

**LEASE BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
CITY OF CORONADO**

THIS LEASE, executed this \_\_\_\_ day of \_\_\_\_\_ 2023, by and between THE UNITED STATES OF AMERICA, acting by and through the Secretary of the Navy ("GOVERNMENT"), and the City of Coronado, whose address is 1825 Strand Way, Coronado, California 92118 ("LESSEE"). (GOVERNMENT and LESSEE may sometimes jointly be referred to as the "Parties.")

**W I T N E S S E T H:**

**WHEREAS**, the Leased Premises, as defined below, covered by this Lease are under the control of the Secretary of the Navy (the "Navy"); and

**WHEREAS**, the Leased Premises are not excess property as defined in section 3 of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. § 102); and

**WHEREAS**, the Secretary of the Navy, pursuant to the provisions of 10 U.S.C. § 2667, has determined that the proposed use of the Leased Premises, subject to the terms and conditions of this Lease, will promote the national defense or serve the public interest.

**NOW THEREFORE**, in consideration of the terms, covenants, and conditions in this Lease, GOVERNMENT and LESSEE agree as follows:

**1. LEASED PREMISES.** GOVERNMENT leases, rents, and demises to LESSEE, and LESSEE hires and rents from GOVERNMENT, the Leased Premises consisting of approximately 14 acres of beach land at Naval Air Station North Island (NASNI), Naval Base Coronado (NBC), California as more particularly described and/or depicted in Exhibit "A" to this Lease (the "Leased Premises"), together with all improvements and all related Personal Property as described and/or listed in Exhibit "A", and with all rights of access to the Leased Premises for ingress and egress as provided under Paragraph 27 below.

**2. TERM.** The term of this Lease shall begin on April 18, 2023 and end on April 17, 2028, unless sooner terminated under Paragraph 15.

Upon mutual agreement by both parties, the term of this lease may be renewed for four (4), five (5)-year renewal terms with LESSEE delivering to the Navy representative a written renewal request ninety (90) days prior to the expiration of the then current term/option period. Each succeeding lease term shall be on the same terms and conditions as the initial term, except with respect to expiration date and rent.

### **3. INTENTIONALLY OMITTED.**

### **4. CONSIDERATION.**

4.1. In Kind. In lieu of paying rent either totally or partially in cash, LESSEE may pay rent to GOVERNMENT by providing in-kind consideration in accordance with this Paragraph 4.1. In consideration for this Lease, the LESSEE shall provide in-kind consideration in the form of work or services. Pursuant to 10 U.S.C § 2667, acceptable types of in-kind consideration include the maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration, such as removal of invasive plant species) of property or facilities under the control of the Commander, Navy Region Southwest. In-kind consideration shall in no event include any item of protection, maintenance, improvement or repair which is solely incidental to LESSEE's use of the Leased Premises hereunder and which LESSEE is obligated to perform by Paragraph 13, PROTECTION AND MAINTENANCE OF LEASED PREMISES, or other provisions of this Lease, such as, but not limited to, garbage and trash collection and disposal, or clean-up work. The work or services identified by the Installation and agreed upon by LESSEE is through the provision of lifeguard services, active law enforcement, and first emergency response services at the proposed leased property.

An Informal Value Estimate (IVE) has been completed by GOVERNMENT to determine Fair Market Rental Value (FMRV) for the initial term of five years. The value of the work or services to be provided annually by LESSEE are equal to or greater than the estimated \$28,012 FMRV for the first year of the lease, \$28,852 for the second year of the lease, \$29,718 for the third year of the lease, \$30,609 for the fourth year of the lease, and \$31,528 for the fifth year of the lease. Thereafter, an IVE will be completed by the GOVERNMENT at each option renewal term, and this Lease will be modified to include the rental amount owed for each year of the next option renewal term. The value of work or services to be provided annually by LESSEE shall be reviewed by GOVERNMENT prior to each option renewal term to ensure the work or services remain equal to or greater than the estimated FMRV. The IVE methodology used is in accordance with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA).

The annual rental value for the Leased Premises, how it will be recognized in the event that performance extends into the next lease year, the form of in-kind payment, and the terms of performance and delivery shall be described on or before each anniversary of the Lease term in a writing that will be attached to this Lease. However, credit for rent will not be recognized for any lease year until performance of a project has been accepted by the designated engineer of GOVERNMENT. GOVERNMENT and LESSEE shall meet on an as-needed basis, but not less than annually from the date of inception of this Lease to review and amend, if necessary, the established list of specific in-kind projects or services that will be performed. For each project or service proposed, an estimated cost to perform the work must be included with the project or service description, which cost will be drawn from an estimate submitted by each of the Parties. The estimated cost shall be broken down by material, subcontract cost, labor, overhead, and general and administrative expense. Projects or services shall be selected by GOVERNMENT

and scheduled so that the value of the work to be performed is not less than the rent obligations of LESSEE. Authorization to proceed will occur only through written approval from the GOVERNMENT, and that approval shall be made in the form of a written letter by the Real Estate Contracting Officer ("RECO"). A "not to exceed cost ceiling" will be established by the approval letter. The RECO may, upon request, with supporting rationale from LESSEE, increase the "not to exceed cost ceiling." That request must be submitted in writing prior to incurring any cost in excess of that amount and sufficiently in advance to allow for review of the requirement, and, in any event, not less than ten (10) days prior to the date authorization is required. If, due to unavoidable time constraints, it is not practicable to comply with the 10-day requirement, LESSEE may seek verbal approval from the RECO, pending written confirmation. LESSEE shall not be obligated to incur costs in excess of the "not to exceed cost ceiling." Nothing herein shall be construed as requiring LESSEE to perform in-kind services in lieu of paying cash rent, and LESSEE shall always have the option of paying cash rent.

4.1.1. The incurred cost of performing a project or service will be subject to GOVERNMENT audit. Should the audited cost be less than the "not to exceed cost ceiling", LESSEE's rent obligation will be credited only for the audited cost.

4.1.2. Nothing in this Lease shall preclude LESSEE from contracting with a third party for the work or services. LESSEE shall require any contractor to procure a penal bond in an amount not less than the estimated cost of the work contracted for. Prior to commencing the proposed work, LESSEE shall be solely responsible for obtaining any environmental permits required, independent of any existing permits. Copies of all required construction permits shall be delivered to the GOVERNMENT.

4.1.3. GOVERNMENT will retain the right of technical review of any proposed work to be performed or personal property to be delivered. A GOVERNMENT representative may oversee the work solely for the benefit of GOVERNMENT and confirm satisfactory completion to the Commander/Commanding Officer. The RECO must provide a written final acceptance of the work performed in order for LESSEE to receive rent reduction credit for the work performance. Title to any improvements constructed or personal property furnished shall vest in GOVERNMENT upon acceptance. Any bills of sale, purchase receipts, written warranties, other indicia or documents of ownership shall be delivered to the GOVERNMENT upon its acceptance of the improvement or personal property. Written warranties shall include, but not be limited to, a warranty that work performed conforms to the contract requirements and is free of any defect in equipment, material, or design or workmanship, and that LESSEE or LESSEE's contractor will remedy any failure to conform or any defect promptly and at its sole expense. Additionally, any warranty must agree that LESSEE or LESSEE's contractor shall remedy any damage to GOVERNMENT owned or controlled real or personal property when that damage results from either contractor failure to conform to contract requirements or any defect of equipment, material, workmanship, or design. All warranties shall name GOVERNMENT as an additional beneficiary. LESSEE shall enforce all warranties for the benefit of GOVERNMENT if directed by GOVERNMENT.

4.1.4. Upon termination of this Lease for any reason, LESSEE shall not be entitled to a refund of its costs paid for a project the performance of which has not been approved by the

engineer of GOVERNMENT, and a final accounting will be performed and the balance of any rent accrued and still payable to GOVERNMENT will be due on demand by valid check or money order. Notwithstanding termination, GOVERNMENT reserves the right to have a final accounting performed at any time during the course of the lease term, including any renewal term, and request that the value of any rent accrued up to that date and not already contractually obligated to any specific project or service to be performed, be paid by valid check or money order to GOVERNMENT on demand. Upon termination, at GOVERNMENT's option, LESSEE shall complete any work or service already contracted for, in which event GOVERNMENT will issue a temporary license to LESSEE to remain on the Leased Premises, or if otherwise directed by GOVERNMENT, terminate any contract and pay all accrued rent by valid check or money order.

4.1.5. The terms of consideration shall be re-negotiable prior to the renewal of this Lease.

## **5. USE OF LEASED PREMISES.**

5.1. The purpose for which the Leased Premises may be used, in the absence of prior written approval by GOVERNMENT, is for public recreational and dog park purposes only, consistent with the previous use of the property, providing free access to the public and for no other purpose. Leased Premises shall not be used for commercial, economic, or revenue-generating purposes. LESSEE understands and acknowledges that this Lease is not, and does not constitute, a commitment by GOVERNMENT with regard to any fee title conveyance of the Leased Premises, in whole or in part, to LESSEE or any agency, instrumentality, or affiliate, or to any sublessee.

5.2. LESSEE shall not undertake any activity that may affect a historic or archeological property, including excavation, construction, alteration, or repairs of the Leased Premises, without the prior written approval of GOVERNMENT and compliance with section 106 of the National Historic Preservation Act (16 U.S.C. § 470), and the Archeological Resources Protection Act of 1979 (16 U.S.C. §470aa). Buried cultural materials may be present on the Leased Premises. If those materials are encountered, LESSEE shall stop work immediately and notify GOVERNMENT. GOVERNMENT has no knowledge of any historical or archeological property on the Leased Premises; in the event that it becomes aware of any, GOVERNMENT will immediately notify LESSEE.

## **6. ASSIGNMENT AND SUBLEASING.**

6.1. LESSEE shall neither transfer, assign, nor sublet this Lease or any interest in it, or any property on the Leased Premises, or grant any interest, privilege, or license whatsoever in connection with this Lease without the prior written consent of GOVERNMENT. Consent shall not be unreasonably withheld or delayed.

6.2. Any sublease granted by LESSEE shall contain a copy of this Lease as an attachment and be consistent with the terms and conditions of this Lease and shall terminate immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of

GOVERNMENT to LESSEE or any sublessee, except as specifically stated in this Lease. No sublease shall relieve LESSEE of any of its obligations under this Lease. Under any sublease made with or without consent of GOVERNMENT, the sublessee shall be deemed to have assumed all of the obligations of LESSEE under this Lease. Every sublease shall be subject to, and shall be deemed to contain, the Environmental Protection provisions set forth in Paragraph 14 below.

6.3. LESSEE shall submit to GOVERNMENT for its prior written consent, a copy of each sublease LESSEE proposes to execute. The consent may include a requirement that LESSEE renegotiate the sublease to conform to the provisions of this Lease. Consent to the sublease shall not be taken or construed to diminish or enlarge any of the rights or obligations of either GOVERNMENT or LESSEE. Should a conflict arise between the provisions of this Lease and a provision of the sublease, the provisions of this Lease shall take precedence. Upon its execution, a copy of each sublease shall be immediately furnished to the GOVERNMENT.

**7. INDEMNIFICATION.** LESSEE shall indemnify, defend, and save GOVERNMENT harmless and shall pay all costs, expenses, and reasonable attorney's fees for all trial and appellate levels and post-judgment proceedings in connection with any fines, lawsuits, actions, damages, liability, and causes of action of every nature whatsoever to the extent arising or growing out of, or in any manner connected with, the occupation of use of the Leased Premises by LESSEE, its employees, servants, agents, guests, invitees, and contractors. This includes, but is not limited to, any fines, claims, demands and causes of action of every nature whatsoever that may be made upon, sustained or incurred by the GOVERNMENT by reason of any breach, violation, omission or non-performance of any term, covenant or condition hereof on the part of the LESSEE, its employees, servants, agents, guests, invitees, or contractors. This indemnification also applies to claims arising out of the furnishings of any utilities or services by the GOVERNMENT or any interruption therein or failure thereof, occasioned by the negligence or lack of diligence of LESSEE or its respective officers, agents, servants or employees. However, this indemnity shall not extend to damages due to the extent of the fault of the GOVERNMENT or its employees, agents, servants, guests, invitees or contractors. This covenant shall survive the termination of this Lease.

## **8. ENVIRONMENTAL CONDITION OF PROPERTY.**

8.1. ECP Checklist. An Environmental Condition of Property (ECP) Checklist shall be attached to and made a part of this Lease as Exhibit "B" either at the time this Lease is executed, or within a reasonable time after the term begins, depending on the time needed by GOVERNMENT to complete the report, and in the latter event, the report will speak from the date the term of this Lease begins. The ECP Checklist sets forth the existing environmental conditions of the Leased Premises as represented by a survey conducted by GOVERNMENT and sets forth the basis for the GOVERNMENT's determination that the Leased Premises are suitable for leasing. LESSEE understands that whenever this Lease ends, GOVERNMENT may conduct an inspection of the Leased Premises to determine if any material deviation from the initial environmental condition has occurred, and if a material deviation has occurred, LESSEE will remain liable, to the extent permitted by law, for resulting loss or damage, notwithstanding

the ending of this Lease. LESSEE and each sublessee are made aware of the notifications contained in the ECP and shall comply with all Land Use Controls:

8.1.1. LESSEE agrees to comply with all applicable, local, state, and federal regulations associated with Leased Premises and all actions within.

8.1.2. LESSEE must comply with the conservation measures agreed with through informal consultation with US Fish and Wildlife Service (“USFWS”).

8.1.3 Any proposed site alterations (e.g. new construction or ground disturbances) will require Site Approval or environmental review from the Naval Base Coronado, Public Works Officer, NEPA Coordinator, and subject matter experts. Any proposed site alterations must survey and test for asbestos containing materials, lead, and munitions of explosive concern prior to work commencement.

8.1.4. To minimize dog feces abandoned on the Leased Premises, and the potential minor contamination (Section B.) and health hazards (Section L.):

- LESSEE will maintain the ‘doggie bag’ receptacle(s) that are already in place.
- LESSEE will continue any regular dog-beach waste cleanup activities and regular waste receptacle emptying.
- LESSEE will maintain a minimum of the current number of six (6) signs with language instructing clean-up of pet waste throughout the term of the Lease.

8.1.5. Migratory Bird Treaty Act (MBTA). Active nests are protected year round by the MBTA. If the project proposes to install fences, tree removal, tree trimming or clearing of vegetation, the executing agent/contractor will avoid the nesting season and coordinate with the NBC Biologist at (619) 545-3703 to ensure that work will not impact birds protected under the MBTA. Migratory Bird Treaty Act Breeding Season occurs between 15 February and 15 September.

To avoid and minimize the potential effects to the Endangered Species Act listed Western Snowy Plover and MBTA protected shorebirds, the GOVERNMENT and LESSEE will implement the following conservation measures as part of the proposed action:

LESSEE will install, maintain, and replace, as necessary, a minimum of four (4) educational signage that: 1) illustrates the presence and conservation needs of snowy plovers; 2) clearly defines the boundaries of the authorized dog use area; and 3) informs dog owners and pedestrians that access is not permitted through the security fence, throughout the term of the Lease. LESSEE will coordinate with NBC Natural Resources Manager, Ms. Loni Beyer Wilson, at (619) 545-5551 or [loni.j.beyerwilson.civ@us.navy.mil](mailto:loni.j.beyerwilson.civ@us.navy.mil), for details to include in the educational signage.

LESSEE will implement any repair, modification, or improvement necessary, to the extent practicable, to the fence as outlined in Exhibit "E" to ensure that dogs do not pass under/through/around the Installation fence immediately adjacent to the Leased Premises. In coordination with Naval Base Coronado's approval and in accordance with Paragraphs 4 and 9, LESSEE will attach a 4-foot high chain link fence on eight (8) sections of the existing Installation fence along the western perimeter of the Leased Premises. LESSEE shall maintain the fence once a month to remove the accumulation of kelp/seaweed and repair/replace the fence, as needed, to the GOVERNMENT's satisfaction. LESSEE shall coordinate and obtain approval from Naval Base Coronado prior to the installation of any modifications or improvements on the Leased Premises, in accordance with Paragraph 9.

LESSEE will provide regular police patrols with increased frequency relative to snowy plover nesting season (March 1 to Sept 15) to enforce regulations and educate the public of off-limits areas.

GOVERNMENT will ensure that security lighting along the fence is directed away from nesting habitat while meeting security requirements.

GOVERNMENT will coordinate with USFWS to evaluate the potential for snowy plover chicks to cross through the fence, and if beneficial will install additional fencing material at the base of the fence.

GOVERNMENT, LESSEE, and USFWS will explore options for beach habitat enhancement to benefit snowy plovers on one or more segment(s) of the City beach to improve the off-base habitat conditions for this species. LESSEE will limit raking of kelp/seaweed to once every two weeks, as it is a food source for snowy plovers.

LESSEE will ensure all trash is contained in covered, secure trash bins that are inaccessible to wildlife, emptied on a regular basis and prevented from overflowing. All exposed food waste or trash generated from food products (e.g., wrappers, food containers) will be removed from the site on a daily basis to prevent attraction of predators (e.g., American Crows or Common Ravens and mammalian scavengers such as rats, raccoons, and skunks). LESSEE will promptly remove or bury any animal carcasses found on the Leased Premises.

To the east of Dog Beach is the border with the City of Coronado Beach. This beach is considered critical habitat for the Western Snowy Plover per the USFWS final critical habitat designation issued June 2012 (subunit 55B, 77 Fed Reg 118 June 19, 2012, pp. 36728-36869). Within the critical habitat final rule, USFWS states that it did not anticipate impacts to the dog beach saying, "As the dog beach to the north of subunit CA 55B is not part of this designation as critical habitat, the FEA (final economic analysis) does not consider impacts to activities occurring at this beach."

8.1.6. The City of Coronado shall abide by the most recent version of the EM-385-1-1 Safety Manual and all applicable regulations in regards to safety. All work on potentially hazardous materials and waste (i.e. lead and asbestos) will be handled in accordance with applicable local, state, and federal regulations.

8.2. UXO. Unexploded Ordnance and other Munitions and Explosives of Concern (UXO) may be present at this site. Unless otherwise explicitly stated in this paragraph, LESSEE shall not conduct or permit any sublessee(s) to conduct any subsurface excavation, digging, drilling or other disturbance of the surface at any time without the prior written approval of the GOVERNMENT. Any excavation, digging, drilling, or other disturbance of the surface shall be done in compliance with all applicable Federal, state, and local laws and regulations and with Department of Defense and Department of the Navy safety policies, including those pertaining to explosives safety. LESSEE acknowledges that land underlying and adjacent to the Leased Premises may contain UXO. If, after receipt of written approval by GOVERNMENT, LESSEE undertakes any subsurface excavation, digging, drilling, or other disturbance of the surface, it shall immediately halt work and notify GOVERNMENT of any buried debris, or foreign, potentially hazardous material encountered during this work

8.3. Lead-Based Paint. GOVERNMENT is not responsible for any removal or containment of lead-based paint (LBP), identified in the ECP. If LESSEE, sublessee or other authorized occupant of the Leased Premises intends to make any improvements or repairs that require LBP removal, an appropriate LBP disposal plan ensuring compliance with all applicable Federal, state, and local laws and regulations must be incorporated into the plans and specifications and submitted to GOVERNMENT. The LBP disposal plan will identify the proposed disposal site, or in the event that the site has not been identified, will stipulate for disposal at a licensed facility authorized to receive it.

**9. IMPROVEMENTS AND RESTORATION**. Neither LESSEE, nor sublessee, shall construct or make any substantial construction, alterations, additions, modifications, excavations, betterments, or improvements to, installations upon, or otherwise modify or alter the Leased Premises in any way (collectively, the “Improvements”), including those that may adversely affect human health or the environment, without the prior written consent of GOVERNMENT. That consent shall not be unreasonably withheld or delayed. Further, that consent may involve a requirement to furnish GOVERNMENT with a payment and performance bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of GOVERNMENT. For any Improvements in the proximity of any known Navy Environmental Restoration Program (“ERP”) site, that consent may also include a requirement for the written approval of GOVERNMENT’s Remedial Project Manager in addition to approval by the RECO. The Improvements shall be done in a workmanlike manner and be subject to the requirements of all state and local building codes, as applicable. LESSEE shall give GOVERNMENT prior written notification and a full plan and description of the proposed Improvements, including any other information on the proposed work requested by GOVERNMENT. LESSEE will submit all necessary documentation to the GOVERNMENT in order for the GOVERNMENT to complete the federal consistency process under the Coastal Zone Management Act (CZMA). All engagement with the California Coastal Commission regarding the proposed work will be



undertaken by the GOVERNMENT. Except as otherwise stated in this Lease or in GOVERNMENT's written approval, upon expiration or earlier termination of this Lease, GOVERNMENT shall have the option to cause title to all Improvements to be vested in the United States, or to require LESSEE to remove the Improvements and restore the Leased Premises to the condition that existed when the term of this Lease began, or to a condition that is acceptable to GOVERNMENT. If requested by GOVERNMENT, LESSEE agrees to deliver a quitclaim deed to evidence or perfect the transfer of title to the Improvements to the United States for nominal consideration.

**10. ACCESS BY GOVERNMENT.** In addition to access required under Paragraph 14, at all reasonable times throughout the term of this Lease, GOVERNMENT shall be allowed access to the Leased Premises upon at least 24-hour's notice to LESSEE or sublessee unless GOVERNMENT reasonably determines the entry is an emergency required for safety, health, environmental, operations or security purposes, in which event no notice shall be required. LESSEE or sublessee shall have no claim on account of any entries against GOVERNMENT or any GOVERNMENT officer, agent, employee or contractor, provided, however, that nothing in this Lease shall be deemed to prejudice the rights of LESSEE or any sublessee under any contract, other agreement or law including, but not limited to the Federal Tort Claims Act.

**11. UTILITIES AND SERVICES.** LESSEE and any sublessee shall be responsible for obtaining utilities and services for the Leased Premises. In the event that LESSEE shall request and GOVERNMENT shall furnish LESSEE with any utilities and services maintained by GOVERNMENT, LESSEE shall pay GOVERNMENT the agreed charges as additional rent under this Lease. Those charges and the method of payment shall be determined by GOVERNMENT or the appropriate supplier of the service, in accordance with applicable laws and regulations, on the basis that GOVERNMENT or the appropriate supplier may establish, and may include a requirement for the installation of adequate connecting and metering equipment at the sole cost and expense of LESSEE. It is expressly agreed and understood that GOVERNMENT in no way warrants the continued maintenance or adequacy of any utilities or services furnished by it to the Leased Premises. LESSEE shall have the right, subject to Paragraph 9, to install utilities, or make improvements to existing utilities on the Leased Premises, including but without limitation, the installation of emergency power generators, that may be necessary for the operation of LESSEE's equipment.

**12. NONINTERFERENCE WITH GOVERNMENT OPERATIONS.** LESSEE or any sublessee shall not conduct operations or activities, or make any alterations, that would interfere with or otherwise restrict GOVERNMENT operations, environmental clean-up, or restoration actions by GOVERNMENT, U. S. Environmental Protection Agency (EPA), state environmental regulators, or their contractors. Cleanup, restoration, or testing activities for environmental purposes by those entities shall take priority over LESSEE's or any sublessee's use of the Leased Premises in the event of any conflict. However, GOVERNMENT will take reasonable steps to prevent interference with LESSEE's or the sublessee's use of the Leased Premises.

**13. PROTECTION AND MAINTENANCE OF LEASED PREMISES**

13.1. LESSEE shall, at its own expense, protect, preserve, maintain, and repair the Leased Premises in at least as good condition as when LESSEE received it as reflected in Exhibit “B” ECP Checklist, normal wear and tear, damage by insurable events, and Acts of God excepted. LESSEE’s responsibilities shall include, but not be limited to, removal of trash, litter, broken glass, and other hazards or obstructions from the Leased Premises that are generated by the public and the LESSEE, its agents, contractors, or employees. LESSEE shall ensure that the Leased Premises is maintained free of any noxious or nuisance-causing condition. LESSEE is responsible for the maintenance and repair of all structures built or placed on the Leased Premises by LESSEE.

13.2. Refuse Removal. Debris, trash, and other undesirable materials except for any naturally occurring debris, such as kelp or seaweed, shall be promptly removed from the Leased Premises by LESSEE, and the Leased Premises shall be kept reasonably clean and free of undesirable materials at all times. At completion of the Lease term, LESSEE shall remove all containers, equipment not belonging to GOVERNMENT, and other undesirable materials, and leave the Leased Premises in an acceptably clean condition.

13.3. Security Protection. LESSEE shall keep the Leased Premises secure and safe. Any crimes or other offenses, including traffic offenses and crimes and offenses involving damage to or theft of GOVERNMENT property, shall be reported to the appropriate state or local municipal authorities for investigation and disposition (in non-exclusive legislative jurisdiction areas) and to GOVERNMENT as property owner.

13.4. LESSEE shall ensure that only trained, experienced, and qualified persons perform the maintenance and protection services specified in this Paragraph.

#### **14. ENVIRONMENTAL PROTECTION PROVISIONS**

14.1. Compliance with Law. LESSEE shall comply, at its sole cost and expense, with the Federal and state laws, regulations, and standards that are or may become applicable to LESSEE’s activities on the Leased Premises.

14.2. Permits. LESSEE shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under this Lease, independent of any existing permits.

14.3 Inspection. GOVERNMENT’s rights under this Lease specifically include the right for GOVERNMENT officials to inspect, upon reasonable notice, the Leased Premises for compliance with environmental, safety and occupational health

14.4 Asbestos. Except as provided in Paragraph 14.6, GOVERNMENT is not responsible for any abatement, removal, or containment of asbestos. If LESSEE intends to make any Improvements that require the abatement, removal, or containment of asbestos, an appropriate asbestos management plan must be incorporated in the alterations plan to be submitted to the Commander/Commanding Officer under Paragraph 8. The asbestos management plan will identify the proposed disposal site for the asbestos.

14.5 Abatement of Asbestos. GOVERNMENT shall be responsible for the removal or containment of asbestos or asbestos-containing material (collectively, “ACM”) existing in the Leased Premises on the term beginning date as identified in the ECP attached to this Lease when that ACM is damaged or deteriorated to the extent that, through normal use, it is a source of airborne fibers in quantities that pose a threat to human health (“damaged or deteriorated ACM”). GOVERNMENT agrees to abate all that existing damaged or deteriorated ACM as stated in this Paragraph 14.5. GOVERNMENT may choose the most economical means of abating damaged or deteriorated ACM, which may include removal or containment, or a combination of removal and containment. The foregoing GOVERNMENT obligation does not apply to ACM that is not damaged or deteriorated at the time LESSEE takes possession of the Leased Premises and that may become damaged or deteriorated by LESSEE’s activities. ACM that during the period of this Lease becomes damaged or deteriorated through the passage of time, or as a consequence of LESSEE’s activities under this Lease, including but not limited to any emergency, shall be abated by LESSEE at its sole cost and expense. Notwithstanding Paragraph 14.4, in an emergency, LESSEE shall notify GOVERNMENT as soon as practicable of its emergency ACM responses. LESSEE shall be responsible for monitoring the condition of existing ACM on the Leased Premises for deterioration or damage and accomplishing repairs pursuant to this Lease.

14.6. Environmental Liability of LESSEE. Notwithstanding any other provision of this Lease, LESSEE does not assume any liability or responsibility for environmental impacts and damage caused by GOVERNMENT’s use of toxic or hazardous wastes, substances, or materials on any portion of the installation, including the Leased Premises. LESSEE has no obligation under this Lease to undertake the defense of any claim or action, whether in existence now or brought in the future, solely arising out of the use or release of any toxic or hazardous wastes, substances, or materials on or from any part of the installation, including the Leased Premises, which occurred prior to the first day of LESSEE’s occupation or use of each portion of, or any building, facility, or other improvement on, the Leased Premises under any instrument entered into between the Parties, or the term beginning date, whichever is earlier. Further, LESSEE has no obligation under this Lease to undertake environmental response, remediation, or cleanup relating to that use or release.

14.6.1. For the purposes of this Paragraph, “defense” or “environmental response, remediation, or cleanup” include liability and responsibility for the costs of damage, penalties, legal, and investigative services relating to such use or release. “Occupation or use” shall mean any activity or presence (including preparation and construction) in or upon such portion of, or such building, facility, or other improvement on, the Leased Premises.

14.6.2. This Paragraph 14.6 does not relieve LESSEE of any obligation or liability it might have or acquire with regard to third parties or regulatory authorities by operation of law.

14.6.3. This Paragraph 14.6 shall survive the expiration or termination of this Lease.

14.7. Response or Remedial Actions. LESSEE agrees to comply with the provisions of any health or safety plan in effect under the ERP or any hazardous substance remediation or response agreement with environmental regulatory authorities during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by LESSEE. To the extent authorized by applicable law, LESSEE and any approved sublessees or assignees, and any licensees, or invitees of it or them, shall have no claim on account of entries against the United States or any of its officers, agents, employees, contractors or subcontractors.

14.8. Storage of Hazardous Wastes. LESSEE must comply with all applicable Federal, state, and local laws, regulations, and other requirements relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes. LESSEE shall not treat, store, transport, or dispose of hazardous waste unless LESSEE is in possession of any required permit issued to it under the Resource Conservation and Recovery Act, as amended (RCRA). LESSEE shall not treat, store, transport, or dispose of any hazardous waste under, pursuant to, or in reliance upon any permit issued to GOVERNMENT. LESSEE shall be liable for the cost of proper disposal of any hazardous waste generated by its approved sublessees in the event of failure of the sublessees to dispose properly of those wastes.

14.9. Environmental Records. LESSEE must maintain and make available to GOVERNMENT all records, inspection logs, and manifests that track the generation, handling, storage, treatment, and disposal of hazardous waste, as well as all other records required by applicable laws and requirements. GOVERNMENT reserves the right to inspect the Leased Premises and LESSEE's records for compliance with Federal, state, local laws, regulations, and other requirements relating to the generation, handling, storage, treatment, and disposal of hazardous waste, as well as to the discharge or release of hazardous substances. Violations will be reported by GOVERNMENT to appropriate regulatory agencies, as required by applicable law. To the extent required by law, LESSEE shall be liable for the payment of any fines and penalties that may accrue as a result of the actions of LESSEE.

14.10. Spill Plans. If hazardous waste, fuel, chemicals, or other regulated hazardous substances will be present on the Leased Premises, LESSEE shall prepare a completed and approved plan prior to commencement of operations on the Leased Premises for responding to hazardous waste, fuel, and other chemical spills. The plan shall comply with all applicable requirements and shall be updated from time to time as may be required to comply with changes in site conditions or applicable requirements, and where required, shall be approved by all agencies having regulatory jurisdiction over the plan. The plan shall be independent of Navy spill prevention and response plans. LESSEE shall not rely on use of the installation's personnel or equipment in execution of its plan. LESSEE shall file a copy of the approved plan and approved amendments thereto with the Commander/Commanding Officer within fifteen (15) days of approval. Notwithstanding the foregoing, should GOVERNMENT provide any personnel or equipment, whether for initial fire response or spill containment or otherwise on request of LESSEE, or because LESSEE was not, in the sole opinion of GOVERNMENT, conducting

timely cleanup actions, LESSEE agrees to reimburse GOVERNMENT for its costs in accordance with all applicable laws and regulations.

14.11. RCRA Compliance. LESSEE shall comply with the hazardous waste permit requirements under the RCRA or its state equivalent and any other applicable laws, rules, and regulations. LESSEE must provide at its own expense hazardous waste storage facilities that comply with all laws and regulations that it may need for storage. GOVERNMENT hazardous waste storage facilities will not be available to LESSEE. Any violation of the requirements of this Paragraph 14.12 shall be deemed a material breach of this Lease.

14.12. Accumulation Points. Navy accumulation points for hazardous and other wastes shall not be used by LESSEE, and LESSEE shall not permit its hazardous waste to be commingled with hazardous waste of the Navy.

14.13. Discharge of Fill. LESSEE shall not discharge, or allow the discharge of, any dredged or fill material into any waters or wetlands on the Leased Premises except in compliance with the express written consent of the Commander/Commanding Officer.

14.14. Pesticides. Prior to the storage, mixing, or application of any pesticide, as that term is defined under the Federal Insecticide, Fungicide, and Rodenticide Act, LESSEE shall prepare a plan for storage, mixing, and application of pesticides (Pesticide Management Plan). The Pesticide Management Plan shall be sufficient to meet all applicable Federal, state, and local pesticide requirements. LESSEE shall store, mix, and apply all pesticides within the Leased Premises only in strict compliance with the Pesticide Management Plan. The pesticides will only be applied by a licensed applicator.

14.15. National Pollutant Discharge Elimination System (NPDES) Permit. LESSEE shall comply with all requirements of the Federal Water Pollution Control Act, as amended, the NPDES, and any applicable State or local requirements. If LESSEE discharges wastewater to a publicly owned treatment works, LESSEE must submit an application for its discharge prior to the start of this Lease. LESSEE shall be responsible for meeting all applicable wastewater discharge permit standards. LESSEE shall not discharge wastewater under the authority of any NPDES permit, pretreatment permit, or any other permit issued to the installation. LESSEE shall make no use of any septic tank installed on the installation without the prior written consent of GOVERNMENT. Notwithstanding the foregoing, GOVERNMENT acknowledges that if LESSEE is leasing a portion of an office building, and that wastewater removal in the said building is the responsibility of GOVERNMENT.

14.16. Radioactive Materials. LESSEE must notify GOVERNMENT of its intent to possess, store, or use any licensed or licensable source or byproduct materials, as those terms are defined under the Atomic Energy Act, as amended, and its implementing regulations; of LESSEE's intent to possess, use, or store radium; and of LESSEE's intent to possess or use any equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulations, at least sixty (60) days prior to the entry of such materials or equipment upon the installation. Upon notification, GOVERNMENT may impose requirements, including prohibition of possession, use, or storage that is deemed necessary to adequately protect health

and the human environment. Thereafter, LESSEE must notify GOVERNMENT of the presence of all licensed or licensable source or byproduct materials, of the presence of all radium, and of the presence of all equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation; provided, however, that LESSEE need not make either of the above notifications to GOVERNMENT with regard to source and byproduct material that is exempt from regulation under the Atomic Energy Act. LESSEE shall not, under any circumstances, use, own, possess, or allow the presence of special nuclear material on the Leased Premises.

## **15. TERMINATION.**

15.1. Termination by GOVERNMENT. GOVERNMENT shall have the right to terminate this Lease in whole or in part, without liability, and regardless of any lack of breach by LESSEE of any of the terms and conditions of this Lease with not less than sixty (60) days written notice except due to national emergency; installation inactivation, closure or other disposal action. Any prepaid rent for periods of time beyond the termination date shall be refunded by GOVERNMENT, subject to Paragraph 15.2.3, if applicable.

15.2 Breach of Terms by LESSEE. In the event of breach by LESSEE of any of the terms, conditions, or obligations of this Lease, GOVERNMENT shall afford LESSEE sixty (60) calendar days from LESSEE's receipt of GOVERNMENT's notice of such breach to cure such breach unless GOVERNMENT determines that immediate notice of termination, or a shorter period of time for cure, is required for safety, environmental, operational, or security purposes. GOVERNMENT may grant a reasonable extension of time to complete the cure. In the event that such breach cannot be cured, GOVERNMENT shall elect to terminate this Lease on account of the breach by LESSEE, GOVERNMENT will issue a notice of termination, and to the extent permitted by law, GOVERNMENT shall be entitled to recover, and LESSEE shall pay to GOVERNMENT:

15.2.1. The reasonable costs incurred in resuming possession of the Leased Premises;

15.2.2. The reasonable costs incurred in performing any outstanding obligation on the part of LESSEE existing prior to or upon termination;

15.2.3. An amount equal to the aggregate of any maintenance obligations, and charges assumed under this Lease and not paid or satisfied, with amounts being due and payable at the time when those obligations and charges would have accrued or become due and payable if this Lease had not been terminated, provided, however, that charges denominated as "rent" under Paragraph 3 shall not accrue beyond 60 days after the later of (a) the date the Leased Premises are vacated by LESSEE and restored to their original condition, or (b) the date of issuance of notice of termination.

15.3. In the event that a notice of termination for breach is disputed and it is later determined that LESSEE was not in breach or that the breach was excusable, the notice of

termination shall be effective as a notice of termination under Paragraph 15.1 and the rights and obligations of the parties shall be the same as if the termination had been issued upon any required notice in accordance with Paragraph 15.1.

15.4. Sale or Transfer of the Property. If GOVERNMENT elects to sell or transfer title to the Leased Premises during the term of this Lease, GOVERNMENT may terminate this Lease upon 180 days written notice.

15.5. Federal Requirement. In the event all or any part of the Leased Premises is required for Federal use, or if LESSEE's use of it is not consistent with Federal program purposes, GOVERNMENT may terminate the Lease, or any needed part of the Leased Premises, if it is practical to terminate a part, upon ninety (90) days' written notice to LESSEE.

15.6. Termination by LESSEE. LESSEE may terminate this Lease at any time upon sixty (60) days written notice to the GOVERNMENT.

## **16. INTENTIONALLY OMITTED.**

## **17. INSURANCE.**

17.1. LESSEE shall, without prejudice to any other rights of GOVERNMENT, bear all risk of loss or damage or destruction to the Leased Premises, including any buildings, improvements, fixtures, or other property on it, arising from any causes whatsoever, with or without fault by GOVERNMENT. During the entire period this Lease shall be in effect, LESSEE, at no expense to GOVERNMENT, agrees to carry and maintain in effect at all times during the term of this Lease the following insurance coverages:

17.1.1. Property insurance coverage against loss or damage by perils covered by Insurance Services Office ("ISO") special cause of loss form or its equivalent in an amount not less than One Hundred Percent (100%) of the full replacement cost of the buildings, building improvements, improvements to the land, fixtures, and personal property on the Leased Premises. The policies of insurance carried in accordance with this condition shall contain a "Replacement Cost Endorsement." The full replacement cost shall be determined every five years, except in the event of substantial changes or alterations to the Leased Premises undertaken by LESSEE as permitted under the provisions of this Lease.

17.1.2. If the Leased Premises are located in a state, or an area of a state, which is prone to suffer property loss and damage from earthquake, flood, windstorm, or rainstorm, and if required by GOVERNMENT, a special risks or perils endorsement from a commercial insurer or from a state or Federal program, in amounts and with limitations and deductibles satisfactory to GOVERNMENT.

17.1.3. Commercial general liability insurance using the most recent occurrence form or its equivalent, covering personal injury, premises, operations, products, completed operations, and independent contractors and for the contractual liability assumed by LESSEE under Paragraph 17, and shall afford immediate protection at the time that the term of this Lease

begins, and at all times during the term of this Lease, with single limit personal injury coverage of \$4 million each occurrence, with single-limit property damage in the amount of \$4 million each occurrence, and with single-limit fire/legal liability coverage in the amount of \$1 million each occurrence. The value of the structure for fire coverage will be determined every five years.

17.1.4. If LESSEE owns or leases business vehicles that will be operating on, to, or from the Leased Premises or military land, those vehicles must be registered and insured in accordance with installation requirements.

17.1.5. If and to the extent required by law, workers' compensation and employers liability or similar insurance in form and amounts required by law.

17.2. During the entire period this Lease shall be in effect. LESSEE shall either carry and maintain the insurance required below at its expense, or require any contractor performing work on the Leased Premises to carry and maintain the following at no expense to GOVERNMENT:

17.2.1. The property insurance coverage required under subparagraph 17.1 above, which shall include the general property form that provides coverage in connection with any construction or work permitted under this Lease.

17.2.2. Fire and any other applicable insurance provided for in this Paragraph 17, which, if not then covered under the provisions of existing policies, shall be covered by special endorsement related to any Improvements (as defined in Paragraph 9), including all materials and equipment incorporated in, on, or about the Leased Premises (including excavations, foundations, and footings) under an ISO special cause-of-loss, completed value, builder's risk form or its equivalent; and

17.2.3. Workers' compensation for LESSEE and any contractor of LESSEE.

17.3. All policies of insurance that this Lease requires LESSEE or any contractor to purchase and maintain, or cause to be purchased and maintained under this Paragraph, shall be underwritten by insurers authorized to underwrite insurance in the state where the Leased Premises are located, and that have a rating of at least B+ by the most recent edition of Best's Key Rating Guide. In all policies, GOVERNMENT shall be named as additional insured and loss payee for its interest in, but not limited to, the Leased Premises and any personal property included with the Leased Premises (under ISO forms CG 2011 and CG 2028 or their equivalents). GOVERNMENT shall appear in all policies as "The United States of America, c/o (Commanding Officer, Naval Facilities Engineering Systems Command Southwest, 750 Pacific Highway, San Diego, CA 92132), and payments for losses shall be made to "Treasurer of the United States." All policies shall state (a) that no cancellation, reduction in amount, or material change in coverage shall be effective until at least sixty (60) days after receipt by GOVERNMENT of written notice; (b) that the insurer shall have no right of subrogation against GOVERNMENT; and (c) shall be reasonably satisfactory to GOVERNMENT in all other respects, including, without limitation, the amounts of coverages and deductibles from time to time. In no circumstances with LESSEE be entitled to assign to any third party rights of action that LESSEE may have against GOVERNMENT. Notwithstanding the foregoing, any



cancellation of insurance coverage based on nonpayment of the premium shall be effective only upon thirty (30) days' written notice to GOVERNMENT. LESSEE understands and agrees that cancellation of any insurance coverage required to be carried and maintained by it or contractor under this Paragraph 17 will constitute a failure to comply with the terms of this Lease, and GOVERNMENT shall have the right to terminate this Lease upon receipt of any cancellation notice, but only if LESSEE fails to cure noncompliance to the extent allowed under Paragraph 15.

17.4. LESSEE shall deliver, or cause to be delivered upon execution of this Lease and PRIOR TO ENTRY on or occupancy of the Leased Premises or the commencement of any Improvements (and thereafter not less than thirty (30) days prior to the expiration date of each policy furnished under this Paragraph 17), to GOVERNMENT a certificate or certificates of insurance evidencing the coverages and deductibles required by this Paragraph 17.

17.5. In the event that any item or part of the Leased Premises shall be damaged or destroyed, the risk of which is assumed by LESSEE under Paragraph 17.1, LESSEE shall promptly give notice to GOVERNMENT. LESSEE shall, as soon as practicable after the casualty, restore damaged or destroyed property as nearly as possible to the condition that existed immediately prior to the loss or damage, subject to Paragraph 9. All repair and restoration work under this Paragraph shall comply with the provisions of this Lease, including any notice and approval requirements.

17.6. Notwithstanding any other provision of this Lease, LESSEE may, with the prior consent of the RECO, self-insure any risk for which insurance coverage is required under this Lease; provided, however, that if LESSEE's statutory limits of liability or other impediments to the assumption of liability are less than the limits of insurance required in this Lease, LESSEE shall obtain commercial coverage that is sufficient in amount and nature to satisfy the insurance requirements of this Lease when added to any self-insurance. In order to obtain the consent of GOVERNMENT to self-insure, LESSEE shall deliver to GOVERNMENT a writing setting forth the limitations and impediments, if any, to which LESSEE's self-insurance is subject, LESSEE's source of funds to pay any claim from any risk for which insurance is required under this Lease (including its most recent audited financial statement) and any other information that GOVERNMENT may require to assess LESSEE's request. If commercial insurance is required for any purpose, the provisions of Paragraph 17 shall apply; however, the total amount of commercial insurance and self-insurance shall meet the dollar limitations contained in this Paragraph 17.

17.7. If GOVERNMENT at any time believes that the limits or extent of coverage or deductibles for any of the insurance required in this Lease are insufficient, it may determine the proper and reasonable limits and extent of coverage and deductibles and deliver notice of that coverage or deductibles to LESSEE. LESSEE shall thereafter carry insurance with the limits and extent of coverage and deductibles as determined by GOVERNMENT until further change.

## **18. LABOR PROVISIONS.**

18.1. Equal Opportunity. During the term of this Lease, LESSEE and each sublessee agree as follows with regard to all employees located at, or involved with, the Leased Premises:

18.1.1. LESSEE and each sublessee shall not discriminate against any employee or applicant for employment because of race, color, age, marital status, handicap, religion, sex, or national origin. LESSEE and each sublessee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, marital status, handicap, religion, sex, or national origin. That action shall include, but not be limited to, employment, upgrading, demotion, or transfer, retention or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. LESSEE and each sublessee agree to post in conspicuous places available to employees and applicants for employment notices furnished by GOVERNMENT containing the provisions of this nondiscrimination clause.

18.1.2. LESSEE and each sublessee shall, in all solicitations or advertisements for employees placed at the Leased Premises by or on behalf of LESSEE and each sublessee, state that all qualified applicants will receive consideration for employment without regard to age, marital status, handicap, race, color, religion, sex, or national origin.

18.1.3. LESSEE and each sublessee shall comply with all provisions of Exec. Order No. 11,246 of September 24, 1965, as amended by Exec. Order No. 11,375 of October 13, 1967 (the "Executive Order"), and of the rules, regulations, and relevant orders of the Secretary of Labor as it relates to the Leased Premises.

18.1.4. LESSEE and each sublessee shall furnish all information and reports required by the Executive Order, and by the rules, regulations, and orders of the Secretary of Labor or pursuant to it, and will permit access to its books, records, and accounts by GOVERNMENT and the Secretary of Labor for purposes of ascertaining compliance with those rules, regulations, and orders.

18.1.5. In the event of LESSEE's or any sublessee's noncompliance with this Equal Opportunity clause or with any of the applicable rules, regulations, or orders, this Lease or any sublease may be canceled, terminated, or suspended in whole or in part and LESSEE or any sublessee may be declared ineligible for further GOVERNMENT contracts in accordance with procedures authorized in the Executive Order, and other sanctions may be imposed and remedies invoked, all as contained in the Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

18.1.6. LESSEE shall include the provisions in Paragraph 18.1 in every sublease unless exempted by rules, regulations, or orders of the Secretary of Labor issued under section 204 of the Executive Order, so that those provisions will be binding upon each sublessee. LESSEE will take whatever action against any sublessee that GOVERNMENT may direct as a means of enforcing those provisions, including sanctions for noncompliance. However, in the event LESSEE becomes involved in, or is threatened with, litigation with a sublessee as a result

of the direction by GOVERNMENT, LESSEE may request GOVERNMENT to join the litigation to protect the interests of GOVERNMENT.

18.2. Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708) (the "Act"). This Lease and each sublease, to the extent that it is a contract of a character specified in the Act and is not covered by the Walsh-Healy Public Contracts Act (41 U.S.C. §§ 35-45) or the Davis-Bacon Act (40 U.S.C. §§ 3141-3148), is subject to the following provisions and exceptions of the Act and to all other sections and exceptions of that law as they apply to employment at the Leased Premises:

18.2.1. LESSEE and each sublessee shall not require or permit any laborer or mechanic in any workweek in which he/she is employed on any work on the Leased Premises to work in excess of 40 hours on work subject to the contents provisions of the Act unless the laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for those excess hours. The "basic rate of pay," as used in this clause, shall be the amount paid per hour, exclusive of the employer's contribution or cost for fringe benefits and any cash payment made in lieu of affording fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

18.2.2. LESSEE shall cause its contracts with contractors and subcontractors to include the language required under Section 3702(b) of the Act.

18.3. Convict Labor. In connection with the performance of work required by this Lease or any sublease, LESSEE or any sublessee agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

18.4 Davis-Bacon Act. All construction workers, laborers, and mechanics employed by LESSEE or LESSEE's contractor(s), and each of its subcontractors and sub-subcontractors, who perform work under Paragraph 8, or in-kind work under Paragraph 3.1, are covered by the Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141-3148, and the implementing regulation at, 29 C.F.R. pt. 5, (together, the "Davis-Bacon Act"), and shall be paid wages and rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. To the extent that there is not a prevailing wage for a particular labor category and the Davis-Bacon Act permits a negotiated wage to be paid, the negotiated wage may be paid. LESSEE shall cause its general contractor(s) to comply and assure compliance by its subcontractors and sub-subcontractors.

**19. NOTICES**. Notices shall be sufficient under this Lease if made in writing and submitted in the case of:

**LESSEE:**

City of Coronado  
ATTN: Tina Friend, City Manager  
1825 Strand Way  
Coronado, CA 92118  
tina.friend@coronado.ca.us

**GOVERNMENT:**

Commanding Officer  
Naval Facilities Engineering Systems Command Southwest  
ATTN: Ralna Martinez, Real Estate  
750 Pacific Highway, 9th Floor Mail Room  
San Diego, CA 92132  
ralna.c.martinez.civ@us.navy.mil

Those persons shall serve as the representatives of the Parties and the points of contact during the term of this Lease. Any notice shall be deemed to have been given if sent by (i) United States certified or registered mail, return receipt requested, postage prepaid; (ii) a nationally recognized overnight delivery service; or (iii) personal delivery. Notices sent by (i) the United States Postal Service shall be deemed delivered two (2) days after being deposited with the United States Postal Service; (ii) notices delivered by a nationally recognized overnight delivery service shall be deemed delivered one day after depositing with such carrier; and (iii) hand delivered notices shall be deemed delivered upon actual delivery to the recipient. Notice shall be addressed to the Party's address set forth above or to such other persons or addresses as the Parties may hereafter direct by written notice.

**20. AUDIT.** This Lease and any sublease shall be subject to audit by any cognizant GOVERNMENT agency. LESSEE and each sublessee shall make available to those agencies for use in those audits all records that it maintains that are related this Lease or any sublease and copies of all reports required to be filed under this Lease.

**21. AGREEMENT.** This Lease and the Attachments attached hereto contain the entire agreement between the Parties. This Lease shall not be modified except in a single writing that is signed by both LESSEE and GOVERNMENT. No oral statements or representation made by, or for, on behalf of either LESSEE or GOVERNMENT shall be a part of this Lease. Should conflict arise between the provisions of this Lease and any attachment to it, or any other agreement between GOVERNMENT and LESSEE, the provisions of this Lease shall take precedence.

**22. FAILURE TO INSIST ON COMPLIANCE.** The failure of either Party to insist in any one or more instances upon performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or relinquishment of such Party's right to the future performance of any of those terms, covenants, or conditions and other Party's obligations for its future performance shall continue in full force and effect.

**23. DISPUTES.**

23.1. Except as provided in the Contract Disputes Act of 1978, as amended, (41 U.S.C. §§ 7101-7109) (the "Disputes Act"), all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Disputes Act.

23.2. "Claim", as used in this clause, means a written demand or written assertion by LESSEE or GOVERNMENT seeking, as a matter of right, the payment of money in a sum

certain, the adjustment or interpretation of Lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a Lease clause that includes the relief sought by the claimant. However, a written demand or written assertion by LESSEE seeking the payment of money exceeding \$100,000 is not a claim under the Disputes Act until certified as required by Paragraph 23.3.1. A voucher, invoice, or other routine request for payment that is not in dispute is not a claim under the Disputes Act. The request may be converted to a claim under the Disputes Act by complying with the submission and certification requirements of this clause, if it is disputed either for liability or amount or is not acted upon in a reasonable time.

23.3. A claim by LESSEE shall be made in writing and submitted within six (6) years after accrual of the claim to GOVERNMENT (ATTN: RECO), for a written decision. A claim by GOVERNMENT against LESSEE shall be subject to a written decision by GOVERNMENT (RECO).

23.3.1. LESSEE shall deliver the following certification when submitting any claim in excess of \$100,000: "I certify that the claim is made in good faith; that the supporting data is accurate and complete to the best of LESSEE's knowledge and belief; that the amount requested accurately reflects the Lease adjustment for which LESSEE believes the GOVERNMENT is liable; and that I am duly authorized to certify the claim on behalf of LESSEE."

23.3.2. The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

23.3.3. The certification shall be executed by an individual authorized by California law to act on behalf of LESSEE.

23.4. For LESSEE claims of \$100,000 or less, the Commanding Officer must, if requested in writing by LESSEE, render a decision within sixty (60) days of the request. For LESSEE-certified claims over \$100,000, the Commanding Officer must, within sixty (60) days decide the claim or notify LESSEE of the date by which the decision will be made.

23.4.1. The decision of the Commanding Officer shall be final unless LESSEE appeals or files a suit as outlined in the Disputes Act.

23.5. At the time a claim by LESSEE is submitted to the Commanding Officer, or a claim by GOVERNMENT is presented to LESSEE, the Parties, by mutual consent, may agree to use non-binding alternative means of dispute resolution. When using arbitration conducted under 5 U.S.C. §§ 575-580 or when using non-binding alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in Paragraph 23.3.1., and executed in accordance with Paragraph 23.3.3.

23.6. GOVERNMENT shall pay interest on the amount found due and unpaid by it from (1) the date the Commanding Officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in the Federal Acquisition Regulation (48

C.F.R. § 33.201), interest shall be paid from the date that the Commanding Officer initially receives the claim. Simple interest on claims shall be paid at the rate fixed by the Secretary of the Treasury, as stated in the Disputes Act, which is applicable to the period during which the Commanding Officer receives the claim and then at the rate applicable for each six (6) month period as fixed by the Secretary of the Treasury during the pendency of the claim.

23.7. Notwithstanding anything in this Paragraph, LESSEE shall proceed diligently with the performance of this Lease pending final resolution of any request for relief, claim, appeal, or action arising under this Lease, and comply with any decision of the Commanding Officer.

**24. COVENANT AGAINST CONTINGENT FEES.** LESSEE warrants that no person or agency has been employed or retained to solicit or obtain this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by LESSEE for the purpose of obtaining business.

**25. TAXES.** Both LESSEE and the GOVERNMENT are exempt from taxes payable to the state and its political subdivisions. If and to the extent that the property owned by the GOVERNMENT is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

**26. SUBJECT TO EXISTING AND FUTURE EASEMENTS.** This Lease, and each sublease, is subject to all outstanding easements and rights in the nature of an easement (collectively, "easements") for the location of any type of facility over, across, in, and upon all or any part of the Leased Premises, and to the right of GOVERNMENT to grant additional easements over, across, in and upon the Leased Premises for the public interest. However, GOVERNMENT shall coordinate with LESSEE to minimize any impact to LESSEE's operations, and any additional easement shall be conditioned on the assumption by its grantee of liability to LESSEE for damages that LESSEE shall suffer for property destroyed or rendered unusable on account of the grantee's exercise of its easement rights. There is hereby reserved to the holders of outstanding easements or which may be granted later, to any workers officially engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities located on the easement area, and to any Federal, state, or local official engaged in the official inspection of that work, reasonable rights of ingress and egress over the Leased Premises that may be necessary for the performance of their duties with regard to those facilities, subject to Paragraph 10.

**27. INGRESS, EGRESS, AND SECURITY.**

27.1. LESSEE and any sublessees, and their employees, vendors, and invitees will be granted reasonable access to the Leased Premises under this Lease. As a condition, LESSEE and sublessees, and their employees, vendors, and invitees, agree to adhere to all base rules and regulations regarding installation security, ingress, egress, safety and sanitation that may be prescribed from time to time by the Commander/Commanding Officer.

27.2. Installation Security. The Leased Premises is located on a secure Navy installation and LESSEE and any sublessee(s) are required to comply with all applicable security rules, regulations, and procedures issued by the installation Commander/Commanding Officer.

**28. ADMINISTRATION.** Except as otherwise stated in this Lease, the RECO shall have complete charge of the administration of this Lease, including granting any consents and approvals hereunder it, and shall exercise full supervision and general direction insofar as the interests of GOVERNMENT are affected.

**29. DAMAGE TO THE LEASED PREMISES.** In the event all or any part of the Leased Premises is damaged either directly or indirectly as a result of LESSEE's use or occupancy, whether during the construction, operation, maintenance, or replacement, or removal of improvements or otherwise, due to acts or omissions of LESSEE, its agents, contractors, or employees, LESSEE shall, upon demand, either compensate GOVERNMENT for the loss or damage, or rebuild, replace, or repair the item or items of the Leased Premises or facilities so lost or damaged, as GOVERNMENT may elect.

**30. APPLICABLE RULES AND REGULATIONS.**

30.1. LESSEE and any sublessee shall comply with all Federal, state, and local laws, regulations, ordinances and restrictions that are applicable, or may become applicable, to LESSEE's or sublessee's activities on the Leased Premises. This includes, but is not limited to, laws and regulations concerning the environment, construction of facilities, health, safety, food service, water supply, sanitation, and any licenses and permits to conduct business. LESSEE and any sublessee is responsible for obtaining and paying for permits required for its operations under this Lease.

30.2. Further, all activities authorized under this Lease shall be subject to rules, regulations, and procedures regarding installation security, supervision, or otherwise, that may, from time to time, be prescribed by the installation Commander/Commanding Officer.

**31. SUBCONTRACTORS AND AGENTS FOR TENANT.** All Work involving LESSEE facilities must be performed by skilled tradesmen who are bonded against loss due to damages resulting directly or indirectly from work performed.

**32. SURRENDER.** Upon the expiration of this Lease or its prior termination, and subject to the election of GOVERNMENT under Paragraph 9, LESSEE shall quietly and peacefully remove itself and its personal property from the Leased Premises and surrender possession to GOVERNMENT. However, in the event GOVERNMENT shall terminate this Lease upon less than thirty (30) days notice, LESSEE shall be allowed a reasonable period of time, as determined by the RECO, but in no event less than sixty (60) days from receipt of notice of termination, in which to remove all of personal property from, and terminate its operations on, the Leased Premises. During the period prior to surrender, all obligations assumed by LESSEE under this Lease shall remain in full force and effect; provided, however, that if GOVERNMENT shall in its sole discretion, determine that any action is equitable under the circumstances, it may suspend, in whole or in part, any further accruals of rent, if any, or maximum amount to be

expended between the date of termination of this Lease and the date of final surrender of the Leased Premises. GOVERNMENT may, in its discretion, declare any personal property that has not been removed from the Leased Premises upon termination as abandoned upon an additional ninety (90) days notice.

**33. FEDERAL FUNDS.** This Lease does not obligate any appropriated funds.

**34. INTENTIONALLY OMITTED.**

**35. HEADINGS.** The headings of paragraphs in this Lease are used solely for ease of reference. They may not be used to construe the meaning of all or any part of a paragraph.

**36. ATTACHMENTS.** Attachments to this Lease are set forth below:

- A. The Leased Premises and Land Description
- B. Record of Survey
- C. Environmental Condition of Property Checklist
- D. Avoidance and Minimization Measures
- E. Fence Installation

[THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK.  
SIGNATURES APPEAR ON THE FOLLOWING PAGES.]



***IN WITNESS WHEREOF***, the Parties have, on the respective dates set forth below, duly executed this Lease as of the day and year first above written.

**GOVERNMENT**

The United States of America  
By the Secretary of the Navy

Date: \_\_\_\_\_

By \_\_\_\_\_  
LINDSEY GREEN  
Real Estate Contracting Officer

**CONCURRENCE**

By \_\_\_\_\_  
COMMANDING OFFICER OR DESIGNEE

**LESSEE**

City of Coronado

Date: \_\_\_\_\_

By \_\_\_\_\_  
TINA FRIEND  
City Manager

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Tony Winney, Assistant City Manager      Date

(SIGNATURES CONTINUED NEXT PAGE)

**APPROVAL AS TO FORM:**

---

Johanna N. Canlas, City Attorney                      Date

**ATTEST:**

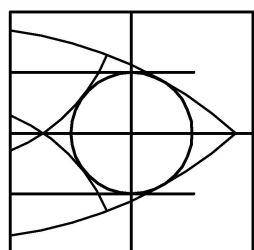
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Kelsea Holian, Deputy City Clerk                      Date



SHEET 2 OF 2

REVISED 05/13/2014



**NAVFAC**

DEPT. OF THE NAVY

NAVFAC SOUTHWEST

**NAVAL BASE CORONADO  
NAS NORTH ISLAND  
AREA KNOWN AS "DOG BEACH"**

DRAWN BY:  
**R. SCHMIDT**  
CADASTRAL LEAD:  
**L. CYR**  
DATE:  
**09-21-2009**  
SCALE:  
**1" = 500'**  
UIC  
**N00246**



**City of Coronado Dog Beach Out-grant Lease  
Naval Air Station North Island  
Naval Base Coronado, San Diego, CA**

—+— Fence

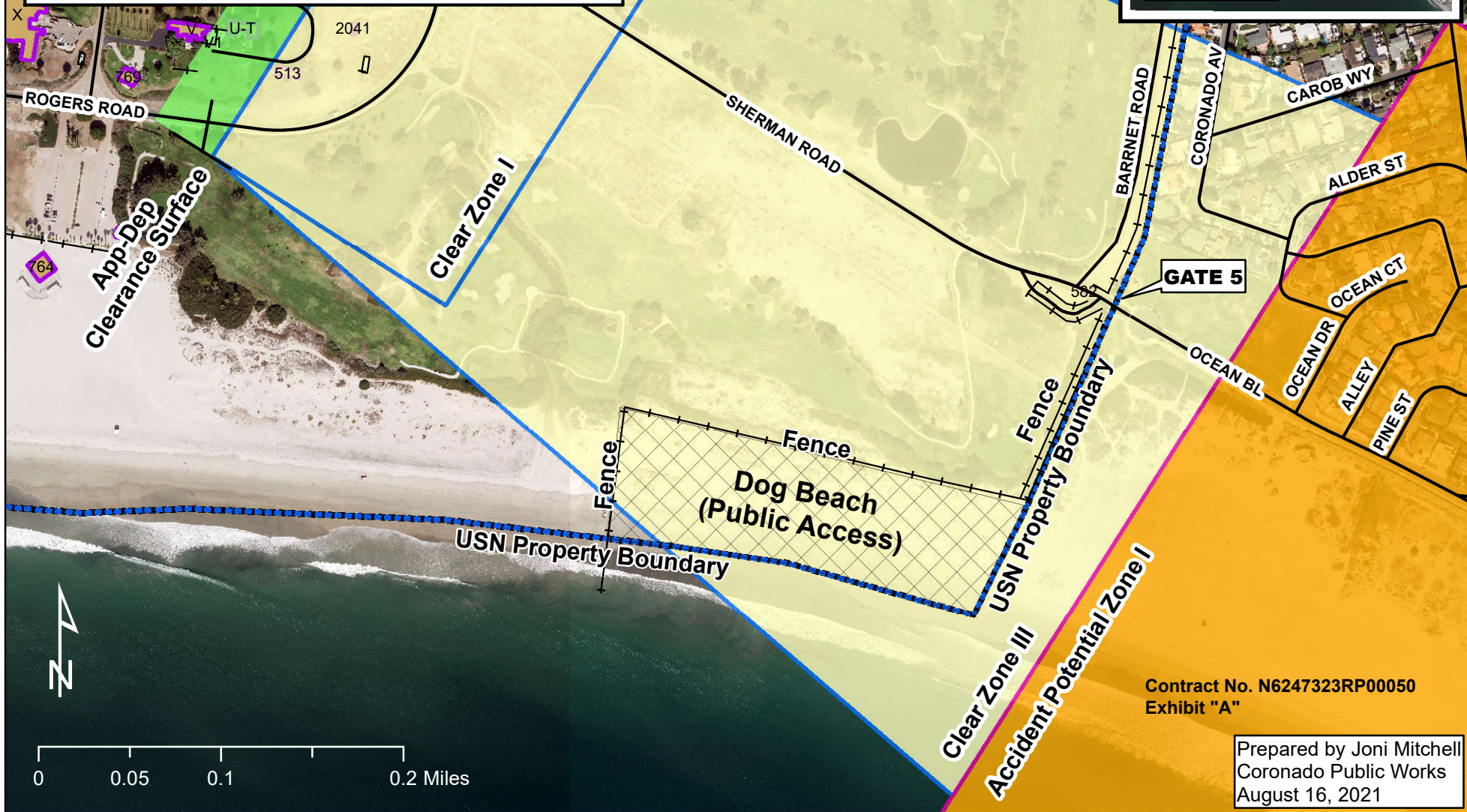
City of Coronado Dog Beach Out-grant Lease

**Air Accident Zone**

Accident Potential Zone I

App-Dep Clearance Surface

Clear Zones I and III



Contract No. N6247323RP00050  
Exhibit "A"

Prepared by Joni Mitchell  
Coronado Public Works  
August 16, 2021

## EXHIBIT "A"

## LAND DESCRIPTION

LEASE FOR AN AREA KNOWN AS DOG BEACH  
LOCATED ON NAVAL BASE CORONADO

A strip of land lying within the Southeasterly portion of Naval Base Coronado in the City of San Diego, County of San Diego, State of California, more particularly described as follows:

Beginning at the Mean High Tide Station No.108 (monument CCIII) as shown on Miscellaneous Map No.121 filed in the Office of the County Recorder of San Diego County, State of California, March 11, 1932, said point being on the easterly boundary line of said Naval Base Coronado also shown on Record of Survey 20942 filed March 23, 2011 at said County; thence along said easterly boundary South 23°38'34" West, 833 feet, more or less, to the southeast corner of the fence line that delineates the southerly line of the Sea N' Air Golf Course, said point also being the TRUE POINT OF BEGINNING; thence along said fence line North 76°58' West, 1200 feet, more or less, to an angle point in said fence line where the fence leaves the southerly line of said Sea N' Air Golf Course and continues in a southerly direction; thence along said southerly extension of the fence line South 07°02' West, 549 feet, more or less, to the low water mark of the Pacific Ocean; thence southeasterly along said low water mark of the Pacific Ocean 1038 feet, more or less, to the easterly boundary line of said Naval Base Coronado; thence along the easterly boundary line of said Naval Base Coronado North 23°38'34" East, 570 feet, more or less, to said TRUE POINT OF BEGINNING.

All as shown on Exhibit 'B', attached hereto and made a part hereof.

NOBLE.RHONDA.1540331282  
31282

Digitally signed by  
NOBLE.RHONDA.1540331282  
Date: 2021.12.14 09:29:20 -08'00'

Rhonda M. Noble, PLS 8592

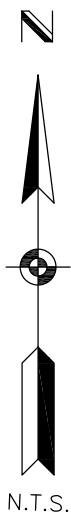
Date





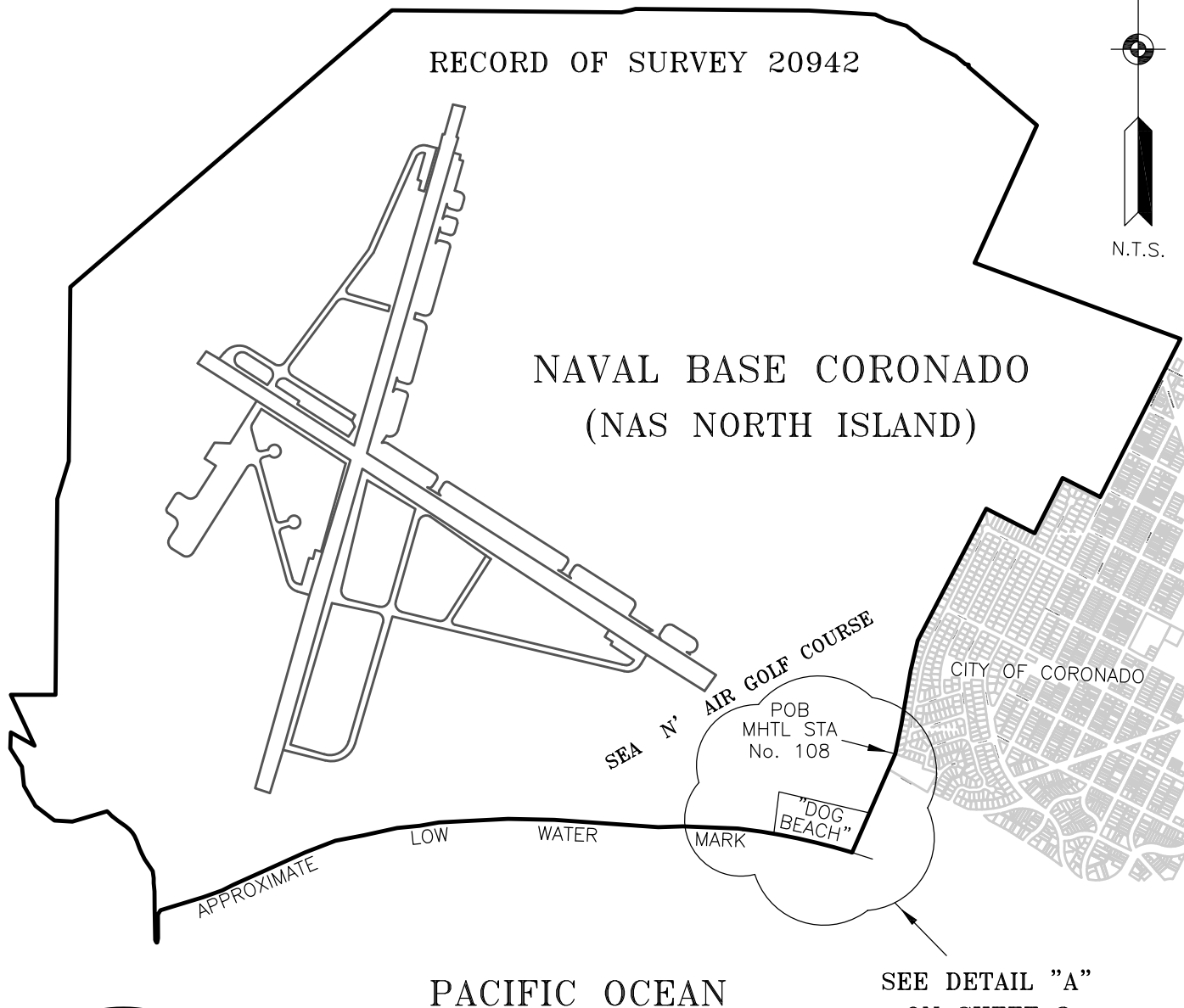
# EXHIBIT "B"

## SAN DIEGO BAY



RECORD OF SURVEY 20942

### NAVAL BASE CORONADO (NAS NORTH ISLAND)



PACIFIC OCEAN

SEE DETAIL "A"  
ON SHEET 2



Contract No. N6247323RP00050

PRINT DATE: 23 Aug 2021

DEPARTMENT OF THE NAVY

NAVAL FACILITIES ENGINEERING SYSTEMS COMMAND

EPROJECT NO.:

NAVAL FACILITIES ENGINEERING SYSTEMS COMMAND SOUTHWEST

CONTRACT. NO.

REAL ESTATE

CADASTRAL

DRAWN BY: RMN

SAN DIEGO, CALIFORNIA

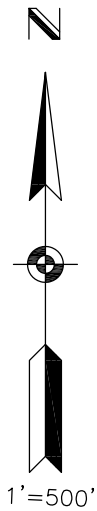
SHEET 1 OF 2

NAVAL BASE CORONADO  
LEASE FOR AREA KNOWN AS "DOG BEACH"

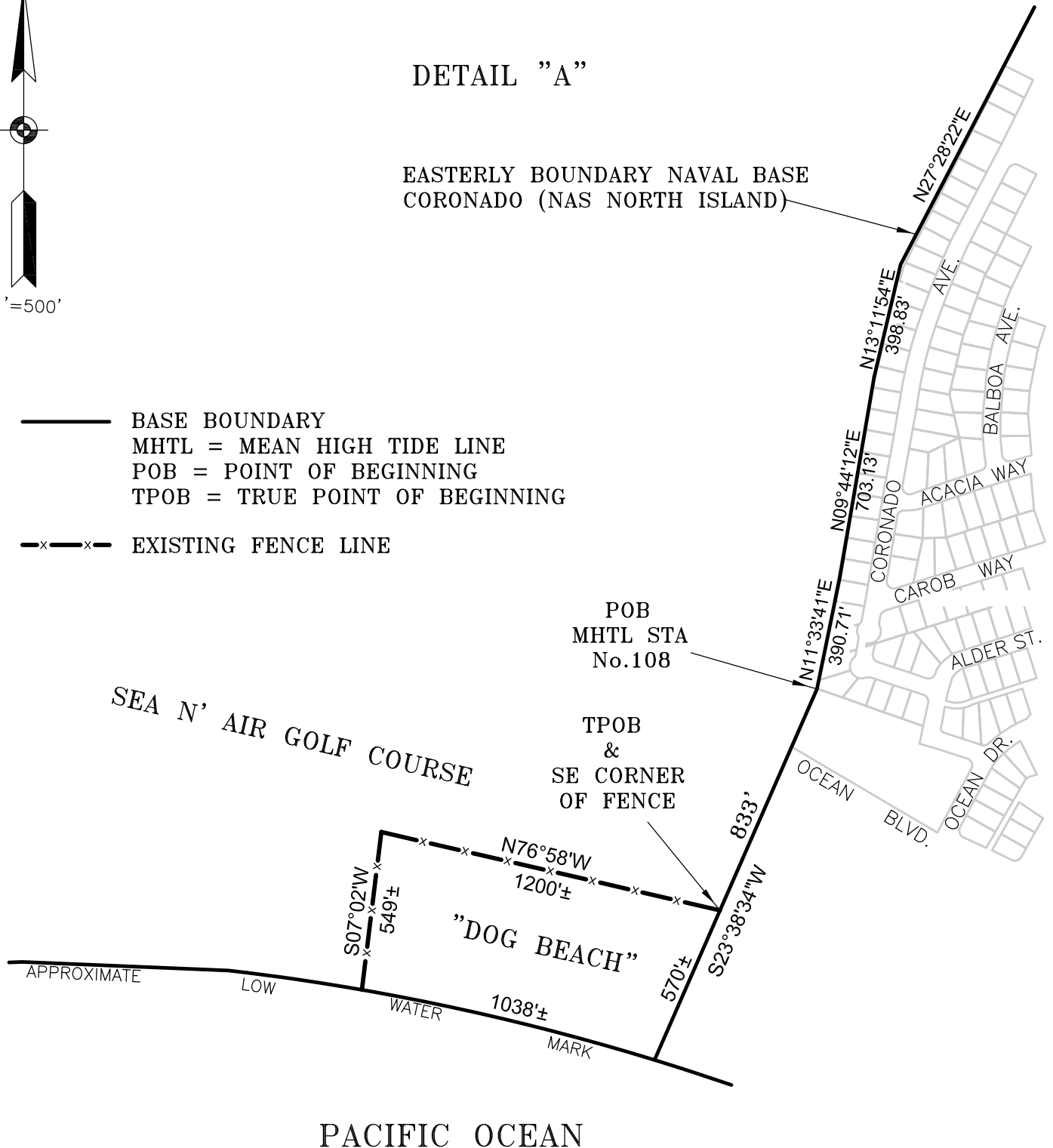
# EXHIBIT "B"

## DETAIL "A"

EASTERLY BOUNDARY NAVAL BASE  
CORONADO (NAS NORTH ISLAND)



- BASE BOUNDARY
- MHTL = MEAN HIGH TIDE LINE
- POB = POINT OF BEGINNING
- TPOB = TRUE POINT OF BEGINNING
- x-x- EXISTING FENCE LINE



Contract No. N6247323RP00050

PRINT DATE: 23 Aug 2021

EPROJECT NO.:

CONTRACT. NO.

DRAWN BY:  
RMN

SHEET 2 OF 2

DEPARTMENT OF THE NAVY

NAVAL FACILITIES ENGINEERING SYSTEMS COMMAND SOUTHWEST

REAL ESTATE

CADASTRAL

SAN DIEGO, CALIFORNIA

NAVAL BASE CORONADO  
LEASE FOR AREA KNOWN AS "DOG BEACH"

# ENVIRONMENTAL CONDITION OF PROPERTY (ECP) CHECKLIST

Page 1 of 4

**Installation** Dog Beach, Naval Air Station North Island, Naval Base Coronado

## Parcel/Site Location and Description:

"Dog Beach" Dog Park located on Ocean Blvd., Coronado, CA 92118  
Latitude 32.686426 North; Longitude 117.192286 West

## **SITE SUMMARY INFORMATION**

The Proposed Action is a real estate action involving an Out-Grant Lease Agreement to the City of Coronado, reference (f), for a term of five (5) years with four (4) additional terms of five years for a total term of twenty-five (25) years, for approximately 14 acres of beach land in the southeasterly portion of NASNI, outside the fenced perimeter, but above the low water line of the Pacific Ocean. This area is used by the City of Coronado for "Dog Beach", Enclosure (1). The area is open to the public and operated by the City of Coronado. The City maintains the area and enforces various ordinances to off-lease dogs and other activities. Dog Beach is adjacent to Breakers Beach which is restricted from public access.

### **A. Parcel/Site Uses:**

Prior Use: Public beach

Current Use: Public beach

Future Use: Same

**B. Contaminants:** ☐ Yes ☐ No ☒ Unknown

If yes, identify contaminant and media:

Source of information: Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

Restrictions or Land Use Controls: ☒ Yes ☐ No

If yes, please identify and explain in detail in Section 2 below. (Health and Safety Plan required to address potential soil contamination and contaminated soil disposal) See Section 2

**C. Hazardous Materials Use:** ☐ Yes ☒ No ☐ Unknown

**Hazardous Materials Storage:** ☐ Yes ☒ No ☐ Unknown

Source of information: Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

Restrictions or Land Use Controls: ☒ Yes ☐ No

If yes, please identify and explain in detail in Section 2 below.

**D. Treatment, Storage, Disposal of Hazardous Waste:** ☐ Yes ☐ No ☒ Unknown

Source of information: Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

Restrictions or Land Use Controls: ☐ Yes ☒ No

If yes, please identify and explain in detail in Section 2 below. (Health and Safety Plan required to address potential soil contamination and contaminated soil disposal)

**E. Underground Storage Tanks:** ☐ Yes ☐ No ☒ Unknown

UST No. \_\_\_\_\_ Gals. \_\_\_\_\_

Source of information: Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

Restrictions or Land Use Controls: ☐ Yes ☒ No

If yes, please identify and explain in detail in Section 2 below.

**F. Above-Ground Storage Tanks:** ☐ Yes ☒ No

AST No. \_\_\_\_\_ Gals. \_\_\_\_\_

Source of information: Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

Restrictions or Land Use Controls: ☐ Yes ☒ No

If yes, please identify and explain in detail in Section 2 below.



# ENVIRONMENTAL CONDITION OF PROPERTY (ECP) CHECKLIST

Page 2 of 4

**G. Presence of Polychlorinated Biphenyl's (PCB's):** ☐ Yes ☐ No ☒ Unknown

Source of information: Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

Restrictions or Land Use Controls: ☐ Yes ☒ No

If yes, please identify and explain in detail in Section 2 below.

**H. Asbestos:** ☐ Yes ☒ No ☐ Unknown

If yes: ☐ Friable ☐ Non-friable ☐ Unknown

Source of information: Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

Restrictions or Land Use Controls: ☐ Yes ☒ No

If yes, please identify and explain in detail in Section 2 below.

**I. Lead Paint:** ☐ Yes ☒ No ☐ Unknown

Source of information: Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

Restrictions or Land Use Controls: ☐ Yes ☒ No

If yes, please identify and explain in detail in Section 2 below.

**J. Radon:** ☐ Yes ☐ No ☒ Unknown

Source of information: Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

Restrictions or Land Use Controls: ☐ Yes ☒ No

If yes, please identify and explain in detail in Section 2 below.

**K. Radiological Materials:** ☐ Yes ☐ No ☒ Unknown

Source of information: Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

Restrictions or Land Use Controls: ☐ Yes ☒ No

If yes, please identify and explain in detail in Section 2 below.

**L. Solid/Bio-Hazardous Waste:** ☐ Yes ☐ No ☒ Unknown

Source of information: Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

Restrictions or Land Use Controls: ☐ Yes ☒ No

If yes, please identify and explain in detail in Section 2 below.

**M. Munitions and Explosives of Concern:** ☐ Yes ☐ No ☒ Unknown

Source of information: Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

Restrictions or Land Use Controls: ☐ Yes ☒ No

If yes, please identify and explain in detail in Section 2 below.

**N. Threatened or Endangered Species:** ☒ Yes ☐ No ☐ Unknown Western Snowy Plovers (*Charadrius nivosus nivosus*). The Navy

Source of information: Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

has determined that the proposed renewal of the Dog Beach property lease to the City of Coronado may affect but is not likely to adversely affect Western Snowy Plovers on Dog Beach or the adjacent areas on Breakers Beach.

Restrictions or Land Use Controls: ☒ Yes ☐ No

If yes, please identify and explain in detail in Section 2 below.

**O. Natural or Cultural Resources:** ☒ Yes ☐ No ☐ Unknown

Source of information: see CATEX and enclosed Avoidance and Minimization measures

Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

Restrictions or Land Use Controls: ☒ Yes ☐ No

If yes, please identify and explain in detail in Section 2 below.

**P. Use of Adjacent Property:**

Current Use: Breakers Beach - NBC

Past Use: Breakers Beach - NBC

Source of information: Rukia Dahir, NEPA Coordinator, site visit 7 Feb 2023

Restrictions or Land Use Controls: ☒ Yes ☐ No

If yes, please identify and explain in detail in Section 2 below.

## ENVIRONMENTAL CONDITION OF PROPERTY (ECP) CHECKLIST

Page 3 of 4

**Q. Has the site had any Notices of Violation?** ☐ Yes ☒ No.

If yes, please explain:

Source of information:

Rukia Dahir, NEPA Coordinator, site visit 7 February 2023

Restrictions or Land Use Controls: ☐ Yes ☒ No

If yes, please identify and explain in detail in Section 2 below.

**R. Additional information or comments regarding questions shown above (attach sheet(s) if additional room is needed):** \_\_\_\_

Real Estate Agreement and USFWS Conservation Measures

Source of information: CATEX/Enclosures (Avoidance and Minimization Measures), Real Estate Agreement

Restrictions or Land Use Controls: ☒ Yes ☐ No

If yes, please identify and explain in detail in Section 2 below.

### 2. List of Land Use Controls required for Real Estate Action:

MBTA, USFWS conservation measures including avoidance and minimization measures outlined in Categorical Exclusion NEPA No. 23-141

Part C - The City of Coronado shall abide by the most recent version of the EM-385-1-1 Safety Manual and all applicable regulations in regards to safety. All work on potentially hazardous materials and waste (i.e. lead and asbestos) will be handled in accordance with applicable local, state, and federal regulations.

Part N - Migratory Bird Treaty Act (MBTA). Active nests are protected year round by the MBTA. If the project proposes to install fences, tree removal, tree trimming or clearing of vegetation, the executing agent/contractor will avoid the nesting season and coordinate with the NBC biologist (619) 545-3703 to ensure that work will not impact birds protected under the MBTA. Migratory Bird Treaty Act Breeding Season occurs between 15 February and 15 September.

Part O - Endangered Species Act (ESA) - To avoid and minimize the license renewal's potential effects to the ESA listed Western Snowy Plover and Migratory Bird Treaty Act protected shorebirds, the Navy and City of Coronado will implement the following conservation measures:

- a. To minimize dog feces abandoned on the Leased Premises, and the potential minor contamination (Section B.) and health hazards (Section L.):
- b. The City of Coronado will maintain the 'doggie bag' receptacle(s) that are already in place.
- c. The City of Coronado will continue any regular dog-beach waste cleanup activities and regular waste receptacle emptying.
- d. The City of Coronado will maintain a minimum of the current number of six (6) signs with language instructing clean-up of pet waste throughout the term of the Lease (N6247323RP00050).
- e. To avoid and minimize the potential effects to the Endangered Species Act listed Western Snowy Plover and MBTA protected shorebirds, the Department of Navy (DON) and the City of Coronado will implement the following conservation measures as part of the proposed action:
- f. The City of Coronado will install, maintain, and replace, as necessary, a minimum of three (3) educational signage that: 1) illustrates the presence and conservation needs of snowy plovers; 2) clearly defines the boundaries of the authorized dog use area; and 3) informs dog owners and pedestrians that access is not permitted through the security fence, throughout the term of the Lease. The City of Coronado will coordinate with NBC Natural Resources Manager, Ms. Loni Beyer Wilson, at (619) 545-5551 or [loni.j.beyerwilson.civ@us.navy.mil](mailto:loni.j.beyerwilson.civ@us.navy.mil), for details to include in the educational signage.
- g. The City of Coronado will provide regular police patrols with increased frequency relative to snowy plover nesting season (March 1 to Sept 15) to enforce regulations and educate the public of off-limits areas.
- h. The City of Coronado will evaluate the condition of the fence and implement any repair, modification, or improvement necessary to ensure that dogs do not get under/through/around the fence and potential raptor perches are minimized and/or install anti-perch spikes.
- i. The DON will ensure that security lighting along the fence is directed away from nesting habitat while meeting security requirements.
- j. The DON will coordinate with USFWS to evaluate the potential for snowy plover chicks to cross through the fence, and if beneficial will install additional fencing material at the base of the fence.
- k. The DON, The City of Coronado, and USFWS will explore options for beach habitat enhancement to benefit snowy plovers on one or more segment(s) of the City beach to improve the off-base habitat conditions for this species. The City of Coronado will minimize raking of kelp/seaweed as it is a food source for snowy plovers.
- l. The City of Coronado will ensure all trash is contained in covered, secure trash bins that are inaccessible to wildlife, emptied on a regular basis and prevented from overflowing. All exposed food waste or trash generated from food products (e.g., wrappers, food containers) will be removed from the site on a daily basis to prevent attraction of predators (e.g., American Crows or Common Ravens and mammalian scavengers such as rats, raccoons, and skunks). The City of Coronado will promptly remove or bury any animal carcasses found on the Leased Premises.

Part P - To the east of Dog Beach is the border with the City of Coronado Beach. This beach is considered critical habitat for the Western Snowy Plover per the USFWS final critical habitat designation issued June 2012 (subunit 55B, 77 FedReg 118 June 19, 2012, pp. 36728-36869). Within the critical habitat final rule, USFWS states that it did not anticipate impacts to the dog beach saying "As the dog beach to the north of subunit CA 55B is not part of this designation as critical habitat, the FEA (final economic analysis) does not consider impacts to activities occurring at this beach."

Part R - The City of Coronado will submit all necessary documentation to the Department of Navy in order for the Navy to complete the federal consistency process under the Coastal Zone Management Act (CZMA). All engagement with the California Coastal Commission regarding the proposed work will be undertaken by the Navy.

## ENVIRONMENTAL CONDITION OF PROPERTY (ECP) CHECKLIST

Page 4 of 4

### 3. Signature:

Based on records reviews, site inspections, and interviews, the environmental professional(s) certify that the environmental conditions of the property are as stated in this document and this property is suitable for outgrant.

Environmental Professional:

DAHIR.RUKIA.SAEED.15  
50309153

Digitally signed by  
DAHIR.RUKIA.SAEED.1550309153  
Date: 2023.02.07 13:31:17 -08'00'

Signature

Rukia Dahir

Print Name

NEPA Coordinator, NBC

Title

February 7, 2023

Date

The real estate professional(s) acknowledge these restrictions and/or LUCs identified above and will ensure they are made a part of the outgrant document.

Real Estate Professional:

MARTINEZ.RALNA.C.117  
3334598

Digitally signed by  
MARTINEZ.RALNA.C.1173334598  
Date: 2023.02.07 15:58:01 -08'00'

Signature

Ralna Martinez

Print Name

Realty Specialist

Title

February 7, 2023

Date

Property Owner (Activity or Region) acknowledges and accepts the foregoing statement of environmental conditions and the land use controls (if any) that will be required for this real estate outgrant:



Digitally signed by  
MATTIVI.MATTHEW.MARINO.1251308744  
Date: 2023.02.22 16:25:26 -08'00'

Signature

CDR Matthew Mattivi, P.E

Print Name

Public Works Officer

Title

Date

## **AVOIDANCE AND MINIMIZATION MEASURES**

### **RECORD OF CATEGORICAL EXCLUSION (NEPA 23-141) NASNI DOG BEACH 25-YEAR LEASE AGREEMENT**

#### **General Conditions.**

1. Site Access. Project work areas, laydowns, and access routes are limited to the sites specified in enclosure (1). Parking, driving, and staging of equipment, are limited to existing roads and previously compacted and developed areas.
2. Invasive Species. To prevent the introduction and spread of invasive non-native plant species, all vehicles, equipment and footwear shall be cleaned of dirt, debris, seeds, mud, and visible plant material prior to being brought onto and before leaving the site. Vehicles shall be cleaned prior to being used elsewhere on Navy property.
3. Site Approval/NEPA. The City of Coronado will need to coordinate and obtain approval from Naval Base Coronado prior to installation of any improvements and/or repairs at Dog Beach.

#### **Natural Resources**

4. Wildlife Section. The proposed action will have no adverse effect on sensitive wildlife species nor federally listed endangered or threatened wildlife species provided that the avoidance and minimization measures below are implemented.
5. Migratory Bird Treaty Act/Breeding Season Restrictions. Active nests are protected year round by the Migratory Bird Treaty Act (MBTA). If the project proposes tree removal, tree trimming or clearing of vegetation, the executing agent/contractor will avoid the nesting season and coordinate with the NBC biologist (619) 545-3703 to ensure that work will not impact birds protected under the MBTA. Migratory Bird Treaty Act Breeding Season occurs between 15 February and 15 September.
  - a. To avoid impacts to nesting birds, removal or tree trimming must be scheduled to occur outside of the breeding season (non-breeding season is 1 September to 14 February) to the most practicable extent possible.
  - b. If this work must be conducted during the MBTA bird-breeding season, a qualified biologist must confirm that no active nest will be impacted by these actions. The qualified biologist will be hired by the project proponent and must be approved by the NBC biologist. The qualified biologist must survey the area within 72 hours of commencing work to determine if active nests are present. If active nests are found, the scheduled work will be postponed until the qualified biologist, in coordination with NBC Environmental Division, determines that the nest is no longer active. In addition, if an active nest is found in the project area at any time during project work, stop work immediately and contact NBC biologist at (619) 545-3703. The contractor cannot take action to remove the bird or the nest from the area which is being used. This action must be conducted, overseen, or authorized by the NBC biologist.
  - c. Contact NBC EV for suggestions on nesting deterrence.

6. Any proposed site alterations (e.g. new construction or ground disturbances) will require Site Approval or environmental review from the Naval Base Coronado, Public Works Officer, NEPA Coordinator, and subject matter experts. Any proposed site alterations must survey and test for asbestos containing materials, lead, and munitions of explosive concern prior to work commencement.

#### Endangered Species Act.

7. Western Snowy Plovers (*Charadrius nivosus nivosus*). The Navy has determined that the proposed lease of the Dog Beach property to the City of Coronado may affect but is not likely to adversely affect Western Snowy Plovers on Dog Beach or the adjacent areas on Breakers Beach.

8. The Navy proposes to grant a lease agreement to the City of Coronado for 14 acres of beach land known as “Dog Beach.” The Navy has maintained licenses with the City of Coronado for the use and operation of Dog Beach since 1979. The Western Snowy Plover (*Charadrius nivosus nivosus*) nests, forages, and roosts on Naval Air Station North Island (NASNI) west of Dog Beach. This species is listed as threatened under the Endangered Species Act. The proposed lease area is within Subunit CA 55A and has been exempted from Critical Habitat designation under section 4(a)(3) of the Endangered Act (ESA) based on the United States Fish and Wildlife Services (USFWS) approved Integrated Natural Resources Management Plan (INRMP). The INRMP identifies conservation and management recommendations within the scope of the installation’s military mission, including the conservation measures for these ESA listed plovers and other state and federally protected species through the development of cooperative, ecosystem management-based strategies. Implementing these strategies provides benefits to plovers within and adjacent to NASNI, and support the Navy’s Critical Habitat Exemption.

9. Plover nesting does not occur on Dog Beach but in rare cases, beach activities could spill over to the nesting beaches and potentially cause disturbance and adverse impacts to nesting, roosting, and foraging plovers throughout the year. The Dog Beach area has provided beneficial recreational uses to both Navy personnel and the public by allowing dogs to run off-leash on the beach outside of protected habitat and away from other beachgoers. A fence separates the Navy’s Breakers Beach from Dog Beach leased and managed by the City of Coronado (See map below). Dog Beach is adjacent to successful plover nesting and roosting areas supporting plover nesting, roosting, and foraging. During the 2021 breeding season, plovers nested as close as 150 feet from the NASNI security fence, and 3 nests were established within 500 feet of the nest.

10. The security fence prevents most people and dogs from entering East Breaker’s Beach from Dog Beach, but infrequently, some dogs are able to pass through or swim around the fence and, on occasion, have been observed running loose on East Breaker’s Beach. Dogs have the potential to impact nesting and foraging plovers by disturbing nesting plovers and reducing nest attendance, trampling eggs, and chasing or harming chicks, fledglings, and adults.

11. The adjacent City of Coronado Beach to the east is designated as critical habitat (CA 55B). With minimal effort on the part of the Navy, the City of Coronado, the USFWS, and local citizen

environmental groups, maintaining small areas on the City of Coronado Beach would provide beneficial uses for roosting and foraging plovers and other state and federally protected shorebirds.

12. The proposed action is not likely to have adverse effects on the Western Snowy Plover, sensitive wildlife and plant species or their habitats, nor federally listed endangered or threatened wildlife and plant species or their habitats provided that the avoidance and minimization measures below are implemented.

13. To avoid and minimize the license renewal's potential effects to the ESA listed Western Snowy Plover and Migratory Bird Treaty Act protected shorebirds, the Navy and City of Coronado will implement the following conservation measures as part of the proposed action:

a. To minimize dog feces abandoned on the Leased Premises, and the potential minor contamination (Section B.) and health hazards (Section L.):

b. The City of Coronado will maintain the 'doggie bag' receptacle(s) that are already in place.

c. The City of Coronado will continue any regular dog-beach waste cleanup activities and regular waste receptacle emptying.

d. The City of Coronado will maintain a minimum of the current number of six (6) signs with language instructing clean-up of pet waste throughout the term of the Lease (N6247323RP00050).

e. To avoid and minimize the potential effects to the Endangered Species Act listed Western Snowy Plover and MBTA protected shorebirds, the Department of Navy (DON) and the City of Coronado will implement the following conservation measures as part of the proposed action:

f. The City of Coronado will install, maintain, and replace, as necessary, a minimum of three (3) educational signage that: 1) illustrates the presence and conservation needs of snowy plovers; 2) clearly defines the boundaries of the authorized dog use area; and 3) informs dog owners and pedestrians that access is not permitted through the security fence, throughout the term of the Lease. The City of Coronado will coordinate with NBC Natural Resources Manager, Ms. Loni Beyer Wilson, at (619) 545-5551 or [loni.j.beyerwilson.civ@us.navy.mil](mailto:loni.j.beyerwilson.civ@us.navy.mil), for details to include in the educational signage.

g. The City of Coronado will provide regular police patrols with increased frequency relative to snowy plover nesting season (March 1 to Sept 15) to enforce regulations and educate the public of off-limits areas.

h. The City of Coronado will evaluate the condition of the fence and implement any repair, modification, or improvement necessary to ensure that dogs do not get under/through/around the fence and potential raptor perches are minimized and/or install anti-perch spikes.

- i. The DON will ensure that security lighting along the fence is directed away from nesting habitat while meeting security requirements.
- j. The DON will coordinate with USFWS to evaluate the potential for snowy plover chicks to cross through the fence, and if beneficial will install additional fencing material at the base of the fence.
- k. The DON, The City of Coronado, and USFWS will explore options for beach habitat enhancement to benefit snowy plovers on one or more segment(s) of the City beach to improve the off-base habitat conditions for this species. The City of Coronado will minimize raking of kelp/seaweed as it is a food source for snowy plovers.
- l. The City of Coronado will ensure all trash is contained in covered, secure trash bins that are inaccessible to wildlife, emptied on a regular basis and prevented from overflowing. All exposed food waste or trash generated from food products (e.g., wrappers, food containers) will be removed from the site on a daily basis to prevent attraction of predators (e.g., American Crows or Common Ravens and mammalian scavengers such as rats, raccoons, and skunks). The City of Coronado will promptly remove or bury any animal carcasses found on the Leased Premises.

#### **Air Section.**

14. Equipment required to install a fence may require air quality permits with San Diego Air Pollution Control District (SDAPCD). The executing agent/contractor shall coordinate with the Naval Base Coronado Environmental Department for guidance and review of required SDAPCD documentation and air permit applications prior to initiation of the project (619) 545-3058.

#### **Clean Water Act**

15. No debris or fill, including vegetation, shall be placed in/near any Clean Water Act (CWA) Section 404 and/or 401 Water of the U.S. (WOTUS) except as authorized by a permit from the U.S. Army Corps of Engineers (USACE), and additional permits, as required.

#### **16. Coastal Zone Management Act**

The project site occurs within a Navy-owned and controlled area on NBC and is thus not considered part of the “coastal zone” per Section 304 of the Coastal Zone Management Act. The City of Coronado will submit all necessary documentation to the DON in order for the Navy to complete the federal consistency process under the Coastal Zone Management Act. All engagement with the California Coastal Commission regarding the proposed work will be undertaken by the DON.

#### **Storm Water Section.**

17. All projects shall implement minimum BMPs as applicable for the duration of the project and implement additional protective measures as needed to prevent the deposition or discharge of pollutants.

## **Waste Section.**

18. All solid waste removed from government property must be properly disposed according to Federal, state, local, and Navy regulations. The executing agent/contractor will review the project for hazardous components (e.g., PCBs, asbestos, lead-based paint) prior to the start of the project. Waste generated from the project suspected of being hazardous waste will be segregated from all other waste. It is the responsibility of the generator of the waste (i.e., contractor/executing agent) to make a proper waste determination. Hazardous waste will be properly labeled with the name of the generator, generator's EPA ID number, content description, hazardous property, physical state, accumulation start date, and initials of individual filling out the label. The EPA ID number will be the installation's EPA ID number. The contractor/executing agent will arrange for hazardous waste disposal. The hazardous waste service provider on the installation must sign the hazardous waste manifest before the hazardous waste can leave the installation. The current hazardous waste service provider is NES. If the waste is determined to be non-hazardous waste, NES is not required to sign the paperwork.

19. Construction and Demolition Waste. All C&D projects awarded to contractors at Navy installations must include a construction waste management plan for C&D debris, per reference (o), to support E.O. or DoD and Navy diversion goals. Recyclable C&D waste may be processed through installation Qualified Recycling Program (QRPs) for in-house projects or contracted projects if appropriate provisions are included in the contract and coordinated with the QRP in accordance with the OPNAVINST M-5090.1.

20. All materials that can be recycled, must be recycled. It shall be the contractor/executing agent's responsibility to remove and dispose of such material in accordance with local, state and federal regulations.

21. Wastes will be managed and disposed of in accordance with applicable federal, state, county, and local regulations and the Commander Navy Region Southwest (CNRSW) Hazardous Waste Management Plan.

## **Spill Prevention**

22. Ensure that the fuel tank for any proposed generator follows all requirements imposed by Spill Prevention Control & Countermeasures (SPCC), NFPA 30 and state/local regulation for the storage of flammable and combustible materials. This includes secondary containment. Every reasonable and practical effort shall be employed to identify, contain and mitigate any potential release before a release event occurs. Maintain properly stocked spill kits that are appropriate in quantity and compatible for the types of spills in the area that may occur.

23. Notifications in the event of a release to the environment depending on the type, nature and magnitude of any release, on all federal installations, Fed Fire is the First Responder. Call 911 when using a cell phone or Non-government phone and 9-911 when using a government phone, the Command Duty Officer (CDO) (619) 778-4862, Contracting Officer, and NBC Environmental (619) 545-3429 will be immediately notified. After the initial call is made, notify Christina Kasprovich, with NBC (619) 545-7187.



















