking opportunities.

Water Supply: The Concessionaire shall be responsible for providing all potable water necessary for the Project. This shall include, but not be limited to, wet tap into the City's potable water system, installation of water meter(s), backflow preventer(s) and all other appurtenances associated with supplying potable water to the facility. Connections to the existing potable water system servicing NTC Park will not be allowed.

Sanitary Sewer Connection: The Concessionaire shall be responsible for providing all sanitary sewer connections necessary to service the Project. This shall include, but not be limited to, pumps, sewer lines and connection to the City's sanitary sewer system and all other

appurtenances associated with a sanitary sewer system to serve the facility. Connections to the exiting sanitary sewer system servicing NTC Park will not be allowed.

Electrical Supply: The Concessionaire shall be responsible for providing all electrical service necessary for the Project. This shall include, but not be limited to, coordination with San Diego Gas and Electric, electrical transformers, panels, meters, conduit and conductors and all other appurtenances associated with supplying electrical power to the facility. Connections to the exiting electrical system servicing NTC Park will not be allowed.

Natural Gas: The Concessionaire shall be responsible for providing all natural gas service necessary for the Project. This shall include, but not be limited to, coordination with San Diego Gas and Electric, gas meters, gas lines, shut-off valves and all other appurtenances associated with supplying natural gas to the facility.

Architectural Services: The Concessionaire shall be responsible for, but not limited to, all architectural, engineering, geotechnical, environmental and landscape architectural services necessary to perform the scope of work for the Project. All plans and specifications and the development of such shall comply with all applicable federal, state and the City's laws, rules, regulations, and requirements including, but not limited to, those items identified in the Consultant's Guide.

EXHIBIT D: CONSTRUCTION REQUIREMENTS

I. Competitive Bidding

1. **Compliance.** Concessionaire shall bid and award contracts to complete the Project in accordance with the Charter of the City of San Diego and rules, regulations, and laws promulgated thereunder, including, but not limited to, the San Diego Municipal Code and current City Council Resolutions and Policies, as well as any expressly applicable public contract laws, rules, and regulations [Required Contracting Procedures]. Required Contracting Procedures include all contracting requirements that are applicable to the City, including, but not limited to, competitive bidding, the City’s small and local business program for public works contracts, and the City’s Equal Benefits Ordinance. Prior to bidding the Project, Concessionaire shall consult with City’s Public Works Department. Concessionaire shall work with City’s Public Works Department to ensure that all Required Contracting Procedures are met. Concessionaire understands that it must comply with all Required Contracting Procedures. Failure to adhere to all Required Contracting Procedures is a major default of the Concession Agreement, hereinafter “Agreement.”
2. **Bidding Documents.** Concessionaire, following City review of the Construction Documents (See sections V and VII of this exhibit), shall address all review comments and requirements to the satisfaction of the City for final approval of Construction Documents, in accordance with City’s standard review procedures prior to solicitation of bids.
 - A. *Submission of Bidding Documents.* Concessionaire shall submit bidding documents to City for approval before soliciting bids for a construction contract work for the Project. City retains the right to notify Concessionaire of necessary corrections and will notify Concessionaire of corrections within thirty (30) Working Days of submittal date.
 - B. *Obtain all Permits and Approvals.* Concessionaire shall obtain all necessary permits required by local, City, State and Federal regulatory permitting agencies for the construction of the Project, including, but not limited to, environmental and land development, building, grading and public improvement permits. Approval of Construction Documents will be contingent upon Concessionaire obtaining all necessary permits and then City approval will be required before bidding can proceed and this approval will be evidenced by City’s issuance of a letter indicating Concessionaire may proceed with competitive bidding.
3. **Solicitation of Bids.** Concessionaire shall solicit sealed bids for the construction of Project in accordance with all Required Contracting Procedures. With notice of at least five (5) Working Days, Concessionaire shall notify City of the time and place of each bid opening. Concessionaire shall work with City’s Public Works Department to ensure that bids are solicited in the manner required in accordance with the Required Contracting Procedures.
4. **Bid Opening and Award of Contract.** Concessionaire shall open bids and award contracts in accordance with all the Required Contracting Procedures. Concessionaire shall work with City’s Public Works Department to ensure that bids are opened and contracts are awarded in the manner required in accordance with the Required Contracting Procedures. Concessionaire shall publicly open sealed bids in the presence of City’s authorized representative(s). The bidding contractors shall be permitted to be present at the bid opening. City’s representative(s) shall be provided with all bids received immediately after the bid opening and with a copy of the tabulation of bid results upon Concessionaire’s completion. Contract(s) for the construction of the Project shall be awarded by Concessionaire to lowest responsible and reliable bidder in accordance with Required Contracting Procedures.

II. Project Schedule Obligations and Components

1. **Concessionaire’s Obligation.** To the extent required by City, Concessionaire shall provide, coordinate, revise, and maintain the Project Schedule for all phases of the Project.

- A. *Project Initiation.* During Project initiation and design phases, Concessionaire shall submit an updated Project Schedule on a quarterly basis to City for approval.
 - B. *Construction Phase.* During Construction, Concessionaire shall submit an updated Project Schedule monthly to City and shall include:
 - i. Forecast Data with the intended plan for the remainder of the contract duration.
 - ii. Actual Data with indications of when and how much Work and/or Services was performed (% complete)
 - iii. Logic changes or other changes required to maintain the Project Schedule
2. **Detail and Format.** Unless otherwise directed by City, the Project Schedule shall include all phases of the Project.
- A. *Identification of design and construction activities and their sequence.*
 - B. *Float Time.* Show activities on their early dates with corresponding Total Float Time noted beside them.
 - C. *Milestones.* Show Milestones with beginning and ending dates.
 - i. Milestones shall include: site development plan, 30% design, 60% design, 90% design, 100% design, bid opening date, Notice to Proceed, start construction, end construction, Notice of Completion and Project Completion.

III. Consultant Provisions

Concessionaire shall cause the following provisions to be included in all consultant contracts for the Project.

1. **Third Party Beneficiary.** The City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design and payment in full to Consultant by Concessionaire, the City will become the owner of the Project design and work products, and City shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third party beneficiaries of this contract.
2. **Competitive Bidding.** Consultant shall ensure that all design plans and contract specifications prepared, required, or recommended under this Agreement allow for competitive bidding. Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City of San Diego. Consultant shall submit this written justification to the City of San Diego prior to beginning work on such plans or specifications. Whenever Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.
3. **Professional Services Indemnification.** Other than in the performance of design professional services which shall be solely as addressed in Sections 4 and 5 below, to the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its subcontractors, agents, subagents and consultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to,

directly or indirectly, in whole or in part, any services performed under this Agreement by Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Consultant's duty to defend, indemnify, protect and hold harmless shall not include any liabilities arising from the sole gross negligence or sole willful misconduct of the Indemnified Parties. As to Consultant's professional obligations, work or services involving this Project, Consultant agrees to indemnify and hold harmless the City of San Diego, and its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney's fees, losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of Consultant or Consultant's employees, agents or officers. This indemnity obligation shall apply for the entire time that any third party can make a claim against, or sue the City of San Diego for liabilities arising out of Consultant's provision of services under this Agreement.

4. **Indemnification for Design Professional Services.** To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.
5. **Design Professional Services Defense.** Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.
6. **Enforcement Costs.** Consultant agrees to pay any and all reasonable costs the City of San Diego may incur to enforce the indemnity and defense provisions set forth in this Agreement.
7. **Professional Liability Insurance.** For all of Consultant's employees who are subject to this Agreement, Consultant shall keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate. Consultant shall ensure both that (1) this policy's retroactive date is on or before the date of commencement of the work to be performed under this Agreement; and (2) this policy has a reporting period of three (3) years after the date of completion or termination of this Agreement. Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City of San Diego's exposure to loss.
8. **Commercial General Liability [CGL] Insurance.** Consultant shall keep in full force and effect, during any and all work performed in accordance with this Agreement, all applicable CGL insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence, subject to an annual aggregate of two million dollars (\$2,000,000) for general liability, completed operations, and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.
9. **Insurance Policy Requirements.** Except for professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City of San Diego. Further, all insurance required by express provision of this agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City of San Diego. The policies cannot be canceled, non-renewed, or materially changed except after thirty (30) calendar days prior written notice by Consultant or Consultant's insurer to the City of San Diego by certified mail, as reflected on an endorsement that shall be submitted to the City of San Diego, except for non-payment of premium, in which case ten (10) calendar days notice must be provided. Before performing any work in

accordance with this Agreement, Consultant shall provide the City of San Diego with all Certificates of Insurance accompanied with all endorsements.

10. **Workers Compensation.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the State of California, the Consultant shall keep in full force and effect, a Workers Compensation policy. That policy shall provide a minimum of one million dollars (\$1,000,000) of employers liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City of San Diego and its respective elected officials, officers, employees, agents and representatives.
11. **Compliance Provision.** Consultant agrees, at its sole cost and expense, to perform all design, contract administration, and other services in accordance with all applicable laws, regulations, and codes, including, but not limited to, the Americans with Disabilities Act of 1990 [ADA] and title 24 of the California Code of Regulations as defined in Section 18910 of the California Health and Safety Code [Title 24]. Further, Consultant is responsible as designer and employer to comply with all parts of the ADA and Title 24.
12. **Maintenance of Records.** Consultant shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of services for the Project, throughout the performance of the services and for a period of five (5) years following completion of the services for the Project. Consultant further agrees to allow the City of San Diego to inspect, copy and audit such books, records, documents and other evidence upon reasonable written notice. In addition, Consultant agrees to provide the City of San Diego with complete copies of final Project design and construction plans and Project cost estimate.
13. **Equal Benefits and Equal Opportunity.** Consultant shall comply with the City's nondiscrimination requirements as set forth in the Agreement.

IV. Design and Construction Standards

1. **Laws.** Concessionaire shall comply with all local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including, but not limited to, the following:
 - A. *Permits.* Development Services Department permits, hazardous material permits, other applicable permits to the Project for the construction of the Project.
 - B. *Building Codes.* State and local Building Codes
 - C. *The Americans with Disabilities Act [ADA] and Title 24 of the California Building Code* [Title 24]. It is Concessionaire's sole responsibility to comply with all ADA and Title 24 regulations. See Concessionaire Certification attached as part of this Exhibit.
 - D. *Environmental.* Concessionaire shall complete all environmental measures required by the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and the local jurisdiction, including but not limited to, implementation of mitigation measures, and conducting site monitoring and reporting.
 - E. *Air, Water, and Discharge.* Concessionaire shall comply with the Clean Air Act of 1970, the Clean Water Act, San Diego Regional Water Quality Control Board Order No. R9-2013-0001 (Municipal Separate Storm Sewer Permit), and San Diego Municipal Code Chapter 4, Article 3, Division 3 (Stormwater Management and Discharge Control).
 - F. *ESBSSA.* Concessionaire shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.

- G. *City Directives*. Concessionaire shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
2. **Standard Specifications**. Concessionaire shall comply with the most current editions of the following reference specifications when designing and constructing the Project, including:
 - A. *Greenbook*. Standard Specifications for Public Works Construction [Greenbook], including the Regional and City of San Diego Supplement Amendments [Whitebook].
 - B. *DOT*. California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.
 3. **City Standards**. Concessionaire's professional services shall be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following:
 - A. *City of San Diego's Consultant's Guide to Park Design & Development*.
 - B. *City of San Diego's Drainage Design Manual*.
 - C. *City of San Diego's Landscape Technical Manual produced by the Planning Department*.
 - D. *City of San Diego's Street Design Manual*.
 - E. *City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans*.
 - F. *City of San Diego's Technical Guidelines for Geotechnical Reports*.
 - G. *City of San Diego Standard Drawings including all Regional Standard Drawings*.
 - H. *City of San Diego Data Standards for Improvement Plans*.
 - I. *City of San Diego Storm Water Standards*.
 - J. *City of San Diego Low Water Impact Development Manual*.
 - K. *The City of San Diego Water Department Guidelines and Standards*.

V. **Approval of Design, Plans, and Specification**

UNLESS OTHERWISE DIRECTED BY THE CITY, CONCESSIONAIRE SHALL OBTAIN APPROVAL OF DESIGN, PLANS, AND SPECIFICATIONS IN THE MANNER IDENTIFIED BELOW:

1. **Project Approval**. Concessionaire shall be required to comply with the Consultant's Guide to Park Design and Development, including but not limited to Section 4, Project Process, Submittals and Approvals. Concessionaire will be responsible for all community outreach and committee reviews needed to get this Project approved.
2. **City Approval**. Concessionaire shall obtain City approval of the design, in writing, at 30% Design, 60% Design, 90% Design, and 100% Design.
 - A. *Condition Precedent*. City approval of the 30% Design is a condition precedent to authorization to proceed with subsequent work on the Project. City will notify Concessionaire in writing after receipt of

Design Documents of approval, or of request for modifications. If modifications are requested, Concessionaire shall modify and resubmit Schematics for City approval.

B. *Sixty (60) Percent Design.* At 60% design, City will notify Concessionaire in writing after receipt of Design Documents at each required stage of design, of approval, or of request for modifications. If modifications are requested, Concessionaire shall modify and resubmit Design Documents for City approval.

C. *Ninety (90) Percent Design.* At 90% design, City will notify Concessionaire in writing after receipt of design documents at each required stage of design, of approval, or of request for modifications. If modifications are requested, Concessionaire shall modify and resubmit Design Documents for City approval.

D. *Citywide Review of 100% Plans and Specifications.* City agrees to review the Plans and Specifications and provide City's written comments to Concessionaire within ninety (90) calendar days of the date such Plans and Specifications are delivered to City in accordance with the notice provisions in the Agreement. Plans and Specifications shall include City's standard drawings and specifications as described in this Exhibit. If requested by City, Concessionaire shall make changes to the Plans and Specifications.

3. **Submittal of Plans, Specifications, and Budget.** Within six (6) months of City Council approval of this Agreement, Concessionaire shall deliver to City complete Plans and Specifications, Estimated Costs, and bid documents, consistent with the Schematic Drawings, for the design and construction of the Project.
4. **Final Approval and Permit Review.** City approval of the Plans and Specifications is a condition precedent to authorization to proceed with subsequent work on the Project. Approval and permit review will require a minimum of ninety (90) calendar days from the date that the Plans and Specifications were submitted to the City review, if no changes are required, or ninety (90) days from the date the requested changes are submitted to the City. City approval will be comprised of approval by Development Services Department, Public Works Department, Real Estate Assets Department and the Park and Recreation Department.

VI. Construction Obligations

1. **Site Safety, Security, and Compliance.** Concessionaire shall be responsible for site safety, security, and compliance with all related laws and regulations.
2. **Access to Project Site.**
 - A. *Site Access.* City officers, agents and employees have the right to enter the Project site at any time; however, City will endeavor to coordinate any entry with Concessionaire.
 - B. *Site Tours.* Site tours may be necessary throughout completion of the Project. Concessionaire shall allow City to conduct site tours from time to time as the City deems necessary. City will give Concessionaire notice of a prospective tour and a mutually agreeable time shall be set. Concessionaire is not obligated to conduct tours or allow access for tours when City failed to give prior notice.
3. **Public Right of Way.** All work, including, materials testing, special testing, and surveying to be conducted in the Public right of way shall be coordinated with the City.
4. **Traffic Control.** Concessionaire shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans and/or notes.

5. **Inspections.** Concessionaire shall coordinate any and all special inspections required for compliance with all State Building Codes as specified in the Contract Documents.
 - A. *Reports.* Concessionaire shall provide City all special inspection reports within seven (7) calendar days of inspection. Concessionaire shall report all failures of special inspections to City.
 - B. *Remedies.* Remedies for compliance shall be approved by Concessionaire, Concessionaire's consultants, City's Development Services Department, and City representatives.
 - C. *Concealing Work.* Prior to concealing work, Concessionaire shall obtain approval of the work from the following four entities: 1) Public Works Department; 2) Park and Recreation Department; 3) Development Services Department; and 4) Special Inspections - as required by all State Building Codes and as stipulated in this Agreement. This approval is general approval only and in no way relieves Concessionaire of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Concessionaire shall fulfill all requirements of each of these four entities.
6. **Permits.** The Parties acknowledge the construction work to be performed on the Project by Concessionaire in compliance with this Agreement is subject to the prior issuance of building, land development, and/or public improvement permits paid for and obtained by Concessionaire. In the event that City, or any other governmental agency, unreasonably refuses to issue the permit(s) necessary to authorize the work to be performed or if the permit(s) are unreasonably canceled or suspended, then Concessionaire is relieved from its obligation to construct those improvements covered by the denial of said permit(s). All plans, specifications and improvements completed to the date of the denial, suspension or cancellation of said permit(s) shall become the property of City.
7. **Maintenance.** Concessionaire shall maintain and be responsible for the Project site throughout the term of the Concession Agreement.
8. **Drug-Free Workplace.** The Concessionaire agrees to comply with the City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE," adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The Concessionaire shall certify to the City that it will provide a drug-free workplace by submitting a Concessionaire Certification for a Drug-Free Workplace form attached as part of this Exhibit.
 - A. *Concessionaire Notice to Employees.* The Concessionaire shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.
 - B. *Drug-Free Awareness Program.* The Concessionaire shall establish a drug free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the work place.
 - ii. The policy of maintaining a drug free work place.
 - iii. Available drug counseling, rehabilitation, and employee assistance programs.
 - iv. The penalties that may be imposed upon employees for drug abuse violations.
 - v. In addition to section 8.A above, the Concessionaire shall post the drug free policy in a prominent place.
 - C. *Concessionaire's Agreements.* The Concessionaire further certifies that each contract for Consultant or Contractor Services for this Project shall contain language that binds the Consultant or Contractor to comply with the provisions of this section 8 "Drug-Free Workplace," as required by Sections 2.A(1) through (3) of Council Policy 100-17. Consultants and Contractors shall be individually responsible for their own drug free work place program.

VII. Project Deliverables

1. Master Contract Documents.

- A. *Working Drawings.* Concessionaire shall prepare Working Drawings in accordance with City's most current drawing format as outlined in City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.
- B. *Surveys.* Concessionaire shall provide all surveying services required for the design of this Project in accordance with all applicable legal regulations, the Technical Guidelines produced by the California Council of Civil Engineers & Land Surveyors under the title "A Guide to Professional Surveying Procedures," and the City of San Diego Engineering and Capitol Projects Department's "Data Standards for Improvement Plans," August 2004.
- C. *Schematic Design Documents.* Concessionaire shall consult with City to ascertain requirements of the Project and to prepare Schematic Design Documents.
- D. *Design Development Documents.* Concessionaire shall prepare from the approved Schematic Design Documents, for approval by City, Design Development Documents to fix and describe the size and character of the entire Project. These documents shall contain, at a minimum, the following:
 - i. Site plan, indicating the nature and relational location, via dimensions, of all proposed Project components.
 - ii. Traffic circulation and landscaping should also be indicated at this stage if applicable.
 - iii. Plans, elevations, cross-sections, and notes as required to fix and describe the Project components.
 - iv. Proposed construction schedules.
 - v. Technical 'Special Provisions' section of the Specifications.
 - vi. Outline of Specifications prepared in accordance with the latest recommended format of the Construction Specification Institute.
 - vii. Probable Project construction costs, for each component of the Project being considered in this phase.
 - viii. Color board with material samples.
- E. *Construction Documents.* Concessionaire shall provide, based on the approved Design Development documents, Working Drawings and Contract Specifications [throughout the Agreement and attached exhibits referred to as Construction Documents] setting forth in detail the requirements for construction of the Project, including the necessary bidding information.
- F. *Utility Location Requests.* Along with initial submission of Construction Documents, Concessionaire shall furnish copies of the Service and Meter Location Request and all utility companies verifications.
- G. *Cost Estimate.* Concessionaire shall provide a construction cost estimate based on the Construction Documents.
- H. *As-Builts.* Concessionaire shall provide As-Builts.
 - i. As-Builts shall show by dimension accurate to within one (1) inch, the centerline of each run of conduits and circuits, piping, ducts, and other similar items as determined by City, both concealed and visible. Concessionaire shall clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. Concessionaire shall clearly show, by symbol or note, the vertical location of the item ("under slab," "in ceiling," "exposed," etc.), and make all identification sufficiently descriptive that it may be related reliably to the specification.

Concessionaire shall thoroughly coordinate all changes on the As-Builts making adequate and proper entries on each page of specifications and each sheet of drawings and other documents where entry is required to properly show the change.

- ii. Concessionaire shall include all of the following on the As-Builts:
 - a. Depth of foundation in relation to finished first floor.
 - b. Horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements.
 - c. Locations of internal utilities and appurtenances, with references to visible and accessible features of the structure.
 - d. Field changes of dimensions and details.
 - e. Changes authorized by approved proposal requests, construction change orders, discussion with City that resulted in any change/deviation from City's program, specifications, approved plans, equipment or materials.
 - f. Details not issued with original contract drawings, design/build plans, deferred approvals, etc.
 - g. Upon completion of work, obtain signature of licensed surveyor or civil engineer on the Project record set verifying layout information.
 - h. Show locations of all utilities on-site with size, and type of pipe, if different than specified, and invert elevations of pipe at major grade and alignment changes.
 - i. The title "PROJECT RECORD" in 3/8" letters.
 - iii. Concessionaire shall maintain a set of As-Builts at the Project site for reference. Concessionaire shall also deliver to the City a set of As-Builts at the completion of construction. This will be a condition precedent to the City accepting the improvements. Concessionaire shall ensure that changes to the As-Builts are made within twenty-four hours after obtaining information. Changes shall be made with erasable colored pencil (not ink or indelible pencil), shall clearly describe the change by note (note in ink, colored pencil or rubber stamp) and by graphic line, shall indicate the date of entry, shall circle the area or areas affected and, in the event of overlapping changes, use different colors for each change.
- I. *Operation and Maintenance Manuals.* Concessionaire shall submit all Operation and Maintenance manuals prepared in the following manner:
- i. In triplicate, bound in 8½ x 11 inch (216 x 279 mm) three-ring size binders with durable plastic covers prior to City's Final Inspection.
 - ii. A separate volume for each system, including but not limited to mechanical, electrical, plumbing, roofing, irrigation, and any other system as determined by City, with a table of contents and index tabs in each volume as follows:
 - a. Part 1: Directory, listing names, addresses, and telephone numbers of Concessionaire's agents, suppliers, manufacturers, and installers.
 - b. Part 2: Operation and Maintenance Instructions, arranged by specification division or system.For each specification division or system, provide names, addresses and telephone numbers of Concessionaire's agents, suppliers, manufacturers, and installers. In addition, list the following: 1) appropriate design criteria; 2) list of equipment; 3) parts list; 4) operating instructions; 5) maintenance instructions, equipment; 6) maintenance instructions, finishes; 7) shop drawings and product data; and 8) warranties.

VIII. Typical Insurance Provisions

1. **Types of Insurance.** At all times during the term of this Agreement, Concessionaire shall ensure that all contractors hired for this Project maintain insurance coverage as follows:
 - A. *Commercial General Liability.* Concessionaire shall provide at its expense a policy or policies of Commercial General Liability [CGL] Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad and which shall cover liability arising from premises and operations, XCU (explosions, underground, and collapse) independent contractors, products/completed operations, personal injury and advertising injury, bodily injury, property damage, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Concessionaire shall maintain the same or equivalent CGL Insurance as described herein for at least ten (10) years following substantial completion of the work. All costs of defense shall be outside the policy limits. The Policy shall provide for coverage in amounts not less than the following: (i) General Annual Aggregate Limit (other than Products/Completed Operations) of two million dollars (\$2,000,000); (ii) Products/Completed Operations Aggregate Limit of two million dollars (\$2,000,000); (iii) Personal Injury Limit one million dollars (\$1,000,000); and (iv) Each Occurrence one million dollars (\$1,000,000).
 - B. *Commercial Automobile Liability.* For all of Concessionaire's automobiles used in conjunction with the Project including owned, hired and non-owned automobiles, Concessionaire shall keep in full force and effect, a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad in the amount of one million dollars (\$1,000,000) combined single limit per occurrence, covering bodily injury and property damage for owned, non-owned and hired automobiles ["Any Auto"]. All costs of defense shall be outside the policy.
 - C. *Architects and Engineers Professional Liability.* For all of Concessionaire's employees who are subject to this Agreement, Concessionaire shall keep in full force and effect, or Concessionaire shall require that its architect/engineer(s) of record keep in full force and effect errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) annual aggregate. Concessionaire shall ensure both that (i) this policy retroactive date is on or before the date of commencement of the Project; and (ii) this policy has a reporting period of three (3) years after the date of completion or termination of this Contract. Concessionaire agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.
 - D. *Worker's Compensation.* For all of Concessionaire's employees who are subject to this Contract and to the extent required by the State of California, Concessionaire shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Concessionaire against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Concessionaire to comply with the requirements of this section. That policy shall provide at least the Statutory minimums of one million dollars (\$1,000,00) for Bodily Injury by Accident for each accident, one million dollars (\$1,000,000) for Bodily Injury by Disease each employee, and a one million dollars (\$1,000,000) for Bodily Injury by Disease policy limit. Concessionaire shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.
 - i. Prior to the execution of the Agreement by the City, the Concessionaire shall file the following signed certification:

“I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker’s compensation or to undertake self-insurance, in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Contract.”

E. *Builder’s Risk.* To the extent commercially available, Concessionaire shall provide a policy of “all risk” Builders Risk Insurance. Concessionaire shall add City and its respective elected officials, officers, employees, agents, and representatives to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. Concessionaire shall also add its construction contractor, and the construction contractor’s subcontractors to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. The insurance may provide for a deductible which shall not exceed fifty thousand dollars (\$50,000). It shall be Concessionaire’s responsibility to bear the expense of this deductible. The Builders Risk coverage shall expire at the time such insured property is occupied by City, or a Notice of Completion is filed, whichever occurs first.

2. **Endorsements Required.** Each policy required under section 1, above, shall expressly provide, and an endorsement shall be submitted to the City, that:

A. *Additional Insureds.* Except as to Architects and/or Engineers professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds.

i. *Commercial General Liability.* The policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives. The coverage for Projects for which the Engineer’s Estimate is one million dollars (\$1,000,000) or more shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, (iii) Your work, including but not limited to your completed operations performed by you or on your behalf, or (iv) premises owned, leased, controlled, or used by you; the coverage for Projects for which the Engineer’s Estimate is less than one million dollars (\$1,000,000) shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, or (iii) premises owned, leased, controlled, or used by you; Except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, these endorsements shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code section 11580.04, the insurer’s obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code section 11580.04.

ii. *Commercial Automobile Liability Insurance.* Unless the policy or policies of Commercial Automobile Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Concessionaire; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and

representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code section 11580.04.

- B. *Primary and Non-Contributory.* The policies are primary and non-contributing to any insurance or self-insurance that may be carried by the City of San Diego, its elected officials, officers, employees, agents, and representatives with respect to operations, including the completed operations if appropriate, of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of Concessionaire's insurance and shall not contribute to it.
- C. *Project General Aggregate Limit.* The CGL policy or policies must be endorsed to provide a Designated Construction Project General Aggregate Limit that will apply only to the work performed under this Agreement. Claims payments not arising from the work shall not reduce the Designated Construction Project General Aggregate Limit. The Designated Construction Project General Aggregate Limit shall be in addition to the aggregate limit provided for the products-completed operations hazard.
- D. *Written Notice.* Except as provided for under California law, the policies cannot be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Concessionaire to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-payment of premium, in which case ten (10) calendar days notice shall be provided.
- E. The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.

**EQUAL BENEFITS ORDINANCE
CERTIFICATION OF COMPLIANCE**



For additional information, contact:
CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM
 202 C Street, MS 9A, San Diego, CA 92101
 Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION

Company Name:	Contact Name:
Company Address:	Contact Phone:
	Contact Email:

CONTRACT INFORMATION

Contract Title:	Start Date:
Contract Number (if no number, state location):	End Date:

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:

- Contractor shall offer equal benefits to employees with spouses and employees with domestic partners.
 - Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit.
 - Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner.
- Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.
- Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements.
- Contractor shall submit *EBO Certification of Compliance*, signed under penalty of perjury, prior to award of contract.

NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at www.sandiego.gov/administration.

CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

Please indicate your firm's compliance status with the EBO. The City may request supporting documentation.

I affirm compliance with the EBO because my firm (*contractor must select one reason*):

- Provides equal benefits to spouses and domestic partners.
- Provides no benefits to spouses or domestic partners.
- Has no employees.
- Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.

I request the City's approval to pay affected employees a cash equivalent in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.

It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]

Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.

Name/Title of Signatory	Signature	Date
-------------------------	-----------	------

FOR OFFICIAL CITY USE ONLY

Receipt Date:	EBO Analyst:	<input type="checkbox"/> Approved	<input type="checkbox"/> Not Approved – Reason:
---------------	--------------	-----------------------------------	---

Certification for Title 24/ADA Compliance

{INSERT Name of Project}

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for {Insert Name of Project} by {Insert Consultant Name} shall meet all current California Building Standards Code, California Code of Regulations, Title 24 and Americans with Disabilities Act Accessibility Guidelines requirements, and shall be in compliance with the Americans with Disabilities Act of 1990.

Dated: _____

By: _____

Certification for a Drug-Free Workplace

PROJECT TITLE: _____

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that:

{Insert Name Under which Business Conducted}

has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this Project contains language that indicates the Subconsultants/Subcontractors agreement to abide by the provisions of Sections 2.A(1) through (3) of Council Policy 100-17 as outlined.

Signed _____

Printed Name _____

Title _____

Date _____

Exhibit E: Operating Plan

[To be provided by the successful proposer, as required in the Request for Proposals, and approved by the City of San Diego.]

Exhibit F: Schedule of Days and Hours of Operation

I. The City requires the following **minimum** hours of operation for the NTC Aquatic Center:

- Monday through Friday: 8:00 a.m. to 9:00 p.m.
- Saturday and Sunday: 12:00 p.m. to 4:00 p.m.

II. The City requires a minimum of thirty (30) un-programmed hours each week for public open swim.

EXHIBIT G

REGARDING INFORMATION REQUESTED UNDER THE CALIFORNIA PUBLIC RECORDS ACT

The undersigned duly authorized representative, on behalf of the CONCESSIONAIRE declares and acknowledges the following:

Any contents within and performance of the Concession Agreement is a public record subject to disclosure unless a specific exemption in the California Public Records Act applies.

If CONCESSIONAIRE submits information clearly marked confidential or proprietary, the City of San Diego (City) may protect such information and treat it with confidentiality only to the extent permitted by law. However, it will be the responsibility of CONCESSIONAIRE to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the California Public Records Act, should the City choose to withhold such information.

General references to sections of the California Public Records Act will not suffice. Rather, CONCESSIONAIRE must provide a specific and detailed legal basis, including applicable case law that clearly establishes the requested information is exempt from the disclosure requirements of the California Public Records Act.

If CONCESSIONAIRE does not provide a specific and detailed legal basis for withholding the requested information within a time specified by the City, the City will release the information as required by the California Public Records Act and CONCESSIONAIRE will hold the City harmless for release of this information.

It will be CONCESSIONAIRE's obligation to defend, at CONCESSIONAIRE's expense, any legal actions or challenges seeking to obtain from the City any information requested under the California Public Records Act withheld by the City at the CONCESSIONAIRE's request. Furthermore, CONCESSIONAIRE shall indemnify the City and hold it harmless for any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the Public Records Act withheld at CONCESSIONAIRE's request.

Nothing in this Agreement creates any obligation for the City to notify CONCESSIONAIRE or obtain CONCESSIONAIRE's approval or consent before releasing information subject to disclosure under the California Public Records Act.

Name of Firm

Signature of Authorized Representative

Printed/Typed Name

Date



City of San Diego

EQUAL OPPORTUNITY CONTRACTING (EOC)

1200 Third Avenue • Suite 200 • San Diego, CA 92101

Phone: (619) 236-6000 • Fax: (619) 235-5209

WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

NO OTHER FORMS WILL BE ACCEPTED

Section 1.01 CONTRACTOR IDENTIFICATION

Type of Contractor: Construction Vendor/Supplier Financial Institution Lessee/Lessor
 Consultant Grant Recipient Insurance Company Other

Name of Company: _____

ADA/DBA: _____

Address (Corporate Headquarters, where applicable): _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: () _____ Fax Number: () _____

Name of Company CEO: _____

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: () _____ Fax Number: () _____

Type of Business: _____ Type of License: _____

The Company has appointed: _____

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: _____

Telephone Number: () _____ Fax Number: () _____

- One San Diego County (or Most Local County) Work Force - Mandatory
- Branch Work Force *
- Managing Office Work Force

Check the box above that applies to this WFR.

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

I, the undersigned representative of _____
(Firm Name)

_____ hereby certify that information provided
(County) (State)

herein is true and correct. This document was executed on this _____ day of _____, 20____

(Authorized Signature)

(Print Authorized Signature Name)

WORK FORCE REPORT – Page 3

NAME OF FIRM: _____ DATE: _____

OFFICE(S) or BRANCH(ES): _____ COUNTY: _____

I. INSTRUCTIONS: FOR EACH OCCUPATIONAL CATEGORY, INDICATE NUMBER OF MALES AND FEMALES IN EVERY ETHNIC GROUP. TOTAL COLUMNS IN ROW PROVIDED. SUM OF ALL TOTALS SHOULD BE EQUAL TO YOUR TOTAL WORK FORCE. INCLUDE ALL THOSE EMPLOYED BY YOUR COMPANY ON EITHER A FULL OR PART-TIME BASIS. THE FOLLOWING GROUPS ARE TO BE INCLUDED IN ETHNIC CATEGORIES LISTED IN COLUMNS BELOW:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

TRADE OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Brick, Block or Stone Masons														
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees

Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--



CITY OF SAN DIEGO WORK FORCE REPORT

HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2000 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.¹ By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.² If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from Sacramento County, we ask for separate Work

Force Reports representing your firm from each of the three counties.

MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.^{1,3} In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.³

TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one¹, two² & three³. These numbers coincide with the types of work force report required in the example. See below:

- ¹ One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- ² Branch Work Force *
- ³ Managing Office Work Force

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

Exhibit A: Work Force Report Job categories-Administration

Refer to this table when completing your firm's Work Force Report form(s).

Management & Financial

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

Professional

Art and Design Workers
Counselors, Social Workers, and Other Community and Social Service Specialists

Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

Architecture & Engineering, Science, Computer

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

Technical

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

Sales

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

Administrative Support

Financial Clerks
Information and Record Clerks
Legal Support Workers
Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

Services

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

Crafts

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics, Installers, and Repairers
Woodworkers

Operative Workers

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

Transportation

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material Moving Workers
Water Transportation Workers

Laborers

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry Workers

Exhibit B: Work Force Report Job categories-Trade

Brick, Block or Stone Masons

Brickmasons and Blockmasons
Stonemasons

Carpenters

Carpet, floor and Tile Installers and Finishers

Carpet Installers
Floor Layers, except Carpet, Wood and Hard Tiles
Floor Sanders and Finishers
Tile and Marble Setters

Cement Masons, Concrete Finishers

Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

Construction Laborers

Drywall Installers, Ceiling Tile Inst

Drywall and Ceiling Tile Installers
Tapers

Electricians

Elevator Installers and Repairers

First-Line Supervisors/Managers

First-line Supervisors/Managers of Construction Trades and Extraction Workers

Glaziers

Helpers, Construction Trade

Brickmasons, Blockmasons, and Tile and Marble Setters
Carpenters
Electricians
Painters, Paperhangers, Plasterers and Stucco
Pipelayers, Plumbers, Pipefitters and Steamfitters
Roofers
All other Construction Trades

Millwrights

Heating, Air Conditioning and Refrigeration Mechanics and Installers
Mechanical Door Repairers
Control and Valve Installers and Repairers
Other Installation, Maintenance and Repair Occupations

Misc. Const. Equipment Operators

Paving, Surfacing and Tamping Equipment Operators
Pile-Driver Operators
Operating Engineers and Other Construction Equipment Operators

Painters, Const. Maintenance

Painters, Construction and Maintenance
Paperhangers

Pipelayers and Plumbers

Pipelayers
Plumbers, Pipefitters and Steamfitters

Plasterers and Stucco Masons

Roofers

Security Guards & Surveillance Officers

Sheet Metal Workers

Structural Iron and Steel Workers

Welding, Soldering and Brazing Workers

Welders, Cutter, Solderers and Brazers
Welding, Soldering and Brazing Machine Setter, Operators and Tenders

Workers, Extractive Crafts, Miners

CITY OF SAN DIEGO

**CONCESSIONAIRE'S QUESTIONNAIRE
FOR ALL AGREEMENTS OF MORE THAN FIVE YEARS**

Before the City of San Diego will process requests to Concessionaire, all information requested in this Questionnaire must be completed by the proposed Concessionaire. All information furnished in this Questionnaire must be complete and accurate. Omissions, inaccuracies, or misstatements may cause the rejection and/or subsequent revocation of the City's Concession Agreement.

In submitting this Questionnaire, the proposed Concessionaire completing the Questionnaire authorizes the City to make any inquiry or investigation it believes necessary to substantiate or supplement the information furnished in the Questionnaire, and authorizes others to release such information to the City.

Exact name of proposed Concessionaire (always complete):

Date this Questionnaire completed: _____, _____.

The information furnished in and with this Questionnaire is true, complete, and correct to the best of my knowledge.

Signature: _____

Title: _____

Thank you for taking the time to complete the Questionnaire. Concessionaires may contact the Real Estate Assets Department if they have any questions. Please return the completed Questionnaire, with any additional information or documents to:

REAL ESTATE ASSETS DEPARTMENT
1200 THIRD AVENUE STE. 1700
SAN DIEGO, CA 92101
TEL.: (619) 236-6020 FAX: (619) 236-6706

This Questionnaire contains 14 pages.

PROPOSED CONCESSIONAIRE

- 1. Name of proposed Concessionaire exactly as it will appear on the Concession Agreement:

- 2. Mailing Address of proposed Concessionaire for purposes of notice or other communication relating to the Concession Agreement:

Telephone No.: _____ Fax. No.: _____
E-mail Address: _____

3. Billing Address (***only if different from Mailing Address***);

Telephone No.: _____ Fax. No.: _____

4. Proposed Concessionaire intends to operate as a:
Sole Proprietorship (); Partnership (); Corporation ();
Limited Liability Company (); Other _____

Explain if necessary:

PARTNERSHIP STATEMENT

If proposed Concessionaire is a partnership, please answer the following:

1. Date of Organization: _____

2. General Partnership ()
 Limited Partnership ()
 Other () Explain _____

3. Statement of Partnership recorded: Yes () No ()

Date	Book	Page	County

4. Has the partnership conducted business in San Diego County?
 Yes () No () If so, when? _____
 If so, where? _____

5. Name, address, and partnership share of each general and limited partner. If a general partner is another partnership, a corporation, or a limited liability company (LLC), please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity. If a limited partner holding a 10% or greater interest is another partnership, a corporation, or an LLC, pages 3; or 4 and 5; or 6 must also be completed for such entity.

General/Limited	Name	Address	Share %

6. Attach a complete copy of the Partnership Agreement. If a Partnership Agreement has been previously submitted, a new Partnership Agreement need be submitted only if the Partnership Agreement on file with the City is no longer current.

CORPORATION STATEMENT

If proposed Concessionaire is a corporation, please answer the following:

1. Type of corporation: C () Subchapter S ()
2. When incorporated? _____
3. Where incorporated? _____
4. Is the corporation authorized to do business in California? Yes () No ()
If so, as of what date? _____
5. The corporation is held:
a. Publicly () Privately ()
b. If publicly held, how and where is the stock traded?

6. Please list the following:	<u>Authorized</u>	<u>Issued</u>	<u>Outstanding</u>
a. Number of voting shares:	_____	_____	_____
b. Number of nonvoting shares:	_____	_____	_____
c. Number of shareholders:			_____
d. Value per share of Common Stock:		Par	\$ _____
		Book	\$ _____
		Market	\$ _____

7. Please furnish the name, title, address, and the number of voting and nonvoting shares of stock owned by each officer and, in addition, the same information for each stockholder owning more than 10% of any class of stock.

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____

Title: _____

Address: _____

No. of Shares: _____

(Additional page(s) may be added if needed to complete list of stockholders.

Any partnership, corporation, or LLC owning more than a 10% ownership interest must also complete, as appropriate for each entity (for identification purposes). Also, furnish the financial data for such partnership, corporation, or LLC. If there is an ownership chain of additional partnerships, corporations, or LLCs, the above requirements extend to each such entity having either: (1) a 10% or greater direct, indirect, beneficial ownership, or membership interest in the proposed Concessionaire; or (2) effective control of the proposed Concessionaire, regardless of the percentage of ownership or membership interest.

LIMITED LIABILITY COMPANY STATEMENT

If the proposed Concessionaire is an LLC, please answer the following:

1. Date of Organization: _____
2. Where Organized: _____
3. Is the Company authorized to do business in California?
 - a. Yes () No ()
 - b. If so, as of what date? _____
4. Has the Company conducted business in San Diego County?
 - a. Yes () No ()
 - b. If so, when? _____
 - c. If so, where? _____
5. Please furnish the name, address, and membership share held by each manager and officer, and each member owning more than a 10% membership interest. If a member is a partnership, corporation, or another LLC, please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity.

Manager/Officer/ Member	Name	Address	Share %

6. Attach a complete copy of the Operating Agreement. If an Operating Agreement has been previously submitted, a new Operating Agreement need be submitted only if the Operating Agreement on file with the City is no longer current.

FINANCIAL AND OTHER BACKGROUND INFORMATION

FINANCIAL STATEMENT

Concessionaire, general partners of Concessionaire, owner-corporations of Concessionaire members of Concessionaire owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of Concessionaire **must attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition.** The report **must** include a balance sheet **and** annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

OTHER INFORMATION

Each Concessionaire, each general partner of Concessionaire, each owner-corporation of Concessionaire, each member of Concessionaire owning more than a 10% membership interest, any person or business entity guaranteeing the performance of Concessionaire, any person or entity owning more than a 10% interest of Concessionaire, and any guarantor of Concessionaire must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
 - a. Yes () No ()
 - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.

2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
 - a. Yes () No ()
 - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.

3. **Pending Litigation** - Are any of the individuals or entities presently a party to ANY pending litigation?
 - a. Yes () No ()
 - b. If yes, please provide detailed information for each action.

4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
 - a. Yes () No ()
 - b. If yes, please provide detailed information for each claim, lien, or judgment.

REFERENCES FOR PROPOSED QUESTIONNAIRE

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

REFERENCE NO. 1

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 2

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 3

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 4

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors, must each complete this page before the request can be processed. (You may reproduce and use copies of this page, if necessary.)

The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Concessionaire.

First, Middle, & Last Name	_____
Date of Birth	_____
Place of Birth	_____
Social Security Number	_____
Driver's License Number/State	_____
Home Address	_____

Previous Address	_____

Home Telephone No.	_____
Employer	_____
Occupation	_____
Business Address	_____
Business Telephone No.	_____
Business Fax No.	_____

The City is hereby authorized to request a credit report and other information covering my financial and business history.

Date _____ Signed _____

Print or type exact name of proposed Concessionaire from page 1 of Questionnaire:

METHOD OF OPERATION

Please describe your proposed business operation on the property. Discuss any optional services and uses which you propose to provide.

**PROPOSED METHOD OF FINANCING
DEVELOPMENT**

Describe the method of financing for any new or additional development in excess of \$100,000. Include a schedule of approximate dates when construction of each significant improvement is expected to be commenced and completed.

ESTIMATE OF GROSS RECEIPTS

Please show the best estimate of the average annual gross sales for each significant use or service, and for each significant optional use or service which the Concessionaire plans to conduct on or from the property.

Average annual gross sales for each proposed significant use during each of the first five operating years:

Year of Operation	Uses (Identify Each Use)				
1	\$	\$	\$	\$	\$
2					
3					
4					
5					

EXPERIENCE STATEMENT

Please describe in detail the duration and extent of your business experience, with special emphasis upon experience with the type of business which you propose to conduct on City property. Also state in detail the pertinent experience of the persons who will be directly involved in development and management of the business.

EXHIBIT H

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

- A. The Proposer certifies, to the best of its knowledge and belief, that --
1. The Proposer and/or any of its Principals
 - a. ARE ←checking this box means you are presently debarred, etc., ARE NOT presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any public (Federal, State, or Local) agency;
 - b. HAVE ←checking this box means you have been convicted, etc., HAVE NOT , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
 - c. ARE ←checking this box means you are presently indicted, etc., ARE NOT presently indicted for, or otherwise criminally or civilly charged by a public entity with, commission of any of the offenses enumerated in paragraph (a) (1) (ii) of this provision.
 2. The Proposer HAS ←checking this box means you have defaulted on contracts, HAS NOT , within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
 3. "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity. This Certification Concerns a Matter Within the Jurisdiction of the City of San Diego and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution.
- B. The Proposer shall provide immediate written notice to the Contact Person if, at any time prior to contract award, the Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- C. A certification that any of the items in paragraph A. of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Proposer's

responsibility. Failure of the Proposer to furnish a certification or provide such additional information as requested by the Contact Person may render the Proposer non-responsible.

- D. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph A. of this provision. The knowledge and information of a Proposer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- E. The certification in paragraph A. of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Proposer knowingly rendered an erroneous certification, in addition to other remedies available to the City of San Diego, the Contact Person may terminate the contract resulting from this solicitation for default.

Name of Firm

Signature of Authorized Representative

Printed/Typed Name

Date