File No. 120738

Committee Item No. 10
Board Item No. 16

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

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Board of Supervisors Meeting **Date** September 11, 2012

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Completed by: Victor Young **Date** August 31, 2012
Completed by: Victor Young **Date** 9-6-12

[Master Lease Amendment - United States Navy - Treasure Island Childcare]

Resolution approving the Eighth Amendment to the Treasure Island Childcare Master Lease between the Treasure Island Development Authority and the United States Navy extending the term to November 30, 2013.

WHEREAS, The Treasure Island Development Authority ("Authority") and the United States of America, acting by and through the Department of the Navy (the "Navy"), entered into master lease No. N6871102RP02P09, dated October 1, 2001, for the Authority to use and sublease certain land and structures on former Naval Station Treasure Island (as amended from time to time, the "Childcare Master Lease") at no rent; and

WHEREAS, The Childcare Master Lease enables the Authority to sublease the land and structures to Catholic Charities for the purpose of operating a Childcare Center on Treasure Island; and

WHEREAS, The term of the Childcare Master Lease expires on November 30, 2012; and

WHEREAS, The Authority wishes to extend the term of such lease for a period of one (1) year beginning on December 1, 2012 and ending on November 30, 2013, unless sooner terminated in accordance with the terms and conditions of the Master Lease; and

WHEREAS, The Navy concurs with such amendment and the amendment has been approved by the Authority Board of Directors at its June 13, 2012 meeting; and

WHEREAS, The Board of Supervisors Resolution establishing the Authority, AB 699 and TIDA's Bylaws require that the Authority obtain Board of Supervisors approval of any agreements having a term in excess of ten (10) years or anticipated revenues of $1,000,000 or more; and

WHEREAS, Because the cumulative term of the Childcare Master Lease exceeds ten (10) years, the Authority is requesting that the Board of Supervisors approve the Eighth Amendment to extend the term of such lease for a period of one (1) year beginning on December 1, 2012 and ending on November 30, 2013, unless sooner terminated in accordance with the terms and conditions of the Master Lease; now, therefore, be it

RESOLVED, That the Board of Supervisors hereby approves and authorizes the Director of Island Operations of the Authority or her designee to execute and enter into the Eighth Amendment to the Childcare Master Lease in substantially the form filed with the Clerk of the Board of Supervisors in File No. 120738, and any additions, amendments or other modifications to such Eighth Amendment (including, without limitation, its exhibits) that the Director of Island Operations of the Authority or her designee determines, in consultation with the City Attorney, are in the best interests of the Authority and do not otherwise materially increase the obligations or liabilities of the Authority, and are necessary or advisable to effectuate the purpose and intent of this resolution.

Treasure Island Development Authority
City and County of San Francisco

Resolution Approving the Eighth Amendment to the Treasure Island Childcare Master Lease between the Treasure Island Development Authority and the United States Navy to Extend the Term.

SUMMARY OF PROPOSED ACTION:
This item seeks approval and authorization to amend the Master Lease between the Treasure Island Development Authority (the "Authority") and the U.S. Navy (the "Navy") for the Childcare Center on former Naval Station Treasure Island to extend the Term of the Lease to November 30, 2013.

BACKGROUND:
On October 1, 2001, the Authority entered into Lease Number N6871102RP02P09 with the United States Navy (as amended from time to time, the "Childcare Master Lease"). The lease premises include land and structures that are subleased to Catholic Charities for the purpose of operating a Childcare Center on Treasure Island. The Authority does not pay any Base Rent under the Childcare Master Lease, and the Authority uses the subleasing and permit revenues to support the interim operation of Treasure Island. The Master Lease is renewed yearly.

The term of the Childcare Master Lease will expire on November 30, 2012. This Amendment will extend the term to November 30, 2013 on the same terms and conditions as the existing Master Lease.

The Authority's Board of Directors approved the Eighth Amendment to the Childcare Master Lease at its June 13, 2012 meeting. Pursuant to the Board of Supervisors Resolution establishing the Authority, AB 699 and TIDA's Bylaws, Board of Supervisors approval is required of any contract or agreement entered into by the Authority with a term longer than ten years. Because the term of the Childcare Master Lease will exceed ten years, the Director of Island Operations requests approval of the Eighth Amendment from the Board of Supervisors to extend the term to November 30, 2013 on the same terms and conditions as the existing Master Lease.

RECOMMENDATION:
Approve the Eighth Amendment to the Childcare Master Lease between the Treasure Island Development Authority and the United States Navy to extend the term to November 30, 2013.

Mirian Saez, Director of Island Operations

120738

Items 7, 8, 9, 10, 11 & 12 Files 12-0735, 12-0736, 12-0737,12 -0738, 12-0739 & 12-0740	Department: Treasure Island Development Authority

EXECUTIVE SUMMARY

Legislative Objectives

- File 12-0735: The proposed resolution would approve the 28th Amendment to the Treasure Island South Waterfront Master Lease between the Treasure Island Development Authority (TIDA) and the U.S. Navy (the Navy) to extend the term of the Lease by one year, from December 1, 2012 through November 30, 2013, unless terminated sooner in accordance with the terms and conditions of the Master Lease.
- File 12-0736: The proposed resolution would approve the 37th Amendment to the Treasure Island Land and Structures Master Lease between TIDA and the Navy to extend the term of the Lease by one year, from December 1, 2012 through November 30, 2013, unless terminated sooner in accordance with the terms and conditions of the Master Lease.
- File 12-0737: The proposed resolution would approve the 16th Amendment to the Treasure Island Marina Master Lease between TIDA and the Navy to extend the term of the Lease by one year, from December 1, 2012 through November 30, 2013, unless terminated sooner in accordance with the terms and conditions of the Master Lease.
- File 12-0738: The proposed resolution would approve the 8th Amendment to the Treasure Island Childcare Master Lease between TIDA and the Navy to extend the term of the Lease by one year, from December 1, 2012 through November 30, 2013, unless terminated sooner in accordance with the terms and conditions of the Master Lease.
- File 12-0739: The proposed resolution would approve the 24th Amendment to the Treasure Island Event Venues Master Lease between TIDA and the Navy to extend the term of the Lease by one year, from December 1, 2012 through November 30, 2013, unless terminated sooner in accordance with the terms and conditions of the Master Lease.
- File 12-0740: The proposed resolution would approve the 27th modification to the Cooperative Agreement between TIDA and the Navy to extend the term of the Agreement by one year, from October 1, 2012 through September 30, 2013.

Key Points

- The only change being proposed to the existing five leases and one Cooperative Agreement, between TIDA and the Navy, is to extend the leases and agreement by one year. The five leases would be extended from December 1, 2012 through November 30, 2013 and the Cooperative Agreement would be extended from October 1, 2012 through September 30, 2013.

Fiscal Analysis

- TIDA anticipates generating $8,326,365 in FY 2012-2013 revenues from leasing existing residential and commercial facilities and special events. Such revenues would offset the $8,326,365 expected to be incurred by TIDA under the Cooperative Agreement between TIDA and the Navy.

Recommendations

- Approve the proposed resolutions.

MANDATE STATEMENT/ BACKGROUND

Mandate Statement

In accordance with Charter Sections 9.118(b) and 9.118(c), any agreements or leases with a term of ten years or more and/or over $10,000,000 of expenditures is subject to Board of Supervisors approval.

Background

File 12-0735: The Treasure Island Development Authority (TIDA)a nd the Navy entered into a two-year South Waterfront Master Lease on September 4, 1998, for TIDA to use and sublease certain land and facilities at Treasure Island, including the Administration Building, Building 180, Hangar 2, and Hangar 3. The Lease is at no cost to TIDA. Since that time, the South Waterfront Master Lease has been amended 27 times, mainly to add or delete property and to extend the term. The 27th amendment was approved by the Board of Supervisors on September 13, 2011 (Resolution No. 370-11).

File 12-0736: TIDA and the Navy entered into a one-year Land and Structures Master Lease on November 19, 1998, for TIDA to use and sublease certain land and structures at Treasure Island that are subleased to non-profit agencies and commercial interests. The Lease is at no cost to TIDA. Since that time, the Land and Structures Master Lease has been amended 36 times, mainly to add or delete property and to extend the term. The 36th amendment, which added Building 449[1] located at Avenue C and 4th Street to the Land and Structure Master Lease at no cost to TIDA, was approved by the Board of Supervisors on January 24, 2012 (Resolution No. 12-12).

File 12-0737: TIDA and the Navy entered into a two-year Marina Master Lease on September 4, 1998, for TIDA to use and sublease certain facilities at Treasure Island, including the Treasure Isle Marina, the Treasure Isle Marina parking lot and the Treasure Island Yacht Club. The Lease is at no cost to TIDA. Since that time, the Lease has been amended 15 times, mainly to extend the term. The 15th amendment was approved by the Board of Supervisors on September 13, 2011 (Resolution No. 0375-11).

File 12-0738: TIDA and the Navy entered into a five-year Childcare Master Lease on October 1, 2001, for TIDA to sublease land and structures, including Building 502, at Treasure Island for the purpose of operating a childcare center. The Lease is at no cost to TIDA. Since that time, the Lease has been amended seven times, mainly to extend the term. The 7th amendment was approved by the Board of Supervisors on September 13, 2011 (Resolution No. 0371-11).

File 12-0739: TIDA and the Navy entered into a two-year Event Venues Master Lease on September 4, 1998, for TIDA to use and sublease certain land and structures at Treasure Island, at no cost to TIDA. Since that time, the Lease has been amended 23 times, mainly to add or delete property and to extend the term. The 23rd amendment was approved by the Board of Supervisors on September 13, 2011 (Resolution No. 0373-11).

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[1] Building 449 is a 13,000 square foot vacant concrete structure which TIDA uses for commercial leasing opportunities such as storage, light industrial, or warehouse space.

File 12-0740: The City and the Navy entered into a one-year Cooperative Agreement, for the City to assume responsibility for various services on Treasure Island, which was initially approved by the Board of Supervisors on October 1, 1997 (File 244-97-4). Such services include: (i) operation and maintenance of the water, waste water, storm water, electric and gas utility systems, (ii) security, public health and safety services, (iii) grounds and street maintenance and repair, and (iv) property management and caretaker services. The Cooperative Agreement was modified in 1998 to make TIDA party to the Cooperative Agreement with the Navy, which was approved by the Board of Supervisors on November 19, 1998 (File 98-1751). Under the original Cooperative Agreement, reimbursements paid by the Navy to TIDA for the TIDA services provided to the Navy were negotiated on an annual basis as the Cooperative Agreement was renewed each year. In all, the Navy paid TIDA a total of $12,848,213 from FY 1997-1998 through FY 2001-2002, when such payments by the Navy ended[2]. According to Ms. Mirian Saez, TIDA Director of Island Operations, revenues generated from leasing of existing residential and commercial facilities, special events and film and photo productions have offset the costs associated with the Cooperative Agreement since FY 2002-2003.

The Cooperative Agreement has been modified 26 times. The 26th amendment was approved by the Board of Supervisors on September 13, 2011 (Resolution No. 0372-11).

Status of the Conveyance of Treasure Island Property

The Board of Supervisors approved the Economic Development Conveyance Memorandum of Agreement (EDC MOA) between the Treasure Island Development Authority (TIDA) and the Navy on June 7, 2011 (Resolution No. 242-11). Under the terms of the EDC MOA, the Navy will convey Treasure Island property to TIDA in phases, commencing upon the Navy's completion of ongoing environmental remediation. According to Mr. Michael Tymoff, TIDA Development Project Director, the first phase conveyance of Treasure Island property from the Navy to TIDA is anticipated to occur before December, 2012. The second phase conveyance is expected to occur in April, 2013. Mr. Tymoff advises that the full conveyance of Treasure Island to TIDA is currently estimated to occur sometime in 2019.

The properties that are not conveyed will continue to be managed by TIDA, in accordance with the Cooperative Agreement (File 12-0740), until the conveyance is complete. The individual Master Leases between TIDA and the Navy will terminate for specified properties as such properties are conveyed to TIDA, in accordance with the EDC MOA. According to Mr. Tymoff, in exchange for the conveyance of the Treasure Island property, the EDC MOA commits TIDA to paying the Navy (a) $55,000,000 in ten annual $5,500,000 payments, plus interest[3], projected to total $12,375,000, (b) an additional $50,000,000 if the project achieves certain financial performance benchmarks (i.e., an internal rate of return on private capital above 18%), and (c)

[2] TIDA was advised by the U.S. Navy that the U.S. Navy reimbursements would be eliminated based on the U.S. Navy's determination that the Treasure Island Development Authority was earning sufficient revenues to pay for all of the costs of providing services at Treasure Island.

[3] The EDC MOA sets the interest rate as "the interest rate payable on ten year Treasury Notes in effect as of the month that this Agreement is entered into plus one hundred fifty basis points, which Interest Rate will be locked for the duration of this Agreement."

35% of all profits above a 22.5% internal rate of return. The first payment due to the Navy is projected to occur in April 2013, with the second phase conveyance.

Based on the EDC MOA and the approved Disposition and Development Agreement (Resolution No. 241-11) between TIDA and Treasure Island Community Development, LLC, the master developer for the Treasure Island project, is required to make all the payments to the Navy, on behalf of TIDA. According to Mr. Tymoff, TIDA plans to introduce a resolution at a future Board of Supervisors meeting that would amend the EDC MOA in order to: (a) provide more protections to TIDA regarding the Navy's environmental remediation obligations, (b) define the terms of the transfer for 27-acres on Yerba Buena Island (YBI) for the YBI Ramps Improvement Project, and (c) address utility access easements, operations and maintenance.

DETAILS OF PROPOSED LEGISLATION

The six proposed resolutions would extend the term of the following five Leases and the one Cooperative Agreement between the Treasure Island Development Authority (TIDA) and the U.S. Navy (Navy) by one year, as detailed in Table 1 below.

Table 1: Proposed Term Period Extensions of TIDA's Leases and Cooperative Agreement

File No.	Lease/Agreement	Amendment Number	Term Period Extensions
12-0735	Treasure Island South Waterfront Master Lease	28	December 1, 2012 - November 30, 2013
12-0736	Treasure Island Land and Structures Master Lease	37	December 1, 2012 - November 30, 2013
12-0737	Treasure Island Marina Master Lease	16	December 1, 2012 - November 30, 2013
12-0738	Treasure Island Childcare Master Lease	8	December 1, 2012 - November 30, 2013
12-0739	Treasure Island Event Venues Master Lease	24	December 1, 2012 - November 30, 2013
12-0740	Cooperative Agreement	27	October 1, 2012 - September 30, 2013

The only change being proposed to the existing five leases and one Cooperative Agreement, between TIDA and the Navy, is to extend the leases and agreement by one year. As detailed in Table 1 above, the five leases would be extended from December 1, 2012 through November 30, 2013 and the Cooperative Agreement would be extended from October 1, 2012 through September 30, 2013. These proposed extensions have been approved by the Navy and were approved by TIDA's Board of Directors on June 13, 2012.

According to Ms. Saez, TIDA seeks to extend all master agreements with the Navy in order to continue operations in accordance with the Cooperative Agreement with the Navy, which assigns TIDA the responsibility for municipal services of land leased by TIDA from the Navy under the Master Leases and allows TIDA to sublease property to generate revenue pending conveyance of the Treasure Island property from the Navy to TIDA. A year-to-year term of the Cooperative Agreement allows TIDA and the Navy the flexibility to discontinue all or portions of the agreements as the conveyance of Treasure Island property from the Navy to TIDA occurs.

FISCAL ANALYSIS

Revenues Generated from Leases and Costs Associated with the Cooperative Agreement

Continuation of the subject (a) Treasure Island South Waterfront Master Lease, (b) Treasure Island Land and Structures Master Lease, (c) Treasure Island Marina Master Lease, (d) Treasure Island Childcare Master Lease, and (e) Treasure Island Event Venues Master Lease would allow TIDA to continue to generate revenues to support TIDA's interim operations of Treasure Island until the Navy fully transfers Treasure Island to TIDA.

As shown in Table 2 below, TIDA received a total of $7,845,818 from various revenue sources in FY 2011-2012. TIDA has budgeted for $8,326,365 in revenue for FY 2012-2013, an increase of $480,547 or 6.1 percent more than FY 2011-2012.

Table 2: Actual and Projected Revenues Under Leases

TIDA Revenue Sources as of 8/28/2012	Actual 2011-12 Revenue	Budgeted 2012-13 Revenue
Joint Venture Special Events	$0	$286,000
TIDA Special Events Revenues	628,221	316,200
TI Commercial Revenues	2,336,412	2,505,000
Film Revenues	13,986	25,000
YBI Filming/Cellsites/ Banner Revenues	182,039	282,550
Maritime Revenues	93,300	90,000
John Stewart Company Housing Revenues	4,164,511	4,342,143
Other Housing Common Area Maintenance (CAM)	427,349	479,472
Total	**$7,845,818**	**$8,326,365**

TIDA's projected revenues would offset the $8,326,365 of expenditures expected to be incurred by TIDA in FY 2012-13.

RECOMMENDATIONS

Approve the proposed resolutions.

EIGHTH AMENDMENT
TO LEASE AGREEMENT N6871102RP02P09
BETWEEN
THE UNITED STATES OF AMERICA
AND
TREASURE ISLAND DEVELOPMENT AUTHORITY

THIS LEASE AMENDMENT made this _____day of_____2012, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government", and the TREASURE ISLAND DEVELOPMENT AUTHORITY, hereinafter called the "Lessee";

WHEREAS, the parties hereto, as of 1 October 2001, entered into Lease Agreement N6871102RP02P09 under the terms of which the Lessee uses certain real property for space located at the former Naval Station, Treasure Island; and

WHEREAS, the parties agree to amend the terms of the Lease Agreement.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth; the following paragraphs to Lease N6871102RP02P09 are hereby amended to reflect the following changes;

1. Paragraph 2 **TERM**, delete in its entirety and the following paragraph is inserted therefore:

"The term of this Lease shall be for a period of one (1) year beginning on 1 December 2012 and ending on 30 November 2013, unless sooner terminated in accordance with the provisions of Paragraph 14, Termination"

All other terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth above duly executed this amendment to the Lease as of the day and year first above written.

UNITED STATES OF AMERICA	TREASURE ISLAND DEVELOPMENT AUTHORITY
_____	_____
Title_____	Title_____

APPROVED AS TO FORM:

_____
CITY ATTORNEY

#120738

ORIGINAL

SEVENTH AMENDMENT
TO LEASE AGREEMENT N6871102RP02P09
BETWEEN
THE UNITED STATES OF AMERICA
AND
TREASURE ISLAND DEVELOPMENT AUTHORITY

THIS LEASE AMENDMENT made this _____ day of _____ 2011, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government", and the TREASURE ISLAND DEVELOPMENT AUTHORITY, hereinafter called the "Lessee";

WHEREAS, the parties hereto, as of 1 October 2001, entered into Lease Agreement N6871102RP02P09 under the terms of which the Lessee uses certain real property for space located at the former Naval Station, Treasure Island; and

WHEREAS, the parties agree to amend the terms of the Lease Agreement.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth; the following paragraphs to Lease N6871102RP02P09 are hereby amended to reflect the following changes;

1. Paragraph 2 **TERM**, delete in its entirety and the following paragraph is inserted therefore:

"The term of this Lease shall be for a period of one (1) year beginning on 1 December 2011 and ending on 30 November 2012, unless sooner terminated in accordance with the provisions of Paragraph 14, Termination"

All other terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth above duly executed this amendment to the Lease as of the day and year first above written.

UNITED STATES OF AMERICA

Title WILLIAM R. CARSILLO
REAL ESTATE CONTRACTING OFFICER
DEPARTMENT OF THE NAVY

TREASURE ISLAND DEVELOPMENT AUTHORITY

Title Director of Island Operations

APPROVED AS TO FORM:

Deputy CITY ATTORNEY

ORIGINAL

SIXTH AMENDMENT
TO LEASE AGREEMENT N6871102RP02P09
BETWEEN
THE UNITED STATES OF AMERICA
AND
TREASURE ISLAND DEVELOPMENT AUTHORITY

THIS LEASE AMENDMENT made this 2nd day of August 2010, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government", and the TREASURE ISLAND DEVELOPMENT AUTHORITY, hereinafter called the "Lessee";

WHEREAS, the parties hereto, as of 1 October 2001, entered into Lease Agreement N6871102RP02P09 under the terms of which the Lessee uses certain real property for space located at the former Naval Station, Treasure Island; and

WHEREAS, the parties agree to amend the terms of the Lease Agreement.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth; the following paragraphs to Lease N6871102RP02P09 are hereby amended to reflect the following changes;

1. Paragraph 2 **TERM**, delete in its entirety and the following paragraph is inserted therefore:

"The term of this Lease shall be for a period of one (1) year beginning on 1 December 2010 and ending on 30 November 2011, unless sooner terminated in accordance with the provisions of Paragraph 14, Termination"

All other terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth above duly executed this amendment to the Lease as of the day and year first above written.

UNITED STATES OF AMERICA

ELIZABETH A. LARSON
Title REAL ESTATE CONTRACTING OFFICER
DEPARTMENT OF THE NAVY

TREASURE ISLAND DEVELOPMENT AUTHORITY

Title DIO

APPROVED AS TO FORM:

Deputy CITY ATTORNEY

FIFTH AMENDMENT
TO LEASE AGREEMENT N6871102RP02P09
BETWEEN
THE UNITED STATES OF AMERICA
AND
TREASURE ISLAND DEVELOPMENT AUTHORITY

THIS LEASE AMENDMENT made this _____day of_____2009, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government", and the TREASURE ISLAND DEVELOPMENT AUTHORITY, hereinafter called the "Lessee";

WHEREAS, the parties hereto, as of 1 October 2001, entered into Lease Agreement N6871102RP02P09 under the terms of which the Lessee uses certain real property for space located at the former Naval Station, Treasure Island; and

WHEREAS, the parties agree to amend the terms of the Lease Agreement.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth; the following paragraphs to Lease N6871102RP02P09 are hereby amended to reflect the following changes;

1. Paragraph 2 **TERM**, delete in its entirety and the following paragraph is inserted therefore:

"The term of this Lease shall be for a period of one (1) year beginning on 1 December 2009 and ending on 30 November 2010, unless sooner terminated in accordance with the provisions of Paragraph 14, Termination"

All other terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth above duly executed this amendment to the Lease as of the day and year first above written.

UNITED STATES OF AMERICA	TREASURE ISLAND DEVELOPMENT AUTHORITY
_____	_____
Title_____	Title_____

APPROVED AS TO FORM:

_____
CITY ATTORNEY

FOURTH AMENDMENT
TO LEASE AGREEMENT N6871102RP02P09
BETWEEN
THE UNITED STATES OF AMERICA
AND
TREASURE ISLAND DEVELOPMENT AUTHORITY

THIS LEASE AMENDMENT made this 5th day of January ~~2008~~ 2009, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government", and the TREASURE ISLAND DEVELOPMENT AUTHORITY, hereinafter called the "Lessee";

WHEREAS, the parties hereto, as of 1 October 2001, entered into Lease Agreement N6871102RP02P09 under the terms of which the Lessee uses certain real property for space located at the former Naval Station, Treasure Island; and

WHEREAS, the parties agree to amend the terms of the Lease Agreement.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth; the following paragraphs to Lease N6871102RP02P09 are hereby amended to reflect the following changes;

1. Paragraph 2 **TERM**, delete in its entirety and the following paragraph is inserted therefore:

"The term of this Lease shall be for a period of one (1) year beginning on 1 December 2008 and ending on 30 November 2009, unless sooner terminated in accordance with the provisions of Paragraph 14, Termination"

All other terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth above duly executed this amendment to the Lease as of the day and year first above written.

UNITED STATES OF AMERICA

WILLIAM R. CARSILLO
Title REAL ESTATE CONTRACTING OFFICER
DEPARTMENT OF THE NAVY

TREASURE ISLAND DEVELOPMENT AUTHORITY

Title Director

APPROVED AS TO FORM:

Deputy CITY ATTORNEY

ORIGINAL

THIRD AMENDMENT
TO LEASE AGREEMENT N6871102RP02P09
BETWEEN
THE UNITED STATES OF AMERICA
AND
TREASURE ISLAND DEVELOPMENT AUTHORITY

THIS LEASE AMENDMENT made this 7th day of Dec. 2007, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government", and the TREASURE ISLAND DEVELOPMENT AUTHORITY, hereinafter called the "Lessee";

WHEREAS, the parties hereto, as of 1 October 2001, entered into Lease Agreement N6871102RP02P09 under the terms of which the Lessee uses certain real property for space located at the former Naval Station, Treasure Island; and

WHEREAS, the parties agree to amend the terms of the Lease Agreement.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth; the following paragraphs to Lease N6871102RP02P09 are hereby amended to reflect the following changes;

1. Paragraph 2 **TERM**, delete in its entirety and the following paragraph is inserted therefore:

"The term of this Lease shall be extended through 30 November 2008, unless sooner terminated in accordance with the provisions of Paragraph 14, Termination"

2. Paragraph 17 **INSURANCE**, delete 17.4 in its entirety and the following paragraph is inserted therefore:

"17.4 During the entire period this Lease shall be in effect, Lessee shall require its contractors or sublessees or any contractor performing work at Lessee's or sublessee's request on Leased Premises to carry and maintain the insurance required below:

17.4.1 Comprehensive general liability insurance in an amount to be determined by Lessee and the City of San Francisco Risk Manager based on generally applicable insurance industry standards for the permitted uses; provided, however, that in no case shall the amount of coverage be less than $1 million per occurrence with respect to personal injury or death, and $1 million per occurrence with respect to property damage.

17.4.2 Workman's compensation or similar insurance in form and amounts, required by law."

All other terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth above duly executed this amendment to the Lease as of the day and year first above written.

UNITED STATES OF AMERICA

WILLIAM R. CARSILLO
Title REAL ESTATE CONTRACTING OFFICER
DEPARTMENT OF THE NAVY

TREASURE ISLAND DEVELOPMENT AUTHORITY

Title Director of Island Operations

APPROVED AS TO FORM:

Eileen M. Malley
DEPUTY CITY ATTORNEY

THIRD AMENDMENT TO LEASE AGREEMENT N6871102RP02P09

SECOND AMENDMENT
TO LEASE AGREEMENT N6871102RP02P09
BETWEEN
THE UNITED STATES OF AMERICA
AND
TREASURE ISLAND DEVELOPMENT AUTHORITY

THIS LEASE AMENDMENT made this _____day of_____2006, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government", and the TREASURE ISLAND DEVELOPMENT AUTHORITY, hereinafter called the "Lessee";

WHEREAS, the parties hereto, as of 1 October 2001, entered into Lease Agreement N6871102RP02P09 under the terms of which the Lessee uses certain real property for space located at the former Naval Station, Treasure Island; and

WHEREAS, the parties agree to amend the terms of the Lease Agreement.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth; the following paragraphs to Lease N6871102RP02P09 are hereby amended to reflect the following changes;

1. Paragraph 2 **TERM**, delete in its entirety and the following paragraph is inserted therefore:

   "The term of this Lease shall be for a period of one (1) year beginning on 1 October 2006 and ending on 30 September 2007, unless sooner terminated in accordance with the provisions of Paragraph 14, Termination."

All other terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth above duly executed this amendment to the Lease as of the day and year first above written.

UNITED STATES OF AMERICA

WILLIAM R. CARSILLO
Title REAL ESTATE CONTRACTING OFFICER
DEPARTMENT OF THE NAVY

TREASURE ISLAND DEVELOPMENT AUTHORITY

Title 3/2/07

APPROVED AS TO FORM:

CITY ATTORNEY

FIRST AMENDMENT
TO LEASE AGREEMENT N6871102RP02P09
BETWEEN
THE UNITED STATES OF AMERICA
AND
TREASURE ISLAND DEVELOPMENT AUTHORITY

THIS LEASE AMENDMENT made this 1st day of June 2003, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government", and the TREASURE ISLAND DEVELOPMENT AUTHORITY, hereinafter called the "Lessee";

WHEREAS, the parties hereto, as of 1 October 2001, entered into Lease Agreement N6871102RP02P09 under the terms of which the Lessee leases certain real property located at the former Naval Station, Treasure Island; and

WHEREAS, the parties agree to amend the terms of the Lease Agreement.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth; Lease N6871102RP02P09 is hereby amended to reflect the following:

DELETE:

Paragraph 13.10 in its entirety and replace it herewith:

Paragraph 13.10 Lessee shall not conduct or permit its Sublessees to conduct any subsurface excavation, digging, drilling, or other soil disturbance of the surface, including, but not limited to, ornamental gardening and the raising of produce for consumption, without the prior written approval of Government.

DELETE:

Paragraph 34.4 in its entirety and replace it herewith:

Paragraph 34.4 Use of groundwater is prohibited. The Lessee will be prohibited from installing any groundwater wells or otherwise using groundwater at the subject property.

DELETE:

Paragraph 34.5 in its entirety and replace it herewith:

Paragraph 34.5 Lessee shall be restricted from all groundbreaking activities, including ornamental gardening and the raising of produce for consumption. Existing landscaping can be maintained by mowing, clipping and pruning, but may not include any groundbreaking such as the addition or removal of trees, shrubs, plants, or grasses. The Lessee shall conduct a quarterly inspection to ensure that ground-disturbing and groundbreaking activities do not occur.

INSERT:

Paragraph 34.9 The Lessee will be required through the lease to comply with all applicable laws and regulations pertaining to the use, treatment, storage, disposal and transportation of hazardous materials.

Paragraph 34.10 The Lessee shall not interfere with the ongoing Installation Restoration and other environmental program activities. The Lessee will be prohibited from damaging any existing or future groundwater monitoring wells and will be responsible for repairing any damage done to the wells.

Paragraph 34.11 All non-emergency utilities work at the Building 502 facility and adjacent streets shall require a Dig Permit, that includes the signature of the Navy Caretaker Site Office, prior to start of any ground-disturbing activities.

In areas of the site where there is no known soil contamination, soil from permitted utilities work shall still be managed for proper handling and disposal during the ongoing CERCLA process at the site. During the course of permitted utilities work, if unexpected subsurface conditions are encountered that include the presence of debris, staining or odor, the permitted work shall cease immediately, and the permit will be re-evaluated.

In the areas of the site beneath the concrete cap and Building 502, where soil contamination has been identified, a work plan that includes protective measures, soil sampling and soil management as determined appropriate, shall be a part of the approved permit. The purposes of the work plan will be:

1) to ensure that soil excavated from contaminated areas is completely contained by use of ground covers, soil pile covers, runoff control, and care in excavation methods, pending determination of the level of contamination;

2) to ensure that soil is properly characterized by sampling and analysis to determine proper disposition;

3) to ensure that children and staff at the child care facility are not inadvertently exposed to inappropriate risk from hazardous constituents, by such means as project day and time scheduling, temporary relocation, or appropriate physical barriers; and

4) to ensure that personal protective equipment is used consistent with the likely concentrations of hazardous constituents and exposure duration.

For emergency utilities work, the Lessee shall contact the Navy Caretaker Site Office for authorization. In the event that the Navy Caretaker Site Office cannot be reached, the Lessee's officer responsible for worker health and safety shall make an appropriate determination on protective measures to address health and safety to workers due to potentially contaminated soils, and all soil excavated shall be stockpiled in a secure area for further determination of handling. No soil will be returned to the excavation as a result of emergency utilities work until authorized by the Navy.

Paragraph 34.12 The Lessee will be responsible for obtaining all necessary permits and licenses for their own operation. Any violation of the permit conditions will be grounds to require the Lessee to cease operations or terminate the lease.

Paragraph 34.13 The Lessee shall ensure that operators of the Building 502 facility, including maintenance and landscape personnel, are aware of and familiar with these restrictions.

Paragraph 34.14 All required Lease restrictions must also be made part of all subleases within this area, and all references to Lessees and leases in this document also include all authorized sublessees and subleases. A copy of the Lease shall also be provided to each sublessee and licensee of Building 502. A notice of availability of copies of this Lease shall also be provided to the custodial parent or guardian of every child using the day care facility.

All other terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth above duly executed this amendment to the Lease as of the day and year first above written.

UNITED STATES OF AMERICA

Title Real Estate Contracting Officer

TREASURE ISLAND DEVELOPMENT AUTHORITY

ANNEMARIE CONROY
Executive Director
Treasure Island Development Authority Project

AMY JO WILEMAN
Title Real Estate Contracting Officer

APPROVED AS TO FORM:

CITY ATTORNEY

All correspondence in connection with
this contract should include reference to:

N6871102RP02P09

LEASE

BETWEEN

THE UNITED STATES OF AMERICA

AND

TREASURE ISLAND DEVELOPMENT AUTHORITY

FOR

CHILDCARE CENTER (BLDG 502)

NAVAL STATION TREASURE ISLAND

All correspondence in connection with
this contract should include reference to:

N6871102RP02P09

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N6871102RP02P09

LEASE
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE TREASURE ISLAND DEVELOPMENT AUTHORITY

THIS LEASE, made as of this 1st day of October, 2001, is by and between THE UNITED STATES OF AMERICA, acting by and through the Department of the Navy, herein called "**Government**", and the TREASURE ISLAND DEVELOPMENT AUTHORITY, herein called "**Lessee**";

WITNESSETH:

WHEREAS, Government has declared certain real and personal property, as more particularly described as the Leased Premises in Paragraph 1, surplus at the Naval Station Treasure Island, San Francisco, California, (the "Installation"), and Lessee has identified an immediate need to use such real and personal property; and

WHEREAS, the Secretary of the Navy, pursuant to the provisions of 10 U.S.C. § 2667 (f)(1), has determined that this Lease will facilitate state and local economic adjustment efforts pending final disposition of the Leased Premises; and

WHEREAS, the Secretary of the Navy, pursuant to 10 U.S.C. § 2667 (f)(2) has determined that a public interest will be served as a result of this Lease, the fair market value of the Lease is either unobtainable or not compatible with such public benefit, and consequently, consideration for this Lease will be at less than fair market value; and

WHEREAS, the Secretary of the Navy, after consultation with the Environmental Protection Agency Administrator has determined that the Leased Premises is suitable for lease, and the uses contemplated for the Lease are consistent with protection of human health and the environment; and

WHEREAS, Lessee is recognized by the Secretary of the Defense, through the Office of Economic Adjustment, as the local redevelopment authority with the responsibility for the redevelopment of the Installation; and

WHEREAS, Lessee is a municipal corporation, created and organized under the laws of the State of California, with the power to acquire, lease and dispose of federal military installations, and Lessee desires to enter into this Lease to further reuse efforts at the Installation.

NOW THEREFORE, in consideration of the terms, covenants, and conditions set forth in this Lease, Government and Lessee hereby agree as follows:

1. **LEASED PREMISES:**

Subject to the terms and conditions of this Lease, Government does hereby lease, rent, and demise to Lessee, and Lessee does hereby hire and rent from Government, Buildings 502 and the surrounding premises, as shown on Exhibit A, consisting of approximately 3.11 acres, attached hereto, together with all improvements; and all personal property described in Exhibit B attached hereto, and all rights of ingress and egress to such real property (together, the "Leased Premises").

2. **TERM:**

The term of this Lease shall be for a period of 5 years beginning on **1 October 2001** and ending on **30 September 2006**, unless sooner terminated in accordance with the provisions of Paragraph 14, Termination.

3. **CONSIDERATION:**

3.1 As consideration for this Lease, Lessee agrees to (i) actively market the Installation and attempt to sublease those portions of the Leased Premises which are suitable for subleasing, (ii) provide protection and maintenance to the extent described in Paragraph 12 for those portions of the Leased Premises which are or have been during the term of this Lease used or occupied by Lessee or subleased by Lessee to another and (iii) pay Government the Common Services Charge described in Sections 3.1.2 and 3.1.3 below.

3.1.1 As additional consideration, subject to annual appropriations by Lessee's Board of Supervisor's, Lessee shall apply any Revenue (as defined herein) received from subleasing the Premises as follows: first, to reimburse itself for marketing and property management expenses incurred by Lessee; and second, for expenses incurred by Lessee for improvements to the Installation. If sufficient funds for the purposes described in this Section 3.1.1 are not appropriated for any reason in any fiscal year of Lease after the fiscal year in which the Term of this Lease commences, then Government may terminate this Lease, without liability, upon thirty (30) calendar days written notice.

"Revenue" as referred to herein means rental income and any other miscellaneous income derived from the subletting of the Leased Premises less (i) sales tax, use and occupancy tax, franchise tax and any other taxes, building fees, planning fees and inspection fees related to the use and occupancy of the Leased Premises, and (ii) Lessee's cost of operating, maintaining, protecting and repairing the Leased Premises including, without

limitation, any Common Services Charges paid to Government pursuant to this Section 3.1.

3.1.2 Lessee shall be responsible for paying the cost of services incurred by Government and provided for the benefit of Lessee and sublessees as described and in the amount set forth in Paragraph 3.1.3 (the "Common Services Charge"). Lessee shall pay Government the Common Services Charge on the first day of each month.

3.1.3 The Common Services Charge will be calculated as follows:

$0.050 per square foot per month of occupied building space (1) used or occupied by Lessee; (2) subleased by Lessee to another.

$0.003 per square foot per month of land area (1) used or occupied by Lessee; (2) subleased by Lessee to another.

The Common Services Charge may be revised by Government and Lessee on an annual basis, or at other times only upon mutual agreement of Government and Lessee or as required by Section 3.1.4 below.

"Common Services" for the purpose of the Common Services Charge shall include, but are not limited to: fire fighting; general perimeter security (this does not include security of those portions of Leased Premises which are (1) used or occupied by Lessee, (2) subleased by Lessee to another); causeway operations, maintenance and repair; maintenance and repair of roads, streets, sidewalks, curbs and gutters; operation, maintenance and repair of street lighting, street signals and signage; operation, maintenance and repair of storm sewer; pest control, and general administration of these services. Nothing in this Lease commits Government to continue to provide Common Services referenced herein.

3.1.4 If and to the extent Government reduces, modifies or ceases to provide all or portion of the Common Services described herein or to the extent Lessee assumes the responsibility for such Common Services pursuant to a cooperative agreement or other agreement with Government, the Common Services Charge shall be proportionately reduced, to an amount mutually agreed upon by Government and Lessee, so that at all times during the term of this Lease the amount of the Common Services Charge shall accurately and in substantially the same proportion as provided herein reflect the costs of Government in providing such Common Services.

3.1.5 If the Government expects to incur any unanticipated costs which are specifically attributable to an action or inaction of the Lessee, its sublessees, or assigns, the Lessee and the Government shall meet and confer on ways to avoid or mitigate such costs and, if the costs can not be entirely

avoided, the Lessee and Government shall mutually determine the amount that Lessee shall pay from revenue in addition to the Common Services Charge to defray those costs that cannot be avoided or mitigated. If the Lessee and Government are unable to reach agreement on a way to avoid or mitigate the unanticipated costs or the amount of compensation that the Lessee shall pay to the Government to defray such costs, their dispute shall be resolved in accordance with the provisions of Paragraph 23 of this Lease.

3.2 Consistent with standard accounting practices for tax purposes, Lessee shall keep adequate records and books of account showing the actual cost to it of all items of labor, material, equipment, supplies, services and other items of cost incurred by it directly in the performance of any item of work or service in the nature of marketing and management; the repair, restoration, protection and maintenance of Leased Premises which is required by Paragraph 12; or otherwise approved or directed by Government. Lessee shall provide Government with access to such records and books of account and proper facilities for inspection thereof at all reasonable times.

4. **USE OF LEASED PREMISES:**

4.1 The Leased Premises may be used and operated by Lessee as a childcare center. Lessee understands and acknowledges that this is not and does not constitute a commitment by Government with regard to the ultimate disposal of Leased Premises, in whole or in part, to Lessee or any agency or instrumentality thereof, or to any sublessee. The Lease may be terminated by Government or Lessee as provided by the terms of the Lease pursuant to Paragraph 14, and Lessee and Government agree to and acknowledge such terms.

4.2 Lessee shall not undertake any activity that may affect an identified historic or archeological property, including excavation, construction, alteration or repairs of Leased Premises, without the approval of Government. Buried cultural materials may be present on the Leased Premises. If such materials are encountered, Lessee shall stop work immediately and notify Government.

5. **SUBLETTING:**

5.1 Lessee shall not sublet the Leased Premises or any interest therein or any property thereon, or grant any interest, privilege or license whatsoever in connection with this Lease without the prior written consent of Government. Such consent shall not be unreasonably withheld or delayed. Each sublease shall contain or incorporate by reference the environmental protection provisions set forth in Paragraph 13 herein. Under no circumstance shall Lessee assign this Lease without Government's prior written consent, except that no consent shall be required in connection with an assignment of this Lease to a successor to Lessee which is the local redevelopment authority for the Installation

recognized by the Secretary of Defense, through the Office of Economic Adjustment.

5.2 Any sublease granted by Lessee shall contain a copy of this Lease as an attachment and be subject to all 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. Under any sublease made, with or without consent, the sublessee shall be deemed to have assumed the obligations of Lessee under this Lease that relate to the portion of the Leased Premises subleased to such sublessee. No sublease shall relieve Lessee of any of its obligations hereunder.

5.3 Lessee shall furnish Government, for its prior written consent, a copy of each sublease it proposes to execute. Such consent may include a requirement that Lessee renegotiate the sublease to conform with the provisions of this Lease. The determination by Government as to the acceptability of a particular sublease shall principally include approval of the sublessee with respect to its proposed uses of the Leased Premises, the capability of the sublessee to perform its obligations under the sublease, and the conformity of the sublease to the provisions of this Lease. Such consent shall not be unreasonably withheld or delayed. Consent to any sublease shall not be taken or construed to diminish or enlarge any of the rights or obligations of either of the parties under this Lease. 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 the sublease shall immediately be furnished to Government.

5.4 Either party hereto shall, from time to time during the Term, upon not less than twenty (20) calendar days' prior written notice from the other party, execute, acknowledge and deliver to the other party, or such persons or entities designated by such other party, a statement in writing certifying: (a) the

commencement date and expiration date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Common Services Charge and any other consideration required hereunder has been paid.

6. **JOINT INSPECTION & INVENTORY REPORT:**

6.1 Joint Inspection. Representatives of the Lessee and Government shall conduct a joint inspection of all portions of the Leased Premises to be (1) beneficially used or occupied by the Lessee; (2) assigned by the Lessee to another; or (3) subleased by Lessee to another for any purpose. Such inspections shall be completed before any such use begins and may include a representative of the sublessee if appropriate. Based on the joint inspection, a complete inventory of Government property located on the Leased Premises and a report of the condition of the Leased Premises, including the condition of improvements, appurtenances and personal property thereon, has been prepared and is attached to this Lease as Exhibit C.

6.2 No Warranty by Government. All facilities and property delivered to the Lessee shall be delivered "as is, where is," and, as such, the Government makes no warranty as to such facilities and property either as to their usability generally or as to their fitness for any particular purpose. As provided in Section 12 of this Lease, Lessee shall, at no expense to Government, maintain those portions of the Leased Premises which Lessee uses or subleases, and will from time to time make or cause to be made all necessary and proper repairs, replacements, and renewals which shall thereupon become part of the Leased Premises. During the term of this Lease, Government shall have no responsibility, financial or otherwise, except as otherwise described herein with respect to protection and maintenance of the Leased Premises.

6.3 In accordance with 32 CFR §91.7(h), governing the disposition of personal property at closing military bases, Personal Property shall be identified throughout the Installation for use in connection with redevelopment of the Installation. At no expense to Government, and only with Government approval, Personal Property may be relocated from other buildings to the Leased Premises in order to facilitate redevelopment, including exclusive use thereof by the sublessee during the Term of this Lease. Each inventory, upon completion, shall be identified by building or facility number, and signed and dated by both parties to this Lease and attached to this Lease as part of the Joint Inspection Report attached hereto as Exhibit C.

7. **ENVIRONMENTAL BASELINE SURVEY AND FINDINGS OF SUITABILITY TO LEASE:**

An Environmental Baseline Survey for Lease (EBSL) and a Finding of Suitability to Lease (FOSL) are attached to this Lease as Exhibit D and made part of this Lease. The EBSL sets forth the existing environmental conditions of the Leased Premises as represented by the baseline survey which has been conducted by Government. The FOSL sets forth the basis for the Government's determination that Leased Premises are suitable for leasing. Lessee is hereby made aware of the information contained in the FOSL attached hereto as Exhibit D and shall comply with applicable restrictions set forth therein.

8. **ALTERATIONS:**

8.1 Lessee shall not construct, make or permit its sublessees to construct or make any substantial alterations, additions, excavations, improvements to, installations upon or otherwise modify or alter the Leased Premises in any way, including those which may adversely affect the remediation of hazardous materials on the Installation (together, "Alterations") without the prior written consent of Government. Such consent may not be unreasonably withheld or delayed, but may involve, where reasonably necessary, a requirement for Lessee or Lessee's contractor to provide the government with a performance and payment bond satisfactory to it in all respects and other requirements deemed reasonably necessary to protect the interests of the Government.

8.2 Upon termination of this Lease, as directed by Government, Lessee shall, at the option of the Government either:

8.2.1 Promptly remove all alterations, additions, betterments and improvements made or installed and restore the Leased Premises to the same or as good condition as existed on the date of entry under this Lease, reasonable wear and tear and acts of God excepted; or

8.2.2 Abandon such additions or alterations in place, at which time title to such alterations, improvements and additions shall vest in Government.

8.2.3 In either event all personal property and trade fixtures of Lessee or any third person may be removed from the Leased Premises and Lessee shall repair any damage to the Leased Premises resulting from such removal.

9. **ACCESS BY GOVERNMENT:**

In addition to access required under Paragraph 13, at all reasonable times throughout the term of this Lease, Government shall be allowed reasonable access to the Leased Premises for any purpose. Government will give Lessee or any sublessee at least twenty-four (24) hour prior notice of its intention to enter the Leased Premises, unless it determines the entry is immediately required for safety, environmental, operations or security purposes. Lessee shall have no claim on account of any entries against Government or any officer, agent, employee, contractor or subcontractor of Government. All keys to the buildings and facilities occupied by Lessee or any sublessee shall be made available to Government upon request.

10. **UTILITIES AND SERVICES:**

Procurement of utilities (i.e., electricity, water, gas, sewer, telephone and trash removal) will be the responsibility of Lessee. Lessee agrees to obtain needed utility services from any private or municipal supplier who should, during the term of Lease, become able to deliver such services to Leased Premises. In the event that Government shall furnish Lessee with any utilities or services maintained by Government which Lessee may require in connection with its use of Leased Premises, Lessee shall pay Government the cost incurred in providing such utilities or services in the amounts set forth in Exhibit E attached hereto, which rates shall be determined by Government and Lessee in accordance with applicable laws and regulations. Lessee, at no cost to Government, shall install metering devices for utilities serving the Leased Premises prior to its occupancy. The volume of utilities used by Lessee shall be determined by such metering devices. It is expressly agreed and understood that Government in no way warrants the continued availability, maintenance or adequacy of any utilities or services furnished to Lessee.

11. **NON-INTERFERENCE WITH GOVERNMENT OPERATIONS:**

Lessee shall not conduct operations nor make any alterations that would interfere with or otherwise restrict operations, environmental clean-up or restoration actions by Navy, Environmental Protection Agency (EPA), applicable state equivalent, or their contractors. Environmental clean-up, restoration or testing activities by these parties shall take priority over Lessee's use of Leased Premises in the event of any conflict. However, Government and Lessee agree to coordinate to minimize potential conflicts between necessary remediation of environmental contamination, including investigation and remedial actions, and Lessee's and any sublessee's use of Leased Premises.

12. **PROTECTION AND MAINTENANCE SERVICES:**

12.1 Except as otherwise specifically provided herein, Lessee shall furnish or cause to be furnished all labor, supervision, materials, supplies and equipment necessary to the operation, maintenance and repair of the following building systems and appurtenances located in or on the Leased Premises: structural (including roof), fencing, plumbing, electrical, heating and cooling systems; exterior utility systems (including fire hydrants and mains); pavement and grounds maintenance (including grass cutting, shrub trimming and tree removal); pest and weed control; security and fire protection within Leased Premises; refuse collection, removal and disposal; and utilities maintenance necessary for the protection of Leased Premises. Government shall not be required to furnish any services or facilities to Lessee or to make any repair or alteration in or to Leased Premises. Lessee hereby assumes the full and sole responsibility for the protection, maintenance and repair of Leased Premises set forth in this paragraph. For specifics as to such protection and maintenance required to be provided by Lessee hereunder, the following provisions shall apply:

12.1.1 The degree of maintenance and repair services to be furnished by Lessee hereunder shall be that which is sufficient to assure weather tightness, structural stability (excluding any seismic retrofit and/or modification to foundations resulting from extraordinary natural occurrences such as earthquakes, floods and landslides), protection from fire hazards or erosion, and elimination of safety and health hazards which arise during the term of the Lease and which are not caused by the actions of Government or its employees, contractors or agents, so that the Leased Premises being serviced will remain in the condition in which they existed at the commencement of the Lease as documented in the Joint Inspection and Inventory Report prepared pursuant to Paragraph 6, ordinary wear and tear and acts of God excepted. Prior to use and occupancy, Lessee shall correct the safety and health hazards described on Exhibit F.

12.2 During term of this Lease, debris, trash and other useless materials placed on the Leased Premises during the term of this Lease shall be promptly removed from the Leased Premises. Upon termination or expiration of this Lease, the Leased Premises shall be left without containers, Lessee's equipment, and other undesirable materials placed on the Leased Premises during the term of this Lease (except by Government) and in as clean condition as received by Lessee.

12.3 Lessee shall provide or cause to be provided all security services necessary to assure security and safety within the Leased Premises. 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 authorities for their investigation and disposition and to Government as property owner.

12.4 Lessee shall take or cause to be taken, all reasonable and necessary fire protection precautions at the Leased Premises. Such precautions may include, but are not limited to, the maintenance of any sprinkler system that exists on the effective date of this Lease and/or the provision of portable fire extinguishers for fire protection of Leased Premises.

12.5 Lessee is responsible for the repair and maintenance of all interior utility systems and those exterior utility systems, distribution lines, connections and equipment which solely support the Leased Premises. This responsibility extends from the Leased Premises to the point of connection with the utility system which serves users other than Lessee.

12.6 Lessee shall ensure only trained and qualified persons are utilized in performance of the maintenance and protection services specified in this paragraph.

13. **ENVIRONMENTAL PROTECTION PROVISIONS:**

13.1 Lessee, sublessees and contractors shall comply with all applicable Federal, state and local laws, regulations and standards that are or may become applicable during the term of this Lease to Lessee's activities on the Leased Premises.

13.2 Lessee or any sublessee shall be solely responsible for obtaining, at no cost to Government, any environmental permits required for its operations under the Lease, independent of any existing permits held by the Government. Nothing in this Lease shall require Lessee to become a secondary discharger or co-permittee on any existing environmental permit held by Government relating to the operation of the Installation, including, without limitation, any environmental permits associated with the operation of the Installation's sewage treatment plant. Any and all environmental permits required for any of Lessee's or sublessees' operations or activities will be subject to prior concurrence of the Commanding Officer, Engineering Field Activity West, Naval Facilities Engineering Command. Lessee acknowledges that the Government will not consent to being named a secondary discharge or co-permittee for any operations or activities of the Lessee or any sublessee under the Lease. In the event the Government is named as a secondary discharger or co-permittee for any activity or operation of the Lessee or any sublessee, Government shall have the right to take reasonable actions necessary to prevent, suspend, or terminate

such activity or operation, including terminating this Lease, without liability or penalty.

13.3 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 laws and regulations, whether or not Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. Government will give Lessee or sublessee twenty-four (24) hours prior notice of its intention to enter Leased Premises unless it determines the entry is immediately required for safety, environmental, operations or security purposes. Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, contractor or subcontractor thereof.

13.4 Government and its officers, agents, employees, contractors and subcontractors have the right, upon reasonable notice to Lessee and any sublessee, to enter upon the Leased Premises for the purposes enumerated in this subparagraph:

13.4.1 to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, testpitting, testing soil borings and other activities related to the Installation Restoration Program (IRP);

13.4.2 to inspect field activities of Government and its contractors and subcontractors in implementing the IRP;

13.4.3 to conduct any test or survey related to implementation of the IRP or environmental conditions at Leased Premises or verify any data submitted to EPA or applicable state equivalent by Government relating to such conditions;

13.4.4 to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the IRP, including but not limited to monitoring wells, pumping wells and treatment facilities.

13.5 Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP 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 and any sublessee. Lessee and sublessee shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor or subcontractor thereof. In addition, Lessee shall comply with all applicable Federal, state and local occupational safety and health regulations.

13.6 Lessee further agrees that if the Leased Premises are subject to ongoing environmental remediation by Government, during such period, Lessee shall provide to EPA and applicable state equivalent by certified mail a copy of any sublease of the Leased Premises within fourteen (14) calendar days after the effective date of such sublease. Lessee may delete the financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this condition.

13.7 Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act or its applicable state equivalent. Except as specifically authorized by Government in writing, Lessee must provide at its own expense such hazardous waste management facilities as required by its use of the Leased Premises, complying with all laws and regulations. Government hazardous waste management facilities will not be available to Lessee. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

13.8 DOD component accumulation points for hazardous and other waste will not be used by Lessee or any sublessee. Neither will Lessee or sublessee permit its hazardous wastes to be commingled with hazardous waste of DOD Component.

13.9 Before beginning operations on the Leased Premises, Lessee shall have a Government-approved plan for responding to hazardous waste, fuel and other chemical spills. Such plan shall be independent of the Installation plan and, except for initial fire response and/or spill containment, shall not rely on the use of Installation personnel or equipment. Should Government provide to the Leased Premises any personnel or equipment whether for initial fire response and/or spill containment, or otherwise on request of Lessee, or because Lessee was not, in the reasonable opinion of Government, conducting timely cleanup actions, Lessee agrees to reimburse Government for its reasonable and actual costs in association with such response or cleanup upon receipt of an invoice for such costs.

13.10 Lessee shall not conduct or permit its sublessees to conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of Government, which consent shall not be unreasonably withheld or delayed.

13.11 To the extent required by law and regulation, Government shall abate, remove or otherwise remedy all friable, accessible and damaged asbestos containing material (ACM), lead based paint (LBP) and polychlorinated biphenyls (PCBs) from Leased Premises. The presence of known ACM, LBP or PCBs shall be fully identified in an Environmental Baseline Survey (EBS) and/or Supplemental Environmental Baseline Survey (SEBS), attached as an Exhibit.

13.11.1 Except as provided in Paragraph 13.11.2, Government is not responsible for any removal or containment of asbestos containing materials (ACM). If Lessee intends to make any improvements or repairs that require the removal of asbestos, an appropriate asbestos disposal plan must be incorporated into the plans and specifications and submitted to Government. The asbestos disposal plan will identify the proposed disposal site for the asbestos, or in the event the site has not been identified, will provide for disposal at a licensed facility authorized to receive it.

13.11.2 Government shall be responsible for the removal or containment of the ACM identified as requiring abatement shown on Exhibit G attached hereto as damaged or deteriorated ACM. Government agrees to abate these listed items of damaged or deteriorated ACM. Government may choose the most economical means of abating any damaged or deteriorated ACM, which may include removal, repair or containment (encapsulation), or a combination of removal, repair and containment. The forgoing obligation of Government does not apply to any ACM other than that identified in Exhibit G. Notwithstanding Paragraph 13.11.1 above, in an emergency, Lessee will notify Government as soon as practicable of its emergency ACM responses. Lessee shall be responsible for monitoring the condition of existing ACM on Leased Premises for deterioration or damage and accomplishing repairs or abatement pursuant to the applicable conditions of this Lease.

13.12 Lessee shall indemnify and hold harmless Government from any costs, expenses, liabilities, fines or penalties resulting from discharges, emissions, spills, storage or disposal arising from Lessee's occupancy, use or operations, or any other action by Lessee or any sublessee during the term of this Lease giving rise to Government liability under Federal, state or local environmental laws. Lessee's obligations hereunder shall apply whenever Government incurs costs or liabilities as a result of Lessee's activities or activities of any sublessee as provided hereunder. However, this indemnity does not extend to those damages which are due to the fault or negligence of Government or its contractors. This provision shall survive the expiration or termination of this Lease.

13.13 Storage, treatment or disposal of toxic or hazardous materials on the Leased Premises is prohibited excepted as authorized by Government in accordance with 10 U.S.C. § 2692.

13.14 The responsibility of Government to indemnify and hold harmless the Lessee and any sublessee against any toxic torts and other environmental claims shall be in accordance with Public Law 102-484, the National Defense Authorization Act for Fiscal Year 1993, Section 330, as amended.

13.15 If Lessee or a sublessee encounters pre-existing conditions caused by the Government which require the Government to take action in accordance with Federal, State or local law to remove, remediate, correct, or abate hazardous substances, pollutants or contaminants, the Lessee or sublessee shall promptly notify the Government, cease performance, and secure the work site. Vacation of the Leased Premises, or any part thereof, will be directed pursuant to the provisions of Section 15 of this Lease. The Government will take necessary and appropriate actions, as required by Federal, State or local law, and bear the cost of such removal, remediation, corrective action, or abatement, subject to the availability of funds for such purpose.

14. **TERMINATION:**

14.1 Government shall have the right to terminate this Lease, in whole or in part, without liability, upon thirty (30) calendar days written notice:

14.1.1 In the event of the Government making a final decision on disposal of the Leased Premises that is inconsistent with continued use thereof by Lessee under this Lease; or

14.1.2 In the event of a national emergency as declared by the President or the Congress of the United States and Government makes a determination that such national emergency requires termination of this Lease; or

14.1.3 If, at any time after January 1, 2003, (a) Government has complied with all applicable legal requirements to convey fee title to the Premises, (b) Government has satisfied in full all of its obligations under this Lease, (c) Government tenders to Lessee a conveyance of fee ownership of the Premises after negotiating in good faith with respect to establishing reasonable terms, conditions of, and consideration for such conveyance, and (d) Lessee fails to accept such conveyance within one hundred eighty (180) calendar days of written notice of such tender; or

14.1.4 In the event of a breach by Lessee of any of the terms and conditions hereof. In the event of a breach involving the performance of any obligation, Lessee shall be afforded thirty (30) calendar days from the receipt of Government's written notice of intent to terminate to complete performance of

the obligation or otherwise cure the subject breach and avoid termination of this Lease, unless Government determines that a shorter period is required for safety, environmental, operations or security purposes. In the event that Government shall elect to terminate this Lease on account of the breach by Lessee of any of the terms and conditions, Government shall be entitled to recover and Lessee shall pay to Government:

14.1.4(a) The costs incurred in resuming possession of the Leased Premises.

14.1.4(b) The costs incurred in performing any obligation on the part of the Lessee to be performed hereunder, but only after notice to Lessee and the expiration of all applicable cure periods.

14.1.4(c) An amount equal to the aggregate of any maintenance obligations and charges assumed hereunder and not paid or satisfied, which amounts shall be due and payable at the time when such obligations and charges would have accrued or become due and payable under this Lease.

14.2 Lessee shall have the right to terminate this Lease upon thirty (30) calendar days written notice to Government in the event of breach by Government of any of the terms and conditions hereof. In the event of a breach involving the performance of any obligation, Government shall be afforded thirty (30) calendar days from the receipt of Lessee's notice of intent to terminate to complete performance of the obligation or otherwise cure the subject breach and avoid termination of this Lease. Lessee shall also have the right to terminate this Lease in the event of damage to or destruction of all of the improvements on Leased Premises or such a substantial portion thereof as to render Leased Premises incapable or impracticable of use for the purposes for which it is leased hereunder, provided:

14.2.1 Government either has not authorized or directed the repair, rebuilding or replacement of the improvements or has made no provision for payment for such repair, rebuilding or replacement by application of insurance proceeds or otherwise; and

14.2.2 That such damage or destruction was not occasioned by the fault or negligence of Lessee or any of its officers, agents, servants, employees, subtenants, licensees or invitees, or by any failure or refusal on the part of Lessee to fully perform its obligations under this Lease.

14.2.3. If Government requires Lessee or any sublessee to vacate all or a substantial portion of Leased Premises pursuant to any provision of this Lease for a period in excess of thirty (30) calendar days, Lessee may terminate this Lease by written notice to Government given at any time while Lessee shall continue to be denied use of all or a substantial portion of Leased Premises. Lessee shall thereafter surrender possession of Leased Premises within fifteen (15) calendar days of such notice.

15. **ENVIRONMENTAL CONTAMINATION:**

In the event environmental contamination is discovered on the Leased Premises which creates, in Government's determination, an imminent and substantial endangerment to human health or the environment which necessitates evacuation of the Leased Premises, and notwithstanding any other termination rights and procedures contained in this Lease, Lessee shall vacate or require any sublessee to vacate Leased Premises immediately upon notice from Government of the existence of such a condition. Exercise of this right by Government shall be without liability, except that Lessee shall not be responsible for the payment of consideration, the amount of deduction to be determined on a daily pro-rata basis, during the period Leased Premises is vacated, and Lessee shall have the right to terminate this Lease if, as provided in Section 14.3 above, Lessee or any sublessee is deprived of the beneficial use and occupancy of the Leased Premises for a period in excess of thirty (30) days. Government's exercise of this right herein to order the Leased Premises immediately vacated does not alone constitute a termination of the Lease, but such right may be exercised in conjunction with any other termination rights provided in this Lease or by law.

16. **NON-ENVIRONMENTAL INDEMNIFICATION BY LESSEE:**

The Lessee shall hold harmless, indemnify, and defend the Government from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for injury or damage that results from, or is any manner predicated upon activities of the Lessee on the Leased Property during the term of the Lease. This indemnification applies to any fines, claims, demands and causes of action of every nature whatsoever which may be made upon, sustained or incurred by Government by reasons of any breach, violation, omission or non-performance of any term, covenant or condition hereof on the part of Lessee or the employees, agents, servants, guests, invitees and sublessees of Lessee. This indemnification also applies to claims arising out of the furnishing of any utilities or services by Government or any interruption

therein or failure thereof, whether or not the same shall be occasioned by the negligence or lack of diligence of Lessee, its officers, agents, servants, employees or sublessees. However, this indemnity does not extend to those damages which are due to the fault or negligence of Government or its contractors. This covenant shall survive the termination of this Lease.

17. **INSURANCE:**

17.1 At the commencement of this Lease, Lessee shall obtain, from a reputable insurance company or companies, liability insurance or shall maintain a program of self-insurance. The insurance shall provide an amount not less than a minimum combined single limit of $10 million, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of Lessee, sublessees, contractors and invitees under the terms of this Lease. Lessee shall provide Government certificates of its self-insurance or require its insurance company to furnish Government a copy of the policy or policies, or if acceptable to Government, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by Government every three years or upon renewal or modification of this Lease.

17.2 As to those structures and improvements on Leased Premises constructed by or owned by Government, Lessee shall procure and maintain at Lessee's cost a standard fire and extended coverage insurance policy or policies or a program of self-insurance on the Leased Premises in an amount sufficient to demolish damaged or destroyed structures and improvements, remove debris and clear the Leased Premises. Should Lessee elect to purchase commercial insurance in lieu of self-insurance, Lessee shall procure such insurance from a reputable company or companies. In that event, the insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of Government, shall be payable to Lessee to be used solely for the demolition of damaged or destroyed structures and improvements, removal of debris and clear the Leased Premises or for repair, restoration, or replacement of the property damaged or destroyed. Any balance of the proceeds not required for such purposes shall be paid to Government. If Government does not elect, by notice in writing to the insurer within thirty (30) calendar days after the damage or destruction occurs, to have the proceeds paid to Lessee for the purposes herein above set forth, then such proceeds shall be paid to Government, provided however that the insurer, after payment of any proceeds to Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by Lessee. Nothing herein contained shall be construed as an obligation upon Government to repair, restore or replace Leased Premises or any part thereof.

17.3 If and to the extent required by law, Lessee shall provide workmen's compensation or similar insurance or self-insurance in form and amounts required by law.

17.4 During the entire period this Lease shall be in effect, Lessee shall require its contractors or sublessees or any contractor performing work at Lessee's or sublessee's request on Leased Premises to carry and maintain the insurance required below:

17.4.1 Comprehensive general liability insurance, including, but not limited to, contractor's liability coverage and contractual liability coverage, of not less than $3 million, per occurrence with respect to personal injury or death, and $5 million, per occurrence with respect to property damage.

17.4.2 Workman's compensation or similar insurance in form and amounts required by law.

17.5 Should Lessee purchase commercial insurance in lieu of self-insurance, all insurance which this Lease requires Lessee or sublessee to carry and maintain or cause to be carried or maintained shall be in such form, for such periods of time, and with such insurers as Government may reasonably require or approve. In that event, all policies or certificates issued by the respective insurers for public liability and property insurance will name Government as an additional insured, provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Lessee or Government or any other person, provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) calendar days after receipt by Government of written notice thereof; provide that the insurer shall have no right of subrogation against Government; and be reasonably satisfactory to Government in all other respects. In no circumstances will Lessee be entitled to assign to any third party, rights of action which Lessee may have against Government.

17.6 Lessee and sublessees shall deliver or cause to be delivered promptly to Government a certificate of insurance or self-insurance evidencing the insurance required by this Lease and shall also deliver no later than thirty (30) calendar days prior to expiration of any such policy, a certificate of insurance evidencing each renewal policy covering the same risks.

18. **LABOR PROVISION:**

During the term of this Lease, Lessee agrees as follows:

18.1 Lessee will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Lessee shall

take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Government setting forth the provisions of this nondiscrimination clause.

18.1.1 Lessee shall, in all solicitations or advertisements for employees placed at Leased Premises by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

18.1.2 Lessee shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by Government, advising the labor union or worker's representative of Lessee's commitments under this equal opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment

18.1.3 Lessee shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations and relevant orders of the Secretary of Labor.

18.1.4 Lessee shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations and relevant orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records and accounts by Government and the Secretary of Labor for purposes of investigating to ascertain compliance with such rules, regulations and orders.

18.1.5 In the event of Lessee's noncompliance with the equal opportunity clause of this Lease or with any of said rules, regulations or orders, this Lease may be canceled, terminated or suspended in whole or in part, after the expiration of all applicable cure periods, and Lessee may be declare ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation or order of the Secretary of Labor, or otherwise provided by law.

18.1.6 Lessee will include the above provisions in every sublease unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each sublessee. Lessee will take such action with respect to any sublessee as Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Lessee becomes involved, or is threatened with litigation with sublessee as a result of such direction by Government, Lessee may request the United States to enter into such litigation to protect the interest of the United States.

18.2 This Lease, to the extent that it is a contract of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) and is not covered by the Walsh-Healy Public Contracts Act (41 U.S.C. 35-45), is subject to the following provisions and exceptions of said Contract Work Hours and Safety Standards Act and to all other provisions and exceptions of said law.

18.2.1 Lessee shall not require or permit any laborer or mechanic in any workweek in which he is employed on any work under this Lease to work in excess of 40 hours in such work week on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 40 hours in such work week. The "basic rate of pay", as used in this clause, shall be the amount paid per hour, exclusive of Lessee's contribution or cost for fringe benefits and any cash payment made in lieu of providing fringe benefits or the basic hourly rate contained in the wage determination, whichever is greater.

18.2.2 In the event of any violation of the provision of Paragraph 18.2.1, Lessee shall be liable to any affected employee for any amounts due, and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph 18.2.1 in the sum of $10.00 for each calendar day on which such employee was required or permitted to be employed on such work in excess of the standard workday of 8 hours or in excess of the standard work week of 40 hours without payment of the overtime wages required by Paragraph 18.2.1.

18.3 In connection with the performance of work required by this Lease, Lessee agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

19. SUBMISSION OF NOTICES:

Notices shall be sufficient under this Lease if made in writing and to the addressees as:

Lessee: Treasure Island Development Authority
Ms. Annemarie Conroy
San Francisco Mayor's Office
Treasure Island Project
410 Palm Ave. Bldg. 1, Room 237
Treasure Island
San Francisco, CA 94130

Government: Commander BRAC Dept
Engineering Field Division - Southwest
Naval Facilities Engineering Command
1220 Pacific Highway
San Diego, CA

The individuals so designated above shall be representatives of the parties and the points of contact during the period of this Lease.

20. AUDIT:

This Lease shall be subject to audit by any and all cognizant Government agencies. Lessee shall make available to such agencies for use in connection with such audits all records which it maintains with respect to this Lease and copies of all reports required to be filed hereunder.

21. **AMENDMENTS:**

This Lease shall not be amended or modified unless in writing and signed by both parties. No oral statements or representation made by, for or on behalf of either party shall be a part of this Lease. Should a conflict arise between the provisions of this Lease and any exhibit hereto, 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 Government or Lessee 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 Government's or Lessee's right to the future performance of any such terms, covenants or conditions and Government's and Lessee's respective obligations in respect of such future performance shall continue in full force and effect.

23. **DISPUTES:**

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

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

23.3 "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 provides for 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 Act until certified as required by subparagraph 23.4 below. A voucher, invoice or other routine request for payment that is not in dispute when submitted, is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

23.4 A claim by Lessee shall be made in writing and submitted within six (6) years after accrual of the claim, to the Naval Facilities Engineering Command, Engineering Field Activity West (ATTN.: Code 64), 900 Commodore Drive, San Bruno, CA 94066-5006 herein called "Command", for a written decision. A claim by the Government against Lessee shall be subject to a written decision by the Command.

23.4.1 Lessee shall provide the certification specified in subparagraph 23.4.3 of this clause when submitting any claim:

(a) Exceeding $100,000; or
(b) Regardless of the amount claimed, when using:
(1)Arbitration conducted pursuant to 5 U.S.C. 575-580; or
(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to use in accordance with the Administrative Dispute Resolution Act (ADRA).

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

23.4.3 The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which Lessee believes Government is liable; and that I am duly authorized to certify the claim on behalf of Lessee."

23.4.4 The certification may be executed by any person duly authorized to bind Lessee with respect to the claim.

23.5 For Lessee claims of $100,000 or less, the Command, must, if requested in writing by Lessee, render a decision within 60 calendar days of the request. For Lessee-certified claims over $100,000, the Command, must, within 60 calendar days, decide the claim or notify Lessee of the date by which the decision will be made.

23.6 The Command's, decision shall be final unless Lessee appeals or files a suit as provided in the Act.

23.7 At the time a claim by the Lessee is submitted to Command or a claim by Government is presented to Lessee, the parties, by mutual consent, may agree to use ADR. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to employ in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in Paragraph 23.4.3 of this clause, and executed in accordance with Paragraph 23.4.4 of this clause.

23.8 Government shall pay interest on the amount found due and unpaid by Government from (1) the date the Command receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Command initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the Command receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

23.9 Lessee shall proceed diligently with the performance of Lease, pending final resolution of any request for relief, claim, appeal or action arising under Lease, and comply with any decision of the Command.

24. COVENANT AGAINST CONTINGENT FEES:

Lessee warrants that no person or agency has been employed or retained to solicit or secure 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 securing business. For breach or violation of this warranty, Government shall have the right to annul this Lease without liability or in its discretion, to require Lessee to pay the full amount of such commission, percentage, brokerage or contingent fee.

25. OFFICIALS NOT TO BENEFIT:

No member of or delegate to Congress or Resident Commissioner, shall be admitted to any share or part of this Lease or to any benefit to arise therefrom, but this provision shall not be construed to extend to this Lease if made with a corporation for its general benefit.

26. **LIENS:**

Lessee shall promptly discharge or cause to be discharged any valid lien, right in rem, claim or demand of any kind, except one in favor of Government, which at any time may arise or exist with respect to the Leased Property or materials or equipment furnished therefor, or any part thereof, and if the same shall not be promptly discharged by Lessee, or should Lessee or sublessee be declared bankrupt or make an assignment on behalf of creditors, or should the leasehold estate be taken by execution, Government reserves the right to take immediate possession without any liability to Lessee or any sublessee. Lessee and any sublessee shall be responsible for any costs incurred by Government in securing clear title to its property.

27. **TAXES:**

Lessee shall pay or cause to be paid to the proper authority, when and as the same become due and payable, all taxes, assessments and similar charges which, at any time during the term of this Lease, may be imposed upon Lessee with respect to its operations of the Leased Premises. Title 10 United States Code, Section 2667(e) contains the consent of Congress to the Taxation of Lessee's interest in Leased Premises, whether or not the Leased Premises are in an area of exclusive federal jurisdiction. Should Congress consent to taxation of Government's interest in the property, this Lease will be renegotiated.

28 **SUBJECT TO EXISTING AND FUTURE EASEMENTS AND RIGHTS- OF-WAY:**

This Lease is subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in and upon Leased Premises or any portion thereof and to the right of Government to grant such additional easements and rights-of-way over, across, in and upon Leased Premises as it shall determine to be in the public interest; provided that any such additional easement or right-of-way shall be conditioned on the assumption by the grantee thereof of liability to Lessee for such damages as Lessee shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such easements and rights-of-way as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any Federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over Leased Premises as shall be necessary for the performance of their duties with regard to such facilities.

29. **INGRESS-EGRESS AND PARKING:**

Lessee and any sublessees will be granted reasonable access to Leased Premises under this Lease. Such access will be coordinated with Government. As a condition, Lessee and any sublessees agree to adhere to all base rules and regulations regarding installation security, ingress, egress, safety and sanitation as may be prescribed from time to time by Government. Parking will be coordinated with Government.

30. **ADMINISTRATION:**

Except as otherwise provided for under this Lease, Government shall, under the direction of the Command, have complete charge of the administration of this Lease, and shall exercise full supervision and general direction thereof insofar as the interests of Government are affected.

31. **SURRENDER:**

Upon the expiration of this Lease or its earlier termination in accordance with the terms of this Lease, Lessee shall quietly and peacefully remove itself and its property from Leased Premises and surrender the possession thereof to Government. Government may, in its discretion, declare any property which has not been removed from Leased Premises upon expiration or termination provided for above, as abandoned property upon giving to Lessee an additional 30 calendar days notice after the termination date.

32 **INTEREST:**

32.1 Notwithstanding any other provision of this Lease, unless paid within thirty (30) calendar days from the due date, all amounts that become payable by Lessee to Government under this Lease (net any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due. The rate of interest will be the Current Value of Funds rate published by the Secretary of Treasury pursuant to 31 U.S.C. 3717 (Debt Collection Act of 1982).

32.1.1 Amounts shall be, subject to applicable cure periods, due upon the earliest of:

32.1.1(a) the date fixed pursuant to this Lease,

32.1.1(b) the date of the first written demand for payment, consistent with this Lease, including demand consequent upon default termination,

32.1.1(c) the date of transmittal by Government to Lessee of a proposed supplemental agreement to confirm completed negotiations fixing the amount,

32.1.1(d) if this Lease provides for revision of prices, the date of written notice to Lessee stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by Lease supplement.

33. **AVAILABILITY OF FUNDS:**

33.1 The Government's obligations under this Lease are subject to the availability of funds appropriated for such purposes. Nothing in this Lease shall be interpreted to require obligations or payments by Government which are in violation of the Anti-Deficiency Act (31 USC 1341).

34. **SPECIAL PROVISIONS:**

34.1 Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by Lessee under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the Charter of the City and County of San Francisco, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Lease commences, sufficient funds for the payment of any payments required under this Lease are not appropriated for any reason, then either party may terminate this Lease upon thirty (30) calendar days written notice and Lessee shall quietly and peacefully remove itself and its property from Leased Premises and surrender possession thereof to the Government. Notwithstanding the foregoing, this Section 34.1 shall not in any way limit or otherwise impair Lessee's indemnification obligation arising under Sections 13.12 and 16 of this Lease.

34.2 Article 1.5 of the San Francisco Planning Code ("Code") requires the provision of bicycle storage at all properties leased by the City at no cost to the landlord, here the Government, and only if funds are available. In the event public and/or private donations, grants or other funds become available, at any time during this Lease, Lessee shall have the right to request that the Government amend this Lease to include space sufficient for the installation and operation of bicycle storage facilities. In the event of storage locker installation, the storage lockers shall be considered a trade fixture. Government, at no cost to Government, shall reasonably cooperate with City regarding the implementation of this Code.

34.3 The date on which this Lease shall become effective (the "Effective Date") is the date upon which (i) Lessee's Mayor and Board of Supervisors enact a resolution approving this Lease in accordance with all applicable laws and (ii) this Lease is duly executed by the parties hereto.

34.4 Use of groundwater at the leased premises is prohibited. The Lessee is prohibited from installing any groundwater wells at the subject property without prior written consent by the Government. The Lessee shall be responsible for any damage caused by Lessee to existing or future groundwater monitoring wells.

34.5 Lessee shall be restricted from conducting excavation, drilling, or other ground-disturbing activities, other than minor repairs of the pavement and landscaping, without prior written consent by the Government.

34.6 Lessee shall be required to conduct routine evaluations of the existing Asbestos Containing Material (ACM) and comply with all applicable federal, state and local laws relating to ACM. Before reconstruction or remodeling, Lessee or its sublessee shall submit plans to the Government on how ACM will be managed.

34.7 Lessee shall be required to monitor the condition of existing lead-based paint (LBP) and shall eliminate any hazard that develops from LBP through the duration of the lease. Lessee shall comply with all applicable laws and regulations relating to LBP. Lessee shall obtain prior Government approval before modification, construction, or demolition to any building or structure. Lessor shall submit a LBP remediation plan to Government prior to any construction or modification.

34.8 Not withstanding any other provisions of this Lease, the Government will provide no services as described in Section 3.1.3 of the lease and the Common Service Charge as described in Section 3.1.3 shall be waived for the duration of this lease. Should the Lessee fail to provide Common Services to the leased premises, the Government may terminate the Lease, without liability, upon thirty (30) calendar days written notice.

35. **LIST OF EXHIBITS:**

The following exhibits are a part of this Lease:

Exhibit A - Leased Premises
Exhibit B - Inventory of Personal Property
Exhibit C - Joint Inspection Report
Exhibit D - EBS and FOSL

All correspondence in connection with
this contract should include reference to:

N6871102RP02P09

Exhibit E - Requirements for Use of Government Owned Utilities
Exhibit F - Safety and Health Hazards to be Corrected
Exhibit G - Government's Obligations to Abate Asbestos

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

WITNESS

THE UNITED STATES OF AMERICA

_____ By: _____
WILLIAM R. CARSILLO
Real Estate Contracting Officer
REAL ESTATE CONTRACTING OFFICER
DEPARTMENT OF THE NAVY

_____ Date: _____

TREASURE ISLAND DEVELOPMENT AUTHORITY

_____ By: _____

_____ Title: _____
ANNEMARIE CONROY
Executive Director
Treasure Island Development
Authority Project

_____ Date: _____

N6871102RP02P09

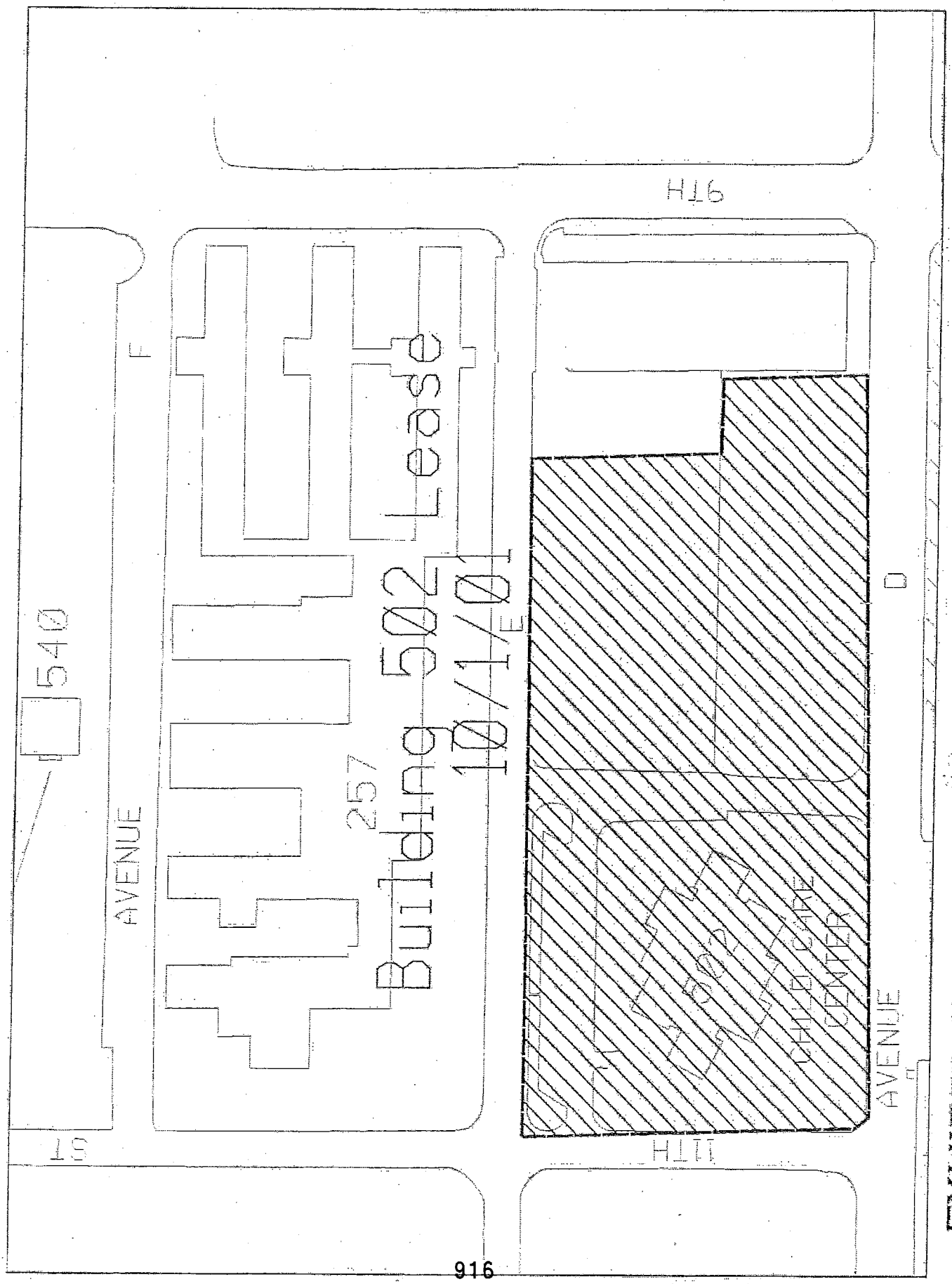

EXHIBIT "A"

N6871102RP02P09

All correspondence in connection with
this contract should include reference to:

Exhibit B

INVENTORY OF PERSONAL PROPERTY

To be completed at time of move-in by both parties.

N6871102RP02P09

All correspondence in connection with
this contract should include reference to:

Exhibit C

JOINT INSPECTION REPORT

To be completed at time of move-in by both parties.

EXHIBIT "D"
Bldg. 502
EBS

COMPREHENSIVE LONG-TERM ENVIRONMENTAL ACTION NAVY (CLEAN II)
Northern and Central California, Nevada, and Utah
Contract Number N62474-94-D-7609
Contract Task Order No. 0126

Prepared For

DEPARTMENT OF THE NAVY
Amelia Duque, Engineer-in-Charge
Engineering Field Activity West
Naval Facilities Engineering Command
San Bruno, California

SITE-SPECIFIC ENVIRONMENTAL BASELINE SURVEY FOR REUSE ZONE 1 NAVAL STATION TREASURE ISLAND, CALIFORNIA

FINAL
July 17, 1997

Prepared By

PRC Environmental Management, Inc.
135 Main Street, Suite 1800
San Francisco, CA 94105

and

Uribe & Associates
2930 Lakeshore Avenue, Suite 200
Oakland, California 94610

R.A. Sugerman

Ms. Rebecca Sugerman, PRC Project Manager

Lynne D Srinivasan

Ms. Lynne Srinivasan, U&A Project Manager

EXHIBIT E

UTILITIES AGREEMENT
SUPPORTING LEASE OF CHILDCARE CENTER (BLDG 502)
NAVAL STATION TREASURE ISLAND

ARTICLE 10, UTILITIES

(a) Portions of the Government's utilities systems serving the Station are located within the Premises and are reserved for use by the Government hereunder. The Lessee agrees to allow the Government or its utility suppliers reasonable access to the Premises for such operation, maintenance, repair and replacement of these utilities systems as may be required. In executing operation, maintenance, repair or replacement of these systems, the Government agrees to take all reasonable steps to limit interference with the use of the Premises by the Lessee or its approved sublessees or assignees.

(b) Prior to commencement of the term of this Lease, the Government and the Lessee will agree upon the terms and conditions for delivery of utility services by the Government to the Lessee which agreement will be appended as Exhibit "E" to this Lease. Conditions will include the following:

(1) Sewage discharge by the Lessee to the Government owned sewer system must meet all requirements of any applicable waste water discharge permit or contract issued by or between the Government and Bay Area Water Quality Management Board for discharge of sewage from the Station.

(2) Storm water discharged from the Premises must meet the requirements of permits issued to the Government in accordance with the National Pollution Discharge Elimination System (NPDES) for discharge of storm water from the Station. In addition, the Lessee agrees to participate in any storm water quality management program required by applicable local, State, or Federal regulations.

(c) The Lessee may, at its own cost, replace, remove, or relocate utility systems on the Premises in order to use the Premises, so long as there is no unreasonable interference with use by the Government of the utility systems and provided the Government has approved the replacement, removal or relocation in advance. Government approval shall not be unreasonably denied or delayed.

All correspondence in connection with
this contract should include reference to:

N6871102RP02P09

BACKGROUND

This exhibit implements the agreement stipulated in ARTICLE 10, of the Lease between the Lessee and the Government.

AGREEMENT

Pursuant to the requirements stipulated in ARTICLE 10 of said Lease, the Lessee and the Government hereby agree to the following with respect to Government-owned utility systems and to Government-provided utility services:

1. General

All utility services delivered at the premises shall be obtained from the City and County of San Francisco (CCSF) in accordance with provisions of Cooperative Agreement N624749720003 entered into by the Navy and CCSF. The Lessee agrees to conform to conditions of service which may be laid out by CCSF in addition to the general requirements of paragraphs 2.0 through 7.0, below. Assistance in obtaining service from CCSF can be obtained by contacting:

San Francisco Public Utilities Commission
410 Palm Ave., Building 1
Treasure Island
San Francisco, CA 94130

Attn.: Chuck Swanson, Utilities Project Manager
Phone: 415 274 0333

2.0 Metering

Electric, natural gas and water service will be authorized by the Government only after installation of meters which fully and exclusively measure consumption on the Premises. Prior to commencement of service the Lessee will insure that any additional metering which may be required has been installed by the San Francisco Public Utilities Commission (SFPUC), as the representative of the CCSF, or in accordance with SFPUC requirements and with written SFPUC authorization. Unless otherwise stipulated by the SFPUC, the volume of sewer discharge from the Premises will be assumed to equal water consumption as measured by applicable meters.

3.0 Commencement of Service

Service will commence after the Lessee, or any sublessee authorized by the Government, has established an account with the SFPUC and has made any advance service deposit which the SFPUC may require.

4.0 **Rates**

Until further notice by the Government, the following rates are in effect:

Utility	Unit	Charge Per Unit
electricity	MWH (million watt-hours)	$142.75
natural gas	MFC (1,000 cubic feet)	$ 6.00
water	KGAL (thousand gallons)	$ 5.40
sewer	KGAL	$ 5.75

5.0 **Billing and Payment**

Monthly bills for utilities services will be issued by the SFPUC to the Lessee or to a Government authorized sublessee as agreed upon between the Lessee and the SFPUC. Payment to the SFPUC is due within 10 working days of receipt of the bill. Adjustments to billed amounts may be requested only after receipt of the billed amount by the SFPUC and may be granted by the SFPUC only after an error in the originally presented bill is clearly established and documented.

6.0 **Service to Sublessees**

As stated in paragraph 5.0, above, payment for utility service may be made directly to the SFPUC by a Government authorized sublessee, rather than by the Lessee, subject to agreement by the SFPUC. In the event any such agreement is made, the Lessee will insure that the applicable sublease contains provisions sufficient to bind the sublessee to all conditions of service given here as well as to any additional conditions of service which may be imposed by the SFPUC.

7.0 **Failure by Sublessees to Make Payment**

Any Government authorized sublessee obligated to make payment for utility services directly to the SFPUC will be considered in arrears if payment of any bill is not received within 30 working days of presentation to the sublessee by the SFPUC. In any such case, the liability for payment will immediately revert to the Lessee and will remain with the Lessee for the remainder of the term of this Lease.

All correspondence in connection with
this contract should include reference to:

N6871102RP02P09

Exhibit F

SAFETY AND HEALTH HAZARDS TO BE CORRECTED

Prior to occupancy and operation as a childcare center, Lessee shall restore and repair any internal surfaces containing mold or mildew and take any necessary measures to prevent future occurrences of mold or mildew.

All correspondence in connection with
this contract should include reference to:

N6871102RP02P09

Exhibit G

GOVERNMENTS OBLIGATION TO ABATE ASBESTOS

No asbestos abatement to be performed by Government.